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

WRIT PETITION No.23759 of 2015

Between:

Shaik Rasool, S/o. Moulali,
Aged about 41 years,
Occ: Business,
R/o. H.No.5-58-5/1, 3rd Lane,
Cobalpet, Guntur,
Guntur District.

.. Petitioner

AND

The State of Andhra Pradesh,
Rep. by the Principal Secretary,
Municipal Administration Department,
Secretariat, Hyderabad & 4 others

.. Respondents

DATE OF JUDGMENT PRONOUNCED : 18.08.2015

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

1	Whether Reporters of Local newspapers may be allowed to see the Judgments?	No
2	Whether the copies of judgment may be marked to Law Reports/Journals	No
3	Whether His Lordship wish to see the fair copy of the Judgment?	No

HON'BLE SRI JUSTICE P.NAVEEN RAO

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ORDER:

According to the petitioner, one Sri K. Venkateswarlu was granted lease of shop bearing No.1300014 at Rajaram Municipal Complex, Jinna Tower, Central, Guntur, in the year 1999. The petitioner claim to have joined in the business of 'Rajadhani Fashions' run by Sri K.Venkateswarlu in the year 2003 as partner. In the year 2009, K.Venkateswarlu left the business and consequently, lease was continued in favour of the petitioner by the respondent Municipal Corporation. The petitioner was paying rent at the rate of Rs.10,295/- per month from the years 2004 to March, 2007. Since there was slack in the business, the petitioner requested the then Municipal Corporation to reduce the monthly rent payable. The claim of the petitioner was considered by the Standing Committee and by Resolution No.576 passed on 24.08.2009, the Standing Committee has approved reduction of rent from Rs.10,295/- to Rs.5,200/-. While so, the Commissioner issued Endorsement on 09.07.2010 informing the petitioner that lease is due for renewal w.e.f. 1.4.2007 and for renewal rental amount has to be increased by 33 1/3% on the original lease amount and not on the reduced lease amount. On 13.10.2014, a notice was issued by the Commissioner, Guntur Municipal Corporation (2nd respondent), to clear all the arrears of amounts due and to vacate the premises. The petitioner was also informed that the lease granted has completed 25 years and, therefore, the Municipal Corporation has to go in for conducting of fresh auction. Final notice was issued on 05.12.2014. On 22.06.2015, further proceedings are issued by the Commissioner, Guntur Municipal Corporation, Guntur (2nd respondent) to various lessees including the petitioner and informing the petitioner that the revised rent payable on the shop occupied by him for the period from 2010 to 2013 is Rs.20,563/-. At this stage, this writ petition is instituted challenging the Endorsement of the Commissioner, dated 09.07.2010.

2. Heard Sri Syed Khader Mastan, learned counsel for the petitioner, learned Government Pleader for Municipal Administration for respondents 1 and 5 and Sri Ancha Pandu Ranga Rao, learned Standing Counsel for respondents 2 to 4.

3. Learned counsel for the petitioner submitted that the Resolution bearing No.576 passed by the Standing Committee, dated 24.08.2009, reducing the rent payable by the petitioner per month holds good and the Commissioner, being subordinate to the Standing Committee, has no power to overrule such resolution. Under Section 679(2) of the Greater Hyderabad Municipal Corporation Act, 1955, the Government alone has got the power to overrule the resolution passed by the Standing Committee. Thus, as long as the said resolution is in force, the petitioner is required to pay only rent at the rate of Rs.5,200/-.

4. Learned counsel for the petitioner further submitted that the rental amount payable by the petitioner was not updated in the Municipal records and unless the rental amount payable by the petitioner is updated by implementing the resolution passed by the

Standing Committee, it cannot be said that the petitioner has violated the lease clauses by not paying the monthly rental amount and, therefore, the question of taking penal action against the petitioner does not arise.

5. Learned counsel for the petitioner further submitted that the petitioner is entitled to pay only an amount of Rs.1,87,000/- towards arrears of rent in accordance with the resolution passed by the Standing Committee on 24.08.2009 and accordingly, on 03.08.2015, the petitioner has deposited an amount of Rs.1,00,000/- (Rupees one lakh only) and the petitioner is willing to pay the balance amount within a period of two (2) weeks.

6. Learned Standing Counsel submitted that huge amount of arrears are due from the petitioner and, therefore, the notice is validly issued demanding payment of arrears of amount and directing the petitioner to evict from the premises. Learned Standing Counsel further contended that the notices issued on 13.10.2014, 05.12.2014 and 22.06.2015 are not under challenge. Learned Standing Counsel further submitted that the alleged resolution passed by the Standing Committee on 24.08.2009 is contrary to the provisions of the Greater Hyderabad Municipal Corporation Act, 1955, and, therefore, they are not valid and the petitioner cannot seek to enforce the same. Learned Standing Counsel further submitted that though the Commissioner passed Endorsement on 09.07.2010 informing the petitioner about the enhanced lease amount payable for the period from 01.04.2007, but he kept quiet till date and has not paid even the amount payable and became the defaulter and, therefore, the question of continuation of the petitioner in the subject premises does not

arise.

7. The issue for consideration in this writ petition is whether petitioner is entitled to occupy the subject premises even though he is a defaulter and not willing to pay revised rent.

8. According to petitioner, on his request, the Standing Committee passed resolution on 24.8.2009 reducing the rent from Rs.10,295/-to Rs.5,200/- and, therefore, he is entitled to pay only that rent as long as said resolution is in force.

9. Original lease holder was granted lease about 25 years back. The lease was renewed from time to time and in the said process, petitioner has come into the said premises in the place of Venkateswarlu. In some of the proceedings name of Venkateswarlu is reflected and in some of the proceedings name of the petitioner is reflected. Thus, it is not clear whether respondent corporation has transferred lease in favour of petitioner. However, since there is correspondence with the petitioner also, for the purpose of deciding the issue, it is assumed that the lease earlier granted to Venkateswarlu is deemed to have been transferred to the petitioner. The rent was also renewed from time to time and in the said manner, by 2007, the basic rent amount is Rs.10,295/- per month. On this after adding the renewal amount and tax and other amounts payable, lease amount determined comes to Rs.15,423/- payable by the occupant of shop no.14 w.e.f. 1.4.2007.

10. The averments in the affidavit filed in support of the writ petition and material papers enclosed, would disclose that petitioner did not pay the lease amount w.e.f. 1.4.2007 and appears that he was pursuing the matter with the Corporation for

reducing the rent. It appears, on the basis of request made by the petitioner, standing committee agreed to reduce the rent from Rs.10,295/- to Rs.5,200/-. The so called resolution passed by the standing committee on 24.08.2009 is not placed on record. This recommendation of the standing committee was not agreed upon by the Commissioner and Commissioner insisted that petitioner has to pay revised rent on revision @ 33 1/3 % on the last lease amount arrived at i.e., Rs.10.295/-. In the said manner, the amount comes to Rs.15,423/-. Petitioner was informed by the endorsement in Roc.No.2276/07/A2, dated 09.07.2010, the said decision of Commissioner. Petitioner neither complained to the standing committee nor the municipal corporation nor assailed before the Court of law and kept quiet. Petitioner continued to occupy the said premises and carry on his business. Admittedly, petitioner did not pay the rent, neither original amount payable nor the reduced amount as per his claim w.e.f. 1.4.2007 and till date.
Learned counsel for the petitioner tried to justify action of the petitioner in not paying the rental amount on the ground that records of accounts section were not updated in compliance of the standing committee decision and, therefore, the system was not accepting the rent payable by the petitioner as per standing committee decision and, thus, rent was not paid. However, there is nothing on record to show bonafides of the petitioner in offering to pay rent even according to his own understanding of the rent payable. Strangely, no further action was taken by the respondent corporation and corporation allowed the petitioner to occupy the subject shop and carry on his business without any hindrance.

11. On 13.10.2014, notice was issued in the name of original lessee informing him that 25 years lease period was over and, therefore, the Corporation has decided to conduct open

auction asking him to vacate the premises. This was followed by final notice dated 05.12.2014 with similar direction. Petitioner did not comply with the said notices. On 22.06.2015, Commissioner issued orders demanding payment of arrears of rent and also asked the several lessees including the petitioner to agree for enhanced rent payable, execute lease deed and pay the arrears of rent payable. The said proceedings clearly indicate that as on 01.04.2007, the basic rent determined was Rs.10,295/-. The same was revised to Rs.13,726/- as on 01.04.2010 and Rs.18,301/- as on 1.4.2013. These orders of the Commissioner are not assailed. Probably having realized that unless petitioner challenges the proceedings of the Commissioner dated 09.07.2010, he would not be able to sustain the continuation in the premises without paying the revised rent demanded in the proceedings dated 22.06.2015, he assailed the endorsement of the Commissioner dated 09.07.2010. Petitioner is silent as to why he did not choose to challenge the endorsement of the Commissioner dated 09.07.2010 all along and kept quiet. The explanation given by the petitioner regarding non payment of rent is not satisfactory. No bonafide effort was made by the petitioner to pay the rent payable even according to his own understanding.

12. The principal attack on the proceedings of the Commissioner dated 9.7.2010 is on the ground that the Commissioner cannot over-ride the decision of the Standing Committee and therefore the said demand made by the Commissioner is invalid and that the petitioner is liable to pay the lease amount as fixed by the Standing Committee only. In other words, according to petitioner he is liable to pay monthly rent at the rate of Rs.5200/- perpetually till decision of the Standing Committee is rescinded. This stand of the petitioner appears to

be erroneous as discussed hereunder.

13. The subject premises are the properties belonging to the Guntur Municipal Corporation. The Guntur Municipal Corporation is governed by the Greater Hyderabad Municipal Corporation Act, 1955 (for short, 'Act 1955). Sections 124 and 148 of the Act are relevant for consideration of the issue in this case. Section 124 of the Act vests power in the Commissioner to execute contracts on behalf of the Corporation. Section 148 of the Act, 1955 deals with the disposal of the property and interest thereon of the corporation. Sections 124 and 148 of the Act read as under:

"Section 124 : Power of the Commissioner to execute contracts on behalf of the Corporation:-

With respect to the making of contracts under or for any purpose of this Act, the following provisions shall have effect, namely:

(a) every such contract shall be made on behalf of the Corporation by the Commissioner,
(b) no such contract, for any purpose which in accordance with any provision of this Act, the Commissioner may not carry out without the approval or sanction of some other municipal authority, shall be made him until or unless such approval or sanction has first of all been duly given;
(c) It shall be competent for the Commissioner to make a contract other than a contract relating to the acquisition of immovable property or any interest therein or any right thereto, not involving an expenditure exceeding rupees twenty lakhs

(d) x x x x
(e) the foregoing provisions of this section shall, as far as may be apply to every contract which the Commissioner shall have occasion to make in the execution of this Act; and the same provisions of this section which apply to an original contract shall be deemed to apply also to any variation or discharge of such contract.

" 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. Sections 124 and 148 of the Act have to be read together to appreciate the contention of petitioner. 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. The role assigned to standing committee is to the extent of sanctioning of lease beyond one year. No provision of the GHMC Act is brought to my notice which vests power in standing committee to fix and/or reduce the rent payable by a lessee. If power is not traceable to any statutory provision, petitioner cannot rely on such a decision to contend that demand made by Commissioner is illegal. Section 124 of the Act vests power exclusively in the Commissioner to execute contracts on behalf of the Corporation. Thus, power is vested in the Commissioner to grant lease. Fixation of appropriate rent is incidental to power to enter into lease with any person. Thus, it cannot be said that Commissioner committed grave illegality in insisting to pay original rent determined.

15. Assuming that proceedings dated 09.07.2010 are not valid, two things go against the petitioner. Firstly, the Commissioner's proceedings dated 09.07.2010 remained unchallenged by the petitioner for five years. It is not permissible for the petitioner to sleep over and come to this Court invoking extraordinary jurisdiction under Article 226 of the Constitution of India, only after further demand is made fixing the rent and arrears of amount payable by him. No reasons are assigned why petitioner has not made complaint to the corporation or to the Government against said decision nor invoked jurisdiction of this Court immediately. Secondly, petitioner has not paid rent from 01.04.2007. He has been in occupation of the subject premises for more than 8 years without paying rent. No valid explanation is

forthcoming except saying that appropriate amount is not reflected in the records of the municipal corporation and therefore as payment would not be accepted, he did not pay. Apparently no efforts were made by the petitioner to show his bonafides.

16. Municipal Corporation needs huge funds for various developmental activities that are required for the welfare of the people living in the corporation limits and for attending to the daily necessities, maintaining hygienic conditions, laying roads and other services required to be provided by the corporation. One of the primary sources of augmenting the resources is by leasing out properties belonging to the corporation. Thus, it is not in public interest to lease out the properties of the corporation at nominal value to the persons of choice by people at the helm of affairs of the corporation. The lease has to be granted only after public auction is conducted and it should be offered to the person who offers highest rental value to the concerned property of the municipal corporation. If the case of the petitioner is accepted, it means that the petitioner is entitled to pay perpetually rent for the subject property at the rate of Rs.5200/- per month, whereas the rent that can be secured by the municipal corporation as on today appears to be more than Rs.30,000/-. It is a commercial property and lessee carries commercial activity to earn profits. Thus, lease of such property should be granted to person who offers best lease amount.

17. Petitioner is also not entitled to any equitable relief from this Court on account of his conduct in not paying the rents since April, 2007. Petitioner is conscious that even assuming that the Standing Committee reduced the rent payable by the petitioner to Rs.5200/-, even that amount is liable for enhancement periodically with minimum of 33 1/3%. The demand made by the

corporation on 22.6.2015 shows that petitioner is in arrears of huge amount. As per the procedure evolved, the appropriate amount of rent payable was worked out and demand was made to pay the arrears. It is evident from notices issued on 13.10.2014, 5.12.2014 that lease period completed 25 years. They are not challenged. I do not see any illegality in the information furnished to the petitioner by the corporation in notice dated 13.10.2014 and 5.12.2014 that fresh auction has to be conducted. Petitioner being a defaulter, has no manner of right to continue to occupy the premises; he is only a lessee; property belongs to respondent corporation. It is not in public interest to allow such lessee to occupy the public premises; no right flows to the petitioner to continue in the same premises perpetually, more so, without paying the rental amount.

18. Having regard to the reasons assigned above, petitioner is not entitled to the relief claimed. Accordingly, the writ petition is dismissed. No costs. Sequel to the same, miscellaneous petitions, if any pending, stand closed.

P.NAVEEN RAO, J

Date: 18th August, 2015
KL/tvk

HON'BLE SRI JUSTICE P.NAVEEN RAO

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WRIT PETITION No.23759 of 2015

Date: 18th August, 2015

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