

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No.531 of 2017

Date : 19-01-2017

Between :

P Santha Rao S/o Kama Raju
R/o NTR Mini Stadium Complex,
Narsipatnam village & mandal, Visakapatnam dist

.... Petitioner

And

The State of A P
Rep by its Principal Secretary,
Municipal Urban Development Authority,
Secretariat, Velagapudi, Amaravathi,
Guntur district and another

....Respondents

The Court made the following:



HONOURABLE SRI JUSTICE P. NAVEEN RAO**WRIT PETITION No.531 of 2017****ORAL ORDER:**

Petitioner was granted lease of shop in NTR Mini Stadium complex, Narsipatnam by Narsipatnam Gram panchayat for a period of one year commenced from 12.9.1990 and petitioner claims to have established a Pan Shop therein. The lease was renewed from time to time. Narsipatnam Gram Panchayat has later become Municipality and the municipal council granted extension of lease for a period of one year by proceedings Rc No. 518/2014/A1 dated 1.11.2014 commencing from 31.3.2014 valid till 31.3.2015. Thereafter, there is no further extension. By proceedings ROC No. 518/2013/A1 dated 7.12.2016, impugned in this writ petition, holding that petitioner is in unauthorized occupation of the leased premises and that he has completed 25 years of lease, petitioner was asked to vacate the subject premises. Challenging the same, this writ petition is filed.

2. Petitioner challenges the said notice on the ground that the provisions of Acquisition and Transfer of the Immovable Property Rules 1967 are not observed; merely because petitioner has completed 25 years of lease is no ground to evict the petitioner and that the municipality is competent to grant lease for any number of years. Learned counsel for petitioner further contended that without following the due process no person can be evicted from the premises, even assuming that there is no valid lease. Counsel for petitioner submitted that there are no arrears due and payable by the petitioner. He had never defaulted in payment of rents. When no illegality committed by the petitioner and petitioner is paying the rents as demanded by the respondent, he cannot be thrown out summarily. Petitioner is eking out his livelihood for all these years by running the pan shop and if he is thrown out at this stage, he would

suffer irreparable hardship. So far no notification is issued to conduct fresh auction.

3. It is not in dispute that petitioner is in occupation of the subject premises for more than 25 years.

4. Acquisition & Transfer of Immovable Property Rules, 1967 (Rules 1967) govern the grant of lease of property belonging to the municipality. Rule 5 is relevant for the purpose of consideration of this case. It reads as under:

“5. Transfer by lease of immovable property belonging to municipal council:----

(1). A municipal council may lease out any immovable property belonging to it for a period of three years at any one time and if it is for a period exceeding three years but not exceeding twenty-five years at a time it may lease out, after obtaining the prior sanction of Government.

(2). Whenever any lessee is permitted to put up any building or structure whether of masonry, brick, mud or metal in the land belonging to municipal council, the prior sanction of the Director of Municipal Administration shall obtained therefore who may impose such conditions as he may think fit.

(3). The lease deed shall be in Form III(a) in Schedule III appended to these rules with such variations as the circumstances may require.”

5. A bare reading of this provision makes it clear that the municipal council is competent to grant lease for a period of 3 years only at any time. If it intends to grant lease for a period exceeding 3 years, but not exceeding 25 years, it may do so after obtaining prior sanction of the government.

6. Rule 8 of the Rules 1967 prescribe procedure to grant lease. Rule 8 mandates granting of lease only by public auction.

7. It is not the case of petitioner that he was granted lease of the subject property after public auction. It is to be noted, at this stage that the original lease was granted to the petitioner, when Narasipatnam was a Gram Panchayat . However, Rules governing the Gram Panchayat also require a similar procedure. It is also not in dispute, even assuming a

valid lease was granted, the same was subsisting only till 31-03-2015. It is also not in dispute that while renewing the lease, no public auction was conducted. Thus, lease was granted on nomination basis and renewed without following proper procedure.

8. The money secured from the leases is the primary source of income to the municipality and revenue augmented in said manner is required to provide various amenities in the municipality. The Municipality can secure better price/value only if public auction is conducted. Public properties have to be leased out only after following due procedure, i.e., by auction. Renewal of lease granted can be only for limited period and once or twice. There can not be renewal as a matter of course. It can not be read into Rule 5 of Rules, 1967 to assume renewal of lease as a matter of course.

9. In **Perla Sambamurthy Vs. State of A.P. and others**¹, this Court held as under:

“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.

10. Division Bench of this court in W.P. NO. 6354 of 2009 was considering the issue of continuation of lease period beyond 25 years by the municipality. On considering the scope of relevant provisions of the Municipalities Act, and the rules made there under, the division bench held as under:

“On a true and fair construction of the provisions of the 1967 Rules read in the context of the fact that leases of Municipal properties are presumptively

¹ 2015 (6) ALD 325

and in this case undisputably for the exclusive purpose of augmenting the revenues of the municipality, the lease ought textually and conceptually be by a public auction so as to ensure that the maximum revenue is generated for the benefit of the Municipality.

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It is a trite principle under a constitutional order that all public properties are public assets administered by State actors or instrumentalities in a fiduciary capacity and enjoined to be administered in conformity with fiduciary principles. All discretion conferred on public authorities is a public trust and consecrated for the purpose of its employment in public interest. Certain executive choices may involve balancing of a plurality of public interest choices but whereas in the present case the property of a public authority-the Nalgonda Municipality is intended to be leased out, the sole and exclusive public policy choice is for ensuring the augmentation of the revenues of the Municipality.

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In the considered view of this Court constitutional and public law concerns as well as the provisions of the 1967 and 1968 Rules do not enable further renewal of the lease in favour of the 6th respondent nor enable the official respondent Nos.1 to 4 to avoid the transparent public process of granting lease of the schedule property only by public auction.

The Municipality has ample powers under Section 194 of the A.P. Municipalities Act, 1965 to evict persons in unauthorised occupation of Municipal property. Since the present occupation of the schedule property by the 6th respondent is without lawful entitlement and so since 31.12.2008, the 4th respondent is required to exercise in full measure the plenitude of powers inhering in the 4th respondent under the provisions of the A.P. Municipalities Act to ensure the eviction of the 6th respondent from the schedule premises. It is further required that the official respondents jointly and severally ensure that the lease of the schedule property is granted pursuant to public auction, in the manner enjoined by the Act read with the provisions of the 1967 and the 1968 Rules.”

11. In **Perla Sambamurthy**, this Court considered the scope of Judicial review in matters of this nature and discretion exercised by the writ Court in granting relief. The court held as under:

“The parameters of judicial review in matters of this nature are well settled. In W.P.Nos.12674, 12685 and 12691 of 2010 in the judgment dated 08.06.2010, this Court delineated the principles laid down by the Supreme Court in various cases on the scope of exercise of jurisdiction by this Court under Article 226 of the Constitution of India. They are:

“It is well to remember that the exercise of jurisdiction under Article 226 of the Constitution of India is discretionary and a Writ is not issued as of right or as a matter of course. **C.R.Reddy Law College Employees’ Association, Eluru W.G.District vs. Bar Council of India, New Delhi [(2004 (5) ALD 180 DB]**. As the power exercised by this Court, under Article 226 of the Constitution of India, is discretionary it need not be exercised in every case where there is an error of law. One of the limitations imposed by this Court, on itself, is that it would not exercise jurisdiction unless substantial injustice has ensued or is likely to ensue. It would not allow itself to be turned into a court of appeal to set right mere errors of law which do not occasion injustice. (**Sangram Singh v. Election Tribunal, Kotah [AIR 1955 SC 425]**). Even when some defect is found in the decision making process, this Court will exercise its discretionary power, under Article 226 of the Constitution of India, with great caution and only in furtherance of public interest and not merely on the making out of a legal point. This Court is required to keep larger public interest in mind in order to decide whether its intervention is called for or not. Only

when it comes to the conclusion that overwhelming public interest requires interference, would it intervene in the matter. **Air India limited v. Cochin International Airport Limited [2000 (2) SCC 617].**”

12. Petitioner is only a lessee. Initial lease was granted on a nomination basis for a period of 1 year which was extended from time to time and has been in occupation for more than 26 years. The property belongs to the municipality, and the lease of such public premises can be granted only after conducting public auction. If a public auction is conducted, municipality may get better lease amount. Thus, merely because petitioner is in occupation of the subject premises for such a long time, he does not acquire vested interest for continuation of that lease forever and can not injunct the Municipality to grant lease to him forever. A lessee cannot contend that he was legitimately expecting to continue lease permanently. Having regard to principles laid down in the cases referred to above, I see no illegality in the proceedings impugned. This Court is not inclined to exercise its discretionary jurisdiction to entertain the writ petition and writ petition is dismissed in limine.

13. Accordingly, the writ petition is dismissed. No costs. Having regard to the same, miscellaneous petitions, if any pending, are closed.

P NAVEEN RAO,J

DATE: 19-01-2017
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When the order is pronounced, learned counsel for the petitioner requested to grant some time for vacating the premises. If the petitioner files an affidavit before the 2nd respondent - Commissioner, Narsipatnam Municipality, within a week from today undertaking to vacate the premises within a period of two (02) months, the 2nd respondent - Commissioner, Narsipatnam Municipality, is directed not to take coercive steps for a period of two (02) months.

P NAVEEN RAO,J

DATE: 19-01-2017
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HONOURABLE SRI JUSTICE P. NAVEEN RAO



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