

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

+WRIT PETITION No.1018 of 2015

% 06.07.2015

Abji Patel, s/o. Bheemji Patel, Aged about 64 years,
Occu:Business r/o. 5-5-698, Malakunta X Roads,
Goshamahal, Hyderabad and others.

.....
Petitioners

Vs.

\$ The Greater Hyderabad Municipal Corporation, rep.by its
Commissioner, Tank Bund, Hyderabad and others.

.
.... Respondents

!Counsel for the petitioners : Sri Vedula Venkata Ramana

Counsel for the Respondents: Sri N.Ashok Kumar, standing
counsel for respondents.

<Gist :

>Head Note:

? Cases referred:

1. (1980) 4 SCC 1

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NO.1018 of 2015

Date: 06.07.2015

Between :

Abji Patel, s/o. Bheemji Patel, Aged about 64 years,
Occu:Business r/o. 5-5-698, Malakunta X Roads,
Goshamahal, Hyderabad and others.

..... Petitioners

And

The Greater Hyderabad Municipal Corporation, rep.by its
Commissioner, Tank Bund, Hyderabad and others.

..... Respondents

This Court made the following:-

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NO.1018 of 2015

ORDER:

Heard learned senior counsel Sri Vedula Venkata Ramana for the petitioners as well as standing counsel for Greater Hyderabad Municipal Corporation and with the consent of the learned counsels, this writ petition is heard and disposed of finally at the admission stage.

2. Petitioners claim that they are the lessees of subject plots which were leased out by the Municipal Corporation of Hyderabad over 50 to 60 years ago, on which mulgies were constructed. They have been regularly paying rents to the municipal corporation. Petitioners are carrying on timber and plywood business in the said mulgies. This writ petition is instituted challenging the impugned notices dated 21.01.2015 served on each of the petitioners directing them to evict the subject premises respectively within 24 hours.

3. Learned senior counsel Sri Vedula Venkata Ramana appearing for the petitioners contended that petitioners were granted valid lease and they are in possession and enjoyment of the same all along.

They have been paying rents regularly and there are no arrears of rents payable by them. It is further contended that tenant cannot be evicted without issuing quit notice.

4. Learned senior counsel further contended that though notices refer petitioners as sub-lessees, no such-sub leases were granted.

The original lessees with the permission of the Corporation have changed the trade name of the premises as early as in the year 1972-73 and their names were recorded accordingly in the municipal records and rents are being collected from the present occupants. Thus, petitioners cannot be described as sub-lessees and unauthorized, illegal occupants.

5. Learned senior counsel contended that even assuming that petitioners are not the tenants, that the lease was validly extended or not, the tenants continue to be in possession of the subject premises. Relying on the judgment of the Supreme Court in the case of **State of U.P. v. Maharaja Dharmander Prasad Singh (AIR 1989 SC 997)**, he submits that lessee cannot be dispossessed without following due process of law even if lease agreement provides the right of reentry for violation of lease conditions and the persons are in unauthorized occupation. He further submitted that the impugned notices were issued at the behest of rival business people, who have hatched plan to remove the petitioners from the present place of business and the same were not issued in bona fide exercise of power. He submitted that earlier W.P.No.16685 of 2007 was filed seeking direction that widening of road should take place without any delay. Petitioners herein were also arrayed as respondents in the said writ petition. He further submitted that PIL NO.281 of 2014 was instituted seeking similar relief. These two cases were instituted with an objective to throw the petitioners out of the subject premises.

6. He further submitted that earlier when similar attempt was made

to demolish the petitioners' shops without issuing notices and opportunity, W.P.No.14260 of 2005 was instituted. Since it was stated by the corporation that they would follow due process of law before taking up demolition, the said writ petition was withdrawn on 27.02.2006. There were negotiations with the respondent corporation wherein request was made to reduce the proposed road width from 80 feet to 60 feet or to provide alternate place nearer to present place to relocate their business and the respondent corporation agreed to consider their request. Learned counsel therefore submitted that all this would indicate that the reasons for eviction are not so much about the conduct of the petitioners, but for extraneous reasons.

7. Learned standing counsel Sri N.Ashok Kumar submitted that there is no subsisting lease in favour of the petitioners. The lease granted in favour of the original lessees expired as early as in the year 1980 and there was no further extension of lease. Petitioners were not the lessees. Petitioners are in unauthorized occupation and enjoyment of the property belonging to the corporation. In order to evict the petitioners, due process was followed. Show cause notices were issued under Section 4(1) of the A.P. Public Premises (Eviction of Unauthorized Occupants) Act, 1968 (for short, 'Act, 1968') to the original lessees and also occupants of the subject premises as early as in the year 2010 itself. The explanations submitted in pursuant to the notices were considered and rejected and consequential eviction notices were issued on 09.08.2011 to the petitioners as well as original allottees directing them to hand over the vacant possession. The said orders have become final as no challenge was made. The present impugned notices were issued in consequent to the said decision. Thus, there is no illegality or irregularity in issuing the notices impugned in the writ petition. He further submitted that present writ petition is not maintainable as petitioners have not challenged the final notices issued on 09.08.2011. He further

submitted that the petitioners have not availed the remedy of appeal provided under the Act, 1968 and on that ground also writ petition is not maintainable.

8. He further submitted that Section 106 of the Transfer of Property Act has no application as the subject premises are public premises and the provision of the Act, 1968 would apply, which is strictly followed. He further submitted that mere acceptance of lease amount does not confer any right on the petitioners. He further submitted that subject property is required for widening the road. The corporation has already faced a lot of wrath by the local people for not widening the road. On account of long litigation the road widening could not be taken up and caused lot of inconvenience and hardship to the road users.

9. He further submitted that there was no provision for transfer of lease and the original lessees transferring the lease in favour of the others was illegal and on that ground alone the petitioners are liable for dispossession. He further contended that in accordance with the provision contained in Section 148 of the Greater Hyderabad Municipal Corporation Act, 1955 (Act, 1955) no lease can be granted at any rate beyond 25 years and, therefore, even on that ground, petitioners are not entitled to occupy the subject premises.

10. The point for consideration is whether the action of respondent corporation in seeking to evict the petitioners is valid ?

11. Admittedly, lease was granted to the various persons whose names are shown in para-3 of the counter affidavit. Said leases expired in the year 1980. The present occupants of the premises claim that they have been put in possession in the subject premises way back in the year 1972-73 and their possession is recognized by the respondent corporation. It is the assertion of the petitioners that

they are the lessees and are in possession and enjoyment in pursuant to the valid lease granted to them and there is no default in payment of lease amounts.

12. Admittedly notices were issued in exercise of power under Section 4(1) of the Act, 1968 and after consideration of the explanation, decision was made rejecting the request and final notice was issued on 09.08.2011 and the same has become final. In consequent to the notice, dated 09.08.2011, the impugned notices were issued. Against the decision taken or notices issued under the Act, 1968, an appeal shall lie under Section 9 of the Act, 1968. No such appeal was preferred challenging the eviction notice dated 09.08.2011. No reasons are assigned in the affidavit filed in support of the writ petition as to why petitioners have not availed the remedy of appeal. On the contrary, they have deposed that petitioners do not have any other remedy except the extraordinary remedy under Article 226 of the Constitution of India. They have allowed the said decision and notice of eviction become final.

13. The subject premises are the properties belonging to the Greater Hyderabad Municipal Corporation (GHMC). The GHMC 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. ”

14. 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 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 provision in 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.

15. No lease agreements are placed on record by petitioners. Petitioners have not shown that provisions of Section 148 are complied and valid lease was granted to them. The categorical stand of the respondent corporation that the leases granted to the original lessees expired in the year 1980 and no further lease was granted is not denied. Except payment of rents and showing some acknowledgments of recording the names of some of the petitioners, no material is brought on record to show that lease is transferred in favour of the petitioners and valid lease is executed in their favour. Merely because petitioners continued to occupy the subject premises and the rent is being paid by them and rent so paid by them is accepted by the respondent corporation, does not amount to granting of valid lease in their favour. Admittedly, no public auction was conducted before continuing the possession of petitioners. No valid lease agreement exists in favour of petitioners. Their continuation is in violation of Section 148 of the Act.

16. The properties on which petitioners are 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 GHMC to provide various civic amenities in the twin cities which require large amounts of funds. GHMC 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 which are idle 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 GHMC to get best lease price on its properties. GHMC 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.

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 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, GHMC has to resort to public auction to grant further lease. No property of the corporation can be leased out without written agreement executed after conducting public auction. Without conducting of open auction, the petitioners could not have been continued with the lease beyond 1980.

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 petitioners, in view of express bar in proviso appended to Section 148(3) of the Act, no lease in favour of petitioners can be continued.

19. Even according to the petitioners own admission the lease period has exceeded 25 years. Applying the said provisions to the present case, it is clear that the lease granted in favour of the petitioners, assuming that a valid lease was granted and lease is in force, is in violation of proviso appended to sub-section (3) of Section 148 and, therefore, further continuation of petitioners is not valid in the eye of law.

20. 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.”

21. 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. There also, there was a 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 unauthorized 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.”

22. Thus, without conducting public auction, lease of subject premises cannot be granted. Auction can be conducted, if so desired by GHMC, only after road widening is taken up. Moreover, due process was followed to evict the petitioners. Show cause notice was issued on 08.04.2010. Such notice was issued in the name of original lessee as well as in the name of the occupant. It appears none of the original lessees or occupants have filed explanation, but third party filed explanation. However, the explanation filed by the third party was considered and by a reasoned order the same was rejected and eviction notice was issued on 09.08.2011 to vacate the premises. The above proceedings are initiated in accordance with the provision contained in the Act, 1968. The orders dated 09.08.2011 have become final as no appeals were preferred. The impugned notices are only consequential to the earlier notices issued. Thus, the present notices cannot be seen in isolation, but have to be seen in the context of first notices issued under Section 4(1) of the Act, 1968 on 08.04.2010, consideration of the explanation and final notices of eviction on 09.08.011.

23. It is contended by the learned senior counsel that after 09.08.2011 eviction notices, there were negotiations and corporation has agreed to retain the petitioners in the subject premises and petitioners have agreed to part with the land, which is required for acquiring of the road and the Corporation has also agreed to reduce the road width to 60 feet instead of 80 feet. Having regard to the said submission, the records were called. As seen from the records, there

was no such proceedings or understanding recorded in the relevant records of the corporation. Without specifying the reasons, corporation kept quiet for four years. Corporation seems to have woken up from deep slumber only recently to act against petitioners. This delay in taking coercive steps to evict petitioners does not enure to the benefit of petitioners to nullify eviction proceedings culminated on 09.08.2011. Thus, there is no merit in the contention of the learned senior counsel.

24. As records would disclose, there was a proposal pending for a long time to widen the road in the stretch between Malakunta X roads and Darusalam X roads. Since Corporation was not evincing interest to widen the road, W.P.No.16685 of 2007 was filed. The petitioners herein are also respondents in the said writ petition. When the matter was taken up for consideration, a letter dated 07.06.2008 of the Office of the Assistant City Planner, Town Planning Center, was placed before the Court, which letter *inter alia* stated that active steps were being taken to widen the road by 80 feet. Having regard to the same, the Court directed the respondent corporation to implement the proposals of widening of the road as expeditiously as possible preferably within a period of six months.

25. In spite of giving such assurance, as no steps were taken, Public Interest Litigation No.281 of 2014 was instituted alleging inaction on the part of the Corporation in removing the illegal encroachments so that the project for widening the road could be completed. When the matter was taken up for consideration, the Division Bench was informed that this writ petition is pending consideration and interim order was granted. Thus, PIL was disposed of directing the respondent corporation to take steps in accordance with law.

26. Even assuming that there were some lapses on the part of respondent corporation in seeking to evict the petitioners, 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 set at nought the process initiated by the respondents. The decision to evict petitioners is in compliance with statutory mandate and in public interest. 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)].**

27. Petitioners have no manner of right to continue to occupy subject premises. In **State of U.P.**, Supreme Court said that lessor can

resume possession by following due process. In fact in this case, due process was also observed in evicting the petitioners. Furthermore, it is in the public interest to widen the road between Malakunta X roads and Darusalam X roads, which is pending for a long time since petitioners were squatting on the subject premises and without evicting the petitioners road cannot be widened.

28. I see no error in the impugned notices warranting interference by this Court. Accordingly, the writ petition is dismissed. However, having regard to the fact that petitioners are in occupation and interim orders granted by this Court earlier, petitioners are given four weeks time from today to vacate the subject premises. There shall be no order as to costs. Miscellaneous petitions if any pending in the writ petition shall stand closed.

JUSTICE P.NAVEEN RAO

Date: 06.07.2015

Note: L.R. copy to be marked.

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HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NO.1018 of 2015

Date: 06.07.2015

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