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***THE HON'BLE SRI JUSTICE P.NAVEEN RAO**

+WRIT PETITION No.16035 of 2015

% 06.07.2015

Perla Sambamurthy, s/o. late Vasudeva Rao,
Aged about 53 years, Occu: Proprietor,
Kameswari Jewellers, Shop Nos.40, 41, 52 & 15FF,
T.S.R.Complex, Dwaraka Nagar, Visakhapatnam.

Petitioner

....

Vs.

\$ The State of Andhra Pradesh, rep.by its Principal
Secretary, Municipal Administration Department,
Secretariat, Hyderabad and others.

.... Respondents

!Counsel for the petitioner : Sri P.Durga Prasad

Counsel for the Respondents: 1)Government Pleader for
Municipal Administration
for Respondent No.1

2)Sri S.Lakshminarayana
Reddy, standing counsel for
Respondent Nos.2 and 3

<Gist :

>Head Note:

? Cases referred:

1. (1980) 4 SCC 1

HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.16035 OF 2015

Date: 06.07.2015

Between:

Perla Sambamurthy, s/o. late Vasudeva Rao,
Aged about 53 years, Occu: Proprietor,
Kameswari Jewellers, Shop Nos.40, 41, 52 & 15FF,
T.S.R.Complex, Dwaraka Nagar, Visakhapatnam.

.. Petitioner

AND

The State of Andhra Pradesh, rep.by its Principal
Secretary, Municipal Administration Department,
Secretariat, Hyderabad and others.

.. Respondents

The Court made the following:

HON'BLE SRI JUSTICE P.NAVEEN RAO
WRIT PETITION No.16035 of 2015

ORDER:

Heard learned counsel for the petitioner as well as standing counsel for Greater Visakhapatnam Municipal Corporation and with the consent of the learned counsels, this writ petition is heard and disposed of finally at the admission stage.

2. Petitioner is running a jewellery shop in Visakhapatnam town. This writ petition is instituted challenging the endorsement dated 23.05.2015 issued by the Zonal

Commissioner of Greater Visakhapatnam Municipal Corporation (GVMC). By the said endorsement, petitioner was informed that there is no possibility of change of lease in respect of shop No.40 (ground floor) and shop No.15 (first floor) in T.S.R. Commercial Complex of respondent corporation.

3. Petitioner avers that person, by name, N.S.Raju was granted lease of shop Nos.40, 41 and 52 in ground floor; Sri Kuritala Srinivas was granted lease of shop No.15 in first floor in T.S.R. Commercial Complex of respondent corporation in Dwaraka Nagar, Visakhapatnam. Petitioner claims that he joined as a partner with the above lessees.

As the lessees intend to stop their business, petitioner came forward to take over the business and also the lease of the shops instead of the said lessees. Requesting for transfer of lease in favour of the petitioner a representation was submitted on 23.08.2014 to the respondent corporation. In response to the said request, the Zonal Commissioner issued proceedings dated 03.09.2014 directing the petitioner to comply with the conditions stipulated therein before processing his request. In consequence thereof, petitioner stated to have complied with all the conditions stipulated and amount of Rs.14.00 lakhs was paid which was towards arrears of rent payable by the original lessees and towards advance rent as a consequence to transfer of lease in favour of the petitioner. In spite of several representations and meetings of the officers personally, there was not much of progress. However, in anticipation of grant of lease, petitioner undertook repairs to the leased premises and renovated the old structures to meet the requirements of the jewellery shop and commenced the business under the name and style of 'Kameswari Jewellers' on 10.04.2015. Petitioner contended that all these four shops form into a single unit. Shop No.15 is in the first floor and other three shops are in the ground floor and there was a common entrance through shop no.40 and, therefore, all these four shops constitute as one unit.

4. Learned counsel for the petitioner contended that with the assurance given by the respondent-corporation, petitioner commenced the jewellery business. The respondent-corporation by communicating letter dated 03.09.2014 directing the petitioner to comply with the conditions stipulated therein have clearly indicated that the lease would be transferred in favour of the petitioner and lease would be continued in respect of all the four shops. In view of such positive indication given by the respondent-corporation and having paid the amount as demanded, the petitioner has undertaken renovation of four shops to suit his business needs by spending huge money and with great difficulty jewellery shop was opened. Thus, the entire exercise was undertaken with the consent and knowledge of the respondent-corporation. It is not open for the respondent-corporation to decline transfer of lease *post facto*. Such decision of the respondent-corporation is arbitrary and discriminatory adversely affecting the right of the petitioner to carry on business and nullifies huge amount invested by him with fond hope of transfer and renewal of lease. On the assurance given by the respondent- corporation, petitioner

has invested huge money for renovation, obtained all the required permissions for running a jewellery business and commenced the business.

5. Learned counsel further submitted that no reasons are assigned for rejecting such request and it amounts to arbitrary exercise of power, more particularly when the corporation itself has given endorsement requiring the petitioner to fulfil the conditions to consider his request for renewal of lease and petitioner having fulfilled all the conditions required, it is not open to the respondent-corporation to refuse transfer of lease. He further submitted that rejection of transfer of lease is in respect of shop nos.40 (GF) and 15 (FF) only, whereas shop Nos.40, 41 and 52 in the ground floor and shop No.15 in first floor formed as common unit and there was a common entrance through shop no.40 and, therefore, even if the lease is renewed for shop Nos.41 and 52, refusal of renewal of lease to shop Nos.40 and 15 would amount to denial of ingress and egress to the other shops. All this was deliberately done only to deny the petitioner to run the jewellery shop successfully and illegal decision was taken only due to the pressure exerted by the rivals in the business who were not happy with the success of the venture since the shop was opened. Thus, the decision impugned in the writ petition is not taken in a *bona fide* exercise of power and authority.

6. Learned counsel further contended that there is no prohibition in transfer of lease and there is no limit prescribed in grant of lease. Petitioner has agreed for enhancement of lease amount as normally applicable and all the arrears of lease payable by the original lessees was already paid. Thus, by granting lease no loss is caused to the respondent-corporation and the petitioner is willing to comply with all the conditions of lease if lease is transferred to him and the renewal is granted.

7. Counter affidavit is filed by the respondent-corporation. Learned standing counsel for respondent-corporation submitted that petitioner has no manner of right to seek transfer of lease. Lease was granted to these shops several years back and all the lessees have completed 25 years of lease. As per the Government orders, lease should be renewed for every three years. The discretion to grant first renewal after completion of original lease period vests in the corporation and thereafter lease can be renewed for further period only with prior approval of the Government. In the instant case, no such prior approval is obtained before granting of renewal of lease to the original lessees. He further submitted that according to the government norms, maximum period of lease that can be granted by way of renewal is 25 years, whereas in the instant case, on all the four shops lease granted was long ago and 25 years was completed. He further submitted that in fact insofar as shop nos.40 and 42 lease expired on 31.03.2012; in respect of shop no.52 lease expired on 23.08.2012 and in respect of shop no.15 lease expired in the year 2006 and after that no renewal was granted. However, lessees continued to occupy. Learned counsel further submitted that since the lease already expired and

without any valid order of extension of lease or agreement for renewal of lease entered into with the lessees, the occupation of the lessees in the subject premises was unauthorized and illegal after the expiry of lease period and, therefore, the question of such lessees agreeing for transfer of lease in favour of petitioner does not arise.

8. Based on the averments contained in the counter affidavit, learned standing counsel further contended that initially when the letter was issued on 18.09.2014 the records were not verified and the said proceedings were issued under the *bona fide* impression that the lessees have subsisting lease and eligible for renewal of lease. On thorough verification of the records, it was found that there was no subsisting lease in favour of the original lessees and, therefore, the request of the petitioner for grant of transfer and renewal of lease was not acceded to. He further submitted that merely because the petitioner opened the jewellery business on 10.04.2015, does not accrue any right for transfer and renewal of lease. By the time the shop was opened, no orders were passed by the respondent-corporation accepting the request of the petitioner for transfer of lease and renewal of lease and, therefore, petitioner illegally undertook the renovation and opening of the shop. He ought to have taken express consent from the respondent corporation before undertaking such renovation and opening of the business. That such action of the petitioner being illegal, no rights accrue to contend that since he has already opened the business he should be allowed to continue.

9. Learned standing counsel, by placing reliance on the decision of this Court in the case of **B.Krishna Reddy vs. Government of Andhra Pradesh (W.P.No.6354 of 2009)**, submitted that ordinarily lease has to be granted by the State or instrumentality only by conducting public auction and no lease can be granted to the existing lessee beyond period of 25 years and in all circumstances public auction has to be conducted before granting lease. He submitted that no amount was received by GVMC as claimed by petitioner. Learned standing counsel therefore supports the decision of the corporation and prays for dismissal of the writ petition.

10. The relevant facts are not in dispute. Shop nos.40, 41 and 52 in ground floor and shop no.15 in first floor of TSR shopping complex owned by the Greater Visakhapatnam Municipal Corporation was leased long back and the lease granted to the original lessees expired on 31.3.2012 (in respect of shop nos.40 and 42); on 23.08.2012 (in respect of shop no.52) and in the year 2006 (in respect of shop No.15). It is not denied that no renewal was granted after the above dates though the lessees continued to occupy the leased premises. Thus, by the time petitioner entered into picture and sought for transfer of lease and continuation of lease, there was no subsisting lease in favour of the original lessees. It is also an admitted fact that even assuming that the lease was renewed or deemed to have renewed and continued to be in operation, the lease period of all the four shops completed 25 years long ago. The last of the

completion of 25 years was in respect of shop no.15 in first floor on 17.04.2014.

11. The subject premises are the properties belonging to the Greater Visakhapatnam Municipal Corporation (GVMC). In terms of Section 7 of the Visakhapatnam Municipal Corporation Act, 1979, the GVMC is governed by the Greater Hyderabad Municipal Corporation Act, 1955 (for short, 'Act 1955'). Section 148 of the Act, 1955 deals with the disposal of the property and interest thereon of the corporation. Section 148 reads as under:

“ Section 148: Disposal of property and interests therein :

- (1) Subject to the provisions of Section 124, the Commissioner may dispose of by sale or exchange any movable property belonging to the Corporation the value of which does not exceed rupees twenty five thousand in each instance, or grant for any term not exceeding twelve months a lease of any immovable property belonging to the Corporation or lease or concession of any right of fishing or grazing or of gathering and taking fruit and the like:

Provided that every such disposal, lease or concession made or granted by the Commissioner shall be reported to the Standing Committee within fifteen days.

- (2) With the sanction of the Standing committee, the Commissioner may dispose of by sale or exchange any movable property belonging to the Corporation the value of which exceeds rupees twenty five thousand but does not exceed such sum as may be specified by the Government by notification, from time to time, in each instance, or grant for any term not exceeding three years a lease of any immovable property belonging to the Corporation or a lease or concession of any such right as aforesaid.

- (3) In cases not covered by sub-section (1) or sub-section (2), the Commissioner shall not lease, sell or otherwise dispose of any movable or immovable property belonging to the Corporation without the previous sanction of the Corporation and of the Government.

Provided that in no case the lease period of immovable property shall exceed twenty five years.

- (4) The sanction of the Standing Committee under sub-section (2) or the previous sanction of the Corporation and the Government under sub-section (3) may be given either generally or for any class of cases or specially for any particular case.

- (5) The Commissioner may lend or let out on hire any movable property belonging to the Corporation on such conditions and for such periods as may be specified in regulations made by the Standing Committee in that behalf. ”

12. As seen from the provision in Section 148, ordinarily no lease can be granted by the Commissioner beyond 12 months. With the approval of the Standing Committee lease can be granted for a term not exceeding three years. In accordance with the sub-section (3) of Section 148, no lease can be granted beyond period of three years without previous sanction of the Corporation and of the Government. In accordance with the sub-section (4), such sanction can be given by the Corporation and the Government, either generally or for any class of cases or specifically for any particular case.

According to the proviso appended to sub-section (3), even with the previous sanction of the Corporation and the Government, such lease shall not exceed 25 years.

13. No lease agreements granted to original lessee are placed on record by petitioner. Petitioner has not shown that provisions of Section 148 are complied and valid lease was granted to original lessees. The categorical stand of the respondent corporation that the leases granted to the original lessees expired on various dates mentioned above and no further lease was granted is not denied. Merely because original lessees continued to occupy the subject premises does not amount to granting of valid lease in their favour. Admittedly, no public auction was conducted before continuing the possession of original lessees. No valid transfer is made in favour of petitioner. His occupation is in violation of Section 148 of the Act.

14. The properties on which petitioner is squatting are public properties. Grant of lease on such properties is not for the benefit of individuals in whose favour lease is granted or in occupation. Such public properties have to be used for the benefit of public at large. It is the responsibility of the GVMC to provide various civic amenities in the city which require large amounts of funds. GVMC resorts to various means to augment the funds required, such as collection of house tax, levy of fee on various services provided etc. In addition it also puts to use its properties by leasing out to generate funds. Lease amounts collected on its properties is required to provide civic amenities. Thus, it is the duty and responsibility of GVMC to get best lease price on its properties. GVMC can get a good offer only if open auction is conducted so that all persons interested can participate in the auction and offer better lease amount.

15. It is appropriate to note what Supreme Court has said in the case of **M/s.Kasturi**

Lal Lakshmi Reddy vs. State of Jammu and Kashmir and Another^[1].

“14. Where any governmental action fails to satisfy the test of reasonableness and public interest discussed above and is found to be wanting in the quality of reasonableness or lacking in the element of public interest, it would be liable to be struck down as invalid. It must follow as a necessary corollary from this proposition that the Government cannot act in a manner which would benefit a private party at the cost of the State; such an action would be both unreasonable and contrary to public interest. The Government, therefore, cannot, for example, give a contract or sell or lease out its property for a consideration less than the highest that can be obtained for it, unless of course there are other considerations which render it reasonable and in public interest to do so. Such considerations may be that some directive principle is sought to be advanced or implemented or that the contract or the property is given not with a view to earning revenue but for the purpose of carrying out a welfare scheme for the benefit of a particular group or section of people deserving it or that the person who has offered a higher consideration is not otherwise fit to be given the contract or the property. We have referred to these considerations only illustratively, for there may be an infinite variety of considerations which may have to be taken into account by the Government in formulating its policies and it is on a total evaluation of

various considerations which have weighed with the Government in taking a particular action, that the court would have to decide whether the action of the Government is reasonable and in public interest. But one basic principle which must guide the court in arriving at its determination on this question is that there is always a presumption that the governmental action is reasonable and in public interest and it is for the party challenging its validity to show that it is wanting in reasonableness or is not informed with public interest. This burden is a heavy one and it has to be discharged to the satisfaction of the court by proper and adequate material. The court cannot lightly assume that the action taken by the Government is unreasonable or without public interest because, as we said above, there are a large number of policy considerations which must necessarily weigh with the Government in taking action and therefore the court would not strike down governmental action as invalid on this ground, unless it is clearly satisfied that the action is unreasonable or not in public interest. But where it is so satisfied, it would be the plainest duty of the court under the Constitution to invalidate the governmental action. This is one of the most important functions of the court and also one of the most essential for preservation of the rule of law.”

16. The Division Bench of this Court in W.P.No.6354 of 2009 was interpreting the rules framed in exercise of power vested under the Municipalities Act, 1965. In the rules framed under Act, 1965 also there is an outer limit of 25 years to grant lease. The facts in that case are some what similar to this case on principal issue. In the judgment dated 25.08.2009, this Court held as under:

“It is a trite principle under a constitutional order that all public properties are public assets administered by State actors or instrumentalities in a fiduciary capacity and enjoined to be administered in conformity with fiduciary principles. All discretion conferred on public authorities is a public trust and consecrated for the purpose of its employment in public interest. Certain executive choices may involve balancing of a plurality of public interest choices but whereas in the present case the property of a public authority-the Nalgonda Municipality is intended to be leased out, the sole and exclusive public policy choice is for ensuring the augmentation of the revenues of the Municipality.

In the considered view of this Court constitutional and public law concerns as well as the provisions of the 1967 and 1968 Rules do not enable further renewal of the lease in favour of the 6th respondent nor enable the official respondent Nos.1 to 4 to avoid the transparent public process of granting lease of the schedule property only by public auction. The Municipality has ample powers under Section 194 of the A.P. Municipalities Act, 1965 to evict persons in unauthorised occupation of Municipal property. Since the present occupation of the schedule property by the 6th respondent is without lawful entitlement and so since 31.12.2008, the 4th respondent is required to exercise in full measure the plenitude of powers inhering in the 4th respondent under the provisions of the A.P. Municipalities Act to ensure the eviction of the 6th respondent from the schedule premises. It is further required that the official respondents jointly and severally ensure that the lease of the schedule property is granted pursuant to public auction, in the manner enjoined by the Act read with the provisions of the 1967 and the 1968 Rules.”

17. Section 148 of the Act creates layers of scrutiny for various periods and upto

Government to grant lease for a period beyond five years. Section does not envisage renewal of lease. It does not envisage transfer of lease. It thus necessarily follows from the scheme of this section that after the period of lease as envisaged in sub-sections 1 to 3 is over, GVMC has to resort to public auction to grant further lease. There is no material on record to show that lease for longer period was with the prior approval of Commissioner and the Government.

18. By way of amendment proviso is appended to Section 148(3) which imposes ceiling of 25 years to grant lease even with the approval of Government. Even assuming that lease is deemed to have been granted to original lessees and is in force, in view of express bar in proviso appended to Section 148(3) of the Act, no lease in their favour can be continued and cannot be transferred under any circumstances to petitioner. If petitioner intends to take the subject premises on lease he has to participate in the open auction that may be initiated by the respondent corporation.

19. Even assuming that there were some lapses on the part of respondent corporation in seeking to evict the original lessees or in not informing the petitioner in the first instance, instead asking him to comply with certain conditions, in exercise of power of judicial review vested in the Court under Article 226 of the Constitution of India, this Court is not inclined to hold the impugned reply as illegal. It is a decision made in accordance with statutory mandate and is in public interest. This position would not change even if GVMC has accepted the amounts paid by petitioner. Petitioner is only entitled for refund of amount, if any paid. The parameters of judicial review in matters of this nature are well settled. In W.P.Nos.12674, 12685 and 12691 of 2010 in the judgment dated 08.06.2010, this Court delineated the principles laid down by the Supreme Court in various cases on the scope of exercise of jurisdiction by this Court under Article 226 of the Constitution of India. They are:

“It is well to remember that the exercise of jurisdiction under Article 226 of the Constitution of India is discretionary and a Writ is not issued as of right or as a matter of course. **C.R.Reddy Law College Employees’ Association, Eluru W.G.District vs. Bar Council of India, New Delhi [(2004 (5) ALD 180 DB]**. As the power exercised by this Court, under Article 226 of the Constitution of India, is discretionary it need not be exercised in every case where there is an error of law. One of the limitations imposed by this Court, on itself, is that it would not exercise jurisdiction unless substantial injustice has ensued or is likely to ensue. It would not allow itself to be turned into a court of appeal to set right mere errors of law which do not occasion injustice. **(Sangram Singh v. Election Tribunal, Kotah [AIR 1955 SC 425]**. Even when some defect is found in the decision making process, this Court will exercise its discretionary power, under Article 226 of the Constitution of India, with great caution and only in furtherance of public interest and not merely on the making out of a legal point. This Court is required to keep larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to the conclusion that overwhelming public interest requires interference, would it intervene in the matter. **Air India limited v. Cochin International Airport Limited [2000 (2) SCC 617]**.”

20. Thus, I see no illegality in refusing to transfer the lease of shop No.40 (ground floor) and shop no.15 (first floor) of T.S.R. commercial complex of respondent corporation in Dwaraka Nagar, Visakhapatnam. Hence, writ petition is liable to be dismissed and it is accordingly dismissed.

21. In the peculiar facts of this case, the GVMC is directed to immediately initiate steps to conduct public auction of the concerned shops. It is needless to observe that GVMC has to conduct public auction of all the shops, where the lease period has expired. Such action should be completed within a fixed time frame and shall be completed within a period of twelve weeks from the date of receipt of copy of this Order. Till the auction process is completed and new lessee is awarded lease of the subject premises, petitioner may be allowed to continue. Petitioner shall vacate the premises within two weeks from the date of completion of lease process and awarding of lease to highest bidder. From the month of June, 2015, till the petitioner vacates the premises as above, he has to pay the lease amount as per the amount quoted by the highest bidder in whose favour lease is to be awarded. If there is any amount of the petitioner lying with the respondent-corporation, the lease amount payable by the petitioner till he vacates the premises shall be adjusted and balance amount shall be refunded.

Miscellaneous petitions if any pending in the writ petition shall stand closed.
There shall be no order as to costs.

Date : 06.07.2015

JUSTICE P.NAVEEN RAO

Note: L.R. copy to be marked.
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HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.16035 of 2015

Date: 06.07.2015

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[\[1\]](#) (1980) 4 SCC 1