

(2007) 08 AP CK 0002

Andhra Pradesh High Court

Case No: Writ Petition No's. 13434 and 13534 of 2005

Elisetti Yadagiri

APPELLANT

Vs

District Collector-cum-District
Magistrate and Another

RESPONDENT

Date of Decision: Aug. 2, 2007

Acts Referred:

- Acquisition and Transfer of Property by Gram Panchayats, Mandal Parishads and Zila Parishads Rules, 2001 - Rule 6, 7, 7(2)

Citation: (2007) 6 ALD 288

Hon'ble Judges: V.V.S. Rao, J

Bench: Single Bench

Advocate: K. Mahipathy Rao, in WP No. 13434 of 2005 and C. Buchi Reddy, in WP No. 13534 of 2005, for the Appellant; Government Pleader for Revenue for Respondent No. 1 and G. Elisha, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

V.V.S. Rao, J.

These two writ petitions are filed assailing the proceedings in file No. B3/l660/2005 dated 27.5.2005 issued by first respondent, namely, the District Collector, Mahabubnagar, and the consequential notices in file No. A/161/2005 dated 2.6.2005 issued by second respondent, namely, the Mandal Parishad Development Officer (MPDO), Mahabubnagar, directing the petitioners to vacate the premises in their occupation within three days from the date of receipt of said notices. As the contentions raised are similar, this common order shall dispose of both the writ petitions.

2. The Mandal Parishad, Achampet, constructed a shopping complex with thirty-seven shops in its office premises. Out of these shops, in 2003, ten shops were put to auction on lease and again sometime later some other shops were put to

auction. The petitioners in these two writ petitions became successful bidders and they were inducted as lessees in accordance with the Acquisition and Transfer of Property by Gram Panchayats, Mandal Parishads and Zilla Parishads Rules, 2001 (the Rules, for brevity). These rules were promulgated in G.O. Ms. No. 215, Panchayat Raj and Rural Development (Pts.III) dated 25.6.2001. The petitioners allege that as per the terms of the lease, they paid security deposit and are regularly depositing the monthly rentals with Mandal Parishad. Their lease is allegedly valid upto 1.8.2009.

3. It appears that the local M.L.A. addressed a letter dated 1.10.2004 to the Hon"ble Minister for Panchayat Raj alleging irregularities in leasing out the shops in the shopping complex at Achampet to various persons. Having considered the same, the Government issued a Memo No. 4075/Pts.HI/2005 dated 6.5.2005 informing their decision to cancel allotment of shops in the shopping complex at Achampet and to re-allot the shops after conducting fresh auction by giving paper notification. In response thereto first respondent issued impugned proceedings dated 27.5.2005 cancelling the allotment of shops and instructing MPDO to re-allot the shops by conducting fresh auction after giving paper notification in accordance with the rules. In obedience thereto MPDO issued the consequential notices dated 2.6.2005.

4. The learned Counsel for the petitioners submit that before and after conducting the auction for leasing out the shops, Mandal Parishad imposed various conditions which were complied with by the petitioners. The petitioners paid security deposits, advance rent and incurred huge expenditure for making leased out shops fit for starting business. At that stage, the Government ordered cancellation of auction without even giving notice to the lessees/petitioners, and therefore, the same is unsustainable. The learned Counsel secondly allege that on the principle of estoppel MPDO or Mandal Parishad cannot cancel the lease unilaterally nor they can evict the lessees highhandedly without due process of law.

5. MPDO filed separate applications for vacating the interim stay granted by this Court while admitting the writ petitions on 23.6.2005. In the counter-affidavit accompanying W.V.M.P. No. 1359 of 2007 filed in first writ petition, being W.P. No. 13434 of 2005 (similar counter is filed in the other writ petition), it is stated that the consequential notices dated 2.6.2005 were issued in obedience to the decision of the Government and first respondent and in view of this, Mandal Parishad has taken a decision to re-allot the shops as per the guidelines and directions issued by first respondent. Based on these submissions, the learned Standing Counsel for Mandal Parishad submits that apart from the orders of the Government many of the lessees are not paying the rents regularly. Therefore, MPDO issued impugned notices to all the petitioners directing them to vacate the shops. He also submits that originally lease was given for one year but petitioners are claiming lease for a period of six years based on tampered documents and that the lease period in respect of many of the lessees has already been expired.

6. Rule 6 of the Rules deals with lease of Panchayat property after following the procedure contemplated in Rule 7 of the Rules. Rule 7(2) of the Rules requires such transfer or lease to be affected only after conducting public auction and no lease shall be granted for a period of exceeding twelve months. Apart from the procedure laid down therein, the provisions of the Andhra Pradesh Panchayat Raj Act, 1994 or the Rules referred to hereinabove are silent with regard to the method and manner of evicting a lessee of Mandal Parishad or Panchayat property. The learned Standing Counsel also has not placed before this Court any other statute which enables the Gram Panchayat to evict tenant/lessee who refuses to vacate the leased out premises after expiry of the lease or for default in payment of rents or after receiving notice to quit.

7. The question whether a lessor, be it Gram Panchayat or Mandal Parishad, can evict the lessee from its property by issue of notice or by use of force is no res Integra. In State of Uttar Pradesh and Others Vs. Maharaja Dharmander Prasad Singh and Others, , the Supreme Court considered the question whether a lessor can resort to extra judicial methods to resume possession from a lessee holding over or at sufferance. Relying on Bishan Das and Others Vs. The State of Punjab and Others, , the Supreme Court ruled as under:

A lessor, with the best of title, has no right to resume possession extra-judicially by use of force, from a lessee, even after the expiry or earlier termination of the lease by forfeiture or otherwise. The use of the expression "re-entry" in the lease-deed does not authorise extrajudicial methods to resume possession. Under law, the possession of a lessee, even after the expiry or its. earlier termination is juridical possession and forcible dispossession is prohibited; a lessee cannot be dispossessed otherwise than in due course of law. In the present case, the fact that the lessor is the State does not place it in any higher or better position. On the contrary, it is under an additional inhibition stemming from the requirement that all actions of Government and Governmental authorities should have a "legal pedigree". In Bishan Das and Others Vs. The State of Punjab and Others, , this Court said (at pp.1574 and 1575 of AIR):

We must, therefore, repel the argument based on the contention that the petitioners were trespassers and could be removed by an executive order. The argument is not only specious but highly dangerous by reason of its implications and impact on law and order.

Before we part with this case, we feel it our duty to say that the executive action taken in this case by the State and its officers is destructive of the basic principle of the rule of law.

Therefore, there is no question in the present case of the Government thinking of appropriating to itself an extrajudicial right of re-entry. Possession can be resumed by Government only in a manner known to or recognised by law. It cannot resume

possession otherwise than in accordance with law. Government is, accordingly, prohibited from taking possession otherwise than in due course of law.

8. Thus, though the issue of the consequential notices by MPDO cannot be faulted and it is valid, any action on the part of Mandal Parishad to evict the petitioners by extra judicial methods other than invoking the legal remedies is not permitted by law. This Court, therefore, observes that if petitioners who are admittedly lessees pursuant to public auction conducted by Mandal Parishad which has been now cancelled by the Government, are to be evicted, Mandal Parishad has to take necessary action as per law. Till the petitioners are evicted by such due process, there cannot be any interference with their possession.

9. The writ petitions, with the above observations, are accordingly disposed of. No costs.