

HON'BLE SRI JUSTICE S.V.BHATT

WRIT PETITION Nos.22999 OF 2010 AND 6091 OF 2016

COMMON ORDER:

The petitioners and the respondent are common in these two writ petitions.

The writ prayers read thus:

W.P.No.22999 of 2010:

“..writ of mandamus to declare the impugned proceedings: 1).No.AMCH/SO/GMP/49/2010/7 dated 24.8.2010 2).No.AMCH/SO/GMP/49/2010/8 dated 24.8.2010 3).No.AMCH/SO/GMP/49/2010/9 dated 24.8.2010 4).No.AMCH/SO/GMP/49/2010/5 dated 24.8.2010 5).No.AMCH/SO/GMP/49/2010/2 dated 24.8.2010 dated 24.8.2010, issued by the 1st respondent cancelling the allotment of their respective shops /spaces i.e. shops Nos.49,50,53,40 and 27 at Gudimalkapur Market Yard and directing to vacate, as illegal, improper and contrary to law;
ii.To direct the 2nd respondent not to collect the enhanced rent of 5% over and above the existing rent, as contemplated under clause 8 of old lease deed dated 31.12.1999 in the absence of extension of lease or renewal of lease entered in 1999, as it would be illegal, and impermissible in law.”

W.P.No.6091 of 2016:

“..writ of Mandamus to declare the Proceedings:
1).AMC/H/GMP.Veg/3/2012-13-/675 dated 16.2.2016,
2).AMC/H/GMP.Veg/3/2012-13/679 dated 16.2.2016
3).AMC/H/GMP.Veg/3/2012-13/678 dated 16.2.2016,
4).AMC/H/GMP.Veg/3/2012-13/677 dated 16.2.2016
and
5)AMC/H/GMP.Veg/3/2012-13/2012-13/676 dated 16.2.2016, issued by the 3rd respondent cancelling the allotment of the shops/spaces i.e., shops Nos.49, 50, 53, 40 and 27 belonging to the petitioners respectively at Gudimalkapur Vegetable Market yard, Hyderabad and directing the vacate, as illegal, violative of principles of natural justice, without jurisdiction, improper and contrary to law.”

Heard Mr. P.Gangaiah Naidu, learned senior counsel for petitioners and Mrs. G.Neeraja Reddy for contesting respondents.

The averments in brief are that the petitioners are traders in vegetables and were originally doing business at Karvan. The petitioners along with others, in the year 1991 were asked to shift the business to Gudimalkapur and shifted to Gudimalkapur in or about 1991-92.

It is alleged that the respondents upon shifting to Gudimalkapur allowed the petitioners along with others to carry on business without rent for using the place in the market yard at Gudimalkapur. On 31.12.1999, the petitioners entered into lease agreement for a period of 11 months commencing from 01.01.2000 to 30.11.2000. The agreed rent was Rs.1,875/- per month for each one of the petitioners. In the year 2000, the petitioners claim to have paid Rs.25,000/- for construction of temporary sheds and the said amount was utilised for construction of temporary sheds and the petitioners are doing business in the sheds constructed with their money. While matters stood thus, the association of vegetable vendors of Gudimalkapur filed W.P.No.1350 of 2000 with the following prayer:

“writ of Mandamus declaring the action of the respondents in demanding monthly rent of Rs.1875/- for each shop from the members of petitioner association as illegal, improper unjust and arbitrary and further declare that the members of the petitioner association are entitled to get the lease for a period of 99 years at a nominal rent of Rs.1/- as done in the case of Mahaboob Mansion Grain Market Yard, Malakpet, Hyderabad and other market yards under the control of third respondent herein.”

On 21.10.2002, the writ petition was disposed of. According to petitioners, the petitioners on 17.06.2003, represented as directed by this Court. The grievance of petitioners is that there was no timely action by the respondents, but to their surprise, the respondents issued

impugned notice dated 24.08.2010 and cancellation proceedings dated 16.02.2016.

To appreciate the grievance of petitioners, this Court is of the view that the operative portion of order in W.P.No.1350 of 2000 and the impugned notice/proceedings are excerpted hereunder:

W.P. No.1350 OF 2000:

“Though the petitioners are assailing the fixation of the rent at Rs.1875/- per each shop, the details of the said fixation are not placed before this Court and it is also not within the powers of this Court to go into the reasonableness of the rent fixed by the concerned authorities. So far as the discriminatory treatment with reference to other markets, where sale/long lease of the shops were granted, and in the case of the petitioner’s members, where the shops were allotted on rental basis, it is open to the petitioner to make representations to the concerned authorities for similar treatment as was given within reference to the other market yards and if such representation is made the Respondents authorities are directed to consider and pass appropriate orders.

Accordingly, the members of the Petitioner Association are directed to make representation to the 1st respondent Government for allotment of the shops to them either on outright sale basis or on long term rent basis or even with reference to the quantum of rent also; and on such representations, the 1st respondent is directed to consider the claims of such members of the Petitioner Associations and pass appropriate orders, within a period of three months from the date of such representation.”

“ No. AMCH/SO/GMP/VMY/53/2010

Dt.03.05.2010

Sub: AMCH-Sub-Office, Gudimalkapur
Vegetable Market Yard-Allotment of space-
Non-payment of rent-Notice issued-Reg.

Ref: 1. This office allotment order
No.AMCH/A&R. 1/137/95-96 Dated 31.12.1999

2. Lease Deed Dt.31.12.1999

3. This office Notice No.AMCH/SO/GMP/2009-10

Dt.16.9.09.

M/s.K.Krishna Shanker, Vegetable Commission Agent, Gudimalkapur was allotted a space 13' x17' sft. On the basis of rent for a period of (11) months and accordingly a lease deed was executed on 31.12.1999.

As per condition (8) of lease deed executed by the lessee i.e. M/s.K.Krsihna Shanker Vegetable Commission Agent is required to extend his lease for a further period of (11) months subject to payment of rent at 5%[^] over and above the rent already fixed.

As per condition (3) of the lease deed the monthly rent fixed shall be payable before 5th of each calendar month. As per the records maintained and verified, it is noticed that the monthly rent of Rs.1875/- was not remitted to this office for the period commencing from September,2009 to April,2010 amounting to Rs.15,000/- (Rupees Fifteen thousand only)

As per the condition No.(8) of lease deed executed the rent shall be enhanced at 5% over and above the rent already fixed for (11) months. It is noticed that the lease period was not extended and the enhanced rent at 5% for the subsequent period of lease was not remitted.

It is further noticed that the further period of lease of (11) months as required under condition No.(8) of lease deed was not renewed and the payment of rent at 5% over and above the rent already fixed for subsequent years was not remitted.

Therefore, M/s.K.Krsihna Shanker, Vegetable Commission Agent is hereby instructed to remit the outstanding rent of Rs.15,000/- within (7) days from the date of receipt of this notice, failing which appropriate necessary legal action will be initiated.

In addition to payment Arrears of the rent M/s.K.Krishna Shanker, Vegetable Commission Agent is further directed to pay an amount of Rs.77,719/- (Rupees Seventy Seven Thousand Seven Hundred one Nineteen only) being the difference of the enhanced rent at the rate of 5% for

every lease period of (11) months from 1.1.2001 onwards till date with in (7) days from the date of receipt of this notice failing which appropriate further necessary action as per law will be initiated.

Further M/s. K.Krishna Shanker, Vegetable Commission Agent is hereby instructed to enter into lease deed for further period of (11) months immediately.”

Thereafter, through the impugned proceedings dated 16.02.2016, the respondent/s cancelled the allotment of space of petitioners at Gudimalkapur Vegetable Market and read thus:

“And as per the condition 3 of the lease deed the monthly rent fixed shall be payable before 5th of each calendar month. But on verification of the records maintained by this office it was found that an amount of Rs.50,625/- towards the rent for the period from April,2008 to June,2010 plus the enhanced rent at the rate of 5% as per clause (8) of the lease agreement is Rs.62,719/- for the period from 1-1-2001 to 30.4.2010. Thus the total rent of Rs.1,13,344/- (Rupees one lakh thirteen thousand three hundred and forty four only) is due to Agricultural Market Committee, Hyderabad. Thus, you have become a defaulter in payment of rents as per the lease agreement for which this office had served 1st, 2nd and show cause notice 7th cited. In which, it was requested to pay the above said due amount to Agricultural Market Committee, Hyderabad.

In spite of several request made by this office vide notices under reference 1st 2nd and 7th cited above, the payment of the rental arrears was not paid till today and replies submitted vide 4th and 6th cited, were also not convincing for non-payment of the rents.

Hence this issue has been placed before the Agricultural Market Committee Meeting held on 11.8.2010. The Committee examined the replies submitted by you and concluded that the M/s.Durga & Co., Vegetable Commission Agent is deliberately violated the lease deed agreement conditions Nos.3

and 8 and not paid the total Rent of Rs.1,13,344/- (Rupees one lakh thirteen thousand three hundred and forty four only) as detailed above. The Market Committee has unanimously resolved to cancel the allotment of space/shop No.49 allotted to M/s.Durga & Co., Vegetable Commission Agent and take legal action to recover the said amount.

Therefore, the allotment of shop bearing No.49 is hereby cancelled and M/s.Durga & Co., Vegetable Commission Agent is directed to vacate the shop and handover the possession of the shop to the Market Committee within 15 days from the receipt of this order.”

The petitioners assail that the order dated 24.08.2010 is illegal, improper and without jurisdiction. The order cancelling allotment without considering the representation submitted by the petitioners firstly is contrary to the order of this Court in W.P.No.1350 of 2000 dated 21.10.2002. Secondly is violative of Article 14 of the Constitution, for a few of the traders are picked up for continuation or a few of the traders are subjected to orders of cancellation of lease. The order of cancellation on the ground of non-payment of rent is unavailable, for according to petitioners, if there are any arrears, they would pay after getting the arrears verified. The enhanced rent from Rs.1875/- by reference to the order of Hon'ble Supreme Court is not correct, for the facilities at Gaddiannaram Fruit Market and the facilities at Gudimalkapur are different. It is further contended that in the absence of valid lease, beyond 31.11.2000 or renewal of lease, the question of payment of enhanced rent could not arise. To sum up the case of petitioners, it is noted that (1) this Court granted liberty to members of their Association to represent to 1st respondent Government for allotment of shops to them on outright sale or long term lease and on quantum of rent, (2) representation was made and the same is not disposed of till date. (3) There is no condition to levy and demand rent at enhanced rates beyond 31.11.2000. (4) Undertakings

are given as directed by this Court and still cancellation of lease is arbitrary and unconstitutional.

The respondent/market yard filed counter affidavit. It is admitted that the petitioners were allotted shops at Gudimalkapur Vegetable Market Yard. On 31.12.1999, the petitioners entered into agreements with Agricultural Market Committee, Hyderabad. According to agreed terms, rent at Rs.1875/-per month is payable with enhancement at 5% on the agreed rent every year. According to respondent, the traders committed default in payment of rent, notices were issued and the association filed W.P.No.1350 of 2000. As already noted, the writ petition was disposed of. The petitioners are not paying rent at enhanced rent from January, 2001 onwards which they are under obligation to pay under the agreement. According to respondent, a few of the petitioners are not paying monthly rent as well. The cancellation is on account of non-payment of enhanced rent. The petitioners filed W.P.No.22999 of 2010 challenging the notice and conditional order was passed by this Court to deposit arrears of rent, the petitioners execute personal bonds for arrears of 5% enhanced rent and execute lease deed as required by the authorities. The petitioners have not availed the benefit of Government Memo dated 18.10.2013 by clearing the arrears of rent to claim any benefit. The total rent arrears of all Commission Agents including petitioners in Gudimalkapur Market yard is to a tune of Rs.1,29,00,000/-. The traders are enjoying the property without clearing arrears of rent. Therefore, the Committee is entitled to cancel the space/shops allotted to petitioners. It is further submitted that against the order in W.P.No.24834 Of 2010, the Government preferred appeal and the same is pending. According to respondent, the petitioners have committed default of conditions imposed in WPMP No.29354 of 2010. Therefore, there is failure of performance of the condition imposed by this Court and orders dated 16.02.2016 are

issued. The summary of reply is that the petitioners have failed to clear the arrears of rent and using property from 31.12.1999, are paying rent at Rs.1875/- and have not paid enhanced rent from January,2001 onwards. The rent is not paid regularly by the petitioners. Therefore, according to respondent, cancellation order dated 16.02.2016 is justifiable and no exception in law or fact can be taken.

The petitioners' challenge cancellation order dated 16.02.2016 issued for the alleged breach committed by the petitioners in complying conditions imposed by this Court in W.P.M.P.No.29354 of 2010. In the considered view of this Court, the consideration and disposal of the challenge to notice dated 24.08.2010 in W.P.No.22999 of 2010 would substantially decide the issue in these two writ petitions.

Mr.P.Gangaiah Naidu contends that the petitioners are traders in vegetables and were originally doing business at Karvan. The petitioners along with others have re-located their business to Gudimalkapur Market Yard on the assurance of the authorities to allot sufficient space for doing business at the Market Yard. Hence, in the first ten years, there was no condition to pay rent or any amount between petitioners and the Market Yard. Each one of the petitioners had paid Rs.25,000/- for construction of sheds at Market Yard by the respondent. The petitioners have paid the amount and the shops in possession of each one of the petitioners are constructed with the money paid by the petitioners. Therefore, there ought not to be levy and demand of rent, much less rent at enhanced rate. The order of this Court in W.P. No.1350 of 2000 mandates the Government to consider the request of petitioners for outright sale of shops in their possession or grant long term lease to petitioners. Accordingly, representations are made and no decision is taken as on date. Keeping the inaction in mind which is attributable to the respondents herein, the direction to

pay rent at enhanced rates is illegal, arbitrary and unconstitutional. Further, for non-payment of enhanced rent or furnishing personal guarantee, issuing cancellation order dated 16.02.2016 is unsustainable and likewise calling upon the petitioners to remit the outstanding rents of Rs.15,000/- from the date of receipt of notice dated 24.08.2010 and further directing payment of arrears of Rs.77,719/-, being the difference of arrears of enhanced rent, is illegal and arbitrary.

It is further contended that assuming without admitting that on 31.12.1999 lease agreement was entered into between the petitioners and the Market Yard, the life of the said lease deed was for 11 months. The clause dealing with rent at enhanced rates cannot operate beyond the life of lease agreement. The respondents are discriminating in the matters of allotment of space at Gudimalkapur and Gaddiannaram, pray for setting aside the impugned notice/proceedings.

The standing counsel appearing for Market Yard/1st respondent contends that the challenge to proceedings dated 24.08.2010 is unsustainable and the very basis of the writ petitions is incorrect. She draws the attention of the Court to the prayer in W.P.No.1350 of 2000, contends that the very demand of rent at Rs.1,875/- was challenged in W.P. No.1350 of 2000 and declaration was sought that the members of petitioner/association are entitled to get lease for a period of 99 years at nominal rent of Re.1/- as was done in the case of Mahaboob Manison Grain Market Yard, Malakpet. However, this Court, while disposing of the writ petition except giving liberty to the members of the Association to represent to Government, accepted neither of the prayers. The Agricultural Market Committee, therefore, on account of delay or inaction in the Government in disposing of the representation could not be deprived of its legitimate rent from petitioners. She contends that with the lease agreement entered into and executed

between the parties, the petitioners cannot pray for outright sale or grant of shops on long term lease at nominal rent of Re.1/-. With the execution of lease agreement on 31.12.1999, the petitioners are estopped by law and fact in contending contrary to what is borne out by record. She further contends that this Court on 17.09.2010 in W.P.M.P.No.29354 of 2010 in W.P.No.22999 of 2010 imposed the following conditions:

“There shall be interim suspension as prayed for, subject to condition the petitioners deposit arrears of rent as demanded by the respondent, execute personal bonds for arrears of 5% enhanced rent and also execute lease deeds as required by the authorities within a period of two weeks from the date of receipt of a copy of this order.”

The petitioners committed breach of the said condition, hence, proceedings dated 16.02.2016, cancelling the lease in favour of petitioners are legal and valid. She prays for dismissal of the writ petitions.

I have perused the material available on record and noted the submissions of learned counsel appearing for the parties.

The following point arises for consideration is:

“Whether the notice No.AMCH/SO/GMP/49/2010/7 dated 24.8.2010 and proceedings No.AMC/H/GMP.Veg/3/2012-13-/675 dated 16.2.2016 issued by the 3rd respondent dated 16.02.2016 are arbitrary, without jurisdiction and contrary to the orders of this Court”.

The case of petitioners is that they have shifted their business

from Karvan to Gudimalkapur at the instance of respondents herein. Admittedly, there was no obligation to pay rent from 1991-92 to 01.01.2000. The parties entered into lease deed on 31.12.1999. With the execution of lease deed, the petitioners have agreed to bind themselves to the conditions imposed on them by the market yard as lessor and are paid rent at Rs.1,875/-. Through the proceedings dated 24.08.2010, the petitioners are called upon to pay the outstanding amount of Rs.15,000/- and arrears of rent at Rs.77,190/-. The objection against such recovery is that the representation filed with the Government/^{1st} respondent is still pending and secondly by reference to the lease deed dated 31.12.1999, enhancement of rent at 5% per annum is illegal and unavailable.

The submissions in this behalf, in the considered view of this Court, are misplaced in the admitted fact situation of the case. The petitioners by executing lease deed on 31.12.1999 have agreed to enjoy possession of space/shop at Market yard, Gudimalkapur subject to payment of rent and enhancement at 5% per annum. The Association filed writ petition and this Court while disposing of W.P.No.1350 of 2000 granted liberty to represent to Government for appropriate reliefs. The liberty to represent and further direction to Government to consider and dispose of the representation cannot and could not be construed to exonerate the petitioners from payment of enhanced rent. Unless and until binding order is received by the Market Yard in favour of petitioners, Market Yard/respondent is entitled to call upon the petitioners to pay the outstanding rent and arrears of rent. The objections now raised by the petitioners are completely afterthought and further, once possession is accepted as lessee, the lessee unilaterally cannot formulate binding clauses between the parties. Notwithstanding that fresh lease agreement is not entered into or any direction is received from the Government by the Market Yard,

still the possession of petitioners is agreed to be continued at nominal enhancement of 5% per annum by the Market Yard. The stand of the respondents in counter affidavit that on account of non-payment of rents or arrears as on date a sum of Rs.1,29,00,000/- is recoverable by the Market Yard, is an important circumstance for consideration. If the authorities/Government did not dispose of the representation as directed by this Court in W.P. No.1350 of 2000, the remedies available to the petitioners are distinct and cannot provide valid challenge to proceedings dated 24.08.2010. The contention of petitioners that after the expiry of 11 months from 01.01.2000 no lease exists is accepted, in the considered view of this Court such contention instead of furthering the cause of petitioners, renders their possession at Gudimalkapur neither as tenant holding over nor lessee at sufferance, but becomes unauthorised and illegal possession of shops. In the considered view of this Court, the respondents are also at fault in not taking timely decision either on the representations said to have been submitted by the petitioners or passing fresh orders on extension of lease, entering into agreement and recovering the rent as and when it became payable. Instead it appears that there is so much complacency in the affairs of Gudimalkapur Market Yard in administering the premises in accordance with law. As already noticed, the delay in disposing of representation cannot be taken advantage of by petitioners. The challenge to proceedings dated 24.08.2010 is not made out and this Court is not inclined to interfere with the proceedings impugned in the writ petition, but to meet the ends of justice, the writ petitions are disposed of by this order.

As regards proceedings dated 16.02.2016 is concerned, the 1st respondent ordered cancellation of lease on the ground that the condition imposed by this Court in W.P.M.P.No.29354 of 2010 in W.P.No.22999 of 2010 is not complied with. Assuming without

admitting that the petitioners have not complied with the condition imposed by this Court, the respondent ought to have filed petition to vacate the order dated 17.09. 2010. Had such procedure been followed, this Court would have had opportunity to consider the grievance and to balance the competing interests of both parties, appropriate directions would have been issued, including incorporating default clauses. Now, the petitioners submit that undertakings are given. The undertakings now filed before the Court do contain office seal and acknowledgment, but, however, the same is disputed by the respondents. For the view this Court intends to take on the proceedings dated 24.08.2010, the consideration of grievance against proceedings dated 16.02.2016 is purely academic.

“The petitioners are given two instalments of six weeks to pay the outstanding amount and arrears of rent as demanded through proceedings dated 24.08.2010 and pay the difference of rent from 17.09.2010 till date within a further period of six weeks thereafter.”

This Court is of the view that the Agricultural Market Committee, Gudimalkapur for reasons beyond comprehension of this Court is not taking timely decisions, to provide proper amenities to the users of Market Yard and huge arrears are piling up. The fact that revenues are not received is placed on record. To avoid further litigation or uncertainty in the matter, the Commissioner and Director of Agricultural Marketing, 1st Floor, C Block, BRKR Bhavan, Tank Bund Road, Hyderabad, Telangana/2nd respondent is directed to enquire in to the leases granted by the Agricultural Market Committee, Gudimalkapur and if lease deeds are not entered into or executed, proper steps are taken for execution of lease deeds by all the lessees of shops in the market yard. The said exercise shall be completed by 2nd respondent

within four months from the date of receipt of a copy of this order.”

The writ petitions are disposed of as indicated above. No order as to costs.

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

S.V.BHATT,J

Date:04.07.2016

Stp/Lrkm