THE HON'BLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No.44615 OF 2016

Dated:27.12.2016

Between:

Korukonda Sreenivas, S/o. Venkata
Krishna Rao, 40 years, R/o.8-31-2,
Tamil street, China Waltair,
Visakhapatnam .. Petitioner

And

Greater Visakhapatnam Municipal
Corporation, rep., by its Commissioner,
Visakhapatnam and others .. Respondents

The Court made the following:

THE HON'BLE SRI JUSTICE P. NAVEEN RAO

<u>WRIT PETITION No.44615 OF 2016</u>

<u>ORDER</u>:

Heard. With the consent of learned counsel for the parties, the Writ Petition is being disposed of at the stage of admission.

2. The petitioner was granted lease for the premises known as 'Moulana Abdul Kalaam Azad Shadikhana' in the year 2004, initially for a period of three years and thereafter the same was renewed from time to time. The said lease has expired on 22.12.2016. The petitioner claims to have submitted a representation for extension of the lease for a further period of three years for the reasons mentioned therein. Alleging that his representation is not acted upon and renewal of lease is not granted to the petitioner, even though the lease term expired, this Writ Petition is instituted, just before the expiry of the lease period.

3. It is not in dispute that the property in issue belongs to Greater Visakhapatnam Municipal Corporation (GVMC) and grant of leases is regulated by the Greater Hyderabad Municipal Corporations Act, 1955 (for short, 'the Act'). The Act mandates that lease has to be granted only after conducting public auction and for a specified period. After the expiry of the period, ordinarily no renewal should be granted and fresh auction should be conducted for grant of further lease. Concerning the property of the same respondent – GVMC in W.P.No.16035 of 2015, this Court dealt with all aspects of grant of lease. It is useful to extract the

relevant paragraphs of the order, dated 06.07.2015. They read as under:

> "11. The subject premises are the properties belonging to the Greater Visakhapatnam Municipal Corporation (GVMC). In terms of Section 7 of the Visakhapatnam Municipal Corporation Act, 1979, the GVMC is governed by the Greater Hyderabad Municipal Corporation Act, 1955 (for short, 'Act 1955). Section 148 of the Act, 1955 deals with the disposal of the property and interest thereon of the corporation. Section 148 reads as under:
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> **" 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. ”

12. 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 the 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 the 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.

14. The properties on which petitioner is squatting are public properties. Grant of lease on such properties is not for the benefit of individuals in whose favour lease is granted or in occupation. Such public properties have to be used for the benefit of public at large. It is the responsibility of the GVMC to provide various civic amenities in the city which require large amounts of funds. GVMC resorts to various means to augment the funds required, such as collection of house tax, levy of fee on various services provided etc. In addition it also puts to

use its properties by leasing out to generate funds. Lease amounts collected on its properties is required to provide civic amenities. Thus, it is the duty and responsibility of GVMC to get best lease price on its properties. GVMC can get a good offer only if open auction is conducted so that all persons interested can participate in the auction and offer better lease amount.

15. It is appropriate to note what Supreme Court has said in the case of **M/s.Kasturi Lal Lakshmi Reddy vs. State of Jammu and Kashmir and Another**[1]**.**

> "14. Where any governmental action fails to satisfy the test of reasonableness and public interest discussed above and is found to be wanting in the quality of reasonableness or lacking in the element of public interest, it would be liable to be struck down as invalid. It must follow as a necessary corollary from this proposition that the Government cannot act in a manner which would benefit a private party at the cost of the State; such an action would be both unreasonable and contrary to public interest. The Government, therefore, cannot, for example, give a contract or sell or lease out its property for a consideration less than the highest that can be obtained for it, unless of course there are other considerations which render it reasonable and in public interest to do so. Such considerations may be that some directive principle is sought to be advanced or implemented or that the contract or the property is given not with a view to earning revenue but for the purpose of carrying out a welfare scheme for the benefit of a particular group or section of people deserving it or that the person who has offered a higher consideration is not otherwise fit to be given the contract or the property. We have referred to these considerations only illustratively, for there may be an infinite variety of considerations which may have to be

[1] (1980) 4 SCC 1

taken into account by the Government in formulating its policies and it is on a total evaluation of various considerations which have weighed with the Government in taking a particular action, that the court would have to decide whether the action of the Government is reasonable and in public interest. But one basic principle which must guide the court in arriving at its determination on this question is that there is always a presumption that the governmental action is reasonable and in public interest and it is for the party challenging its validity to show that it is wanting in reasonableness or is not informed with public interest. This burden is a heavy one and it has to be discharged to the satisfaction of the court by proper and adequate material. The court cannot lightly assume that the action taken by the Government is unreasonable or without public interest because, as we said above, there are a large number of policy considerations which must necessarily weigh with the Government in taking action and therefore the court would not strike down governmental action as invalid on this ground, unless it is clearly satisfied that the action is unreasonable or not in public interest. But where it is so satisfied, it would be the plainest duty of the court under the Constitution to invalidate the governmental action. This is one of the most important functions of the court and also one of the most essential for preservation of the rule of law."

17. Section 148 of the Act creates layers of scrutiny for various periods and upto Government to grant lease for a period beyond five years. Section does not envisage renewal of lease. It does not envisage transfer of lease. It thus necessarily follows from the scheme of this section that after the period of lease as envisaged in sub-sections 1 to 3 is over, GVMC has to resort to public auction to grant further lease. There is no material on record to show that lease for longer period was with the

> prior approval of Commissioner and the Government."

4. In the instant case also, initially lease was granted in the year 2004 and expired in the year 2007. Without conducting auction, the petitioner was granted three extensions. Thus, the question of grant of further extension without following the procedure for conducting open auction does not arise and it is contrary to the law governing the field and the procedure envisaged by the Act regulating grant of leases by the respondent - GVMC. The reasoning adopted by this Court in the above Writ Petition applies in all fours to the case on hand. Therefore, the relief as sought for by the petitioner cannot be granted in this Writ Petition.

5. The respondent – GVMC is granted liberty to take immediate steps to conduct open auction for grant of lease. The process of conducting of open auction shall be initiated immediately and shall be completed within a period of three months from today. The discretion is vested in the respondent - GVMC to continue the petitioner till the auction proceedings are finalised, subject to the petitioner clearing all the arrears within a period of two weeks from today and continue to pay the enhanced lease amount. However, at any rate no such continuation can be permitted beyond three months time granted for conducting of auction and finalising the fresh lease. It is always open to the petitioner to participate in the auction conducted by the respondent – GVMC.

6. With the above observations, the Writ Petition is disposed of. There shall be no order as to costs.

Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

P. NAVEEN RAO, J

Date:27.12.2016

Note:- Furnish C.C. in one week
(B/o)
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