
(2000) 09 AP CK 0069

In the Andhra Pradesh High Court

Case No : Writ Petition No. 16053 of 1999

Ch. Balraj

APPELLANT

Vs

The Municipal Council and Others

RESPONDENT

Date of Decision : 04-09-2000

Acts Referred:

Andhra Pradesh Municipalities Act, 1965 — Section 192

Citation : (2001) 1 ALT 183

Hon'ble Judges : N.V. Ramana, J

Bench : Single Bench

Advocate : P. Raghavender Reddy, for the Appellant; V. Viswanatham, The G.P. for Municipal Administration For the Respondent No. 3 and B. Siva Reddy, For the Respondent No. 4, for the Respondent

Final Decision : Allowed

Judgement

N.V. Ramana, J.—This writ petition is filed by the petitioner questioning the allotment of shop No.1 of "B" block at daily vegetable market at Kamareddy by the Municipality, in favour of the fourth respondent, by its resolution No. 1 /2, dated 31.5.1999.

2. The case of the petitioner is that he has erected a wooden bunk at the municipal vegetable market, Kamareddy, and was doing business along with 72 other persons similarly situated. It appears that all these 72 bunk owners are evicted/displaced for the purpose of constructing municipal shopping complex. The municipality passed the following resolution No. 2/74 (II) dated 28.9.1991 before shifting the 72 bunk owners:

"The 72 bunk owners in daily vegetable market should shift their bunks to weekly market temporarily on the condition that the said 72 bunk owners would be allotted shop rooms giving due importance on the rents fixed by the municipal council at that time. A list of 72 vendors is also enclosed to the resolution".

3. After that, the municipality constructed shopping complex, consisting 82

shops, in five rows calling them as "A" Block to "E" Block, under IDSMT Scheme. Prior to construction of the present shopping complex, the petitioner used to have his wooden bunk in "B" Block first shop and the 4th respondent used to do business in "B" Block second shop. According to the petitioner, he stands first in the B block and fourth respondent stands second in B block, and the municipality allotted the shops as per the physical existence of the wooden bunks to the vegetable vendors. Earlier, the petitioners and others filed Writ Petition No. 5054 of 1995 seeking allotment of shops. By order dated 21.11.1996, while disposing of the writ petition, this court directed the respondents-therein to consider the case of the petitioners-therein for allotment of newly constructed shops and stalls in the vegetable area market in terms of G.O.Ms.No.120, Municipal Administration Department, dated 9.3.1995 and as per the resolution No. 2/74 (II) dated 28.9.1991 of Kamareddy Municipal Council. By proceedings Roc.No.A/31/91, dated 2.4.1997, allotment of shops was made by the municipality, in favour of the previous bunk owners, including R-4 herein (shop No. B.3), as per the list. The 4th respondent did not occupy the said shop No. B.3 on the ground that he filed Writ Petition No. 7321 of 1997. The 4th respondent filed the above said W.P.No. 7321 of 1997 seeking a writ of mandamus declaring the proceeding, Roc.No.A1/31/91 dated 2.4.1997, issued by the respondents therein as illegal and contrary to the judgment dated 21.11.1996 in Writ Petition No. 1016 of 1995 and to direct the respondents to act according to the above said judgment. On 25.4.1997 this court directed stay of all further proceedings including allotment of shop No. B.1. Subsequently, R.4 withdrew that Writ Petition No. 7321 of 1997 on 11.6.1998 on the ground that he filed civil suit. The fourth respondent filed O. S. No. 46 of 1997 in the District Munsif Court, Kamareddy, (which was transferred to the Mobile Court, Kamareddy and re-numbered as O. S. No. 28 of 1999), for perpetual injunction restraining the municipality from interfering or dispossessing him from the wooden bunk existing in front of Mulgi No.1 of B- block situate at daily vegetable market, Kamareddy as long as his leasehold rights are in existence and also for a direction to the municipality to allot mulgi No.1 of B- block as per the order of this Court in Writ Petition No 1016 of 1995 and G.O.Ms.No. 120, Municipal Administration Department, dated 9.3.1995. Later, R.4 withdrew the said suit in 14.7.1999 reserving liberty to file a fresh suit. Questioning the allotment of shop to R.4 by resolution No.1/ 2, dated 31.5.1999 and the consequential proceedings of the Municipal Commissioner Roc.1286/99, dated 21.7.1999, the petitioner filed this writ petition.

4. On 30.7.1999, while admitting the writ petition, this court granted interim order suspending the proceedings of the Municipal Commissioner dated 21.7.1999.

5. The 2nd respondent-Municipal Commissioner, Kamareddy, filed counter affidavit. It is stated, inter alia, therein that the municipality constructed 82 shops in the daily market under IDSMT scheme in the year 1995 as per the sanction issued by the Government in G. O.Ms.No.120, M.A.Department, dated

9.3.1995. Prior to the said construction, 72 persons were doing their business in the same place by erecting bunks for the last 20 years. After completion of construction, these shops were allotted to the existing businessmen in the same place, i.e., from "A" to "E" blocks. In the Order dated 21.11.1996 in W.P.No. 1016 of 1995, the High Court directed allotment of shops strictly in accordance with G.O.Ms.No.120 and the resolution referred to above. As the abovesaid G.O.Ms.No.120 and resolution No. 2/74 (II) dated 28.9.1991 do not spell out any specific procedure to be adopted for allotment of shops, the Municipal Council by resolution No. 1 / 2 on 31.5.1998 resolved to allot shop No. B.1 in favour of R.4, who was earlier doing his business in the same place, where the present shop No. B.1 is located, and accordingly proceedings, Roc No. 1286/99 dated 21.7.1999, are issued. The 2nd respondent claimed that the allotment of shops was made only to those members who were previously doing their business in the same place, and the writ petition deserves to be dismissed.

6. The fourth respondent filed counter. He denied the claim of the petitioner that prior to the construction of the complex the petitioner was having his bunk in B block first shop and the fourth respondent was having business in B block second shop. It is stated that the municipality has prepared a statement showing the names of the lessees and in the said statement the wooden bunk number of the 4th respondent is shown as 112 and the name of the 4th respondent is shown at serial No.1. In that statement, the bunk number of the petitioner is shown as 139 and petitioner's name is at serial No.28. As per the arrangement made at the time of evicting the wooden bunk owners, prior to construction of shopping complex, the allotment of shops has to be made, after construction of the complex, as per the serial number in the statements, and the 4th respondent is entitled for allotment of first shop in B block and the petitioner is not entitled for that shop. The 4th respondent denied the allegation of the petitioner that the wooden bunk which was given No. 112 wherein he was doing vegetable business prior to the construction of the shopping complex by the municipality has gone in road widening. The 4th respondent stated that, as the municipality failed to allot shop No.1 in B- block to him after the construction of shopping complex in accordance with resolution No. 2/74 (II) dated 9.3.1995, he filed Writ Petition No. 1016/95, and that writ petition was disposed of with a direction to the municipality to consider his case in terms of the above G.O.Ms.No.120 and the resolution No. 2/74 (II). He filed another Writ Petition No. 7321/97, as the municipality failed to allot shop No.1 in B block to him, as per the directions in W.P.No. 1016/1995. He stated that he filed Contempt Case No. 695/1997 alleging violation of the order of this court in W.P. 1016/95, and this Court closed the said contempt case. Later, he withdrew Writ Petition No. 7321/97 as he filed O.S.No.28/99 (originally numbered as O.S 46/97) in civil court at Kamareddy for perpetual injunction, and withdrew the same later. According to the 4th respondent, the municipality passed unanimous resolution No. 1/2 on 31.5.1999 to allot shop No. B.1 to him as he was doing business there for the last 40 years, and accordingly by proceedings Roc. No. 1286/99 dated 21.7.1999, the

Commissioner allotted the said shop to him for a period of three years w.e.f. 1.6.1999 to 31.5.2002 on a monthly rent of Rs. 650/-. He further stated that he executed an agreement of lease in favour of the municipality and paid the one month's rent of Rs. 650/- in advance and also deposited three months' rent as advance, and that he is in occupation of the shop and doing business even prior to the interim orders in this writ petition.

7. Heard all the learned counsel appearing for the respective parties at length. Perused the record produced by the learned Standing Counsel for the Municipality and the written submissions filed by the respective counsel.

8. The questions to be determined in this writ petition are :-

(1) Whether the petitioner is entitled for allotment of shop No.B.1 as per resolution No. 2/74(II), dated 28.9.1991, and G.O.Ms.No.120, Municipal Administration Department, dated 9.3.1995?

(2) Can this Court interfere with the resolution No.1/ 2 dated 31.5.1999 passed by the Kamareddy Municipal Council?

(3) Is there is any violation of the earlier orders passed by this Court, by the respondents?

9. The first writ petition, W.P.No. 1016/1995, was filed by R-4 (Abdul Hameed) seeking a writ of mandamus directing the first respondent "to allot one mulgi to him in the municipal market area Kamareddy, where he was carrying on vegetable business prior to the construction thereof and which is adjacent to and behind the temporary shed in which he is carrying on vegetable business presently". That writ petition was disposed of 21.11.1996 in the following terms:

"It is agreed by the learned counsel for the petitioners and the learned standing counsel for the municipality that the interest of justice would be met if a direction is given by the court directing the respondent municipality to take appropriate decision in the matter of allotment of shops already constructed and meant for the vegetable vendors in terms of G.O.Ms.No. 120, Municipal Administration and Urban Development (J-1) Department dt. 9.3.1995 and resolution No. 2/74(II) dated 28.9.1991 of the municipal council. Accordingly there shall be a direction directing the respondent-municipality to consider the cases of all the petitioners therein for allotment of newly constructed shops and stalls in the vegetable market area in terms of the aforesaid G.O and the resolution. The petitioners shall be allotted shops by the respondent-municipality strictly in accordance with the G.O and the resolution. Appropriate decision in this regard shall be taken by the municipality within a period of four weeks from the date of receipt of a copy of this order".

10. The 4th respondent filed Contempt Case No. 695 of 1997 alleging violation of the order in W.P. 1016/95 and that contempt case was closed. The respondents issued proceedings Roc.No. A1/31/91, dated 2.4.1997, deciding not to make any changes in the allotment of shop rooms made earlier as per resolution No.7/13,

dated 26.4.1995. The agenda of the municipal council meeting dated 26.4.1995 -- (as could be seen from the xerox copy of the same available in the record produced by the Standing Counsel for the respondent-municipality) -- was to "consider allotment of 72 shops in the vegetable market to the old bunk owners and the remaining 10 shops to SC and ST candidates". At the end of the agenda it is noted in Telugu that a "list of old bunk owners " is enclosed.

11. The present writ petitioner and seven others filed W.P.No. 5054 of 1995 seeking allotment of shops. On 21.11.1996, the said writ petition was disposed of with the same directions as in Writ Petition in 1016/1995 (extracted above), viz., to consider the case of the petitioners in accordance with G.O.Ms.No. 120 and the resolution. The municipal council discussed the matter and, because there is no procedure prescribed either in G.O.Ms.No.120 or in the resolution No. 2/74(II) dated 28.9.1991, passed resolution No.7/13, dated 26.4.1995 and issued the consequential proceedings dated 2.4.1997. Questioning the said proceedings dated 2.4.1997, R-4 filed W.P.No. 7321/1997 seeking a direction to the respondents to act in accordance in with the judgment dated 21.11.1996 in W.P.No. 1016/1995 for allotment of shops. Later, R-4 withdrew the said Writ Petition No. 7321/97 as he has filed civil suit seeking the same relief. Respondent No.4 withdrew the civil suit also.

12. A perusal of the list of previous bunk owners, available in the records produced by the municipality, discloses that the name of the petitioner herein (Balraj) is shown as against shop No.1 of B-block and the name of R.4 (Abdul Hameed) is shown as against shop No.3 of B-block. The municipality filed its counter in Writ Petition No. 1016/1995 (filed by Hameed. R.4 herein). In paragraph-3 of the said counter it was specifically stated that R.4 herein was doing business in bunk No.3 prior to construction of shops. In paragraph-4 of the said counter, it was stated thus:

"Before constructing the shops and stalls, all the vegetable vendors, including the petitioner Sri Abdul Hameed, vacated the site. After completion of the shops, the writ petitioner (Hameed) erected a temporary shop touching the walls of shop No.1 and in the road margin. Because of that, the shutter of shop No.1 had to be closed. This respondent municipality was constrained to issue a show cause notice u/192 of the A.P.Municipalities Act for removal of the said unauthorized shed. Against that the writ petitioner has approached this Hon"ble court. The allegation of the petitioner that the temporary shed erected by him is not obstructing the public or the public road is not correct. The shed is erected in the road margin and he is causing obstruction, inconvenience to the public coming to the Market leading to the frequent complaints by ladies and children for the removal of the unauthorized shed".

13. In paragraph-5 of the said counter, it was further stated:

"The writ petitioner is a vegetable vendor who was doing his business in the vegetable market prior to the construction of the new shop in bunk No.3 as

already stated. However, his name has come to be entered at serial no.1 in the collection register. The petitioner before filing the writ petition has not made any claim to any particular stall. However it is not correct to allege that the shops are being allotted to some other persons ignoring the claim of the writ petitioner. In fact the shop had been allotted by the Municipal Council, Kamareddy, Respondent herein, taking into view all the aspects of the matter putforward by the various vegetable vendors and relevant consideration with reference to which a list was prepared prior to the construction of the new shops and stalls in vegetable market".

14. It may be noted that in Contempt Case No. 695 of 1997 filed by R.4 herein, the municipality filed its counter and took the stand that R.4 had erected a temporary shed by the side of shop No.B-1. In the suit O.S. No.28/1999, in paragraph-5 of the plaint, the plaintiff (R.4 herein) claimed that he is having a wooden bunk "in front of mulgi No.1 of B-block". The actual reason for withdrawing the civil suit by R.4 is not forthcoming. In spite of giving sufficient opportunity, either R.4 or the municipality could not produce even a copy of the I.A. 44/1999 filed by R.4 in the civil suit seeking permission to withdraw the suit. No material is placed before the court by the 4th respondent, except the oral submission, in support of his claim that the municipality had assured to allot shop No.1 of B block.

15. Resolution No.1/2, dated 31.5.1999 of the Municipal Council, Kamareddy, says that the Council unanimously resolved to allot shop No.1 of B-block to R.4 (Hameed) since the High Court directed in its order in W.P.No.1016/1995 to take appropriate decision for allotment of shop No.B.1 in the vegetable market in favour of R.4. I have already noted the prayer of R.4 in W.P.No. 1016/1995 and the order passed by this Court on 21.11.1996 in the preceding part of this order. What all the 4th respondent prayed for is to allot one mulgi in the municipal market where he was carrying on business prior to construction of the market complex and what the court said while disposing of the writ petition is to allot shop in accordance with G.O.Ms.No. 120,dt. 9.3.1995 and resolution No.2/74 (II) dated 28.9.1991 of the Kamareddy Municipal Council. The 4th respondent also filed Contempt Case No. 695/1997 (in W.P. 1016/1995). That contempt case was disposed of on 16.3.1999. At page No.5 of the order in the contempt case, the learned Judge observed:

"It is required to notice that by proceedings dated February 1998 in Roc. No. A.1/31/91, the petitioner is informed that shop No.3 of daily vegetable market complex at Kamareddy is allotted in his favour and in the said proceedings there is a reference to the interim order in WPMP 8859/97 in W.P. 7321/97.

Suffice it to notice that the interests of justice would be met by disposing of the contempt case leaving the question open as to whether the petitioner is entitled for shop No.1 alone as claimed by him inasmuch as the same is subject-matter of W.P. 7321/97".

16. From the above, it is clear that there is no positive direction of this court either in the writ petition or in the contempt case to allot shop No.1 of B-block in favour of R.4. There is no material to show that R.4 was given any assurance by the municipality that he will be allotted shop No.1 of B-block. Moreover, in the contempt case, this court did not even find fault with the proceedings of municipality issued in Roc.No.A1/31/91 dated 2.4.1997 wherein it was stated that the municipality has decided not to change the allotment of shops already made. Apparently, resolution No. 1 /2 dated 31.5.1999 was passed by the Municipal Council after the disposal of Contempt Case No. 695/1997 on 16.3.1999. No material worth mentioning is available on record to pass such a resolution. The resolution seems to have been passed solely based on the order passed by this Court on 21.11.1996 in W.P.No. 1016/1995 (in which there is no positive direction to allot shop No.1 of B-block in the market). This is clear from the following averment in paragraph-5 of the counter-affidavit filed in this writ petition:

"...as per the directions of this Hon"ble High Court in W.P.No.1016/95 dt. 21.11.96 the Municipal Council has resolved for allotment of shop No.B.1 in favour of Abdul Hameed vide Council Resolution No. 1 /2,dt. 31.5.99. Accordingly the above shop was allotted in favour of Sri Hameed vide proceedings No. 1286/99 dt 21.7.99, which is perfectly justified and as per the directions of this Hon"ble High Court".

17. From the factual aspects noted above, it is clear that the sole basis for allotment of shop No.1 of B-block in favour of R.4 herein by the municipality, is the order dated 21.11.1996 passed by this Court in Writ Petition No. 1016 of 1995, and no other material is forthcoming justifying the action of the municipality.

18. It must be stated that the local bodies should act fairly and their actions must not only stand to judicial scrutiny but also to public scrutiny. The action of the municipality, in this case, prima facie, lacks transparency and, cannot be said to be free from some element of doubt. From the material on record, this court could not discern any plausible reason, or semblance of justification in the action of the municipality, in allotting shop No.1 of B-block in the market by the municipality in favour of the 4th respondent.

19. For the aforementioned reasons, this writ petition is allowed as prayed for. A writ of mandamus shall issue accordingly. No costs.