

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF FEBRUARY 2020

BEFORE

THE HON'BLE MR. JUSTICE H.T.NARENDRA PRASAD

W.P.No.2115 OF 2020(APMC)

BETWEEN:

Sri.S.Ramesh,
S/o S. Siddaramappa,
Aged about 40 years,
Managing Partner
M/s Revanasiddeshwara Trading Co,
RMC Yard, A-Block,
Challakere-577 522,
Chitradurga District. ... Petitioner

(By Sri. M.S.Nagaraj, Advocate)

AND:

1. The Director,
Directorate of Agricultural Produce &
Marketing Department,
No.16, 2nd Raj Bhavan Road,
Bengaluru-560 001.
2. The Secretary,
Agricultural Produce Marketing Committee,
Challakere-577 522,
Chitradurga District. ... Respondents

(By Smt. Shilpa S Gogi, HCGP for R1:
Sri. T.Swaroop, Advocate for R2)

This writ petition is filed under Articles 226 & 227 of the Constitution of India praying to quash the forfeiture notice issued by the R2, dated:03.12.2019 vide Annexure-H and consequently direct the R2 to extend the time to enable the petitioner to complete the construction in the allotted site, bearing No.L-105, in the premises of APMC Yard, Challakere.

This writ petition, coming on for preliminary hearing in 'B' group, this day, the Court, made the following:

ORDER

In this petition, the petitioner has sought the following reliefs:

"i) Issue writ of certiorari quash the forfeiture notice issued by the 2nd respondent vide No.APMC/C/1149/2019-20, dated 03.12.2019 vide Annexure-H.

ii) Consequently issue writ of mandamus or any other writ or direction, directing the respondent No.2 to extend the time, enable the petitioner to complete the construction in the allotted site, bearing No.L-105, in the premises of APMC Yard, Challakere.

iii) Pass any other writ or direction which may deem fit to grant under the facts and circumstances of the above in the interest of justice and equity."

2. The brief facts of the case are that the petitioner is the managing partner of M/s.Revanasiddeshwara Trading and doing Agricultural Produce in the premises of APMC Yard, Challakere. Petitioner is the licensed trader for the notified agricultural produce and he is carrying on trade since from several years. The petitioner filed a representation for allotment of a site. Pursuant to the representation, the respondent has allotted a site bearing No.L-105 by order dated 14.07.2014. The second respondent has executed a lease-cum-sale agreement in respect of the said site on 30.01.2015 as per Annexure-A. As per condition No.3, the petitioner has to construct the building within one year from the date of lease-cum-sale agreement. The petitioner has submitted the building plan and obtained approval as per order dated 28.10.2015 vide Annexure-B. Since there is a drought in Chitradurga District, because of some financial constraints, petitioner was unable to construct the building within one year as per the condition No.3 of the lease-cum-sale agreement. Hence, he sought for extension of time. Pursuant to the said request the respondent by notice dated 05.01.2018 vide Annexure-E has extended further six months time for completion

of the construction work. Since the petitioner has not completed the construction even in the extended period, the respondent issued a notice on 08.07.2019 vide Annexure-E for forfeiture of the site allotted to the petitioner. Pursuant to that, petitioner gave a reply on 23.07.2019 vide Annexure-F. Thereafter the respondent has issued the impugned notice dated 03.12.2019 vide Annexure-H forfeiting the site allotted in favour of the petitioner on the ground that the Managing Committee has passed a resolution on 11.10.2019. Being aggrieved by the same, petitioner is before this Court.

3. Sri M.S.Nagaraj, learned counsel appearing for the petitioner has contended that immediately after the site has been allotted and possession has been handed over to the petitioner he has obtained the approval of the building plan for the purpose of construction of the building. Since there is a drought in that district and there is some financial constraint he was unable to complete the construction within the extended period. The respondent has issue a show-cause notice on 08.07.2019 vide Annexure-E. Pursuant to that, the petitioner

has given a detailed reply vide Annexure-E dated 23.07.2019. Without considering the reply submitted by the petitioner, the impugned order vide Annexure-H is passed. The same is contrary to Rule 20 of the Karnataka Agricultural Produce Marketing (Regulation of Allotment of Property in Market Yards) Rules, 2004 (for short, 'the said Rules') and the impugned order Annexure-H is passed without application of mind. In addition to that he submitted that in similar circumstances, this Court in W.P.No.40225/2014 disposed of on 15.11.2016 has extended further period of six months finally to complete the construction. Hence, he sought for allowing the writ petition.

4. In reply to the same, Sri T.Swaroop, learned counsel appearing for the second respondent - APMC contended that as per lease-cum-sale agreement - Annexure-A, the petitioner has to complete the construction within one year from the date of the lease. Pursuant to the request made by the petitioner, respondent has once extended six months time on 05.01.2018 vide Annexure-R6. In spite of that, he has not completed the construction. Therefore, the respondent issued a show cause

notice on 08.07.2019. Pursuant to that, the petitioner filed a detailed representation vide Annexure-F. The same has been considered by the Market Committee by a resolution dated 11.10.2019 vide Annexure R9 and hence, the impugned notice has been issued. The impugned order has been communicated by the second respondent vide Annexure-H. The same is passed after following the procedure of law as provided under Rule 20 of the said Rules. Therefore, there is no violation of any provisions of the Act. Hence, he sought for dismissal of the writ petition.

5. Heard learned counsel for the parties and perused the writ papers.

6. It is not in dispute that site bearing No.L-105 was allotted in favour of the petitioner by order dated 14.07.2014 and the second respondent has executed lease-cum-sale agreement vide Annexure-A. It is very clear from the condition No.3 mentioned in the lease-cum-sale agreement that the petitioner has to complete the construction of the shop-cum-godown within one year from the date of lease-cum-sale agreement. Since the petitioner has not complied with the

condition, respondent has extended the time for a further period of six months as per Annexure-R6 on 05.01.2018. As per Rule 10(4) of the said Rules, inspite of the extension petitioner has not completed the construction within the extended period. Therefore, the respondent has issued a show cause notice on 08.07.2019 under Rule 20 vide Annexure E. Pursuant to the notice petitioner has given a reply vide Annexure-F dated 23.07.2019. The Market Committee has considered the reply and passed the resolution forfeiting the site which is allotted to the petitioner as per Annexure R9 on 11.10.2019.

7. Be that as it may. The only request made by the petitioner to the notice given by the respondent is that since there is a drought in the District and he is unable to complete the construction, if this Court grants some more time, he will undertake to complete the construction within six months.

8. In view of the above and in view of the order passed by this Court in similar circumstances in W.P.No.40225/2014, without expressing any opinion on the merits of the case, I pass the following order:

(i) The impugned order passed by the second respondent vide Annexure-G is kept in abeyance for a period of six months from today.

(ii) The petitioner shall put up shop-cum-godown within an outer limit of six months from today.

(iii) If the petitioner defaults in adhering to the time schedule stipulated herein above, the impugned order of forfeiture shall stand automatically revived.

With the above observations, the writ petition is disposed of.

**Sd/-
JUDGE**

Cm/-