

G. Rami Reddy Vs. State of Andhra Pradesh Represented by Secretary, Local Administration and ors.

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Court : Andhra Pradesh

Decided On : Apr-20-1962

Reported in : AIR1963AP212

Judge : Basi Reddy, J.

Acts : [Constitution of India](#) - Article 226; Madras District Municipalities Act, 1920 - Sections 303; Madras District Municipalities Rules - Rule 12(1)

Appeal No. : Writ Petn. No. 1354 of 1961

Appellant : G. Rami Reddy

Respondent : State of Andhra Pradesh Represented by Secretary, Local Administration and ors.

Advocate for Def. : O. Adinarayana Reddy, Adv. for ;P. Ramachandra Reddi, third Govt. Pleader, ;M. Krishna Rao, ;M.S. Ramakrishna Rao and ;M. Jagannadha Rao, Advs.

Advocate for Pet/Ap. : P. Babulu Reddy, Adv.

Disposition : Petition allowed

Judgement :

ORDER

Basi Reddy, J.

1. This case brings to light an instance of a Municipal Council misusing its powers to help a private individual at the sacrifice of public revenue and when, at long last, the Municipal Council tried to rectify its mistake and set matters right, the State Government preventing it from doing so by unwarranted interference from above.

2. This writ petition has been filed by a ratepayer of the Municipality in question for an appropriate writ under Article 226 of the Constitution directing the authorities to act in accordance with law.

3. The following facts, leading up to the filing of the writ petition, speak for themselves: The Municipality of Cuddapah owns a theatre known as Muddukrishna Theatre centrally situated within the Municipality. For a very long time, the theatre was being leased out by public auction. The last public auction was held on 11-10-1951. On that occasion, the 3rd respondent (R. V. Parthasarathy Prasad) was the highest bidder; the bid amount was Rs. 2400/- per month and the period of lease was five years as from 1-12-1951. A lease deed was executed by the 3rd respondent for a period of five years ending with 31-12-1956. One of the conditions of the lease was that the rent had to be paid by the 25th of every month.

4. Under the Statutory Rules made by the State Government in exercise of its rule-making power under Section 303 of the Madras District Municipalities Act (V of 1920), a lease of immovable property belonging to a Municipal Council may be granted by the Municipal Council itself if the period of the lease is three years or less, and where it exceeds three years, the prior sanction of the Inspector-General of Local Administration (formerly known as Inspector of Municipal Councils and Local Boards) has to be obtained. Furthermore, Rule 12 of the 'Rules relating to receipts and expenditure of Municipal Councils' prescribes that leases of buildings belonging to a Municipal Council the rents of which are expected to exceed Rs. 200/- per annum, shall be effected by public auction. Rule 12, so far as is material

for purposes of this case, provides:--

'12. (1) (f): Leases of buildings and of lands belonging to the Municipal Council the rents of which are expected to exceed Rs. 200/- per annum, shall be effected by public auction which shall be conducted by the executive authority or by a person duly authorised by him who shall give full publicity thereto in such manner as he considers suitable. The bids at the auction shall be placed by the executive authority before the Municipal Council or a committee thereof according as the highest bid at the auction exceeds or does not exceed Rs. 1,000/-. The Municipal Council or the committee, as the case may be, shall determine which of the bids at the auction shall be accepted. Where the bid accepted is not the highest bid, the reasons for rejecting a bid or bids higher than the one accepted shall be recorded in writing;

Provided that.....

Provided further that in the case of buildings and lands referred to in Clause (f) if at a public auction held, the bid is found to be lower than that obtained in the previous year and if the previous year's lessee desires the continuance of the lease at the old rate, the Municipal Council may, notwithstanding the public auction held, grant the lease to him.'

5. Although the lease granted to the 3rd respondent in 1951 was one which required the prior sanction of the Inspector of Municipal Councils and Local Boards, it appears from the audit report of the year 1953-54 that no such sanction was obtained but only the sanction of the Collector was taken. The audit report of that year further shows that the kist amounts were not collected on the due dates as per the terms of the lease deed, and it was pointed out that the terras of the agreement should be strictly enforced in the matter of collection of instalments lest heavy arrears should accumulate.

6. The Municipal Council, however, did not take Steps to collect the lease amounts regularly from the 3rd respondent. On 23-12-1953, the 3rd respondent sent a petition to the Municipal Council requesting it to grant him remission o the kist amount for the months of October, November and December, 1953 on the ground

that he had incurred loss due to cholera etc., and he also requested the Council to reduce the monthly rent of the theatre from Rs. 2400/- to Rs. 1000/-. The Council by resolution. No. 406 dated 31-12-1953 recommended the grant of remission of one month's kist and the reduction of the monthly rent from Rs. 2400/- to Rs. 2,000/- subject to the approval of the Inspector-General of Local Administration. The latter gave his approval for remission and for reduction of the monthly rent by an order dated 17-2-1955. The audit report for 1954-55 shows that the grant of remission and the reduction in the monthly rent were highly irregular. It was further pointed out that the 3rd respondent had fallen into heavy arrears of kist amounts to the extent of Rs. 6398-3-0 and penal interest on belated payments aggregating to over Rs. 2,000/- at the end of the year 1954-55.

7. Similarly, the audit report for the year 1957-58 points out that the Municipal Council had, in disregard of the rules, granted a total remission of penal interest amounting to Rs. 6256-15-0 due by the 3rd respondent because of belated payments of kist amounts.

8. However, as a result of the reduction of the monthly rent from Rs. 2400/- to Rs. 2000/-, the 3rd respondent actually paid only at the rate of Rs. 2000/- per month for three years during the first lease period of five years.

9. Some six months before the expiry of that lease, the 3rd respondent submitted another application to the Municipal Council requesting it to renew the lease for another period of five years. The Municipal Council by a resolution dated 11-6-1956 resolved to extend the lease for a further period of five years from 1-1-1957 and in that behalf sought the sanction of the Inspector-General of Local Administration. That authority, by his order dated 27-12-1956 granted sanction to the Municipal Council for the extension of the lease of the theatre in favour of the 3rd respondent for a period of five years from 1-1-1957 on a monthly kist of Rs. 2000/- subject to the specific condition that no further application for reduction in the rate of monthly kist should be entertained by the Municipal Council. Thereafter the Council granted a lease to the third respondent for a further period of five years from 1-1-1957 to 31-12-1961 without following the procedure prescribed by Statutory Rule 12(1)(f) referred to above.

10. Then again, on another application made by the 3rd respondent requesting the Council to reduce the monthly kist for the theatre from Rs. 2000/- to Rs. 1,000/- with effect from 1-1-1960 and to show some other concessions, the Council obliged him by passing the following resolution:

'Resolution No. 193 dated 25-8-1960: After careful consideration of the various facts presented by Sri R. V. Parthasarathy Prasad, lessee of the Municipal Muddukrishna Theatre and in view of the fact that there is substantial fall in the income to the lessee consequent on the opening of competitive theatres in the town and as the present rate of rent is high and at the same time the Municipality has realised good profit from this lessee and as the money invested on this theatre has been realised in full by the Municipality long time back and that the lessee has been constantly exhibiting standard pictures for which the lessee deserves encouragement, the Municipal Council unanimously resolves subject to the approval of the Inspector-General of Local Administration (1) to reduce with effect from 1-9-1960 the monthly rent from Rs. 2000/- to Rs. 1500/- without any change in the security deposit of Rs. 10,000/- irrespective of the reduction in the monthly rent; (2) to waive the penal interest upto the day levied and now payable to the Municipality and (3) that the outstanding rent payable to the Municipality shall be paid within two months from this date.

(Sd) Md. Rahamathullah, Chairman.'

11. It would seem that the Municipal Council was prepared to accommodate the 3rd respondent to any extent and had presumably assured him: 'Ask, and it shall be given you; seek, and ye shall find; knock, and it shall be opened unto you.'

12. Next we come to the stage which immediately concerns the present writ petition. Since the lease was due to expire on 13-12-1961, the 3rd respondent again got busy and moved the Municipal Council for extension of the lease of the theatre in his favour for another period of five years beginning from 1-1-1962. The Municipal Council apparently could not say 'nay', and so, by its resolution No. 175 dated 29-6-1961 resolved to extend the lease for five years from 1-1-1962 on the existing monthly rent of Rs. 1500/- and to request the Director of Municipal Administration to accord sanction for the proposal. It was at this stage that the writ

petitioner, who is a resident of the Cuddapah Town and is a ratepayer of the Municipality, came into the picture. He filed a petition before the Director of Municipal Administration on 19-9-1961 apprising him of the fact that the Municipal Council instead of leasing out the theatre by public auction and getting higher rent, was trying to favour the 3rd respondent by giving the lease once again to him on a monthly rent of Rs. 1500/- in spite of the fact that he was a persistent defaulter, and stating further that he (the petitioner) was ready and willing to take a lease of the theatre on a monthly rental of Rs. 1700/-. The petitioner sent copies of the above petition to the Chairman and the Commissioner of the Cuddapah Municipal Council.

13. The writ petitioner followed it up by sending a reminder on 13-10-1961 to the Director of Municipal Administration reiterating his offer and suggesting that the leasehold right of the theatre be auctioned and promising a minimum guarantee of Rs. 1700/- per month.

14. To show his bona fides, the petitioner sent on 2-11-1961 a draft for Rs. 8500/- in favour of the Municipal Commissioner, Cuddapah. In the letter enclosing the draft, the petitioner told the Commissioner to treat the draft as security deposit for his intended bid at the public auction, if held.

15. On 4-11-1961, the Director of Municipal Administration passed orders on the petition submitted by the writ petitioner on 13-10-1961, issuing instructions to the Municipal Commissioner, Cuddapah, to lease out the theatre by public auction taking into account the offer made by the petitioner.

16. The matter came up for consideration before the Municipal Council on 14-11-1961 and a resolution was passed to the effect that the Muddukrishna Theatre should be leased out for a period of three years by public auction on 29-11-1961.

17. In pursuance of the said resolution, the Commissioner published a notification to the effect that the auction would be held at 3 P.M. on 29-11-1961.

18. In the meantime, the 3rd respondent had 'appealed' to the Government and the Government issued telegraphic orders on 27-11-1961 staying the auction.

The Municipal Commissioner obeyed the orders of the Government, stopped the auction and issued the following memorandum dated 30-11-1961:

'Rc. No 13099, B.6.61. Municipal Office. Cuddapah

Dated : 30-11-1961, NOTICE.

The sale of the lease of the Municipal Muddukrishna Theatre, Cuddapah, for a period of three years from 1-1-1962 to 31-12-1964 proposed to be held at 3-00 p.m. on 29-11-1961 as per sale notification dated 14-11-1961 and subsequently adjourned to 3-00 p.m. on 30-11-1961, is stopped in view of the telegraphic instructions received from the Government staying the public auction.

(Sd) K. Narasimha Moorthy,

Commissioner, Cuddapah Municipality.'

19. On 16-12-1961, the Government passed an order permitting, as a special case, the Municipal Council, Cuddapah, to lease out the theatre to the 3rd respondent for a further period of two years from 1-1-1962 at the existing rent of Rs. 1500/- per month, by relaxing Rule 12(1)(f) of the relevant rules. The order reads thus:

'G. O. Ms. No. 1682 M.A., Health, Housing and Municipal Administration Department: dated 16-12-1961.

I. Sri P. Prasad, lessee of Municipal Muddukrishna Theatre, Cuddapah, has requested the Municipal Council, Cuddapah, for extension of lease period for the Municipal Muddukrishna Theatre, which expires on 31-12-1961, by another five years from 1-1-1962. The Municipal Council, Cuddapah, in its resolution No. 175 dated 29-6-1961 resolved to extend the lease period for five years from 1-1-1962 on the existing monthly rent of Rs. 1500/- and to request the Director of Municipal Administration to accord sanction. The Director of Municipal Administration advised the Municipal Council, Cuddapah, to lease out the theatre for a period of three years as under the rules the Municipal Council is competent to lease it out for a period of three years without outside sanction.

II. Shri G. Kami Reddy also addressed the Director of Municipal Administration that he was prepared to take Municipal Muddukrishna Theatre on a monthly rent of Rs. 1700/- for a period of five years and that the present lessee might not be permitted to participate in the public auction because he is in arrears. On this representation, the Director of Municipal Administration advised the Municipal Council, Cuddapah, to auction the lease of the theatre after giving wide publicity as given under Rule 12(1)(f) of the rules relating to the receipt and expenditure of Municipal Councils, taking into consideration the offer of Shri G. Rami Reddy.

III. Aggrieved by the above advise of the Director of Municipal Administration, the present lessee has appealed to the Government to consider his request for extension of the period of lease by three years, if not five years, from 1-1-1962 on the existing rent of Rs. 1500/- on the following grounds:

1. That he has been lessee of the theatre since 1952.
2. That even though the theatre is not in a good condition he has been able to run it properly.
3. That he has so far paid a sum of Rs. 2 1/2 lakhs to Cuddapah Municipality towards the rent of the theatre without any default.
4. That he purchased modern type of first class machinery and furniture with a view to withstand the competition from the modern type of cinema house in the hope that he would be given extension of lease of the theatre by five more years from 1-1-1962.

IV. The Government, after careful consideration of the case in consultation with the Director of Municipal Administration, hereby permit as a special case the Municipal Council, Cuddapah, to lease out the Municipal Muddukrishna Theatre to the present lessee i.e., Shri Parthasarathi Prasad for a further period of two years from 1-1-1962 on the existing rent of Rs. 1,500/- per month by relaxing R. 12(1)(f) of the subject relating to receipt and expenditure of Municipal Councils.

V. They also consider it necessary that the next auction of leasehold right of the Municipal Muddukrishna Theatre should be put to public auction before 30-6-1963

i.e., six months before the expiry of the present lease period in order to allow sufficient time for outgoing and incoming lessees to make necessary arrangements and that the lease period should be fixed at 5 years with an option to renew it for three years more subject to notice of the termination by either party six months before the date of expiry of the lease period.

The stay orders issued in Government Telegram dated 27-11-1961 are hereby vacated.

(Sd) S. A. Hashmy, Deputy Secretary to Government.'

20. In this writ petition, the petitioner challenges the legality of the order passed by the Government as one made without jurisdiction and further contends that under the Statutory Rules, the Municipal Council is under a duty to lease out municipal property only by public auction and not by private arrangement. On these grounds, the writ petitioner seeks an appropriate writ requiring the 1st and the 2nd respondents (the State of Andhra Pradesh and the Commissioner, Cuddapah Municipality) to forbear from giving effect to the order of the 1st respondent dated 16-12-1961 and further directing the 2nd respondent to lease out the Muddukrishna Theatre by public auction in accordance with the resolution of the Municipal Council dated 14-11-1961.

21. As regards the power of the Government to pass the impugned order, whereby they purported to relax Rule 12(1)(f) of the Statutory Rules, which has been extracted supra, neither the learned Government Pleader appearing for the State, nor Mr. M. Krishna Rao, learned Advocate for the 3rd respondent, was able to trace the source of the power of the Government to relax the rule in question in the manner they did. There is no provision in the Madras District Municipalities Act or in the rules made thereunder which authorise the Government to give directions in individual cases abrogating the mandatory rule. If the order of the Government dated 16-12-1961 is bad, as it manifestly is, what remains is the resolution of the Municipal Council dated 14-11-1961 resolving to lease out the Municipal Muddukrishna Theatre by public auction for a period of three years. Now Section 22 of the Madras District Municipalities Act imposes an obligation on the executive authority, namely, the Commissioner, to carry out the resolutions of the Municipal

Council. In my opinion, a mandamus should, therefore, issue to nullify the order of the Government and to carry out the lawful resolution of the Municipal Council.

22. The main contention of Mr. Krishna Rao, on behalf of the 3rd respondent, however, is that the petitioner has no 'locus standi' to maintain this application under Article 226 of the Constitution and ask for a writ of mandamus or any other writ. I cannot accept this contention. The petitioner is not only a resident of the Cuddapah Municipality but is also a ratepayer thereof and as such, is interested in the conservation and proper application of the Municipal funds. Moreover, in the present case, it was the petitioner who took the initiative and by means of a petition presented to the Director of Municipal Administration, brought to light the regrettable state of affairs obtaining in the Cuddapah Municipality. It was on his petition that ultimately, the Director of Municipal Administration gave directions to the Municipal Council to sell the leasehold right of the theatre by public auction. The Director also intimated to the petitioner, by a communication dated 16-11-1961, the action taken on his petition. The communication reads thus:

Office of The Director of The Municipal Administration: A. P. Hyderabad. Dated:-- 16-11-1961. Roc. 128877/6 1.B-3.

Sub:- Cuddapah Municipal -- Muddukrishna Theatre -- leasing out without public auction -- lease period extension -- Regarding. Ref:- From Shri G. Rami Reddy, Contractor,

petition dated 13-10-1961. The petitioner is informed that necessary instructions to conduct auction for leasing out the theatre have been issued to the Commissioner.

X x x x

for Director. To

Shri G. Rami Reddy, Contractor, P.W.D., Nagarajupet, Cuddapah.'

In addition to all this, the petitioner's case is that if a public auction is held, he wishes to take part in it, and as noticed already, he has given a minimum guarantee of Rs. 1700/- as the monthly rent as against the present rent of Rs.

1500/-. All these circumstances are, in my opinion, sufficient to clothe the petitioner with an interest and a right to move this Court for an appropriate writ under Article 226 of the Constitution to restrain a public body from acting in violation of statutory rules and misusing its powers to favour an individual, thereby causing detriment to public revenue.

In support of his argument, Mr. Krishna Rao relied on a decision of a Division Bench of the Madras High Court In re, P. Ramamoorthi, : AIR1953 Mad94 . The petitioner there sought a writ of certiorari to quash the order of the Governor nominating a certain person to be a member of the Madras Legislative Council in exercise of the powers of the Governor under Article 171(3)(e) of the Constitution. The petitioner filed the application under Article 226 of the Constitution as a citizen of India and as one of the members of the Madras Legislative Assembly elected on the Communist Party's ticket. The learned Judges held that the petitioner either as a citizen of India or a member of the Legislature had no such personal and direct interest in the matter of the nomination of a member to the Legislative Council, as to enable him to invoke the provisions of Article 226 of the Constitution. The learned Judges further held that the-possibility of the petitioner along with the other members of his party forming a Ministry, if the person whose nomination was challenged, had not been so nominated, was a very remote consequence of the nomination, and therefore, it could not be said that any personal right of the petitioner had been infringed even in an indirect manner by the nomination by the Governor of that person.

23. The facts of that case are far removed from the facts in this case, and the interest of the petitioner in the instant matter is direct and personal and not remote and impersonal as in that case. A decision directly in point, is the one rendered by Division Bench of the Bombay High. Court composed of Chagla, C. J. and Gajendragadkar, J. in Municipal Corporation, Bombay v. Govind Laxman, AIR 1949 Bom 229. There, the learned Judges were dealing with an application filed under Section 45 of the Specific Relief Act by a ratepayer against the Municipal Corporation of Bombay. An objection was, taken against the maintainability of the application at the insta'nce of the ratepayer. Chagla, C. J., who delivered the judgment, after noticing that it is well-settled that in dealing with an application

under Section 45 of the Specific Relief Act, the principles of English Law applicable to a writ of mandamus should be generally followed, reviewed the case-law, both English and Indian, and held that a ratepayer is undoubtedly interested in the application of the municipal fund, both as a ratepayer who has actually contributed to that fund and also as a beneficiary who is entitled to the various benefits which accrue to the citizens by the application of that fund and has, therefore, locus standi to maintain an application under Section 45 of the Specific Relief Act, if the rates are misapplied or utilised contrary to the provisions of the law, or where the corporation acts illegally in managing its affairs.

24. The petitioner in this case is in a stronger position than the applicant in the Bombay case; for, in this case, the petitioner is not only a ratepayer but one at whose instance the Director of Municipal Administration instructed the Municipal Council to lease the theatre in question by public auction, and the petitioner is much interested in bidding at that auction and, if possible, getting a lease in his favour.

25. I am clearly of the view that this writ petition is maintainable at the instance of the petitioner.

26. In this view, this writ petition is allowed and a writ of mandamus will issue to the 1st respondent (the State of Andhra Pradesh, represented by the Secretary, Local Administration) to forbear from giving effect to the order passed by the Government in G. O. Ms. No. 1682, M.A., Health, Housing and Municipal Administration Department, dated 16-12-1961; and a further direction will issue to the 2nd respondent (The Commissioner, Cuddapah Municipality) to lease out the Municipal Muddukrishna Theatre, Cuddapah, by public auction, in accordance with the resolution No. 410 passed by the Municipal Council on 14-11-1961. The petitioner will get his costs from the 1st respondent-Advocate's fee: Rs. 100/-.

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