

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.2796 of 2021

Date:09.02.2021

Between:

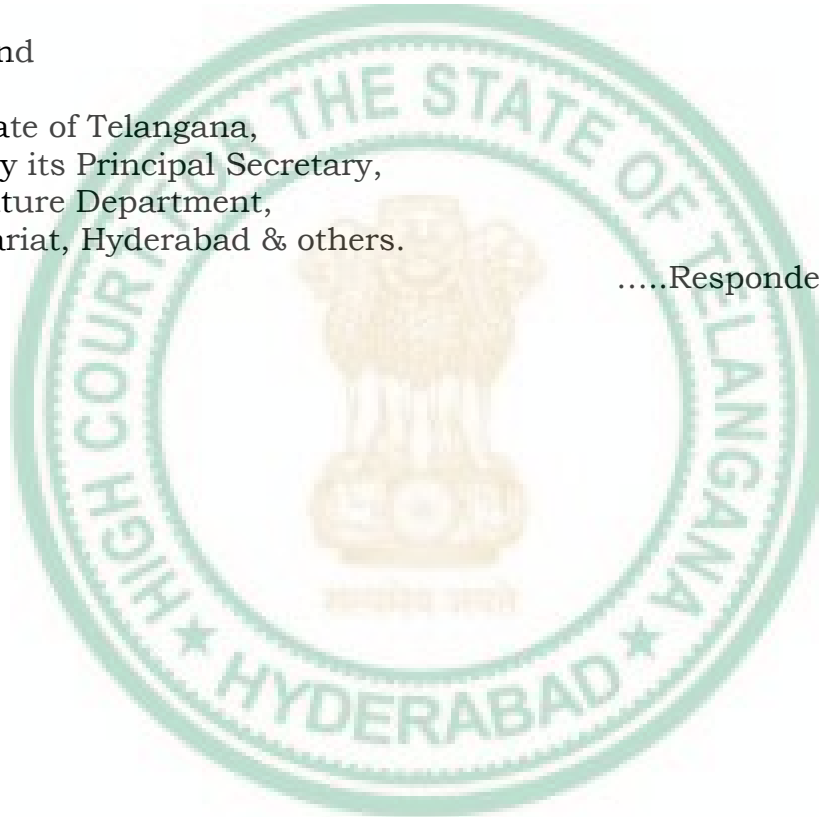
M/s.Lateef Traders,
Rep., by its Proprietor,
Abdul Lateef S/o.Shaik Ahmad,
Age 48 yrs, Occu : Business (Shop No.1 and 6),
R/o.H.No.3-5-104, Bara Imam Galli,
Bhainsa, Adilabad District,
Presently Nirmal District & others.

.....Petitioners

And

The State of Telangana,
Rep., by its Principal Secretary,
Agriculture Department,
Secretariat, Hyderabad & others.

.....Respondents



The Court made the following:

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ORDER:

Heard learned counsel for the petitioners, learned Government Pleader for Agriculture appearing for respondent Nos. 1 and 2 and learned Standing Counsel appearing for respondent No.3.

2. The Agricultural Market Committee at Bhainsa, 3rd respondent has constructed about 100 shops in the market yard. According to petitioners, the 3rd respondent has leased out 60 shops and still 40 shops are vacant. Petitioners were allotted shops in the year 2004 on lease basis for eleven months and renewed from time to time. In the said manner, Shop Nos.1 and 6 were allotted to the 1st petitioner, Shop No.2 to the 2nd petitioner, Shop No.3 to the 3rd petitioner, Shop No.4 to the 4th petitioner and Shop No.5 to the 5th petitioner. Petitioners are paying rent between Rs.2,060/- as minimum and Rs.2,530/- as maximum on the respective shops. On 10.11.2020, the 3rd respondent issued notice to the petitioners directing them to vacate respective shops making allegation of violation of terms of lease and completion of lease period and decision to go for fresh auction. They were given three months time to vacate the premises. It was also alleged that petitioners have sub-leased the premises and getting higher rents than what is paid by them to the 3rd respondent. Petitioners challenge these notices in this writ petition.

3. As seen from the material placed on record and as per the submissions of learned counsel for the petitioners and learned Standing Counsel for the 3rd respondent, the lease period is for

eleven months and the lease granted to the petitioners expired long ago, but renewed from time to time on increase of 5% p.a., on the lease amount every year and for almost 15 years no public auction was conducted to open the availability of shops for public at large. In other words, by renewing the lease on an increase of 5% p.a., for the last more than ten years, the 3rd respondent was denied proper revenue in the form of collection of rents from the shops owned by it, which can be utilized for providing better facilities within the market yard.

4. On instructions, learned Standing counsel states that the Agricultural Market Committee is now in favour of conducting fresh auction. However, she is silent on why periodical auction was not conducted to lease out the shops.

5. It is settled principle of law that no public property can be leased out on nomination basis and lease can not be renewed for years together, without conducting auction. Public auction has to be conducted periodically and premises have to be leased out to persons offering better lease amount.

6. Since petitioners are only lease holders and the lease granted to them expired long ago and renewed orally from time to time by charging 5% interest without conducting public auction, they can not find fault with the decision of Agricultural Market Committee directing them to vacate and to take possession of their property.

7. Having regard to the fact that petitioners are in occupation of shops leased to them, the 3rd respondent has given them three months time by issuing notice dated 10.11.2020 to vacate the premises. Merely because petitioners are continuing business and

merely because the 3rd respondent has not conducted auction earlier, but renewed their lease, right does not accrue to petitioners to claim that they should be continued to occupy the premises for ever by paying only nominal rent as compared to the rent prevailing in the market, which according to learned Standing Counsel is atleast Rs.5000/- and as of now, the neighbouring shop owners are paying Rs.5000/-. If auction is conducted, the 3rd respondent may fetch more rent than what is paid by the neighbouring shop owners also. Further in the notice, it is also alleged that petitioners have sub-leased the premises and collecting higher rents and are enjoying the property in this manner. This is a serious issue. When lease is granted to a person, the lease holder has to enjoy the property by paying lease to the Agricultural Market Committee, but can not indulge in sub-leasing. However, the Court is not expressing any opinion on this aspect.

8. The fact remains that lease granted to the petitioners expired long ago, renewed orally from time to time and even when the renewal period is over, reasonable time is granted by the 3rd respondent directing the petitioners to vacate the premises with an objective of conducting fresh auction to lease out the premises. Thus, steps taken by Agricultural Market Committee are reasonable and in the best interest of the Market yard.

9. Learned counsel for the petitioners sought to contend that there is no need to vacate the premises as the tender notification is not issued sofar and 40 more shops are vacant. Merely because 40 shops are vacant is no ground for the petitioners to continue in the premises occupied by them by paying nominal rent. Further,

unless the existing persons are asked to vacate and premises is vacant, it is difficult to attract better response because one will have an apprehension of existing lease holder not vacating the premises and when the possession of lease premises would be given to him. Therefore, in all fairness, it is always better to have the premises vacated by the existing lease holder before auction is conducted.

10. In the peculiar facts of this case, to balance the equities of petitioners and 3rd respondent, while disposing of the writ petition, the following directions are issued :

(1) The Special Grade Secretary of the Agricultural Market Committee shall take immediate steps to call for tender to lease out the shops located in the Agricultural Market Committee Yard, conduct auction and award lease/licence based on the offer given by the participants. The entire exercise shall be completed within two (2) months from the date of receipt of copy of this order.

(2) Till the auction proceedings are completed, petitioners may be continued to occupy their respective shops. However, petitioners have to pay the lease amount as determined in the fresh auction proceedings from the date of completion of three months period given in the notice dated 10.11.2020, if the auction proceedings are finalized after the expiry of three months period.

(3) Petitioners shall file an affidavit before the Special Grade Secretary of the 3rd respondent, within one week from the date of receipt of copy of this order giving an undertaking that they will handover possession of their respective shops soon after completion of auction proceedings, if they are not the highest bidders for the concerned shop.

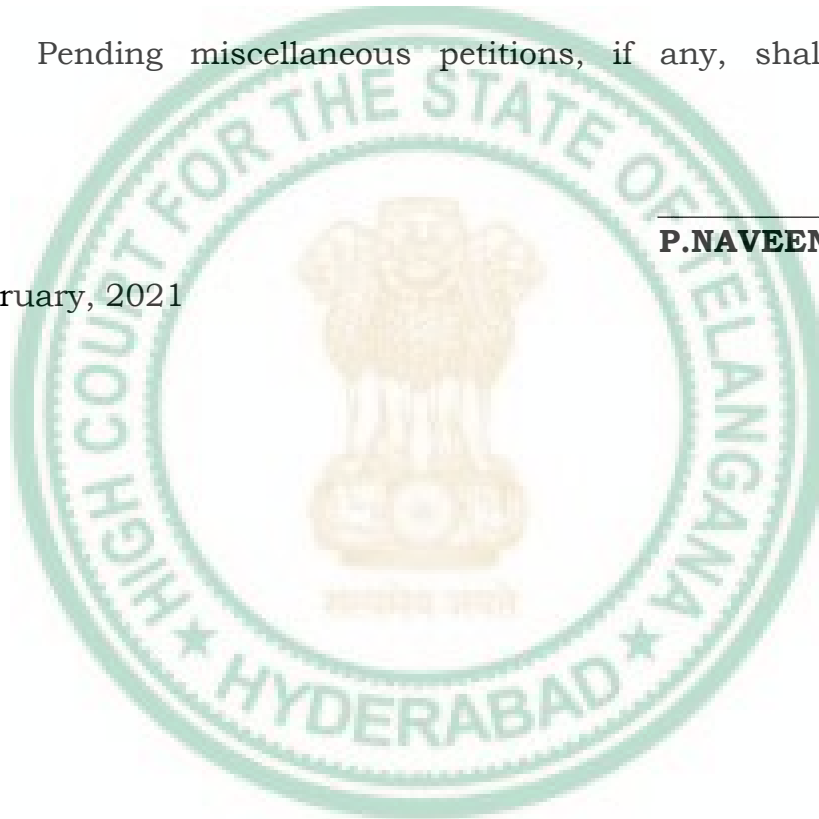
(4) For any reason, if petitioners do not vacate the premises after completion of the auction proceedings and if they are not the highest bidders, the 3rd respondent can take possession of the shops.

(5) The District Collector, Nirmal shall supervise conducting of auction proceedings in orderly, systematic and transparent manner, completion of auction process and awarding of lease of shops belonging to the 3rd respondent to the persons who offer higher lease amount.

Pending miscellaneous petitions, if any, shall stand closed.

9th February, 2021
Rds

P.NAVEEN RAO,J



HONOURABLE SRI JUSTICE P.NAVEEN RAO



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