

(2000) 04 AP CK 0055

In the Andhra Pradesh High Court

Case No : Writ Petition No. 2789 of 2000

Darsi Sree Rama Murthy

APPELLANT

Vs

Vijayawada Municipal Corporation and another

RESPONDENT

Date of Decision : 21-04-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Hyderabad Municipal Corporation Act, 1955 — Section 148, 679, 679

Municipal Corporation of Hyderabad (Acquisition and Disposal of Immovable Property)
Rules, 1970 — Rule 4, 5, 6, 8

Citation : (2000) 4 ALD 390 : (2000) 4 ALT 305

Hon'ble Judges : A. Gopal Reddy, J

Bench : Single Bench

Advocate : Mr. Vedula Venkataramana, for the Appellant; Mr. T.S. Venkataramana, SC for Municipal Corporation of Vijayawada and Mr. E. Manohar for Mr. V.S.R. Anjaneyulu, for the Respondent

Judgement

1. The legality and validity of the orders dated 15-2-2000 in Roc No.3693/ 95-A3 of the first respondent-Vijayawada Municipal Corporation, Vijayawada in leasing out an area of about 1500 square Feet in the first floor of western wing of the VHR Complex of the Vijayawada Municipal Corporation, Vijayawada to the second respondent-Managing Partner, Kalanikethan, for its location of show room on payment of Rs.1,05,000-00 towards deposit and also on payment of rent at the rate of Rs.7,075/- per month for a period of three years with an option to extend another period, i.e., after completion of the lease period of three years, on condition of enhancement of 33 1/3% of the existing rent only, are impugned in the present writ petition.

2. The facts, in brief, are that the first respondent-Corporation is the absolute owner of the Commercial Building Complex known as VHR Complex, situated at Governorpeta, Gopal Reddy Road, Vijayawada, Krishna district. In the said commercial complex, the second respondent is a standing lessee of a part of the ground floor. The first floor portion on the western side in the said complex was

occupied by the Family Court, Vijayawada. As the Family Court, Vijayawada was shifted to the Civil Court Campus, the said portion fell vacant. The petitioner submitted a representation dated 14-1-2000 requesting the first respondent-Corporation to lease out the said premises to him on such terms as the Corporation deems fit and proper. The second respondent, who is also a lessee of the first respondent-Corporation, has also made a similar request. The petitioner on 16-2-2000 filed OS No.291 of 2000 on the file of the learned Junior Civil Judge, Vijayawada, Krishna district for a permanent injunction restraining the respondent Corporation from allotting the said premises in favour of third party without following the due procedure and formalities prescribed under law. Along with the suit, petitioner also filed IA No.411 of 2000 seeking an exparte interim injunction restraining the respondent and its officials etc., from allotting or leasing the plaint schedule premises in favour of third party without following the procedure and formalities prescribed under law.

3. Learned Counsel appearing for the first respondent-Corporation, who has taken notice on behalf of the respondent Corporation, represented in the Court below of that on 15-2-2000, the respondent Corporation had leased out the first floor portion on western wing of the complex to the second respondent, that on the said representation, the suit was posted to 21-2-2000. As the prayer in the suit in OS No.291 of 2000 has become infructuous, the petitioner instructed his learned Counsel on record to withdraw the suit and filed this writ petition on 21-2-2000 alleging that while leasing out the premises in question, the Corporation has not considered the request of the petitioner, which was made earlier in point of time. The respondent-Corporation could have conducted an auction amongst the applicants while granting lease of the property in question. It is contended that while granting State Largesse the first respondent must give equal opportunity to all the persons, who are interested in obtaining the same. It is also contended that the decision to lease out the property in question was taken in the Standing Council Resolution dated 10-2-2000. But the agenda for the said meeting dated 10-2-2000 does not disclose the subject relating to lease of first, floor portion in VIIR Complex in favour of the second respondent. The first respondent, in collusion with the second respondent, has anti-dated its favour of granting lease to the second respondent as the petitioner has filed OS No.291 of 2000 on 16-2-2000. Therefore, the first respondent is guilty of malice in granting the lease in favour of the second respondent. There is no justification on the part of the first respondent in ignoring the representation dated 14-1-2000 of the petitioner and granting lease to the second respondent without conducting auction and without enabling the interested persons to compete for the lease. In view of the same, the petitioner filed the writ petition seeking writ of mandamus to declare that the action of the first respondent by its proceedings dated 15-2-2000 in leasing out the first floor portion in VHR Complex, Governorpet, Gopal Reddy Road, Vijayawada, to the second respondent without conducting auction and without giving opportunity to the petitioner and others for grant of lease of the said premises as arbitrary and illegal and consequently

set aside the proceedings dated 15-2-2000 of the first respondent and direct the first respondent-Corporation to consider the representation dated 14-1-2000 of the petitioner to grant lease of the premises in question or in the alternative direct the respondent-Corporation to conduct an auction for grant of lease hold rights of the premises in question and then grant lease to the highest bidder in the auction.

4. In opposition of the same, the first respondent-Corporation filed its counter stating that an extent of 2,800 square feet in the first floor of VHR Commercial Complex in Besant road, Vijayawada, was in occupation of the Family Court, Vijayawada. The said Family Court vacated the demised premises on 24-1-2000, as they got their own building, that while shifting their office from the premises in question, the Family Court, Vijayawada got published a notification informing its new office address to the public. On seeing the publication, the petitioner along with the second respondent and two others made representations to lease out the said premises in their favour without publication issued by the Vijayawada Municipal Corporation. After receiving the applications, the first respondent-Corporation has taken action for selection of the proper candidate among the applicants to lease out the premises in question on a monthly rent to be fixed according to the procedure of the office, which is followed in respect of other complexes belonging to it. Accordingly, the property in question i.e., 1500 square feet was leased out to the second respondent with the approval of Standing Committee in its Resolution No.920 dated 10-2-2000 on payment of Rs. 1,05,000-00 towards deposit, Rs.21,225-00 towards three months rent as advance and Rs.7,075-00 per month as rent. Ailcr allotment, on lease, it is noticed by the first respondent-Corporation that the said portion was beyond 1500 Sq.Ft. and it is upto 2800 Sq. Ft. Therefore, they will take action for revision at a later date. The petitioner has already filed a suit and failed to obtain injunction, which is detrimental to the interest of the respondent-Corporation. To avoid any delay, the case of the second respondent was considered for allotment of the premises in question on lease, without publication in the paper notification, only after following the procedure, the premises in question was given to the second respondent. The first respondent-Corporation also denied the allegation of its collusion with second respondent in allotting the demised premises to the second respondent. As per the procedure going on in the Vijayawada Municipal Corporation was followed strictly, though the subject was not included in the agenda dated 10-2-2000 prepared on 8-2-2000, it was circulated among all members during next meeting along with the decisions taken in the meeting on 10-2-2000 for their information, without hiding anything to the members. It is submitted that the Standing Committee also approved the action of the first respondent-Corporation in leasing out the premises in question and handing over the possession, hence the respondent-Corporation has issued the proceedings on 15-2-2000.

5. The second respondent also filed counter stating that the present writ petition is not maintainable in view of the fact that the petitioner has already filed a suit

and failed to obtain the injunction. Even on the date of filing the suit, the impugned proceedings were issued and the petitioner, having knowledge about the Standing Committee resolution, has not challenged the same and in pursuance of the lease agreement entered into between the first respondent and the second respondent on 17-2-2000, for a period of three years from 17-2-2000 to 16-2-2000, an amount of Rs.1,05,000-00 was deposited and possession of the demised premises was handed over. When the injunction petition was taken up for hearing on 18-02-2000, the second respondent engaged an advocate and filed a memo narrating the above facts and the matter was adjourned to 21-2-2000 to hear the learned Counsel for the first respondent. The petitioner filed present writ petition by suppressing the real facts, while the civil suit is pending on the same facts, which is an abuse of process of law. Therefore, the second respondent prayed to dismiss the writ petition.

6. Learned Counsel for the petitioner Mr. Veditla Venkataramana, contended that the provisions u/s 148 of the Hyderabad Municipal Corporation Act, 1955 (No.II of 1956) (for short, "the Act"), which is made applicable to the Vijayawada Municipal Corporation, governs the leasing transaction. The petitioner filed the suit before the learned Junior Civil Judge, Vijayawada, with a petition to dispense with the suit notice u/s 685 of the Act. As there is no provision for dispensing with the same, the petitioner has instructed his advocate to withdraw the suit and filed the present writ petition. The said fact has been stated in the writ petition. Therefore, the writ petition cannot be thrown out on this ground alone, as the entire action of the first respondent-authorities is contrary to law and this Court, as well as the Apex Court, in catena of decisions held that whenever Government or its instrumentalities wants to dispose of the property either by way of lease or sale, it shall necessarily be by way of open auction and not otherwise. Leasing out of property in favour of the second respondent is illegal and arbitrary. Learned Counsel for the petitioner also contended that under Rule 8 of the Municipal Corporation of Hyderabad (Acquisition and Disposal of Immovable Property) Rules, 1970 (for short "the Rules"), every case of transfer or lease falling under Rules 4,5 and 6, the Commissioner, shall publish a notice of the proposed transfer or lease, giving full particulars of the property to be transferred or leased, the name of the proposed transferee or lessee and the consideration for the transfer or the rent reserved under the lease. The principle of election of the forum by the petitioner does not arise. The very institution of the suit itself is defective and is not maintainable as notice cannot be dispensed with as held by this Court in *M.A. Scyeed v. MCH* 1993 ALT Supp. (1) 740 . Therefore, the present writ petition is maintainable and prayed to set aside the lease granted in favour of the second respondent and direct the first respondent-Corporation authorities to conduct open auction and lease out the demised premises to the highest bidder. Learned Counsel for the petitioner relied on the following decisions:

M/s. Aga Constructions v. The Chief Engineer, MCH and another 1981 (2) ALT 54 .

7. On the other hand, learned Standing Counsel for the Municipal Corporation contended that if the lease is beyond three years, then only it should be by public auction and if it is within three years, the Standing Committee can lease out in negotiation by dispensing with the public action. As the Family Court, Vijayawada vacated the demised premises and to see that there should not be any loss to the Municipal Corporation, immediately leased out the demised premises by increasing the rent at the rate of Rs.3.75 per Sq. Ft. i.e., Rs.0-25 paise more than the rent paid by the previous tenant. Rule 6 of the Rules stipulates that the Commissioner may lease out any Immovable property belonging to the Corporation and it shall not be valid unless the sanction of the Standing Committee has been obtained therefor. Admittedly, in the present case, the Standing Committee also approved the lease. Therefore, there is no arbitrariness or illegality in leasing out the demised premises in favour of the second respondent.

8. Mr. E. Manofiar, learned senior Counsel appearing for the second respondent strenuously urged that the writ petition is liable to be dismissed in limine for the reason that (he petitioner having filed a representation to lease out the property to him, otherwise than by public auction and when it was not leased out to him and leased out to the second respondent, petitioner questioned the action of the first respondent-Corporation with a mala fide intention by the filing the present writ petition. Apart from the same, the petitioner having approached the civil Court and failed to get an injunction order without withdrawing the suit, cannot invoke the jurisdiction of this Court under Article 226 of the Constitution of India. The petitioner has also not pleaded that how the public interest will suffer if the premises in question is leased out without public auction. In the absence of the same, this Court cannot exercise its equitable writ jurisdiction and interfere with matter. According to the learned Counsel for the second respondent that a revision u/s 679 of the Act lies to the Government against any order passed by the Commissioner. u/s 679-A of the Act, the Government also competent to cancel or suspend the resolutions etc., either suo motu or on representation. In view of the same, when alternative remedy is available, the present writ petition is not maintainable. In support of his contention, he relied upon the following decisions:

1. Jai Singh Vs. Union of India and Others, ;and
2. Swetambar Sthanakwasi Jain Samiti and another Vs. The Alleged Committee of Management, Sri R.J.I. College, Agra and others, .

9. Before I deal with the rival contentions, let me have a look at the relevant provisions of the Act and the Rules which govern lease.

Section 148(2) of Act reads as follows:

"(2) With the sanction of the Standing Committee, the Commissioner may dispose of by sale or exchange any moveable property belonging to the Corporation the value of which exceeds rupees twenty five thousand but does not

exceed such sum as may be specified by the Government by notification, from time to time, in each instance, or grant for any term not exceeding three years a lease of any immovable property belonging to the Corporation or a lease or concession of any such right as aforesaid."

Section 148(3) of the Act reads as follows:

"(3)- In cases not covered by subsection (1) or sub-section (2), the Commissioner shall not lease, sell or otherwise dispose of any movable or immovable property belonging to the Corporation without the previous sanction of the Corporation and of the Government".

10. Rule 6 of the Rules envisages the procedure that has to be followed for leasing out the immovable property belonging to the Corporation.

11. Rule 8 of the Rules contemplates that in every case of transfer or lease falling under Rules 4, 5 and 6, the Commissioner, shall publish a notice of the proposed transfer or lease, giving full particulars of the property to be transferred or leased, the name of the proposed transferee or lessee and the consideration for transfer or the rent reserved under the lease, by different modes. Sub-rule (2) of Rule 8 of the Rules prescribes that in every case where such transfer or lease is to be by public auction, a notice with full particulars of the property to be transferred or leased shall be published in the Andhra Pradesh Gazette and also local newspapers circulated within the jurisdiction of the Corporation.

12. The respondent-Corporation also, by the impugned proceedings, leased out the property for a period of three years and with an option to extend another period of three years after completion of lease period, on enhancement of 33 1/3% of the existing rent. Apart from the same, it is admitted by the respondent-Corporation in the counter that under the impugned proceedings, the leased portion was mentioned at 1,500 sq. ft, but in fact the demised premises is upto 2800 sq. ft. What was put up before the Standing Committee by the Commissioner was the proposal for leasing out 1500 sq. ft., at the rate of Rs.3-75 paise per sq. ft., for a monthly rent of Rs.5,400-00 i.e., more than Rs.0-25 paise per sq. ft., paid by the Family Court, for a period of three years and the same was approved by the Standing Committee to lease out 1500 sq. ft. Section 148(3) of the Act clearly puts an embargo on the powers of the Commissioner for leasing out the property without prior sanction of the Corporation and the Government, as the case may be. Unless prior sanction is obtained from the Corporation and the Government, any property belonging to the Corporation cannot be leased out. This sub-section (3) of Section 148 of the Act was introduced by Andhra Pradesh Act 4 of 1993 (w.e.f. 6-11-1992), only with an intention that the public officials and public minded citizens entrusted with the care of "public property" to show exemplary vigilance and they cannot dispose of the matters in a hanky panky manner, which is detrimental to the interest of the local self Governments. The same was amended by Act 3 of 1994

incorporating the words "Incases not covered by sub-section (I) or sub-section (2)". In view of the above provision, it has to be seen whether the Commissioner has acted in bona fide manner to lease out the property to the Second respondent. It is an approved principle that when the actions of the authorities are challenged, what the Court may do is to examine whether appropriate considerations are borne in mind and any irrelevancy included. In appropriate case, the Court may go further, but how much further shall depend on the circumstances of the case.

13. The Apex Court in *Chenchu Rami Reddy and Another Vs. Government of Andhra Pradesh and Others*, , held as follows:

"5. Now what is there to show that the authority which passed the impugned order was even aware of the essential preconditions envisioned by the statute? Nothing. On the other hand, it is clear that if the concerned authority had even stolen a casual glance at the relevant statutory provision it could not have failed to say, what it was bound to say, if it was so satisfied, that the departure from the prescribed mode of selling by public auction was in the interest of the "math"..."

14. The Apex Court in *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, , observed that:

...the activities of the Government had a public element and if it entered into any contract, it must do so fairly without discrimination and without unfair procedure. Whenever the Government dealt with the public, whether by way of giving jobs or entering into contracts or issuing quotas or licenses or granting other forms of largesse, the Government could not act arbitrarily as its sweet will but must act in conformity with standards or norms, without being arbitrary, irrational or irrelevant. If the Government departed from such standard or norm in any particular case or cases its action was liable to be struck down unless it could be shown that the departure was not arbitrary but was based on some valid principle which was not irrational, unreasonable or discriminatory."

15. In *Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another*, , Bhagwati, J., (as he then was) again speaking for the Court reiterated what he had said earlier in *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, , held that:

"The Government, therefore, cannot, for example, give a contract or sell or lease out its property for a consideration less than the highest that can be obtained for it, unless of course there are other considerations which render it reasonable and in public interest to do so. Such considerations may be that some directive principle is sought to be advance or implemented or that the contract or the property is given not with a view to earning revenue but for the purpose of carrying out a welfare scheme for the benefit of a particular group or Section of people deserving it or that the person who has offered a higher consideration is

not otherwise fit to be given the contract or the property".

16. It is further held at Para 14 of the judgment as follows:

"Where any Governmental action fails to satisfy the test of reasonableness and public interest discussed above and is found to be wanting in the quality of reasonableness or lacking in the element of public interest, it would be liable to be struck down as invalid. It must follow as a necessary corollary from this proposition that the Government cannot act in a manner which would benefit a private party at the cost of the State; such an action would be both unreasonable and contrary to public interest. The Government, therefore, cannot, for example, give a contract or sell or lease out its property for a consideration less than the highest that can be obtained for it, unless of course there are other considerations which render it reasonable and in public interest to do so. Such considerations may be that some directive principle is sought to be advanced or implemented or that the contract or the property is given not with a view to earning revenue but for the purpose of carrying out a welfare scheme for the benefit of a particular group or Section of people deserving it or that the person who has offered a higher consideration is not otherwise fit to be given the contract or the property."

17. The Supreme Court in *State of Haryana and Others Vs. Jage Ram and Others*, held that:

"It was not open to the Excise Authorities to pick and choose a few persons only as the recipients of the notice of reauction. There was no explanation as to how they came to be chose and what their status and standing in the trade were to justify the choice".

18. The Apex Court in *Ram and Shyam Company Vs. State of Haryana and Others*, wherein it considered the grant of mining lease by the Slate of Haryana where the offer of the highest bidder was not considered in awarding the contract was challenged as it amounts to denial of equal opportunity in the- matter of distribution of state largess. The same was rejected by a learned single Judge of Punjab and Haryana High Court, which was confirmed by a Division bench. The Supreme Court, after considering elaborately allowed the appeal. In Para 12 of the Judgement it was observed as follows:

"Let us put into focus the clearly demarcated approach that distinguishes the use and disposal of private property and socialist property. Owner of private property may deal with it in any manner he likes without causing injury to any one else. But the socialist or if that word is jarring to some, the community or further the public property has to be dealt with for public purpose and in public interest. The marked difference lies in this that while the owner of private property may have a number of considerations which may permit him to dispose of his property for a song. On. the other hand, disposal of public property partakes the character of a trust in that in its disposal there should be nothing hanky panky and that it must be done at the best price so that larger revenue coming into the cofTers of the

State administration would serve public purpose viz., the welfare State may be able to expand its beneficent activities by the availability of larger funds. This is subject to one important limitation that socialist property may be disposed at a price lower than the market price or even for a token price to achieve some defined constitutionally recognised public purpose, one such being to achieve the goals set out in Part IV of the Constitution. But where disposal is for augmentation of revenue and nothing else, the State is under an obligation to secure the best market price available in a market economy. An owner of private property need not auction it nor is he bound to dispose of it at a current market price. Factors such as personal attachment, or affinity, kinship, empathy, religious sentiment or limiting the choice to whom he may be willing to sell, may permit him to sell the property at a song and without demur. A welfare State as the owner of the public property has no such freedom while disposing of the public property. A welfare State exists for the largest good of the largest number more so when it proclaims to be a socialist State dedicated to eradication of poverty. All its attempt must be to obtain the best available price while disposing of its property because the greater the revenue, the welfare activities will get a fillip and shot in the arm. Financial constrain may weaken the tempo of activities. Such an approach serves the larger public purpose of expanding welfare activities primarily for which the Constitution envisages the setting up of a welfare State".

19. With regard to the maintainability of writ petition in view of alternative remedy available, the Supreme Court at ParaNo.9 of the judgement held as follows:

"...More often, it has been expressly stated that the rule which requires the exhaustion of alternative remedies is a rule of convenience and discretion rather than rule of law. At any rate it does not oust the jurisdiction of the Court. In fact in the very decision relied upon by the High Court in *The State of Uttar Pradesh Vs. Mohammad Nooh*, it is observed "that there is no rule, with regard to *ceriorari* as there is with *mandamus*, that it will lie only where there is no other equally effective remedy,," It should be made specifically clear that where the order complained against is alleged to be illegal or invalid as being contrary to law, a petition at the instance of person adversely affected by it, would lie to the High Court under Article 226 and such a petition cannot be rejected on the ground that an appeal lies to the higher officer or the State Government."

20. The position that emerges from the above discussion is this: A welfare State as the owner of public property has no such freedom while disposing of the public property or leasing out the same. All its attempts must be to augment more revenue out of the said properties to carry on welfare activities. This can be achieved only by putting the properties for public auction. Exception to the same is it can dispose of its properties for any constitutionally recognised public purpose and to achieve the goals set out in Part IV of the Constitution. The power of discretion of Commissioner or Standing Committee in granting lease

must be confined and structured by rational, relevant, non-discriminatory standard or norms and it should not be arbitrary. If it departs from such standards or norms, the action would be liable to be struck down. The power which is vested in the Commissioner to lease out the property otherwise than by open auction with the prior sanction of the Standing Committee u/s 148(2) will be only to lease out the property in exceptional cases as referred above i.e., to encourage small scale industries, to encourage self employment or societies which require concession to advance social objects; but when he wants to lease out the business premises for private individuals it shall be leased out only by way of public auction but not otherwise. It must follow as a necessary corollary that Commissioner/Standing Committee cannot act in a manner which would benefit a private party at the cost of Municipal Corporation. "Ceasers wife should be above suspicion".

21. Admittedly, in the present case, no prior sanction of the Government for leasing out the property was obtained. Apart from the same, the area handed over to the second respondent is 2800 sq. ft., on a monthly rent of Rs.7,075-00, but the leased area was shown as 1500 sq. ft. In the counter, the first respondent-Corporation has fairly admitted that the demised premises is approximately 2800 sq. ft. and the action for revision of the area will be taken later on. This itself shows the non-application of mind by the Commissioner and also the Standing Committee. The Commissioner acted in a hurried manner in leasing out the property in favour of the second respondent and it cannot be said that he acted in a bonafide manner to safe guard the public interest and revenues of the Corporation in recommending to the Standing Committee for approval of the lease in favour of the second respondent. The Standing Committee also without verifying the same blindly approved the same, which is in detrimental to the interest of the Corporation and loss of revenue. Even otherwise what was approved by the Standing Committee is only to lease out 1500 sq. ft., but not the entire 2800 Sq. ft. For the remaining area there is no approval as such from the Standing Committee. As seen from the impugned proceedings, it is also revealed that it provides extension of another period after completion of lease period of three years on enhancement of rent of 33 1/3% of the existing rent. Moreover the lease deed executed on 17-2-2000 prescribes the lease amount will be enhanced by 33 1/3% on every three years in clause No 21. Therefore, it cannot be said that the lease is only for a period of three years without any right of renewal. Once a right of renewal is provided, then it can be safely said that the lease is for more than three years and in such cases not only the previous sanction of the Standing Committee but also the previous sanction of the Government is necessary for such lease.

22. The note file also indicates that on 24-1-2000 a note was put up for taking a decision by the Commissioner before sending the matter to the Standing Committee. It is endorsed on the said note to call 103 and 105 (petitioner and the second respondent) and whichever of two agrees to pay higher rentals will be allotted. But curiously note put up on 27-1 -2000 do not disclose whether the

petitioner and the 2nd respondent were called for negotiations but as the note put up was that second respondent came forward to pay 0.25 paise per sq. feet extra over and above the rent fixed by VCM and the same was put up before the Standing Committee. It is endorsed on the note file that draft put up was approved after issue put up the file for perusal by the Commissioner as the lessee has to pay the payment as mentioned in the resolution. The date below the signature is altered from 17/2 to 15/2 and the seal of the Commissioner's peshi dated 18-2-2000 is rounded off and handwritten as out. But in all the note files the inward and outward date is mentioned but for sending this draft approval the note inward date is mentioned, the inward 18/2 was altered as outward, which shows some suspicion. As the note file do not disclose how leasing out the property to second respondent in dispensing with the auction is beneficial to the Corporation and whether before negotiating with the second respondent the petitioner was also called upon to note his offer. I am of the view that the petitioner suffered an unfair treatment from the Commissioner's office in discharging its administrative function thereby violating the fundamental principles of fair play in action. The second respondent surreptitiously by a secret offer dated 26-1-2000 scored a march over the petitioner. No opportunity was given to the petitioner to find out his offer and whether he agreed to enhance the rent paid by the VMC. In such circumstances, I have no hesitation to hold that the whole exercise of the commissioner in leasing out the property to the second respondent is arbitrary, illegal and violation of fair play in action.

23. Once it is brought to the judicial notice the illegality committed by the official respondent in leasing out the property, the Court cannot be a silent spectator. To safeguard the public property from misuse the Court can interfere and the technicalities should not come in the way to set right the illegality. The petitioner has not suppressed anything in the affidavit and in fact petitioner has stated that he filed the civil suit and instructed his advocate on record to withdraw the same and invoked the jurisdiction of this Court to set right the illegality by filing the writ petition; and he also stated that the prayer in the suit has become infructuous, hence he is filing the writ petition and he has not challenged the impugned order passed in the said suit. Filing of the civil suit by the petitioner whether will come in the way of this Court for invoking the extraordinary jurisdiction, the Court has to see whether the relief claimed in the suit is the same as claimed in the present writ petition. In the suit, the petitioner prayed for the relief of injunction restraining the first respondent Corporation and its officials from allotting the plaint schedule premises in favour of third party, without following the procedure and formalities prescribed under law. When notice was ordered in the IA the second respondent represented about granting of lease in his favour on 17-2-2000. In view of the same, the petitioner invoked the jurisdiction of this Court under Article 226 of the Constitution of India" specifically stating in the affidavit that he has instructed his advocate on record to withdraw the suit as prayer in the suit has become infructuous. Learned Counsel for the petitioner has also pointed out that the suit cannot be proceeded

with and the plaint has to be rejected as the same is barred by provision of law as notice contemplated u/s 685 of the Act was not issued, which is mandatory as held by this Court in *Bansilal v. Special Officer, MCH, Hyderabad and another*, SA No.869/78 dated 30-10-1981) 1981 (2) ALT 59 There is sufficient force in the above submission. Once the petitioner realised the defect of his instituting the suit he instructed his advocate to withdraw the suit and the same was also dismissed as not pressed on 17-03-2000. In view of the same, this Court is not precluded from probing into the matter and proceeding with the case. On the face of record, the Commissioner's office has not properly appraised the Standing Committee about the area which is to be leased out to the second respondent. What was put up before the Standing Committee is only 1500 sq. ft., instead of 2800 sq. feet. In effect there was no approval by Standing Committee for the remaining area of 1300 Sq. feet. The fraud vitiates the whole thing and hence there cannot be any impediment for this Court for invoking the extraordinary equitable jurisdiction to set right the illegality. Equally, the contention put forward by the learned Counsel for the respondent that the petitioner got an alternative remedy under Sections 679 and 679-A of the Act is also not force for the reason that Section 679 of the Act confers revisional jurisdiction on the Government suo motu, but it would not confer any right to the third party to file a revision. Similarly Section 679-A of the Act prescribes that the Government can suo motu or on an application suspends the resolution passed by the municipality. In this case, the decision making process itself is defective and the decision as such is not challenged, but the decision making process is always subject to judicial scrutiny by this Court and if this Court found that there is inherent defect in the decision making process, all these technicalities should not waive with the Court in setting right the things. The writ petition cannot be thrown out on mere technicalities where the public interest is at sufferance. In view of the same, the impugned order is set aside and the first respondent is directed to notify the demised premises to public notice by way of publication and lease out the same by way of public auction after following due procedure contemplated u/s 148 of the Act, and Rules 6 and 8 of the Rules to the highest bidder.

24. Accordingly the writ petition is allowed. No costs.

25. Before parting with this case, this Court is of the opinion that the first respondent failed to safeguard the interest of the Corporation by accepting the proposal of the second respondent to lease out the commercial area in his favour. It also gives a lot of suspicion about the bona fides of the first respondent in selecting the second respondent in leasing out the area, double the area which was in occupation, due to which the Corporation is suffering loss and also depriving of its revenue. Therefore, it is a fit case where the Principal Secretary, Municipal Administration has to take up the matter and conduct an enquiry into the whole affair of leasing out the property to safe guard the interest of the Municipal Corporation and to see that its interest will not be suffered. During the enquiry, if it is found that due to the lapses on the part of the persons who are

responsible for the loss suffered by the Corporation, it is open for the authorities to fix up the responsibility on such officers and also the second respondent for the loss and recover the same in accordance with law.