
(2012) 06 AP CK 0041

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 3901, 4026 and 4027 of 2012

G.A. Nagaraju

APPELLANT

Vs

Government of Andhra Pradesh and others

RESPONDENT

Date of Decision : 06-06-2012

Acts Referred:

Andhra Pradesh Municipalities Act, 1965 — Section 194, 194(1)(a)

Citation : (2012) 4 ALD(Cri) 549

Hon'ble Judges : G. Chandraiah, J

Bench : Single Bench

Advocate : Kothapalli Ram Mohan Chowdary, for the Appellant; C. Venkat Yadav (SC for MC) for the Respondent Nos. 2 to 4, for the Respondent

Final Decision : Allowed

Judgement

G. Chandraiah, J.—All the petitioners are the tenants of different Municipal shops near Gandhi Chowk, Old Municipal High School, Hindupur, Anantapur District. By the impugned proceedings in ROC No. 2289/2010-AI dated 9.1.2012, issued by the 4th respondent-Hindupur Municipality, represented by its Commissioner, the petitioners were directed to vacate from their respective shops within fifteen days. Aggrieved by the same, the present writ petitions have been filed. Since the issue involved in the writ petitions is common, they are being disposed of by this common order.

2. The case of the writ petitioners is that they were initially granted lease by the 4th respondent-Municipality and by virtue of collecting enhanced rents at the rate of 33 1/3 % as envisaged under Rule 12(h) of Andhra Pradesh Municipalities (Regulation of Receipts and Expenditure) Rules, 1968, (for short "the Rules"), they were allowed to continue in their respective shops for the last about fifteen years and that they are paying the said rents regularly: Their specific case is that the lease period in respect of all the writ petitioners, has not exceeded twenty five years. Earlier, when the 4th respondent-Municipality, issued notice dated 29.6.2011, directing them to vacate the shops, they filed writ petition in WP No.

18428/2011 and by order dated 1.7.2011, this Court directed the 4th respondent to follow due process, as contemplated u/s 194 of the Andhra Pradesh Municipalities Act, 1965 (for short "the Act") for evicting the petitioners from the shops in question. Pursuant to the orders of this Court, the 4th respondent issued the impugned proceedings dated 9.1.2012, directing the petitioners to vacate the premises in question. Challenging the same, the present writ petitions have been filed.

3. The case of the petitioners is that they are continuing in the shops of the 4th respondent - Municipality, for the last about fifteen years by virtue of the enhancement of rent by 33 1/3% per cent by the Municipality, as envisaged under Rule 12(h) of the Rules and they are not defaulters and have not violated any of the clauses under sub-section (1)(a) of Section 194 of the Act and their leases periods have not exceeded 25 years and, therefore, without issuing any show-cause notice, they cannot be evicted. Their further case is that the judgment of the Division Bench of this Court in WP No. 6354/2009 dated 25.8.2009 directing not to accord sanction for renewal of leases of municipal property, beyond a period of twenty five years without conducting public auction, is not applicable to their cases, as their lease periods have not exceeded 25 years. Therefore, they filed representations dated 4.2.2012, but without considering the same, the 4th respondent-Municipality, is contemplating to evict them by using force. Their further case is that the shops of the 4th respondent-Municipality are not in dilapidated condition. With these averments, the impugned proceedings are sought to be set aside.

4. On the other hand, the case of the 4th respondent-Municipality, on behalf of which, counter-affidavit, is filed, is that the Municipal shops are in dilapidated condition and therefore, the council passed a Resolution No. 182 dated 27.10.2011 to demolish the existing shops and to construct new shops and lease out the same to the highest bidder in the public auction. As per the judgment of the Division Bench dated 25.8.2009 in WP No. 6354/2009, the lease period cannot be extended beyond 25 years and the fresh lease has to be granted by way of public auction. Pursuant to the directions of this Court in the earlier writ petition, the petitioners were given opportunity by giving notice dated 14.2.2012 and the petitioners/ lease holders attended and requested them to continue, but the same, in view of the above facts and circumstances, is not feasible. Therefore, the writ petitioners are sought to be dismissed.

5. From the above, certain facts are required to be noticed. The petitioners who were initially granted lease, were continuing in the shops of the 4th respondent-Municipality beyond the lease period by paying the enhanced rents at the rate of 33 1/3%, as envisaged under second proviso to Rule 12(h) of the Rules and the lease periods have not exceeded twenty five years, in respect of all the writ petitioners. Section 194(1)(a) of the Act, provides for circumstances to evict persons in unauthorised occupation of municipal property. There is no averment in the counter-affidavits or in the impugned proceedings issued u/s 194 of the

Act, with regard to violations as contemplated u/s 194(1)(a) of the Act. Therefore, in my considered view, the impugned proceedings, without mentioning the violations u/s 194(1)(a) of the Act, cannot be sustained.

6. The only ground of the 4th respondent-Municipality can be that as the shops are in dilapidated condition, the council has passed resolution to demolish the shop rooms and allot them by conducting public auction to the highest bidder.

7. In view of the above facts and circumstances, I am of the considered, view, the 4th respondent-Municipality, ought to have considered the representation of the petitioners dated 4.2.2012 and passed orders in accordance with law, assigning reasons.

8. For the foregoing reasons, the impugned proceedings are set aside and the 4th respondent-Municipality is directed to consider the representation of the petitioners dated 4.2.2012 and pass appropriate orders in accordance with law, within a period of four weeks from the date of receipt of a copy of this order and till then status quo shall be maintained. The writ petitions are accordingly allowed. No costs.