



IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 31ST DAY OF MAY, 2024

BEFORE

THE HON'BLE MR. JUSTICE R.NATARAJ

WRIT PETITION NO. 226385 OF 2020 (GM-PP)

BETWEEN:

MOHD. SHAFEEQ
S/O SOFILAL BANGI
AGED ABOUT 53 YEARS
OCC: PETTY BUSINESS
R/O JUMMA MASJID,
VIJAYAPURA-586101.

...PETITIONER

(BY SRI. GANESH S. KALBURGI, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
REPRESENTED BY ITS PRINCIPAL SECRETARY
MUNICIPAL ADMINISTRATION, VIKASA SOUDHA,
BENGALURU-560001.
2. DEPUTY COMMISSIONER
VIJAYAPURA-586101.
3. CITY MUNICIPAL CORPORATION VIJAYAPURA
REPRESENTED BY COMMISSIONER-586101.
4. ASSISTANT VICE PRINCIPAL
GOVERNMENT BOYS PRE-UNIVERSITY COLLEGE,
HIGH SCHOOL DIVISION, VIJAYAPURA-586101.

...RESPONDENTS

(BY SRI VEERANAGOUDA MALIPATIL, HCGP
FOR R1, R2 AND R4;
SRI AMRESH S. ROJA, ADVOCATE FOR R3)

Digitally
signed by
RENUKA
Location:
High Court
Of Karnataka



THIS WRIT PETITION IS FILED U/A 226 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE NOTICE/ORDER DATED 03.09.2020 ISSUED BY THE RESPONDENT NO.2 AND RESPONDENT NO.3 IN FILE NO. MA NA PAA VI/KAM.VI/NOTISU/2020-21/766, THE ORIGINAL OF WHICH IS AT ANNEXURE-A,

THIS WRIT PETITION IS COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The petitioner has challenged a notice dated 03.09.2020 issued by the respondent No.3 under Section 4 of the Karnataka Public Premises (Eviction of Unauthorized Occupants) Act, 1974.

2. The petitioner contended that he was a joint owner of the property bearing CTS No.445, M.G.Road, Vijayapura. The respondent No.3 had issued a Master Plan of 2006, which contained a proposal for widening the M.G. road. In order to effect the master plan, respondent No.3 had issued a notice dated 08.09.2014 calling upon him to attend a meeting for implementation of master plan and for proposed widening of the road. The petitioner claims that though compensation was offered, he was not happy and therefore, he filed objection and rejected the offer made by the respondent No.3. The petitioner



thereafter challenged the notice issued by the respondent No.3 before this Court in W.P.Nos.205731-732/2014. The respondent No.3 gave an undertaking that it would not take any steps against the petitioner without following due process of law. However, in absolute violation of the said undertaking respondent No.3 demolished the property belonging to the petitioner. Since the respondent No.3 had taken law into its hands, the petitioner approached this Court in W.P.No.201027/2015. The Deputy Commissioner, entered into a settlement with the petitioner in terms of which, the respondent No.3 had agreed to allot a shop to the petitioner for a term of 60 years and which was subject to renewal from time to time. Following that, a shop was allotted to the petitioner and that the petitioner is carrying out the business in the said shop. The respondent No.3 relying upon certain directions issued by the Division Bench of this Court in CCC Nos.200235-36/2019 caused a notice under Section 4 of the the Karnataka Public Premises (Eviction of Unauthorized Occupants) Act, 1974 informing the petitioner that the perpetual lease granted to him on 01.04.2017 was cancelled.



3. Being aggrieved by the said notice, the petitioner is before this Court.

4. Learned counsel for the petitioner submits that the lease granted to the petitioner was an understanding between the respondent Nos.2 and 3 as well as the petitioner and was outside the scope of Section 174 of the Karnataka Municipal Corporations Act, 1976. He further contends that the petitioner was not a party to the proceedings in CCC Nos.200235-36/2019 and therefore, the lease granted in favour of the petitioner cannot be terminated on the ground that it was in violation of section 174 of Karnataka Municipal Corporations Act, 1976.

5. The learned counsel for the respondent No.3 contended that this Court in CCC Nos.200235-36/2019 was considering a case of non allotment of shops by the respondent No.3 despite a direction issued in W.P.No.200678-679/2019. He submits that the Division Bench of this Court took cognizance of Rule 39 of Karnataka Municipalities (Guidance of Officers, Grant of Copies and Miscellaneous Provisions) Rules, 1966 as well as the judgment of the Hon'ble Apex Court in the



case of **Packraft (India) Pvt. Ltd., Through its Director V.S. Mann vs. U.P.F.C. Through its M.D. R.M. Sethi and others [(1996) 1 SCC 304]** where it was held that

"11. After having noted the contention as advanced by both the sides, no doubt, the affidavit of the Municipal Commissioner would make it clear that the representation of the complainant has been disposed off as per the communication dated 03-09-2019 whereby the representation of the petitioner has been referred to the School Development Monitoring Committee to be disposed off by taking note of the agreement dated 28-02-2006 between the Municipal Authority and the SDMC. Technically that would amount to the satisfaction of the grievance of non-compliance of the consideration as made out in the contempt petition."

6. This Court also noticed that the Deputy Commissioner had held proceedings and had placed a report before the Court. The Division Bench considered the direction issued by the Hon'ble Apex Court and directed the records to be placed before the Principal Secretary, Revenue Department to take note of the report and take appropriate steps to ensure interest in public property is adequately protected.



7. The learned counsel for the respondent No.3 therefore, contended that the question whether the petitioner could be leased a shop perpetually would be considered after the Principal Secretary, Revenue Department takes a decision. He therefore, prays that the consideration of this petition be postponed.

8. I have considered the submissions made by the learned counsel for the petitioner and the learned counsel for the respondent No.3.

9. The fact that the petitioner was joint owner of certain properties that were leased out by the respondent No.3 without following due process of law, is not much in dispute. The fact that the respondent Nos.2 and 3 had entered into a settlement with the petitioner and had consented to allot a shop to the petitioner in lieu of he loosing the rights over his property, is also not in dispute. If that be so, this was a solemn arrangement between the petitioner and the respondent Nos.2 and 3. The respondent No.2, who made a statement before the Court was bound to obtain permission of the State Government in order to enter into a settlement.



However, if that was not done, that cannot be pressed into service against the petitioner to hold that the lease granted to the petitioner was tentative or was subject to any condition or was in violation of any provision of law. The respondent Nos.2 and 3 having allotted the shop to the petitioner and having made a solemn statement that allotment was part of the settlement entered into with the petitioner, they cannot take any course to evict the petitioner. In that view of the matter, the impugned notice issued by the respondent No.3 is without authority of law and hence, the same deserves to be quashed.

10. Consequently, this petition is ***allowed***. The impugned notice dated 03.09.2020 issued by the respondent No.3 is quashed.

**Sd/-
JUDGE**

NJ,PMR
List No.: 1 SI No.: 32