

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH**

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**WRIT PETITION Nos.23434, 23452, 23456, 23526 and 25995
of 2014**

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W.P.No.23434 of 2014

Between:

Sk.Pedda Saida .. Petitioner

And

The Commissioner, Agricultural and Marketing, Government of
Andhra Pradesh, BRKR Buildings, Hyderabad and others.
.. Respondents

DATE OF JUDGMENT PRONOUNCED: -07-2015

SUBMITTED FOR APPROVAL:

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

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|---|--------|
| 1. Whether Reporters of Local newspapers
may be allowed to see the Judgment? | Yes/No |
| 2. Whether the copies of judgment may be
marked to Law Reporters/Journals | Yes/No |
| 3. Whether Their Lordship wish to
see the fair copy of the Judgment? | Yes/No |

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

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WRIT PETITION Nos.23434, 23452, 23456, 23526 and 25995
of 2014

COMMON ORDER:

These Writ Petitions are being disposed of by a common order as they arise out of same cause of action.

Heard the learned counsel for the petitioners and Learned Standing Counsel for the second respondent.

In all these cases, the notice dated 02.08.2014, issued by the second respondent – Agricultural Market Committee, Narasaraopet, asking the petitioners to vacate and handover the shops was challenged.

The petitioners are lessees of the shops constructed by the second respondent – Agricultural Market Committee, Narasaraopet, called as 'Sardar Sri Kasu Vengal Reddy Shopping Complex'. A lease agreement was executed in favour of the petitioners for a period of five years from 12.08.2009. The petitioners also claim that they were conducting their business by encroaching a portion of the road margin and, after vacating that places, they were accommodated in the shops constructed by the second respondent. They also state that there is a clause for renewal in the lease deed in favour of the lessee. It is also their case that the second respondent passed a resolution on 21.02.2014 extending the lease period by another two years on enhancement of 10% of lease amount. In that backdrop, the notice dated 02.08.2014, asking the petitioners to vacate the shops, was challenged.

A counter affidavit is filed by the second respondent stating that the resolution, dated 21.02.2014, to extend lease by another period of two years was sent to the first respondent –

Commissioner, Agricultural and Marketing for approval. The first respondent, by his proceedings in Lr.No.S.I(2)637/2014 dated 01.08.2014, had rejected the proposal and directed the second respondent to conduct a fresh auction. Based on the said proceedings only, the impugned notice, dated 02.08.2014, was issued to the petitioners asking them to vacate the premises. In fact, all the shops were vacated on 11/12.08.2014 and, after taking possession by the second respondent, the present Writ Petitions are filed. Some of the petitioners have not paid municipal taxes for several years in spite of specific clauses in the lease agreement obligating them to pay the taxes.

Though this Court initially granted interim suspension, when the matter was carried to the Division Bench in W.A.No.1166 of 2014 and batch, the Division Bench allowed the Writ Appeals on 09.09.2014 and held as under:

“However, we desire that the writ petitions shall be heard out expeditiously. Let counter affidavits be filed in the writ petitions within two weeks from date. Affidavit in reply is to be filed within two weeks thereafter. In case of failure to file counter affidavits in the time stipulated above, the writ petitions shall be heard out in the absence of the counter affidavits. It would be open for the writ petitioners to participate in the auction to be conducted by the appellant without prejudice and in that process if they succeed the same shall abide by the result of the writ petitions. In any view of the matter, in the said auction if the shops are allotted to third parties, they shall also abide by the result of the writ petitions.”

A reply affidavit is filed stating that, in fact, the second respondent considered the application of the petitioners for renewal and the fact of rejection of proposal by the first respondent was brought to the notice of the petitioners only when the Writ Petition came up for admission. It is also stated that no lawful proceedings were taken for eviction of the petitioners and the averment that the petitioners themselves

vacated the premises was denied.

Learned counsel for the petitioners relied on a decision of the Supreme Court in **State of U.P. v. Lalji Tandon**^[1]. In the said case, the Supreme Court was considering the case of 50 years lease of the government land given in favour of the respondents. There is a clause for renewal for another period of 50 years to be exercised by the lessee before expiry of the original term of 50 years. The original lessee alienated his interest in the property to the predecessor of respondent before the Supreme Court who died during the pendency of the proceedings. He sought for renewal of the lease and the renewed lease was executed later. Thereafter another request was made for renewal of lease for another term of 50 years. Thus, the issue before the Supreme Court was with regard to the right to a new lease consequent upon the option for renewal having been successfully exercised containing a covenant for renewal. The Supreme Court, ultimately, held that the respondent before it was entitled for a third term of renewal. In the present case, such is not the situation. The facts in the said decision are different.

Learned Standing Counsel appearing for the second respondent produced before this Court a letter of the second respondent dated 13.08.2014 addressed to the first respondent stating that all the shops were taken possession and submits that, in pursuance thereof only, the first respondent permitted for conducting auction. He further submits that some third parties took possession of the shops pursuant to the auction held, after the orders of the Division Bench dated 09.09.2014.

Now the issue before this Court is with regard to the right

of the petitioners under clause of renewal contained in the lease deed executed in favour of the petitioners. It reads as follows:

“The deposit amount shall not be refunded to the lessee till expiry of lease period. Lessee has liberty or option to renew his licence in writing. By any reason, fails to renew his lease, deposit amount shall be refunded and no interest be paid and the committee takes the possession of the shop.”

It appears that the petitioners applied for renewal of lease and a resolution was passed on 21.02.2014 by the second respondent to accept extension of lease by two years from 12.08.2014 on enhancement of 10% of rent. The resolution also speaks of sending the same to the first respondent for acceptance. The first respondent, by proceedings dated 01.08.2014, rejected the proposal and directed the second respondent to go for fresh auction. Accordingly, impugned notices were issued on 02.08.2014 asking the petitioners to vacate the shops by paying the outstanding dues. It is not within the exclusive purview of the second respondent to grant extension of lease and the same has to be approved by the first respondent. Though the first respondent rejected the proposal of the second respondent, the petitioners have not challenged the rejection of proposal by the first respondent. Though the petitioners may have a right to seek renewal of lease, such right is not absolute and is subject to acceptance by the first respondent. Now the third parties are stated to have been in occupation of the shops pursuant to auction conducted subsequent to the order of the Division Bench on 09.09.2014.

In view of rejection of proposals by the first respondent, and in the absence of challenge to the order passed by the first respondent, the Writ Petitions are liable to be dismissed and are, accordingly, dismissed. However, this will not prevent the

second respondent from recovering the amounts due, if any, from the petitioners.

As a sequel thereto, miscellaneous applications, if any, also stand dismissed. No order as to costs.

A. RAMALINGESWARA RAO,J

Date: .07.2015
usd

[\[1\]](#) (2004) 1 SCC 1