

P. Ramachandra Rao and ors. Vs. Government of Andhra Pradesh, Rep. by Its Secretary, Municipal Administration and Urban Development (J-i) Department and ors.

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Court : Andhra Pradesh

Decided On : Sep-09-1997

Reported in : 1998(1)ALT60

Judge : B. Sudershan Reddy, J.

Acts : Andhra Pradesh Municipalities Act, 1965 - Sections 43; Regulation of Receipts and Expenditure Rules, 1968 - Rule 12

Appeal No. : Writ Petition No. 2002 of 1997

Appellant : P. Ramachandra Rao and ors.

Respondent : Government of Andhra Pradesh, Rep. by Its Secretary, Municipal Administration and Urban Development

Advocate for Def. : G.P. for Respondent Nos. 1 and 2 and ;E. Sambasiva Pratap, SC for Respondent No. 3

Advocate for Pet/Ap. : C.V. Nagarjuna Reddy, Adv.

Disposition : Writ petition dismissed

Judgement :

ORDER

B. Sudershan Reddy, J.

1. The petitioners herein are lessees of the shops owned by the third respondent the Cudivada Municipality, Gudivada. Petitioner Nos. 1 to 15 are in possession of the shops situated on the Northern side Block No. 1 of Sri Potti Sri Ramulu High School belonging to the third respondent-Municipality; whereas petitioner Nos. 16 to 18 are in possession of the shops situated on the Western side Block No. I. Lease agreement between the petitioners and the third respondent stood expired 30-9-1996, except in the case of the Petitioner Nos. 16 to 18, whose lease stood expired on 31-12-1996. The petitioners herein assert that they are entitled for automatic renewal of their lease as per the provisions of the A.P. Municipalities Act, 1965 (for short 'the Act') and the Rules framed thereunder.

2. While so, the third respondent-Municipality issued notice bearing No. AI/5573/96, dated 9-8-1996 to petitioner Nos. 1 to 15 expressing its willingness to renew the lease for a further period of three years on condition of enhancement of rent by 33 1/3% over and above the existing rent and the petitioners were asked to express their willingness, if they so chose for renewal of the lease on the said condition. The petitioners further informed that if they were not willing to pay enhanced rent, the shops would be put to public auction for the purpose of granting lease. Petitioner Nos. 1 to 15 have submitted representation to the third respondent bringing to its notice about an order passed by the first respondent-Government in G.O.Ms.No. 350-MA, dated 7-8-1995 relating to the case of one of the lessees of the same Municipal Shopping Complex, wherein the lease period for a further period of five years was renewed at the enhanced rate of 18% on the existing rent only. The petitioners claim for similar benefit as in the case of that lessee. The Commissioner of the third respondent-Municipality through his proceedings No. AI-7747/96, dated 5-11-1996 informed that the Council by its resolution No. 240 dated 2-11-1996 had rejected the request of the petitioners and further directed that if the petitioners want renewal they should give consent for the enhanced rate of rent of 33 1/3% over and above the existing rent. Another

representation is stated to have been submitted by the petitioners to the third respondent on 15-11-1996 reiterating their request to reconsider its decision. The request was again negatived and final notice dated 4-1-1997 was issued directing the petitioners herein to enter into agreement for further renewal of the lease on condition of 33 1/3% enhancement of rent within a week, failing which the petitioners were directed to vacate the shops. It is that order, which is impugned in this writ petition.

3. It is urged by the learned Counsel for the petitioners that the petitioners are also entitled for the similar benefit as in the case of one of the lessees of the very same shopping complex, where the Government is stated to have issued necessary directions to the third respondent-Municipality to grant renewal of lease on condition of enhancement of 18% of the existing rent instead of 33 1/3%. The action on the part of the respondents, according to the petitioners, is not only unfair, but arbitrary and discriminatory. There is no reason whatsoever on the part of the third respondent-Municipality in not making similar recommendation to the first respondent-Government and renew lease for a further period of five years subject to the condition of enhancement of 18% of rent over the existing one.

4. In the counter-affidavit filed by the third respondent-Municipality, it is stated that in one case relating to Sri V. Satyanarayana for shop No. 1 block No. 1 on Western side of S.P.S.M.H. School Shops, the then Special Officer made a proposal to the Government and the Government accepted the same to renew the lease for a further period of five years vide G.O.Ms.No. 350-MA, dated 7-8-1995. The decision was not of the Council, but of the Special Officer exercising powers of the Council at the relevant time. There is no justification whatsoever on the part of the petitioners herein asking for similar relief and the Municipal Council after taking all the relevant factors into consideration had resolved not to recommend the cases of the petitioners to the Government nor the Municipality is willing to renew the lease for a period of five years, at 18% enhancement only. The reason stated in the counter-affidavit is simple. All the petitioners herein were earlier given the benefit of renewal of lease for a period of five years from 1-10-1985 on an enhanced rent of 15% over and above the existing rent by the Government vide G.O.Ms. No. 465, MA, dated 2-5-1987. The Government vide G.O.Ms. No 1230,

MA, dated 21-10-1989, while giving the benefit to shop Nos. 21 to 41 for a period of three years from 1-1-1987 categorically directed the Commissioner that the concession was ordered and agreed to as a special case and the concession in payment of enhanced rent shall not be taken as a precedent and such a request was not to be entertained by Government in future. The said order passed by the Government was made available to all the petitioners herein. It is stated that in spite of service of the notices, the petitioners are occupying the shops in question and voluntarily paying the enhanced rent of 18% over and above the existing rent, instead of 33 1/3%. There is no order or decision by the Municipality permitting the petitioner to pay at 18% enhanced rent. The Municipality is not bound by the voluntary act of the petitioners. It is asserted by the Municipality that the petitioners have no right to continue in possession of the shops. They have no right to insist for renewal even on payment of enhanced rent of 33 1/3%, the Municipality is entitled to put the shops for auction on expiry of the lease, instead of granting renewal even at the enhanced rent. The decision of the Municipality to renew the lease even on the enhanced rent of 33 1/3% was taken in the interest of the petitioners in exercise of its statutory discretion. The petitioners have no right to insist for renewal of the lease.

5. In my considered opinion, the petitioners cannot insist that they are entitled for automatic renewal of the lease in respect of the shops in their possession. Their prayer for issuance of a Writ of Mandamus directing the respondents to renew the lease of the petitioners' shops in terms of G.O. Ms. No .350--MA dated 7-8-1995 is misconceived. The Court cannot compel the respondent-Municipality to part with its property to suit the convenience of the petitioners.

6. Rule 12 of Regulation of Receipts and Expenditure Rules, 1968 (for short 'the Rules') provides that lease of the buildings, shops or godowns shall be effected by public auction which shall be conducted by the Commissioner or by a person duly authorised by him who shall give full publicity thereto in such manner as the Commissioner may consider suitable. The Commissioner shall place the bids at the auction before the Competent authority enters into contract under Section 43 of the Act and the said authority shall determine which of the bids at the auction shall be accepted. However, in case of sales of lease of properties, if at public

auction the bid is found to be lesser than that obtained in the previous year and if the previous year's lessee desires continuance of the lease at the old rate, the concerned authority may notwithstanding the public auction held, grant lease to him. In case of renewal, the Municipal Council is authorised to renew the lease for a period of three years at a time and with the prior sanction of the Government for a period exceeding three years, but not exceeding twenty five years without conducting public auction, if the present lessee agrees to renew the lease in his favour at an amount which will be at 33 1/3 % above the earlier rent or the prevailing market value of such shops situated in the vicinity, whichever is higher. However, the Council is authorised under special circumstances and with the prior sanction of the Government renew the lease at a rate not less than 15% over the existing rate of annual lease.

7. In case of institutions, the procedure of holding auction may be dispensed with either by the Council with the sanction of the Government or by the Government, itself, subject to certain conditions. This is the scenario regulating the lease of shops by the Municipality. Rule 12 of the Rules prescribes both grant of lease, as well as renewal. It is clear from a bare reading of the Rule that the lessee has no right to insist for automatic renewal. The normal Rule for granting lease is by public auction and discretion is conferred upon the Municipality to renew the lease for a period of three years at a time subject to the condition of the present lessee agreeing to such renewal in his favour at an amount which will be 33 1/3% above the earlier rent.

8. In the instant case, the discretion is exercised by the third respondent-Municipality in favour of the petitioners and the Municipality thought it fit instead of putting the shops for public auction, the lease could be renewed in favour of the existing lessees on condition of enhancement of 33 1/3% of rent. In fact, the Municipality has no discretion whatsoever to renew the lease unless the existing lessee agrees for enhancement of rent at 33 1/3% or agrees to pay the prevailing market value of such shops situated in the vicinity, which ever is higher. In such view of the matter, it cannot be said that the respondent- Municipality exercised its discretion in an illegal manner.

9. The complaint of discrimination made by the petitioners, in my considered opinion, is misconceived. Mere fact that the Municipality made an exception in one case and recommended to the Government as a special case for grant of lease on increased rent of 15% (sic. 18%) only, instead of 33 1/3% cannot form any basis and give rise to a cause for assertion of any right by the existing lessees. The Court is required to take notice that the decision in the previous case was taken by one particular individual viz., the Special Officer in purported exercise of the power conferred by the Council. It is an individual's decision. Here is a case of collective decision taken by the Municipal Council. Precisely for such reasons, the Court in many cases insisted that the management of the local bodies should always be in the hands of elected representatives. It is not known under what circumstances, the then Special Officer recommended the case of one individual lessee for a different treatment and for what reasons the Government agreed with the recommendation of the Special Officer and directed renewal of lease on condition of 15% enhancement of rent instead of 33 1/3%. The Court could have been in a position to examine the validity of the decision of the Government, if the same was questioned. It cannot be presumed that the Government's decision was legal and intra vires. At any rate such administrative decisions cannot be treated as precedents similar to judicial decision. Such administrative decisions, itself, cannot confer an enforceable right upon the persons claiming similar relief. It cannot form basis for issuance of a Writ of Mandamus by this Court in exercise of its judicial review jurisdiction. The Court cannot issue such Mandamus compelling the authorities to act in a particular manner in the absence of an enforceable right. Therefore, the right question to be asked is as to whether the petitioners before this Court are entitled to the relief asked for, instead of granting relief on the basis of an earlier administrative/executive order in similar case.

10. The Apex Court in Chandigarh Administration v. Jagjit Singh, : [1995]1SCR126 (D.N.) held:

'We are of the opinion that the basis or the principle, if it can be called one, on which the writ petition has been allowed by the High Court is unsustainable in law and indefensible in principle. Since we have come across many such instances, we think it necessary to deal with such pleas at a little length, Generally speaking,

the mere fact that the respondent- authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent-authority to repeat the illegality or to pass another unwarranted order. The extraordinary and discretionary power of the High Court cannot be exercised for such a purpose. Merely because the respondent-authority has passed one illegal/unwarranted order, it does not entitle that High Court to compel the authority to repeat that illegality over again and again. The illegal/unwarranted action must be corrected, if it can be done according to law-indeed, wherever it is possible, the Court should direct the appropriate authority to correct such wrong orders in accordance with law but even if it cannot be corrected, it is difficult to see how it can be made a basis for its repetition. By refusing to direct the respondent-authority to repeat the illegality, the Court is not condoning the earlier illegal act/order nor can such illegal order constitute the basis for a legitimate complaint of discrimination. Giving effect to such pleas would be prejudicial to the interests of law and will do incalculable mischief to public interest. It will be a negation of law and the rule of law. Of course, if in case the order in favour of the other person is found to be a lawful and justified one it can be followed and a similar relief can be given to the petitioner if it is found that the petitioner's case is similar to the other person's case. But then why examine another person's case in his absence rather than examining the case of the petitioner who is present before the Court and seeking the relief. Is it not more appropriate and convenient to examine the entitlement of the petitioner before the Court to the relief asked for in the facts and circumstances of his case than to enquire into the correctness of the order made or action taken in another person's case, which other person is not before the case nor is his case. In our considered opinion, such a course-barring exceptional situations-would neither be advisable nor desirable. In other words, the High Court cannot ignore the law and the well-accepted norms governing the writ jurisdiction

and say that because in one case a particular order has been passed or a particular action has been taken, the same must be repeated irrespective of the fact whether such an order or action is contrary to law or otherwise. Each case must be decided on its own merits, factual and legal, in accordance with relevant legal principles. The orders and actions of the authorities cannot be equated to the judgments of the Supreme Court and High Courts nor can they be elevated to the level of the precedents, as understood in the judicial world'.

11. Similar view is expressed by the Apex Court in Secretary, Jaipur Development Authority v. Daulatmal Jain, : (1997)1SCC35 and State of Haryana v. Ramkumar Mann, : (1997)1ILLJ 1039 SC (D.N.).

12. For the aforesaid reasons, I am not persuaded to accept the submissions made by the learned Counsel for the petitioners relating to the complaint of discrimination. I do not find any merit in the writ petition. The writ petition fails and it is accordingly dismissed. No costs.

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