P. Pullaiah and ors. Vs. State of A.P. and ors.

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Court : Andhra Pradesh

Decided On : Jul-07-2008

Reported in : 2008(5)ALD365; 2008(5)ALT387

Judge : B. Seshasayana Reddy, J.

Acts : Andha Pradesh Municipalities Act, 1965 - Sections 3, 3(1), 43, 250, 260(1), 260(2), 260(3), 277, 277(1), 277(2), 277(3), 277(4), 326(1) and 326(2); Hyderabad Act - Sections 210; Constitution of India - Articles 14 and 19(1); Andhra Pradesh Municipality (Acquisition of Transfer of Immovable Properties) Rules, 1967 - Rules 5 and 7; Andhra Pradesh Municipality (Regulation of Receipts and Expenditure) Rules, 1968 - Rule 12 and 12(A); Receipts and Expenditure Rules, 1965

Appeal No. : WP No. 7475 of 2008

Appellant : P. Pullaiah and ors.

Respondent : State of A.P. and ors.

Advocate for Def. : Government Pleader for Municipal Administration and Urban Development for Respondent Nos. 1 and 2 and ;S. Nageswara Reddy, SC for Respondent Nos. 3 and 4

Advocate for Pet/Ap. : Venkateswarlu Sanisetty, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

B. Seshasayana Reddy, J.

1. This writ petition has been filed by the petitioners, who are 107 in number, with a prayer to issue a writ of mandamus declaring the action of the respondents in fixing non-refundable deposit (goodwill) of Rs. 1,00,000/- from retail vegetable vendors and Rs. 1,50,000/- from wholesale dealers for allotment of shops in the newly constructed agricultural market complex and also fixing the lease amount of Rs. 3,000/- for retail vegetable vendors and Rs. 5,000/- for wholesale dealers pursuant to the council resolution dated 30.1.2008 in Cr. No. 1030 of Ongole Municipality-3rd respondent as arbitrary, illegal and violative of Articles 14, 19(1)(g) of the Constitution of India. The further relief sought for in the writ petition is to direct the respondents to allot the shops to the petitioners in the newly constructed agricultural market complex.

2. P. Pullaiah has sworn to the affidavit filed in support of the writ petition. Writ affidavit, in brief, is: The petitioners are small time vegetable vendors in Damodaram Sanjeevaiah Vegetable Market, Ongole. They have been doing the said business for the last 30 to 40 years. The Ongole Municipality-3rd respondent constructed Damodaram Sanjeevaiah Vegetable Market about 50 to 60 years ago. Some of the petitioners are in occupation of the shops in Damodaram Sanjeevaiah Vegetable Market since the time of their forefathers. Since the place where Damodaram Sanjeevaiah Vegetable Market is situated has become densely populated, Ongole Municipality-3rd respondent has taken a decision to construct a new market complex in Survey No. 14/1 at Vooracheruvu, Near RTC Complex, Ongole. The Ongole Municipality-3rd respondent has taken a decision to close down the old Damodaram Sanjeevaiah Vegetable Market. There are 120 shops in the Damodaram Sanjeevaiah Vegetable Market. The Ongole Municipality-3rd respondent has been entrusting the collection of rents on contract basis by way of public auction. All the vegetable vendors in the said market used to pay Rs. 300/- per month to the contractor. The Ongole Municipality-3rd respondent passed resolution on 25.1.2008 to close down the old vegetable market i.e., Damodaram

Sanjeevaiah Vegetable Market and open the newly constructed agricultural market complex at Vooracheruvu. It is proposed to collect Rs. 1,00,000/- from the retail vendors and Rs. 1,50,000/- from the wholesale dealers as goodwill and fixed Rs. 3,000/- as monthly rent for the retail vegetable vendors and Rs. 5,000/- for the wholesale vegetable vendors. The action of the Ongole Municipality-3rd respondent in collecting the goodwill amount and fixing the rent exorbitantly is illegal and arbitrary and violative of Articles 14and 19(1)(g) of the Constitution of India. It is further averred in the writ affidavit that a duty is cast upon the Municipality to establish public markets. Once public market is established, the Municipal Council is empowered to levy any one or more fees prescribed under Section 277 of the Andha Pradesh Municipalities Act, 1965 (for short, 'the Act'). The Act does not empower the Ongole Municipality-3rd respondent to collect goodwill. It only empowers the municipalities to collect fee in respect of public market. In exercise of powers under clause [c] of Sub-section (2) of Section 326 of the Act, the Governor of Andhra Pradesh has framed the Rules known as the Andhra Pradesh Municipality (Acquisition of Transfer of Immovable Properties) Rules, 1967. Rule 5 of the said Rules deals with transfer by lease of immovable property belonging to Municipal Council. Rules also framed in exercise of powers under Sub-section (1) of Section 3 of the Act and these rules are called as the Andhra Pradesh Municipality (Regulation of Receipts and Expenditure) Rules, 1968 (for short, 'the Rules'). Under Rule 12(A), a municipality can fix reasonable lease/rent amount and it does not empower the municipality to charge goodwill.

3. 4th respondent filed counter-affidavit. S. Ravindrababu, Municipal Commissioner, Ongole Municipality has sworn to the counter-affidavit. It is stated in the counter-affidavit that the agricultural market committee has constructed new market complex in the site belonging to the Ongole Municipality with the funds of agricultural market committee, Ongole, to a tune of Rs. 7.00 Crores. The Government under G.O. Ms. No. 271 of Agricultural and Co-operation (AMII) Department, dated 1.9.2007, decided to handover the new vegetable market complex to Ongole Municipality-3rd respondent subject to the following conditions:

(a) The vegetable market complex at Ongole constructed by Agricultural Market Committee, Ongole, shall be handed over to Ongole Municipality for a consideration of Rs. 7.00 crores payable with 9% interest on decreasing balance within a period of two years;

(b) The Municipality has to pay an amount of Rs. 5.00 crores on conclusion of the auction and the balance principal amount with interest shall be paid from the monthly rental accruals over a period of two years.

(c) The Government has constituted a committee with the following officers to allot the shops and to ensure the repayment of cost of construction along with interest to the Agricultural Marketing Department.

1. Collector and District Magistrate, Prakasam - Chairman.

2. The Assistant Director of Marketing - Member.

3. Person-in-charge, Agricultural Market Committee, Ongole -Member;

4. Commissioner of Municipality, Ongole - Member;

5. Executive Engineer, R& B -Member.

(d) The municipality shall open a separate account for the funds pertaining to the Market Complex and the same shall be operated till the cost of building is fully repaid.

The Municipal Health Officer, Ongole Municipality, submitted a report on 4.10.2007. As per the report, the present market is not safe in public health point of view. He recommended closure of the vegetable market at the present place under Section 250 of the Act. Therefore, it is proposed to shift Damodaram Sanjeevaiah Vegetable Market to the new market complex. There are 120 shops in Damodaram Sanjeevaiah Vegetable Market. According to Rule 7 of the Rules relating to the Receipts and Expenditure Rules, 1965, the Municipal Council has a right to collect fee in respect of the use of any market by way of conducting open auction every year. Accordingly, the vegetable vendors have to pay the fee fixed in the Market Gazettee notification to the highest bidder whose bid is confirmed by the competent authority. The vegetable market complex at Ongole constructed by the Agricultural Market Committee, Ongole was handed over to the Ongole

Municipality-3rd respondent on 16.10.2007 in accordance with G.O. Ms. No. 271, dated 1.9.2007, for a consideration of Rs. 7.00 crores payable with 9% interest on decreasing balances within a period of two years. The Ongole Municipality-3rd respondent has to pay an amount of Rs. 5.00 crores on conclusion of the auction and the balance principal amount with interest shall be paid from the monthly rental accruals over a period of two years. Therefore, the Municipal Council in its Resolution No. 1030, dated 30.1.2008, has resolved fixing the goodwill and monthly rent. to all the blocks of market in the new market including the vegetable wholesale and retail shops. Under Sub-section (1) of Section 277 of the Act, the Municipal Council may provide place for use as public markets. Under Sub-section (2) of the Section 277 of the Act, the Council may, in any public market, levy any one or more of the following fees at such rates and may place the collection of such fees under the management of such persons as may appear to it proper for any period not exceeding one year at a time and on such terms and subject to such conditions as it may deem fit:

(a) fees for the use, or for the right to expose goods for sale in such markets;

(b) fees for the use of shops, stalls, pens or stands in such markets;

(c) fees on vehicles or pack-animals carrying, or on persons bringing goods for sale in such markets;

(d) fees on animals brought for sale into, or sold in such markets; and

(e) licence fees on brokers, commission agents, weighmen and measurers practicing their calling in such markets.

Under Sub-section (4) of Section 277 of the Act, the council may lease any land, shop, godown, building or terrace of a building owned by it and situated anywhere in the municipality for any period not exceeding five years at a time and subject to such terms and conditions as the council may deem fit. There is no proposal to convert the market into a commercial establishment. In view of the conditions stipulated in G.O. Ms. No. 271, dated 1.9.2007, the Ongole Municipality-3rd respondent has proposed in fixing goodwill and rent without collecting any fees as implemented in the old market as per Section 277 of the Act. The fixing of the goodwill is not arbitrary and illegal. The Municipal Council, Ongole, conducted open auction on 26.3.2008, 23.4.2008, 24.4.2008 and 25.4.2008 to the remaining 90 shops excluding the shops allotted to the petitioners. There was heavy participation and competition among the bidders. The plinth area of each vegetable wholesale market shop is 12 x 27 feet. The goodwill amount fixed by the Municipal Council is Rs. 1.50 Lakhs and the monthly rent is Rs. 5,000/-. During the open auction, the highest bid amount to a shop No. 57 is Rs. 4.25 Lakhs and the lowest bid amount to a shop No. 38 is Rs. 1.51 lakhs in this category. The plinth area of each vegetable retail market shop is 9 x 13 feet. The goodwill amount fixed by the Municipal Council is Rs. 1.00 lakh and the monthly rent is Rs. 3,000/-. During the open auction, the highest bid amount to a shop No. 111 is Rs. 5.10 lakhs and the lowest bid amount to a shop No. 118 is Rs. 1.81 lakhs in this category. The plinth area of each flower market shop is 10 x 13 feet. The goodwill amount fixed by the Municipal Council is Rs. 1.00 lakh and the monthly rent is Rs. 1,500/-. During the open auction, the highest bid amount to a shop No. 1 is Rs. 5.46 lakhs and the lowest bid amount to a shop No. 17 is Rs. 1.77 lakhs in this category. The plinth area of each fruit market shop is 10 x 13 feet. The goodwill amount fixed by the Municipal Council is Rs. 1.00 lakh and the monthly rent is Rs. 1,500/-. During the open auction the highest bid amount to a shop No. 38 is Rs. 3.73 lakhs and the lowest bid amount to a shop No. 26 is Rs. 1.02 lakhs in this category. The plinth area of each fish market shop is 10 x 13 feet. The goodwill amount fixed by the Municipal Council is Rs. 0.50 lakh and the monthly rent is Rs. 2,000/-. During the open auction, the highest bid amount to a shop No. 24 is Rs. 1.45 lakhs in this category. The plinth area of each mutton market shop is 10 x 13 feet. The goodwill amount fixed by the Municipal Council is Rs. 0.50 lakhs and the monthly rent is Rs. 2,000/-. During the open auction the highest bid amount to a shop No. 19 is Rs. 1.00 lakhs and the lowest bid amount to a shop No. 24 is Rs. 0.53 lakh in this category. The goodwill and the rent fixed by the Municipal Council in C.R. No. 1030, dated 30.1.2008 is legal. At present the Ongole Municipality-3rd respondent has not proposed to demolish the old vegetable market. The Municipality will take further course of action in respect of old market as per Sub-section (3) of Section 277 of the Act. For better appreciation, I may refer Paras 13 and 14 of the counter-affidavit and they are thus:

13. It is submitted that the averments made by the petitioners are false. At present the Municipality is not proposed to demolish the old vegetable market. The Municipality will take further course of action in respect of old market as per Sub-section (3) of the Section 277 of APM Act, 1965. The Council Resolution No. 1030, dated 30.1.2008 is enclosed for kind perusal. Opportunity is given to the existing vegetable vendors with minimum goodwill and monthly rent amount

14. It is submitted that the present allotment shops in the newly Agricultural Market Committee Complex is involved with financial commitment. In the present old market the vendors are being paid daily fees to the highest bidder accepted by the Municipal Council. Whereas in the newly market the vendors instead of paying the daily fees they have to pay monthly rent and goodwill amount as per the market district gazettee notification No. 7, dated 11.2.2008 approved in C.R. No. 1030, dated 30.1.2008. Rule 12(A) clearly indicates that Municipal Council may fix a reasonable lease period and monthly rent and put to public auction on the amount of not refundable deposit amount (goodwill). The petitioners themselves enunciated the same and it indicates that it is an admitted fact.

4. Heard learned Counsel appearing for the petitioners and learned Standing Counsel appearing for the respondents 3 and 4-Municipality.

5. Learned Counsel appearing for the petitioners submits that under Section 277 of the Act, the Ongole Municipality-3rd respondent has no power to collect goodwill and thus, the action of the respondents 3 and 4 in insisting the petitioners to pay goodwill for obtaining lease of the shops in the newly constructed market complex is illegal and arbitrary. The learned Counsel also refers to Section 277 of the Act, which reads as hereunder:

Section 277. Power in respect of public markets.-(1) The Council may provide places for use as public markets.

(2) The Council may, in any public market, levy any one or more of the following fees at such rates and may place the collection of such fees under the

management of such personal as may appear to it proper or may farm out such fees for any period not exceeding one year at a time and on such terms and subject to such conditions as it may deem fit:

(a) fees for the use, or for the right to expose goods for sale in such markets;

(b) fees for the use of shops, stalls, pens or stands in such markets;

(c) fees on vehicles or pack-animals carrying, or on persons bringing goods for sale in such markets;

(d) fees on animals brought for sale into, or sold in such markets; and

(e) licence fees on brokers, commission agents, weighmen and measurers practicing their calling in such markets.

(3) The Council may, with the sanction of the Government close any public market or part thereof.

(4) The Council may lease any land, shop, godown, building or terrace of a building owned by it and situated anywhere in the municipality for any period not exceeding five years at a time and subject to such terms and conditions as the council may deem fit:

Provided that it shall be competent for the council to grant, with the prior sanction of the Government, any such lease for a period exceeding five years but not exceeding twenty-five years at a time.By referring the provisions of the above referred section, the learned Counsel appearing for the petitioners would contend that goodwill is not included under the category of fee or licence fee. In support of his submissions, reliance has been placed on the decision of this Court in Hindupur Fruits and Vegetables Merchants Association v. Hindupur Municipality 1991 (1) An.W.R. 44, wherein it has been held that Rule 12 of Regulation of Receipts and Expenditure of Municipal Councils, 1968, is not appropriate for the shops in the market and the question of adherence to the procedure in the said rule does not arise and the shop rooms within the market area are to be leased out under Section 277(2) of the Act and not under Section 277(4) of the Act.

6. Learned Standing Counsel appearing for the respondents 3 and 4-Municipality submits that the Governor of Andhra Pradesh framed the rules called the Andhra Pradesh Municipalities (Regulation of Receipts and Expenditure) Rules, 1968, in exercise of powers conferred by Sub-section (1) of Section 326 of the Act. As per Rule 12(A) of the Rules, the Municipal Council may fix a reasonable lease period and monthly rent including non-refundable deposit amount (goodwill). Therefore, the action of the Ongole Municipality-3rd respondent in fixing the non-refundable deposit amount (goodwill) cannot be said to be illegal or contrary to the provisions of the Act. In support of his submissions, reliance has been placed on the decision of this Court in M. Kesava Rao v. State of A.P. 1975 (1) An.W.R. 294, wherein it has been held that levy of fee for use of shops, stalls pens or stands in public market is different from lease of shops belonging to it.

7. In view of the rival contentions of the parties, I deem it appropriate to refer Rule 12(A) of the Rules and it reads hereunder:

12(A). Notwithstanding anything contained in these Rules regarding lease of buildings or terraces of buildings, shops or godowns, and of the lands belonging to the Municipal Council, the Municipal Council may fix a reasonable lease period and monthly rent and put to public auction the amount of non-refundable deposit amount (goodwill). The public auction of non-refundable deposit will be conducted by the Commissioner or by a person duly authorized by him, who shall give full publicity thereto in such manner as he consider suitable. The bids at the public auction shall be placed by the Commissioner before the authority competent as referred in Section 43 of the Act. The said authority shall ordinarily accept the highest bid at the auction. 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.

A plain reading of the above referred rule indicates that the Municipal Council is empowered to fix a reasonable lease period and monthly rent and also non-refundable deposit amount (goodwill). Indisputably, the agricultural market committee constructed the new market complex in the site of the Ongole Municipality-3rd respondent with the fund of Rs. 7.00 crores. While handing over the market complex to Ongole Municipality-3rd respondent, conditions were stipulated which have been stated supra. As per the conditions, the Ongole Municipality-3rd respondent has to pay an amount of Rs. 5.00 crores on conclusion of the auction and the balance principal amount with interest @ 9% shall be paid from the monthly rental accruals over a period of two years. To raise the funds, the Municipal Council passed Resolution No. 1030, dated 30.1.2008 fixing the goodwill and monthly rents to all the blocks of the new market complex. The power exercised by the Municipal Council is traceable to Rule 12(A) of the Rules. When the Rule clearly permits fixing the non-refundable deposit amount (goodwill), unless the rule itself is challenged, no relief can be granted to the petitioners.

8. In the case i.e. Hindupur Fruits and Vegetables Merchants Association's case (supra), on which reliance has been placed by the learned Counsel for the petitioners, it has been held that under Sub-section (4) of Section 277 of the A.P. Municipalities Act, the Municipal Council is entitled to lease shops situated anywhere in the municipal area. Para 9 of the judgment needs to be noted and it is thus:

9. Section 277 of the Act with Sub-sections (1) to (3) corresponds to Section 260(1) to (3) of the Andhra Act and Section 210 of the Hyderabad Act. Sub-section (4) was substituted by Act 5 of 1971. In Sub-section (2) the words 'five years in the case of shops and godowns and one year in other cases at a time' were substituted, by the words 'one year at a time' by; Amending Act 5 of 1971. The two provisions i.e. Section 277(2)(b) and 277(4) operate in different spheres and can operate simultaneously. In such circumstances, there is no question of one excluding the other. The impediment contained in the unamended provision (whereunder the Council was entitled only to lease the shops etc., owned by it and situate outside the public market) alone was sought to be removed by the amended Section 277(4) clothing the Council with the power to lease the shops etc., anywhere including those situate within the public market. Thus, the defect removed by the amendment has no relevance to the power to levy the fees contained in Section 277(2)(b) of the Act.

9. In Maganti Kesava Rao's case (supra), on which reliance has been placed by the learned Standing Counsel appearing for respondents 3 and 4, a Division Bench of this Court held that under Sub-section (1) of Section 277 of the A.P. Municipalities Act, Municipal Council has power to lease the shops etc., anywhere including those situated within the public market.

10. In view of the above discussion, I find that the writ petition is devoid of merits and accordingly the same is hereby dismissed. No costs.