
(2014) 02 AP CK 0119
In the Andhra Pradesh High Court
Case No : W.P. No. 4554 of 2014

Gamidi Rajani

APPELLANT

Vs

Government of Andhra Pradesh

RESPONDENT

Date of Decision : 21-02-2014

Acts Referred:

Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987
— Section 83, 84

Citation : (2014) 3 ALD 80 : (2014) 2 ALT 419

Hon'ble Judges : Ramesh Ranganathan, J

Bench : Single Bench

Advocate : S.R. Sanku, Advocate for the Appellant; V.T.M. Prasad for the Respondent No. 4, Advocate for the Respondent

Judgement

Ramesh Ranganathan, J.—The relief sought for in this writ petition is to declare that the petitioner is entitled to extension of lease for twelve years i.e., to act as the lessee of the fourth respondent choultry to collect rents from her tenants occupying the fourth respondent shopping complex, in the light of G.O. Ms. No. 760 Rev. (Endts.) Department dated 24.7.2009 and in the light of the report submitted by the third respondent dated 18.12.2009. Admittedly the subject choultry is a Section 6(C) institution and, as such, is governed by the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Immovable Properties and Other Right (other than Agricultural) Leases and Licences Rules, 2003 (for brevity, "the Rules") (notified in G.O. Ms. No. 866 dated 8.8.2003). These rules apply to leases of all endowment properties other than agricultural lands. The subject choultry is a shopping complex. The petitioner claims that a lease should be granted in her favour for twelve years to collect rent from the tenants, and coercive steps should not be taken under Sections 83 and 84 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for brevity, "the Act").

2. Rule 3(1) of the Rules stipulates that the Commissioner may, on a request

made in writing by the Executive Authority, permit lease of any property, otherwise than by way of public auction, if he is satisfied, for reasons to be recorded in writing, that the interest of the institution or endowment will not suffer thereby. Rule 3(2) of the Rules requires a public auction to be held at the place where the properties are situated or right exists. Rule 4(1) of the Rules restricts grant of leases only to immovable properties used for residential purposes. Under the said sub-rule, in the case of other immovable properties such as shops, buildings, sites etc., a licence alone shall be granted. Rule 4(2)(b) of the Rules stipulates that no licence shall be granted for a period exceeding three years. Under Rule 4(3)(a) the Executive Authority is required to obtain prior permission of the Commissioner before causing publication of the notice under Rule 6 of the Rules duly submitting proposals to the Commissioner. Rule 6 of the Rules relates to issuance of an auction notice and requires the notice to contain the details referred to therein. Rules 7 and 8 of the Rules deal with the manner in which an auction notice should be published, and the auction conducted. While the prescribed mode, of grant of a lease or a licence, is only by way of a public auction, Rule 3(1) carves out an exception and empowers the Commissioner, if he is satisfied for reasons to be recorded in writing that the interest of the institution or endowment will not suffer thereby, to grant permission to the Executive Authority to grant a lease/licence otherwise by way of a public auction. The requirements of Rule 3(1), for grant of leases/licences otherwise than by way of public auction, are that the Commissioner should satisfy himself that the interest of the institution or endowment will not suffer thereby; and the satisfaction of the Commissioner must be for reasons to be recorded in writing. It is the interest of the institution or endowment which is paramount, and not the interest of the lessee, in the Commissioner arriving at the required satisfaction for according permission for grant of a licence, otherwise than by way of public auction, for shops belonging to institutions and endowments governed by the provisions of the Act. Except in exceptional cases, that too on recording reasons in writing of his satisfaction that the interest of the institution or endowments would not suffer thereby, the Commissioner cannot, ordinarily, accord permission for grant of a lease/licence otherwise than by way of a public auction.

3. Rule 4(3)(b)(ii) of the Rules enables the Commissioner, after considering the objections and suggestions if any received, to accord permission for a period not exceeding five years with such terms and conditions as may be specified for lease or licence to be conducted in public auction. Even where a lease or licence is granted, pursuant to a public auction being conducted, Rule 4(3)(b)(ii) restricts the power of the Commissioner to grant a lease/licence for a period exceeding five years. Under Rule 4(3)(b)(iii), prior to its amendment by G.O. Ms. No. 760 dated 24.7.2009, power was conferred on the Government to accord permission for grant of a lease or licence for a period not exceeding eleven years. This sub-rule has been amended by G.O. Ms. No. 760 dated 24.7.2009 and, instead of the words "eleven years", the words "twelve years" have been

substituted. Both before and after the amendment of the Rules, the power conferred on the Government to grant a lease or licence is only upto a period of 11/12 years, and not more. Even in case of the grant of a lease or licence, for a period of upto 12 years, Rule 4(3)(b)(iii) requires the Government to grant permission following the "above procedure" which is the procedure prescribed in Rules 3 and 4. It is evident, therefore, that the power of the Government, to accord permission for grant of lease/licence otherwise than by way of a public auction, can be exercised only if it is also satisfied that the interest of the institution will not suffer thereby.

4. The petitioner claims to have submitted a representation which appears to have been forwarded by the Assistant Commissioner to the Commissioner. The Commissioner shall examine the petitioner's request strictly in terms of the Rules, more particularly Rule 3(1) thereof, and only if he is satisfied, that the interest of the endowment would not suffer thereby, shall he record reasons therefor in writing and, thereafter, decide whether a lease or licence should be granted in favour of the petitioner and, if so, the duration of the licence period. It is only if he is satisfied that a lease or licence, exceeding a period of five years should be granted, is he required to forward the application to the Government. As a grant of a lease or licence, of immovable properties of religious institutions and endowments, is governed by statutory rules, both the Government and the Commissioner are statutorily obligated to follow the aforesaid rules both in its letter and spirit. The petitioner's representation, as forwarded by the Assistant Commissioner vide letter dated 18.12.2009, shall be examined by the Commissioner strictly in terms of the aforesaid rules and the observations made hereinabove, and a decision shall be taken thereon and communicated to the petitioner at the earliest, in any event not later than three months from the date of receipt of a copy of this order. The writ petition stands disposed of accordingly. The miscellaneous petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.