(1999) 11 AP CK 0061

In the Andhra Pradesh High Court

Case No : Writ Petition No. 23845 of 1999

M. Jagan Reddy and others APPELLANT

Vs

Commissioner, Uppal Kalan Municipality, Uppal, R.R. Dist. RESPONDENT

Date of Decision : 17-11-1999

Acts Referred:

Andhra Pradesh Municipalities (Acquisition and Transfer of Immovable Properties) Rules, 1967 — Rule 3, 4, 5, 8
Andhra Pradesh Municipalities Act, 1965 — Section 276, 277, 326(2)

Citation : (2000) 1 ALD 518

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : Mr. N. Shobha, for the Appellant;

Judgement

1. The petitioners allege that they are the petty vegetable vendors in vegetable market at Uppal, maintained by the respondent in furtherance of the provisions of Sections 276 and 277 of the Andhra Pradesh Municipalities Act, 1965 (in short ''the Act''). They approached this Court with the following relief :

A writ of mandamus declaring the action of the respondent in not allotting the shops to the petitioners in Vegetable Market, Uppal and issuing a notification in Ref. File No.D/1555 dated 1-11-1999 as illegal and arbitrary.

2. In the affidavit accompanying the writ petition they claim that they have been carrying on the vegetable business since 1978. Some officials also assured them that they will be given pukkah shops on a reasonable rent as and when the construction is made. All these assurances are oral assurances. Now the respondent after completion of the municipal shops in the municipal market has issued an auction notice dated 1-11-1999, which is impugned in this writ petition. The auction is for allotting the 44 shops of different sizes to a person who gives the maximum bid towards the goodwill amount, which is minimum of Rs.50,000/- for a shop admeasuring 12'' x 24'' and a minimum of Rs.15,000/- for a shop admeasuring 8'' x 8''. In fact, the notification also reserves shops for

the persons belonging to Scheduled Castes, Scheduled Tribes and persons who are physically challenged

(physically handicapped).

3. The learned Counsel for the petitioners Smt. Sobha submits that having been allowed to carry on their business in the vegetable market on payment of market fee and having given assurance that they will be allotted pukkah shops in the market, the respondent cannot act in an arbitrary manner and defeat the legitimate expectation of the petitioners. I am afraid, this submission is misconceived.

4. Legitimate expectation either substantive or procedural one, comes into play in public law only when the person claiming expectation was given a categorical assurance by explicit or implied conduct of the decision makers. In this case, the petitioners are not able to demonstrate before this Court that there was such assurance, which resulted in the petitioners altering their possession, namely trying their best or procure some other shops elsewhere. In fact, it is their case that they have been carrying on the business even as on today at the vegetable market. Therefore, considerations of either substantive legitimate expectation or procedural expectations do not arise in this case.

5. Further, when a particular act is to be done in a particular manner, the authorities are under statutory obligation to carry on their acts in accordance with the law prescribed. Any other procedure would render the action illegal. When an event is squarely governed by the provisions of enactment or statutory rules, the question of legitimate expectation does not arise.

6. In a recent judgment of the Supreme Court in Punjab Communications Ltd. Vs. Union of India and Others, , His Lordship Hon''ble Sri Justice M. Jagannadha Rao considered almost the entire law on the public law doctrine of legitimate expectation. His Lordship referred with approval to two judgments of House of Lords in Council of Civil Service Unions v. Minister for the Civil Service 1985 AC 374 and Pleasure v. Secretary of State (1997) 3 All ER 577 (HL), and His Lordship also referring to the entire case law of the Apex Court in Navjyoti Coo-Group Housing Society etc. Vs. Union of India and Others, , Food Corporation of India Vs. M/s. Kamdhenu Cattle Feed Industries, , Union of India v. Hindustan Development Corporation AIR 1994 SC 155, Madras City Wine Merchants'' Association and Another Vs. State of T.N. and Another, , M.P. Oil Extraction v. State of M.P. AIR 1998 SC 145 and National Buildings Construction Corporation Vs. S. Raghunathan and Others, , held that the legitimate substantive expectation merely permits the Court to find out if the change of policy resulting in defeating legitimate expectation, is irrational or unreasonable. From this judgment, the following principles of legitimate expectation emerge :

(i) For a legitimate expectation to arise, the decisions of administrative authority must affect the person by depriving him of some benefit or advantage, which he had in the past or been permitted by the decision maker, which the person can legitimately expect to be permitted to continue and the person received assurances from the decision maker that the benefit will not be withdrawn without giving him an opportunity of advancing reasons;

(ii) The procedural aspect of legitimate expectation relates to representation for hearing or other appropriate procedure;

(iii)Substantive part of the principle is that, representation made for a benefit of substantive nature, will be granted or if the person is already in receipt of the benefit, it will be continued and not varied;

(iv)The decision makers permitting to change the policy in public interest, cannot be fettered by the application of principle of substantive legitimate expectation;

(v) If the authority proposes to defeat a person''s legitimate expectation, the authority should afford the person an opportunity to make a representation in the matter. From this point of view, the doctrine imposed a duty to act fairly by taking into consideration all relevant factors relating to such legitimate expectation;

(vi)The protection of legitimate expectation do not require the fulfilment of legitimate expectation, where an overriding public interest required otherwise;

(vii) If a person is denied the benefit by virtue of a legislative enactment or change in the statutory rules, it is always taken that the result of a change in the policy by Legislation, does not give rise to legitimate expectation;

(viii) The principle of legitimate expectation certainly gives the person sufficient locus standi to seek judicial review; and

(ix) The substantive legitimate expectation merely permits the Courts to find out if the change of policy resulting in defeating legitimate expectation was irrational or unreasonable.

7. Therefore, applying the principle of legitimate expectation, as the procedure for giving leasehold right in respect of municipal property, is governed by the statutory rules (as discussed hereunder), the authorities are bound by the Rules and the fact that petitioners are carrying on the business in the vegetable market, does not give rise legitimate expectation of being given a preference in the allotment of shops on lease basis. In fact, the learned Counsel for the petitioners, except saying that the petitioners have legitimate expectation, has not brought to the notice of the Court any case law on subject. In fact, it transpired during the arguments that the petitioners'' Counsel totally ignored the existence of statutory rules governing the transfer of municipal property on lease basis.

8. u/s 326(2)(c) of the Act, the Government is competent to make Rules as to the conditions on which property may be acquired by the Council or on which property vested in or belonging to the Council may be transferred by sale mortgage, tease exchange or otherwise. In exercise of the said power, the

Government promulgated Rules under G.O. Ms. No.661 Municipal Administration, dated 27-10-1967, which was also amended subsequently by G.O. Ms. No.235 dated 6-6-1973. These Rules are called Andhra Pradesh Municipalities (Acquisition and Transfer of Immovable Properties) Rules, 1967 (in short ''the Rules''). Rule 5 of the Rules is relevant and the same reads as under :

"3. Transfer by lease of immovable properly belonging to Municipal Council:--(1) A Municipal Council may lease out any immovable property belonging to it if the lease is for a period of five years or less at any one time; and if it is for a period exceeding five years but not exceeding twenty five years at a time, it may lease out after obtaining the prior sanction of the Government.

(2) Whenever any lessee is permitted to put up any building or structure whether of masonry, brick, mud or metal in the land belonging to Municipal Council, the prior sanction of the Director of Municipal Administration shall be obtained therefore who may impose such conditions as he may think fit. (3) The lease deed shall be in Form III (a) in Schedule III appended to these Rules with such variations as the circumstances may require."

9. Rule 8 of the Rules indicates the procedure to be followed for leasing out the Municipal property. Sub-rule (2) of Rule 8 says that in case the lease is under Rule 5, notice should be published giving full particulars of the properties to be leased and the consideration for the rent reserved under the lease together with the name of the lessee. Sub-rule (3) of Rule 8 is categorical, when it says that in every case of transfer of the Municipal property, either under Rules 3 and 4 one the one hand or Rule 5 on the other hand, the transfer or lease is only by way of public auction. Therefore, the action of the respondent in issuing the impugned auction notice is to be held in accordance with law and there cannot be any grievance out of it.

10. Even on the touch stone of general principles dealing with public property the petitioners case is unsustainable. The law laid down by the Apex Court in Rashbihari Panda etc. Vs. State of Orissa, , Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, , Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another, , State of Haryana and Others Vs. Jage Ram and Others, , Ram and Shyam Company Vs. State of Haryana and Others, and Chenchu Rami Reddy and Another Vs. Government of Andhra Pradesh and Others, , does not support the contention of the Counsel for the petitioners, that they should be inducted as lessees of municipal shops without conducting public auction. In Shri Sachidanand Pandey and Another Vs. The State of West Bengal and Others, , the Hon''ble Supreme Court after referring to the authorities mentioned herein above held as under :

"On a consideration of the relevant cases cited at the bar the following propositions may be taken as well-established; State owned or public-owned property is not to be dealt with at the absolute discretion of the executive.

Certain precepts and principles have to be observed. Public interest is the paramount consideration. One of the methods of securing public interest, when it is considered necessary to dispose of a property, is to sell the properly by public auction or by inviting tenders."

11. The learned Counsel for the petitioners also submits that the condition of fixing the upset goodwill price at Rs.50,000/- for one category of shops and Rs.15,000/- for another category of shops is arbitrary. Arbitrariness is a thing of one''s own perception. The same cannot be defined in precise terms, nor every unreasonable action can be held to be arbitrary. The learned Counsel for the Municipality submits that having regard to the area, where the shops are constructed, being the headquarters of the Municipality, there is no arbitrariness in fixing the goodwill upset price as mentioned in the impugned auction notice, I am of the considered view that for a shop admeasuring 288 sq. feet, fixing the minimum upset goodwill at Rs.50,000/- is reasonable one. This observation is further strengthened by the fact that whatever be the goodwill price, the rent is fixed at Rs. 1,4007- per month for the general category and Rs.720/- for the candidates belonging to the reserved category.

12. Therefore, for the above reasons, 1 do not find any merits to admit this writ petition. The writ petition is accordingly dismissed. No costs.

