
(2010) 02 KL CK 0064

In the High Court Of Kerala

Case No : Writ Petition (C) . No. 15751 of 2009 (L)

P.K. Appukuttan

APPELLANT

Vs

The Guruvayoor Municipality

RESPONDENT

Date of Decision : 10-02-2010

Acts Referred:

Citation : (2010) 02 KL CK 0064

Hon'ble Judges : Antony Dominic, J

Bench : Single Bench

Advocate : Grashious Kuriakose, for the Appellant; K.K. Chandran Pillai, for the Respondent

Final Decision : Dismissed

Judgement

Antony Dominic, J.—This writ petition was filed challenging an auction that was scheduled to be held on 27/03/2009 in respect of a room in a building owned by the Guruvayoor Municipality. Today when the case was taken up, learned Counsel for the petitioner requested that the writ petition may be dismissed as withdrawn.

2. Learned Counsel for the respondent states that auction was held on 27/03/2009 and that the highest bid offered was Rs. 16,60,605/-. The petitioner also had participated in the auction and had offered only an amount of Rs. 3,00,301/-. Though, the Municipality had confirmed the auction in favour of the highest bidder, in the meanwhile, the petitioner had approached the Ombudsman for Local Self Government Institutions and had obtained an order requiring the Municipality to maintain status quo. Therefore, Municipality could not induct the successful bidder into the licensed premises with effect from 01/04/2009, the date on which the licence period was to commence.

3. During the pendency of the proceedings before the Ombudsman, this writ petition was filed on 26/03/2009. Later, during the pendency of this writ petition, the petitioner got the proceedings before the Ombudsman closed apparently for the reason that on 09/06/2009, an interim order was obtained from this Court

preventing the Municipality from taking further action on the basis of the auction that was held on 27/03/2009. That interim order was extended thereafter. Later by order dated 10/08/2009 status quo was directed to be maintained. This position is continuing even as on date, as a result of which the Municipality was prevented from inducting the licensee into the premises auctioned by it.

4. It is while matters stand thus that today when the matter came up, learned Counsel for the petitioner wants to withdraw the writ petition. Although, the petitioner, being the master of the litigation, is entitled to seek withdrawal of the writ petition, fact remains that on account of the interim orders passed at the instance of the petitioner, the Municipality has suffered considerable loss since it was prevented from inducting the licensee into the premises. The situation in this case is one in which this Court is under an obligation to undo the wrong done to the Municipality by force of the interim orders passed in this writ petition. Therefore any undesired or unfair advantage gained by the petitioner must be neutralised. In *South Eastern Coalfields Ltd. Vs. State of M.P. and Others*, , it was held by the Apex Court that for attracting the applicability of restitution, the test is whether on account of an act of the party persuading the Court to pass an order held at the end unsustainable, has resulted in one party suffering an impoverishment, which it would not have suffered, but for the order of the Court and the act of such party. It was further held that in such cases, there is nothing wrong in the injured party demanding to be placed in the same position in which he would have been had the Court not intervened by its interim order and that in such cases the injury caused shall be undone. Paragraph 28 of the judgment being relevant is extracted below for reference.

28. ...Litigation may turn into a fruitful industry. Though litigation is not gambling yet there is an element of chance in every litigation. Unscrupulous litigants may feel encouraged to approach the courts, persuading the court to pass interlocutory orders favourable to them by making out a prima facie case when the issues are yet to be heard and determined on merits and if the concept of restitution is excluded from application to interim orders, then the litigant would stand to gain by swallowing the benefits yielding out of the interim order even though the battle has been lost at the end. This cannot be countenanced. We are, therefore, of the opinion that the successful party finally held entitled to a relief assessable in terms of money at the end of the litigation, is entitled to be compensated....

Again in *Karnataka Rare Earth and Another Vs. The Senior Geologist, Department of Mines and Geology and Another*, , it was held that the party which succeeds ultimately is to be placed in the same position in which it would have been, if the Court would not have passed an interim order. These judgments have been followed by the Apex Court in the judgment in *Amarjeet Singh and Others Vs. Devi Ratan and Others*, .

5. These principles are applicable in this case and the Municipality is entitled to be compensated for the loss, it has suffered. However, counsel for the petitioner

pleaded for leniency in the matter. Having regard to the submissions made, I feel ends of justice will be met if the petitioner is ordered to pay compensatory cost of Rs. 10,000/- and clarifying that, it will be open to the Municipality to initiate appropriate legal proceedings to recover the loss suffered by it.

Therefore, this writ petition is dismissed as withdrawn. The petitioner is directed to pay Rs. 10,000/- to the Municipality towards costs, which shall be paid within four weeks from today.