
(1996) 08 AP CK 0042

In the Andhra Pradesh High Court

Case No : Writ Petition No. 13079 of 1988

Shaik Abdul Hameed and Others

APPELLANT

Vs

Chirala Municipality and Another

RESPONDENT

Date of Decision : 28-08-1996

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (1997) 2 ALT 257

Hon'ble Judges : T. Ranga Rao, J;B. Subhashan Reddy, J

Bench : Division Bench

Advocate : G. Dharma Rao, for the Appellant; E. Samba Siva Pratap, for the Respondent

Judgement

B. Subhashan Reddy, J.—This Writ Petition was filed questioning the notice dated 19-8-1988 issued by the respondent-Chirala Municipality demanding the petitioners to vacate the shops, which they have occupied on lease basis.

2. Indisputably the shops belong to Chirala Municipality, which is a statutory body and a local authority constituted under the Andhra Pradesh Municipalities Act, 1965 (for short "the Act") and which is governed by the above statute and the rules framed thereunder.

3. It is very safe to auction leasehold rights and that what was being done by the Municipalities normally; but it seems Chirala Municipality in some cases extended the leases by collecting 1/3 rentals in excess of the existing rentals. Henceforth, that practice has to be stopped. There cannot be any discrimination between one tenant and another tenant of the Municipality, as otherwise it will be violative of equality clause under Article 14 of the Constitution of India. It is deprecating to note that while the lease for shop Nos. 1 to 6 was extended by collecting 1/3 amount more in 1986 for a period of three years, only for the writ petitioners the auction was proposed to be held by the Municipality and that is how they filed this Writ Petition complaining of discrimination. The discrimination stares at the face as Shop No. 10 has been auctioned and truly it has fetched Rs. 721/- rent

per month as against Rs. 240/-, which the previous tenant was paying. G.O.Ms.No. 384, dated 19-7-1988 is brought to our notice, which deals with the grant of leases pertaining to the properties of the Municipalities. It is better that uniform pattern is maintained so as to be in tune with the equality clause under Article 14 of the Constitution of India, as no similarly situated tenants shall be discriminated against and such an unfettered, uncanalised and unbridled power can be invested in the civic body. The civic body should deal all similarly situated alike without any act of discrimination. This can be maintained only when uniform practice of leasing out the properties by public auction is adopted. Henceforth, all Municipalities in the State of Andhra Pradesh governed by the Act shall sell the leasehold rights only by public auction. But to ensure the rights of the existing lessees, a safe method can be adopted by the Municipalities by making wide publicity of the proposed auction and hold the auction. The highest bid has to be taken into consideration and the bid shall not be confirmed for a period of 15 days from the date of auction. If within 15 days, the existing tenant makes an offer in writing to pay such highest bid amount, then the said tenant shall be given by accepting that offer and also demanding such deposit, which is mentioned in the auction notice. Normally, deposit of six months rent is demanded and that should be the demand by the Municipalities.

4. The respondent-Municipality shall follow the above principles, and conduct auction of all such shops including the instant one covered by this Writ Petition and whose leases expire within a period of three months from the date of receipt of a copy of this order. For these three months, the petitioners shall not be asked to vacate the premises, provided they pay the rents at the rate of 1/3 in excess of what was existing as on the date of filing of the Writ Petition for every 3 years from 1988-91 first spell, 1991-94 second spell and 1994-96 third spell proportionately for two years. The amounts, which have been paid pursuant to the interim order, shall be given set-off.

5 With the above directions the Writ Petition is disposed of. The fee of 15 the Standing Counsel for the respondents is fixed at Rs. 1,200/- payable within two months from the date of presentation of the bill.