

HON'BLE THE ACTING CHIEF JUSTICE DILIP B.BHOSALE

AND

HON'BLE SRI JUSTICE S.V.BHATT

W.A.No.857 OF 2015

PC:(Per Hon'ble Sri Justice S.V.Bhatt)

Heard Mr. O.Manohar Reddy, learned counsel for the appellant,
Sri Lakshminarayana Reddy, learned counsel for respondents 2 and 3
and learned Government Pleader for Municipal Administration for
respondent No.1.

Writ appeal is directed against the order dated 06.07.2015 in
W.P.No.16035 of 2015.

The petitioner is the appellant.

The petitioner prayed for Mandamus declaring endorsement
No.613/2014/Zone3 (Revenue)/A1 dated 23.05.2015, as illegal,
arbitrary and contrary to the provisions of Hyderabad Municipal
Corporation Act.

At the outset to briefly narrate the facts necessary for disposal
of the writ appeal, we find it convenient to excerpt the impugned
endorsement:

"R.C.No.613/2014/Zone-3(Revenue)/A1

Date -05-2015

Office of the Zonal

Commissioner

Zone-3, Surya Bagh

ENDORSEMENT

Sub:Greater Visakha Municipal Corporation –T.S.R.

Commercial Complex- Shop No.40 (GF), Shop o.15 (FF)- Change of
lease-

Reg.

Ref:Application dated 28.08.2014 of Sri Perla Samba Murthy

Vide reference cited, an application was made for change of lease in respect
of the Shop No.40 (GF), Shop No.15(FF) situated at T.S.R. Commercial
Complex, Greater Visakha Municipal Corporation.

After perusing the above request, it is hereby informed to you that on perusal
of Sale Notification 2014 and 15, there is no chance of change of lease."

The circumstances relevant for disposal of the appeal are as

follows:

The subject matter of the writ appeal relates to Shop Nos.15(FF), 40,41,52 at T.S.R. Complex, Dwaraka Nagar, Visakhapatnam. The Visakhapatnam Municipal Corporation/2nd respondent is the owner of the complex. The petitioner through representation dated 25.08.2014, requested respondents 2 and 3 herein to transfer leasehold rights of the shop rooms referred to above in his favour. Admittedly, the lessees of these shops are M/s. K.Srinivas and N.S. Raju. It is the case of the petitioner that the representation for transfer of lease-hold rights was received by respondents 2 and 3 and the following endorsement is issued:

“ ENDORSEMENT

Sub:-Leases-Revenue-Zone-III-GVMC-TSR Shopping Complex (FF)-

Shop No.15 First Floor-Transfer of Lease hold rights-Certain instructions issued-Regarding.

Ref: 1) Representation of Sri Perla Samba Murthy, VSP,
Dt.23.08.2014 received on 25.08.2014.

2) Representation of K.Kuritala Srinivas, VSP,Dt.21-05-2014
received on 25-08-2014.

With reference to the representations cited, the applicant is hereby directed to fulfill the following items and submit the receipts, so as to take further action for transfer of lease hold rights of Shop No.15, TSR Shopping Complex (FF) in this matter.

- 1) Original Notary Affidavit of Sri Perla Samba Murthy and K.Kuritala Srinivas on NJS paper worth of Rs.100/- each.
- 2) 10 months Sur-charge payment receipt.
- 3) Up to date rent payment receipt (online due list enclosed).
- 4) To submit Notary Affidavit on NJS paper worth of Rs.100/- mentioning that if any rent dues arrive in future regarding rent and transfer charges, we will pay and abide by the GVMC rules and regulation.”

The petitioner in anticipation of transfer of leasehold rights, without

actual allotment or creation of leasehold rights in his favour, claims to have spent substantial amount for renovating the shops to his business requirements. In the present appeal, this Court is not concerned either with the financial implication or the effect of unauthorized actions if any carried out by the petitioner. The short point for consideration is whether respondents 2 and 3 are justified in law and fact in refusing to transfer the leasehold rights of subject shop rooms in favour of the petitioner and whether the impugned order suffers from infirmity of law or fact.

It is matter of record that the lease in favour of original lessees viz. M/s. K.Srinivas and N.S.Raju expired in the year 2012. The original lessees firstly do not have subsisting right in their favour to transfer the same to the petitioner. Be that as it may, without proper verification of the term of lease in favour of the persons referred to above, the endorsement dated 03.09.2014 is issued to petitioner. In the said endorsement, it is clearly stated that the petitioner is called upon to comply with the points noted in the endorsement to take further action for transfer of leasehold rights in favour of petitioner. From the reading of endorsement as well, it is clear that to take further action, a few requirements were called upon to be complied with by the petitioner. Admittedly, before any order either confirming transfer of leasehold rights or creation of independent lease in favour of petitioner, respondents 2 and 3 having realized that the lease in favour of original lessees expired long ago have proceeded to auction the shop rooms for grant of lease to the successful bidders. The petitioner under those circumstances lays challenge to the impugned endorsement.

The learned Single Judge having considered each one of the objections raised by the petitioner and on being satisfied that the respondents are required to create leasehold rights in the property belonging to Municipal Corporation by way of public auction dismissed

the writ petition.

Sri O.Manohar Reddy, learned counsel for the appellant/petitioner has prayed this Court to consider the fact that the petitioner has spent substantial amount towards renovation in anticipation of transfer of leasehold rights in his favour and the petitioner is prepared to pay rent fetched in public auction for one of the shops, namely, shop No.19 in the same complex. The learned standing counsel vehemently opposes and contends that in a shopping complex, the rentals fetched by shops vary from the place and the floor on which a shop room is situated and the purpose for which the shop is taken on lease by a prospective lessee. The rentals received from shop No.19 is by no stretch of imagination can be treated as the bench mark to either create or transfer leasehold rights in favour of the petitioner. The learned counsel submits that this Court in a case where there is hardly any right in favour of petitioner cannot create a contract of lease and according to the learned counsel, the petitioner can also participate in the auction scheduled to be conducted. If the petitioner is the highest bidder, the corporation will certainly go with the highest bid and grant lease to the petitioner.

The summary from the above considerations is that the petitioner requested for transfer of leasehold rights in the subject matter of the writ petition. By the time the request is made, the lessees from whom the petitioner is claiming transfer do not have any right to consent to transfer right in favour of petitioner. The issuance of endorsement cannot be treated as creating any right in favour of petitioner for confirmation of lease or transfer of leasehold rights. Further, unless and until the petitioner is lawfully put in possession of the subject matter of the writ petition, the petitioner firstly cannot claim possession of shop rooms and claim to have spent substantial amounts towards renovation. As the shop rooms belong to Municipal Corporation, the creation of leasehold rights, in the considered view of

this Court shall be by way of public auction in accordance with law. We are in complete agreement with the findings recorded by the learned Single Judge and see no reason to interfere with the order under appeal or consider the alternative prayer of learned counsel appearing for the petitioner. The writ appeal fails and accordingly dismissed.

Consequently, miscellaneous petitions, if any pending, also stand disposed of.

DILIP B.BHOSALE, ACJ

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S.V.BHATT,J

Date:09.09.2015

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