

THE HON'BLE SRI JUSTICE S.V.BHATT

WRIT PETITION No.21401 of 2012

ORDER:

One S. Karunakar Reddy is the petitioner. The petitioner was given vacant space by the then Superintendent, Osmania General Hospital, Afzalgunj, Hyderabad/respondent for running canteen in the hospital premises allegedly for the convenience of patients and attendants of patients visiting OP block, Osmania General Hospital.

2. The petitioner challenges notice Rc.No.E10/OGH/2012/928/382 dated 23.05.2012 wherein the respondent called upon the petitioner to remit the enhanced yearly rent from 2003 to March 2012. The difference of amount towards enhanced rent claimed by respondent is Rs.3,20,220/-.

3. The petitioner challenges the notice impugned in the writ petition as arbitrary, capricious, illegal and violative of principles of natural justice. At the outset, it is required to be noted, the petitioner challenges notice dated 23.05.2012, one of the challenges against the notice impugned is that it violates the right of petitioner and contravenes petitioner's fundamental right. To appreciate the challenge to a notice simplicitor, the chronology of events are referred and considered.

3. The respondent, on 05.12.1994, allotted space to petitioner for establishing and running the subject canteen. The allotment order does not refer to the extent of space allotted to petitioner and the

period for which the allotment is made. For the reasons best known to respondent, the consideration for enjoyment of space is very vague and hardly refers to any terms and conditions between the parties. It appears the respondent while allotting subject space has imposed a few conditions viz. mere seeing that the space is not crowded and the activities of canteen do not cause inconvenience to hospital. Admittedly, the petitioner in terms of order dated 05.12.1994 is continuing and enjoying the space. While matter stood thus, petitioner filed WP.No.5572 of 1992. The writ prayer reads thus:

“..to issue a writ of mandamus or any other appropriate writ order or direction declaring the action of the respondents in purporting to prevent the petitioner from running the canteen at O.P. block Osmania General Hospital Hyderabad as arbitrary unreasonable and unconstitutional and to direct the respondents to act in accordance with law.”

On 06.09.2002, the writ petition was dismissed and the operative portion of the order dated 06.09.2002 is excerpted for immediate reference:

“When the matter came up for hearing the learned Government Pleader for Medical and Health, on instructions, submits that since the 1st respondent has issued order, dated 22-07-2002, fixing the rent for the premises of canteen in Out Patient Block, Osmania General Hospital, Hyderabad, and directing the petitioner to remit the arrears of rent immediately in cash section of the Hospital and to pay the same on every 5th of the succeeding month subject to withdrawal of court case immediately, no further orders are necessary in this writ petition.

I have perused the Hospital Order, dated 22-07-2002, of the 1st respondent, addressed to the petitioner, wherein it was stated:

“The Superintendent of Osmania General Hospital, Hyderabad, is pleased to fix the rent for the premises of Canteen, Out Patient Block for Rs.5,000/- (Rupees Five Thousand Only) per month excluding water and electricity charges with effect from 1st January, 2002, in the Osmania General Hospital, Hyderabad, premises occupied and run by the members of the Federation of Local Educated Self Employed Youth.

Therefore, you are directed to remit the arrears of rent amounting for the period from 1st January, 2002, to 31st July, 2002, i.e., for (7) months Rs.35,000/- (Rupees Thirty Five Thousand Only) immediately in Cash Section of the Hospital and obtain the receipt of the same. Further, the rent fixed as above is payable every succeeding month of 5th day positively subject to withdraw the court case immediately.”

In view of the submission made by the learned Government Pleader for Medical and Health, this writ petition is dismissed, as no further orders are necessary. However, there shall be no order as to costs.”

4. Now the case of petitioner is that the petitioner has been remitting the rent and the difference of enhanced rent at 10% now claimed by respondent is illegal, arbitrary and unconstitutional. Hence, the writ petition.

5. The counter affidavit is silent on most of the important conditions, if any, between the petitioner and the respondent. Be that as it may, the petitioner complains the demand of difference of rent amounting to Rs.3,20,220/- is illegal, arbitrary and violative of petitioner's fundamental right. At the cost of repetition, the submission of counsel for petitioner is reiterated only to conclude that the challenge laid by the petitioner on the above ground is without factual or legal basis. To complain that the notice is illegal, the petitioner is

not referring to provision of law or statute under which the right of petitioner is protected and the mere issue of notice has infringed the right. The petitioner has not stated how, the difference of enhanced rent claimed by the respondent, can be termed as arbitrary. The first two grounds without much discussion are rejected as untenable. The notice calling upon petitioner to pay the difference amount does not go that far to infringe the fundamental right of petitioner. In the considered view of this Court, the challenge to a notice simplicitor on these grounds fails and rejected.

6. Before concluding the writ petition, this Court is compelled to observe that the mode and manner of allotment of space by the respondent does not appear to be in accordance with the procedure prescribed by the Government from time to time for allotment of spaces in institutions for commercial utility. The allotment of space on long term basis without authority and proper conditions *per se* is illegal and transparent procedure of auction of space was followed before confirming the space in favour of petitioner.

7. Mr. Y. Ramatirtha, counsel for petitioner, submits that the allotment in favour of petitioner is not singular or unique, several such allotments have been made in the Osmania General Hospital and if any decision is taken, a uniform approach should be directed to be followed.

8. This Court is in agreement with the last submission of the learned counsel for the petitioner. Having regard to the above submission, the Superintendent is directed to examine the legality and

authority of allotment, term of lease etc. in favour of petitioner, allotment of spaces in Osmania Hospital and a proper decision is taken to prevent misutilisation of expected revenues to hospital. To ensure equality before law, after initiating action against the petitioner, the Superintendent/respondent initiates similar action against the allottees, who have been allotted space without definite terms and conditions in the premises of Osmania General Hospital. The spaces, after determination of existing agreements, are re-allotted on auction. The said exercise shall be completed within six (6) weeks from the date of receipt of copy of this order.

With the above observations, the writ petition is dismissed. As a sequel, the miscellaneous applications, if any pending, shall stand closed. There shall be no order as to costs.

August 29, 2016

Note: Registry is directed to communicate a copy of this order to the Principal Secretary, Medical and Health, Government of Telangana, Hyderabad.

(B/o) DSK

S. V. BHATT, J

