

HONOURABLE SRI JUSTICE P.NAVEEN RAO

**WRIT PETITION NOS.19320, 19329, 19331, 19332, 19337, 19338, 19339, 19342, 19346, 19349,
19418, 19424 and 19430 of 2015**

Date: 31.08.2015

W.P.No.19320 of 2015:

Between:

M.Koteswara Rao s/o. Narayana, Aged 55 years,
Kirana Shop, Shop No.14, Z.P.Complex,
Main Road, Opp. to RTC Bus Stand,
Gurazala, Guntur district.

.. Petitioner

AND

The State of Andhra Pradesh, rep.by its Principal
Secretary, Panchayat Raj Department, Secretariat
Buildings, Hyderabad and others.

.. Respondents

The Court made the following :

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COMMON ORDER:

Petitioners in all these writ petitions are the lessees of respective shops in shopping complex of Zilla Parishad, Dandi Stream (vagu), Main Road, opposite to Bus Stand, Gurazala. The lease was granted to the petitioners in the year 2002. Petitioners continued to be in occupation of the said premises till date. Petitioners claim that they have submitted representation for continuation of lease and without considering their representations, respondent-Zilla Parishad is taking steps to hold public auction and such action is illegal. Hence, this writ petition.

2. Heard Sri G.L.V.Ramana Murthy, learned counsel for the petitioners and Government Pleader for Panchayat Raj and standing counsel Sri Ravi Cheemalapati for Zilla Parishad.

3. Learned counsel for the petitioners contends that petitioners were granted lease after conducting public auction and put them in possession after the lease was validly granted and they are in occupation of respective shops given to them. Petitioners are paying the rent as demanded by the Zilla Parishad and they are not in arrears of rent. Even if there were small arrears of rent, they would pay the rent. At no point of time, Zilla Parishad took coercive steps against the petitioners alleging non-payment of arrears. Petitioners were served with notice dated 06.01.2015 with a direction to pay the arrears amount due and to vacate the subject premises in order to conduct a fresh public auction for leasing of the concerned shops. Petitioners have been making request for renewal of lease on whatever conditions that can be imposed. To this extent, written representation was also submitted on 22.06.2015, but so far the said representation is not disposed of. Learned counsel for the petitioners alleges that without disposing of the representation submitted by the petitioners and without following due process of law to evict them, the respondent Zilla Parishad cannot conduct a fresh auction and the same is illegal and amounts to arbitrary exercise of power.

4. Learned standing counsel representing respondent Zilla Parishad submits that petitioners are paying petty lease amounts, whereas if the auction is conducted, the Zilla Parishad would generate more funds for leasing the subject premises; that question of continuation of petitioners in subject premises for such a long time *per se* is not valid in accordance with the Acquisition and Transfer of Property by Gram Panchayats, Mandal Parishads and Zilla Parishad Rules, 2001 (for short, 'Rules, 2001') notified by G.O.Ms.No.215, Panchayat Raj and Rural Development (Pts.III) dated 25.6.2001. Learned standing counsel submits that having found that lease amounts are not paid by the petitioners and since they have been in continuous occupation of subject premises for such a long period contrary to the Rules, 2001, the decision to conduct fresh public auction has been taken. There is no illegality or irregularity in the said decision and in

fact it is in accordance with the Rules mentioned above.

5. Learned standing counsel further submits that according to the provisions of the Rules, 2001 and the terms of lease agreement as prescribed in the schedule appended to the Rules, if the lessee do not pay the rental amount, it is permissible for the Zilla Parishad to evict him without causing any further notice or opportunity.

6. The short question that arises for consideration in these writ petitions is whether further continuation of occupation by petitioners in subject premises is valid and whether petitioners can request for renewal of lease without following due process as indicated in Rules 2001 ?

7. Admittedly, though lease was granted to the petitioners in the year 2002, there was no lease agreement entered into between the petitioners and the Zilla Parishad. The grant of lease of properties belonging to the Zilla Parishad is regulated by the Rules 2001. According to Rule 6 (iv) of the Rules, no lease can be granted exceeding twelve months by the Zilla Parishad except with the previous approval of the District Collector. Even if such an approval is granted by the District Collector, he is entitled to impose certain conditions as necessary. Rule 6 (1)(v) of the Rules also mandates that no lease can be granted ordinarily for a period exceeding 12 months at a time.

8. Cumulative reading of the two provisions would show that Zilla Parishad cannot grant lease exceeding twelve months and beyond 12 months lease can be granted only with the previous approval of the District Collector. Renewal of lease can be granted ordinarily for a period of twelve months at a time. In the instant case, no lease agreement was entered into. No material is filed before this Court to show that District Collector has granted approval for granting lease in favour of the petitioners exceeding twelve months. Thus, the lease granted to the petitioners is contrary to the provisions of the Rules, 2001 and they have been in illegal occupation of the said premises. The notice dated 06.01.2015 discloses that petitioners were due in arrears of rent and direction was issued to pay the arrears.

8. Merely because the petitioners are in continuous occupation of the subject lease premises and the rent paid by them is received by the respondents cannot give right to the petitioners to continue to occupy the leased premises endlessly and contrary to the Rules, 2001.

9. The properties in which petitioners are in occupation are the public properties. The revenue generated from granting of lease of the properties belonging to the Zilla Parishad is required for various development activities. Thus, it is in the interest of public at large, if the respondent Zilla Parishad secures appropriate lease amount to the properties owned by them. The Zilla Parishad can obtain appropriate value to the

properties, only if the public auction is conducted. Such public auction has to be conducted periodically to ensure better value to the properties of the Zilla Parishads. Thus, by not conducting auction for subject premises for more than 13 years, undue benefit was conferred on the petitioners. Therefore, petitioners cannot ask for continuation of occupation of the subject premises and prevent the Zilla Parishad from conducting public auction.

10. Learned counsel for the petitioners endeavoured to persuade that petitioners are doing petty businesses and they may be permitted to continue to occupy the subject premises and if they are evicted from the subject premises, grave prejudice would be caused to them. It is not exaggerated to note that there may be several such people wanting to eke out their livelihood and earn income for themselves by doing job/business honourably and many people may be willing to take these premises on lease and carry on business. Therefore, it cannot be said that only because petitioners are in occupation of the subject premises, they should alone be continued to occupy the subject premises.

11. Learned counsel for the petitioners further contends that without following due process, petitioners cannot be evicted from the subject premises. As seen from the documents enclosed to the affidavit filed in support of the writ petitions, the notices were issued to the petitioners as early as on 06.01.2015 directing them to vacate the subject premises and they were put on notice that public auction would be conducted for granting fresh lease. This notice was issued almost eight months back. Even now petitioners do not challenge the said notice. Much later to the notice, representation was submitted and petitioners now coming before this Court praying to direct the respondents to dispose of the representation submitted by them before conducting fresh auction.

12. Even assuming that the petitioners are entitled to be put on notice before they are evicted, when the subject property belongs to Zilla Parishad and the lease granted to the petitioners in the year 2002 was without any lease deed executed in accordance with the Rules and no valid extension of lease was granted, no right is vested in the petitioners to contend that it is illegal on the part of respondent Zilla Parishad in not following due process. No such relief can be granted in exercise of power of judicial review under Article 226 of the Constitution of India. Concerning eviction of persons occupying the properties belonging to the temples, very same issue was considered by the learned single Judge of this Court in W.P.No.12674 of 2010 and batch in the judgment rendered on 08.06.2010. This Court held as under:

“..... 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)].**

13. I am in respectful agreement with the said view expressed by learned single Judge.

14. For all the above reasons, the relief as sought by the petitioners cannot be granted and writ petitions fails. Accordingly, the writ petitions are dismissed.

15. It is open to the petitioners to participate in the public auction as and when such auction is conducted. However, having regard to the fact that petitioners are in occupation of the subject premises, until auction is conducted and new lessees are inducted into subject premises, petitioners shall be permitted to continue to remain in occupation of the shops on payment of enhanced rent of 35% on the existing rent payable and on clearance of all the rental amounts due. There shall be no order as to costs.

Miscellaneous petitions if any pending in these writ petitions shall stand closed.

Date : 31.08.2015
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JUSTICE P.NAVEEN RAO

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