

THE HON'BLE SRI JUSTICE G.CHANDRAIAH

**W.P.NOS.16059, 16461 16563, 16567, 16054, 17626, 17098, 17306, 17446, 17307,
17300 AND 17302 OF 2011 AND 1350 OF 2012**

COMMON ORDER

Heard the respective counsel for the petitioners and the Standing Counsel for the respondent – Municipal Corporation.

2. Since the issue involved in all the writ petitions is common, they are being disposed of by this common order.

3. The petitioners in all the writ petitions are the occupants of the respective shops/stalls in the commercial complexes of the respondent – Corporation at Hyderabad. The case of the petitioners in W.P.Nos.16059, 16461 16563, 16567, 16054, 17626, 17098, 17446, 17300 and 17302 of 2011 is that they are the original allottees of the shops/stalls by the Municipal Corporation. The case of the petitioners in W.P.No.17306 and 17307 of 2011 and W.P.no.1350 of 2012 is that the shops have been allotted to the original lessees and they have come into possession of the property and paying rents to the Corporation. The petitioners in W.P.No.17306 and 17307 of 2011 were also issued with notices under Section 4(1) of A. P. Public Premises (Eviction of Unauthorized Occupants) Act and they filed replies and subsequently, the present impugned notices dated 7.6.2011 have been issued.

4. The period of lease was for one year and as per the impugned notices, the said period expired long back and the petitioners are continuing in occupation of their respective shops. The impugned notices no.869/EO/E2/GHMC/2011 dated 7.6.2011 in all the writ petitions was issued by the Estate Officer, Greater Hyderabad Municipal Corporation, Hyderabad directing the petitioners to vacate the premises immediately and handover the possession within seven days from the date of receipt of notices. In the impugned notices it is also mentioned that the respective allottees have sub leased the premises and changed the business for which the said shops were taken, without permission of the lessor/Greater Hyderabad Municipal Corporation. Challenging the said notices, on the ground that the Corporation is resorting to evict the petitioners without following the due process of law, the present writ petitions have been filed.

5. The respondent – Corporation in all the writ petitions filed counter affidavits, the tenor of which is that the lease periods in all the cases expired long back and as the shops, on inspection by the staff of the Corporation, were found to be in illegal occupation of the sub lessees and as per the orders of the Hon'be

Lokayukata, the Estate Officer, impugned notices, were issued, seeking the allottees to vacate the shops. It is also further stated that the allottees with the active connivance of the staff of the Corporation, by creating fabricated lease agreements are continuing in occupation of the shops and the records pertaining to their alleged extension of leases are not available in office records. With these averments, the writ petitions are sought to be dismissed.

6. The writ petitioners filed reply affidavits denying the averments made in the counter affidavits.

7. The learned counsel appearing for the writ petitioners contended that the petitioners were allotted the shops by the respondent – Corporation and that they never subleased the premises and in some cases, though the petitioners are not the original allottees, the corporation has changed the lease and entered agreement with them and also extended the lease period. It is further contended that though the lease period expired, the Corporation allowed them to continue in occupation of the shops and that they have been paying the rents regularly and that all of a sudden, the impugned notices have been issued directing them to vacate the premises within seven days and, the corporation is taking coercive steps to evict them without following the due process of law. Relying on the judgments reported in STATE OF U.P. v. MAHARAJA DHARMANDER PRASAD^[1], S.R.EJAZ v. T.N.HANDLOOM WEAVERS'S COOPERATIVE SOCIETY LTD^[2], RAME GOWDA v M.VARADAPPA NAIDU^[3], and B.NARASIMHA REDDY AND ANOTHER v. BHASKARA RAO JOSHI^[4], it is contended that the respondent –Corporation shall follow the due process of law for evicting the petitioners. The contention of the one of the counsel for the petitioners relying on the judgment of the Apex Court in BHARAT PETROLEUM CORPN. LTD. v. CHEMBUR SERVICE STATION^[5] is that the respondent – Corporation shall invoke the provisions of Public Premises (Eviction of UNAUTHORISED Occupants) Act, 1971 for evicting the petitioners and without following the due process of law, they cannot evict the petitioners by force. With these submissions, the impugn notices were sought to be set aside.

8. The learned Standing Counsel for the respondent – Municipal Corporation, contended that the lease periods in all the writ petitions had expired long back and the original allottees have sub-let the premises contrary to the lease agreement and based on fabricated lease agreements, the petitioners are continuing and the Corporation has not been receiving any amount and there is revenue loss to

the Corporation and on inspection by the staff of the Corporation, it was found that the sub lessees are in possession, therefore, the impugned notices were issued seeking the petitioners to vacate the premises and challenging the same, the present writ petitions have been filed. Relying on the judgment reported in CHENCHU RAMI REDDY v. GOVT OF A.P.^[6], the learned Standing counsel contended that public property should be disposed of by public auction. He contended that Section 534 (c) of the Greater Hyderabad Municipal Corporation Act, 1955, requires the allotment of shops by public auction. Therefore, the Corporation is going for public auction for allotment of shops and the petitioners cannot stall the same by asking the court to evict them by due process of law, when admittedly, the lease period had expired. He stated that in similar circumstances, in W.P.No.7367/2010 dated 1.4.2010, when an allottee of the shop of the Municipal Corporation, challenged the notification issued by the Corporation for public auction for allotment of shops in Municipal Commercial Complex at Warangal, on the ground that he is in long possession of the shop and that he is prepared to pay the enhanced rent to the corporation and that as his application for continuing him in the shop is pending consideration, the Corporation cannot go for public auction and evict him; this court has not accepted the prayer of the allottee and has categorically held that the petitioner therein is not entitled for consideration of his application for continuing him in possession and has upheld the notification issued by the Corporation for public auction. He further submitted that when a writ petition in W.P.No.1534 of 2012 was filed one of the allottees at the Abids Municipal Complex Abids, Hyderabad, challenging the very same notice issued by the Corporation bearing No.8659/E0/E2/GHMC/2011 dated 7.6.2011, a learned single Judge of this court by order dated 24.1.2012, has dismissed the writ petition. Therefore, he sought for dismissal of the present writ petitions.

9. In reply, the learned counsel for the petitioners submitted that for the fault on the part of the officials of the respondent – Corporation, in issuing the lease agreements, the petitioners cannot be found fault with and as the respondents extended the lease agreements, they continued in possession and it is not proper on the part of the respondent – Corporation to disown their documents and that whether the lease agreements are fabricated or that the amount paid by them was not remitted to the account of the Corporation, the petitioners are in no way concerned and on that ground, the petitioners cannot be evicted.

10. In view of the above rival contentions, the point that arises for my consideration is whether the respondent – Corporation is justified in issuing the

impugned notices and the same does not call for any interference of this court?

11. The admitted fact in all the writ petitions, as per the impugned notices, is that the original lease periods expired long back. Though some of the petitioners contend that the lease period was extended, the Corporation in the counter affidavits, has categorically denied that any such extension was made and the alleged extension was with the connivance of the staff of the Corporation and that criminal cases have been filed against the staff concerned. Therefore, this court is not inclined to consider the alleged extensions, as they are disputed and denied by the respondent – Corporation. As the initially lease period, in favour of the original allottees expired, question of going into the allegations of sub lease, alleged in the impugned notice does not arise. In the absence of renewal of lease, the petitioners have no right to continue in the shops/stalls of the respondent – Corporation. As per Section 543 (c) of the Greater Hyderabad Municipal Corporation Act, 1955, for allotment of shops/stalls in the Commercial Complexes of the Municipal Corporation, the Corporation has to issue notification for public auction. In the case relied on by the Standing Counsel for the Municipal Corporation in W.P.No.7367/2010 dated 1.4.2010, when an allottee of the shop sought for consideration of his case, on the ground that he is in long possession and that his application for continuing him in possession by accepting the enhanced rent is pending; this court has rejected his case and held that the Corporation has to go for public auction for allotment of shops/stalls in the Municipal Complexes and that he is not entitled for consideration of his case, even if he is prepared to pay the enhanced rent.

12. There is no dispute, as per the law laid down in the judgments relied on by the counsel for the petitioners, the respondent – Corporation has to follow the due process of law for evicting the petitioners. In following the due process of law, the respondent – Corporation, has issued the impugned notice dated 7.6.2011 seeking the petitioners to vacate the premises in question, as the lease period had expired. Therefore, in my considered view, when the lease period had expired and the statute contemplates going for public auction for allotment of shops/stalls, the Corporation is fully justified in issuing the impugned notices and the same does not call for any interference and the issue framed in this regard is answered in the affirmative.

13. A learned single Judge of this court, dismissed the connected writ petition in W.P.No.1534 of 2010 dated 24.1.2012 wherein the very same notice issued by the Corporation dated 7.6.2011 was challenged. The said order is extracted as under for better appreciation:

The petitioners who were tenants in shop No.2, Ground Floor, Abids Municipal Complex, Abids, Hyderabad, are stated to have taken the premises on lease from the respondent on 24.01.2006 for the purpose of running Tea & Snacks business under the name and style of M/s Darshini Express. Admittedly the period of lease had expired. The Corporation issued impugned notice on 07.06.2011 asking the petitioners to vacate the said shop within seven days.

It is contended by the petitioners' counsel that the impugned notice alleges that the shop was sub-leased to one Azam and that nature of business was changed without written permission of the lessor. It is contended that Azam is not a sub-tenant but is only Manager of the petitioners and that even though the shop was originally taken on lease for medical basis, all similar tenants are using the shops for different purposes than medical business. Irrespective of the grounds mentioned in the impugned notice, the petitioners have no right to be in possession of the shop premises as the lease period already expired and admittedly there is no renewal of lease in between the parties. The petitioners have no right to remain in possession of the property. Even though the impugned notice was given on 07.06.2011, for the last more than 7 months the petitioner is continuing in possession of the premises and has now approached this Court from being dispossessed. In the absence of any rights for the petitioners, they cannot continue to be in possession of the premises.

Hence, the Writ Petition is dismissed. However, the petitioners are granted three months time from today for vacating the premises. No costs.

14. The contention of one of the counsel for the petitioners, relying on the judgment reported in Bharat Petroleum Corporation Limited v. Chembur Service Station (5 supra) is that for evicting the petitioners from the shops of the Corporation, provisions of Public Premises (Eviction of Unauthorised Occupants) Act, 1971 have to be invoked. A perusal of the said judgment of the Division Bench discloses that the licensor, which is a public sector undertaking, after issuing notice to the licensee and considering its explanation, terminated the licence due to breach of contract. Licensee approached the civil court and obtained the orders of status quo from dispossessing from the premises of the licensor. High Court declined to set aside the order of status and held that the licensor cannot remove respondent by force and has to follow proper procedure i.e., under Public Premises Act. In the Division Bench, one of the learned judges (Raveendran, J) while setting aside the order of status quo, held that it will be wholly unreasonable to require licensor to sue licensee for "possession" of premises. Another learned judge (Gokhale, J) disagreeing with the view expressed by the other judge, upheld the order of the High Court. Therefore, in the light of disagreement at the Bench, the matter was referred to Larger Bench. The facts of the present case and the facts before the Apex Court are quite different. The facts in the judgment of the Apex Court disclose that there

was termination of license after due notice, as there was breach of contract. In the present case, the lease period expired and therefore, the allottees were directed to vacate by the impugned notices.

15. For the foregoing reasons, I do not find any merit in the writ petitions and they are dismissed. However, the petitioners are granted three months time from today for vacating the premises in question. No costs.

AVS

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[\[1\]](#) (1989)2 SCC 505

[\[2\]](#) (2002)3 SCC 137

[\[3\]](#) (2004)1 SCC 769

[\[4\]](#) 2003(5) ALD 249

[\[5\]](#) (2011)3 SCC 710

[\[6\]](#) (1986)3 SCC 391