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Akula Venkatrao Vs Gram Panchayat, Attili, W.G. Dist. and others

Writ Petition No. 17336 of 2000

Court: Andhra Pradesh High Court

Date of Decision: April 20, 2001

Citation: (2001) 3 ALD 555 : (2004) 7 ALT 230

Hon'ble Judges: S. Ananda Reddy, J

Bench: Single Bench

Advocate: Mr. M. Lakshmana Sarma, for the Appellant; Government Pleader for Panchayat Raj., Mr. Dammalapati Srinivas and Mr. Posani Venkateswarlu, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

S. Ananda Reddy, J.
This writ petition is filed by the petitioner praying for the issue of writ of mandamus or any other appropriate writ,

directing the respondents 1 to 4, particularly the 1st respondent to auction the lease hold rights of the hotel belonging to the Panchayat Board,

Attili, which is towards north of the bus stand, after giving wide publicity.

2. It is stated by the petitioner that he is the resident of the first respondent Gram Panchayat village i.e., Attilli in West Godavari district. It is stated

that he is one of the participant in the auction conducted by the Gram Panchayat for the lease hold rights of the hotel premises. It is stated that the

lease hold rights were auctioned in the year 1997 and the 5th respondent was the successful bidder for a lease amount of Rs.90,100 for a period

of 3 years, which is to expire by March, 2000. But, however, due to civil disputes by the previous lessee, the Gram Panchayat could not deliver

vacant possession to the successful bidder and finally the 1st respondent took possession of the property only on 4-9-2000 after the injunction

order was granted by the civil Court was vacated. Thereafter, the Gram Panchayat issued an urgent notice dated 7-9-2000 for convening the

meeting of the Members of the Gram Panchayat and on 8-9-2000 as Resolution was passed to lease out the premises to the 5th respondent, who

was the highest bidder in the auction that was conducted on 6-3-1997. According to the petitioner, the said decision of the Gram Panchayat was

done as a guarded secret and it is to cause loss to the Gram Panchayat. It is further stated by the petitioner that there are many bidders in the

village, who were prepared to pay upto Rs.1.5 lakhs for the lease of three years and the petitioner is also ready to pay the same if the lease is given

to him. It is further stated that if a public auction is conducted, it may fetch more. Hence, sought for a direction to hold public auction of the

premises belonging to the 1 st respondent-Gram Panchayat and also sought for an interim direction pending disposal of the writ petition not to

deliver possession of the property to 5th respondent.

3. The 1st respondent filed a counter denying the allegations made by the petitioner. But, however, admitted that a resolution was passed on 8-9-

2000 proposing to lease out the premises in favour of the 5th respondent, as the 5th respondent, according to the Gram Panchayat, has been

waiting for the last 3 years, as he was not given possession even though he was successful bidder in the year 1997 auction. Therefore, it was

proposed to give for the same lease amount by enhancing it by another Rs.5000. Accordingly, the Resolution was sent for approval of the District

Collector and in pursuance of the said Resolution, the 5th respondent was also put into possession of the premises. It is also contended that the

sons of the petitioner have acted as sub-lessees during the earlier lease, prior to 1997 and have litigated against the Gram Panchayat and caused

loss and thereafter they have filed even an insolvency petition. Therefore, the Gram Panchayat thought it proper to lease out the premises to the 5th

respondent.

4. A separate counter has been filed on behalf of the 3rd respondent opposing the contention of the petitioner. It is also stated that there was an

earlier litigation in the civil Court with reference to the disputed premises. The 3rd respondent has also admitted that the petitioner has represented

that he is ready and willing to take the premises on lease for a lease amount of Rs.1.8 lakhs to Rs.2.3 lakhs. But stated that the petitioner has not

deposited any amount to show his bona fides. The 5th Respondent deposited a sum of Rs.1,000 at the time of auction and paid a further sum of

Rs. 10,570 by way of Demand Draft on 30th December, 2000. Hence, it is stated that there is no merit in the contentions of the petitioner.

5. The 5th respondent adopted the arguments of the 1st respondent.

6. Heard both sides and considered the material on record.

7. The dispute is with reference to the leasing out of Hotel-premises belongs to the 1st respondent-Gram Panchayat. It is not in dispute that

originally on 6-3-1997 an auction was conducted for a period of three years and the 5th respondent was the successful bidder for a total lease

amount of Rs.90,100. But, however the possession of the premises could not be delivered to the 5th Respondent due to the civil litigation that was

initiated by the earlier lessee and finally the Gram Panchayat took possession of the premises only on 4-9-2000. Thereafter the Gram Panchayat

met on 8-9-2000 and passed a resolution proposing to lease out the premises in favour of the 5th respondent without conducting any auction and

such resolution was sent to the Collector for approval. The contention of the petitioner is that the said Resolution passed by the Gram Panchayat to

lease out the premises in favour of the 5th respondent is a secret deal to cause loss to the public exchequer. According to the petitioner, he is

prepared to pay an amount of Rs.1.5 lakhs as lease amount if the premises leased out to him for a period of three years. It is also his version that if

it is put for public auction, it would fetch even more.

8. The relevant Rules as to the disposal of the properties belonging to the Gram Panchayat are provided in the Rules framed under "Rules relating

to Receipts and Expenditure of Gram Panchayats" framed under G.O. Ms. No.496, dated 11-6-1966, which are amended from time to time, by

G.O. Ms. No.244, dated 7-5-1974, G.O. Ms. No.1381, dated 23-12-1977 and G.O. Ms. No.180, dated 14-3-1983. Rule 12 deals with the

disposal of the properties belong to the Gram Panchayat. Sub-rule (2) of Rule 12 deals with the leasing of buildings and lands belong to the Gram

Panchayat, which is as under:

Leases of buildings and lands belonging to Gram Panchayat - 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 gram Panchayat which shall determine which of the bids should 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.

Executive Instructions:

.....

.....

Provided that in the case of lease of lands and buildings when it is advantageous to renew the lease in favour of the person to whom it was

originally granted, the Gram Panchayat may with the previous sanction of the District Collector, dispense with public auction"".

9, A perusal of the above clearly shows that it is mandatory on the part of the Gram Panchayat, while leasing out the buildings and lands belong to

it, to effect the same by public auction either by the executive authority or a person authorised by him, after giving full publicity thereto. The bids

received shall be placed by the executive authority before the Gram Panchayat, which shall determine which bid should be accepted. The

Panchayat was also given the discretion even to reject the highest bid for the reasons to be recorded in writing. The proviso empowers the Gram

Panchayat to renew the lease in respect of an existing lease, if it is advantageous to renew in favour of the existing lessee. But the said renewal must

be with the previous consent of the District Collector. Therefore, the Gram Panchayat has to necessarily dispose of its properties as provided

under sub-rule (2) of Rule 12 and not by any other mode. Admittedly, the 1st respondent-Gram Panchayat did not conduct any auction of the

premises after its possession was restored to it on 4-9-2000. In respect of Resolution passed to lease out the premises to the 5th respondent

without conducting public auction, there is absolutely no such vested power in the Gram Panchayat to lease out to a third party, who was not even

an existing lessee as on that date. Even in favour of an existing lessee for renewing the lease, previous consent of the District Collector is required.

10. Under the above circumstances, the resolution passed by the 1st respondent-Gram Panchayat to lease out the premises to the 5th Respondent,

without public auction is clearly illegal and contrary to the provisions of the Gram Panchayat Act and Rules. Apart from the fact that though a

resolution was passed on 8-9-2000, the 1st respondent stated that the 5th respondent was inducted into possession on that basis. Except such a

contention, there is absolutely no evidence even showing that the 5th respondent has made any deposit, though it was stated in the representation

that was forwarded to the District Panchayat Officer that the 5th respondent bad agreed to pay the entire one year"s lease amount in advance. In

fact, the counter filed by the District Panchayat Officer shows that the petitioner deposited a sum of Rs. 1,000 earlier and a further sum of Rs.

10,000 in the month of December, 2000. This clearly shows that there are no bona fides in the auction of the 1st respondent-Gram Panchayat that

the 5th respondent was inducted into possession of the premises. Even assuming that the 5th respondent was inducted into possession the said

induction of the 5th respondent is not legal and therefore the 1st respondent is directed to put the premises for public auction after giving wide

publicity of the lease hold rights of the premises in question. As the petitioner has slated in the affidavit that he is prepared to deposit Rs.1.5 lakhs,

if the Gram Panchayat prepared to lease out the premises for a period of three years, to prove his bona fides, the petitioner is directed to deposit

the amount of Rs.1.5 lakhs within a period of two weeks from today and the Gram Panchayat can proceed with the auction by fixing the said

amount as the minimum amount of lease for the period of three years and then conduct further auction, if there are bidders.

11. The writ petition is accordingly allowed with the above directions. No costs.