

**(2019) 02 MP CK 0071**

**In the Madhya Pradesh High Court**

**Case No : Writ Appeal No. 8826 Of 2015**

M/S. Priya Medical Stores

APPELLANT

Vs

State Of Madhya Pradesh & Others

RESPONDENT

**Date of Decision :** 21-02-2019

**Acts Referred:**

**Citation :** (2019) 02 MP CK 0071

**Hon'ble Judges :** Vivek Rusia, J

**Bench :** Single Bench

**Advocate :** Jagdish Baheti, Mayank Purohit

**Final Decision :** Disposed Off

## **Judgement**

1. The petitioner has filed the present petition being aggrieved by order dated 7.5.2015 whereby a direction was issued to vacate the medicine shop and order dated 9.5.2015 whereby drug licence has been cancelled.

2. The petitioner was allotted a shop in the Government Hospital, Ujjain by Redcross Society for sale of medicines. According to the petitioner, it was the highest bidder in the auction sale and the shop was leased out on a payment of monthly rent. The petitioner is regularly depositing the lease-rent with the respondents. The state Government came up with the policy in the name of "Mukhya Mantri Nishulka Dava Vitaran Yojna" in order to provide generic medicines to the patients from the medical shops situated in the premises of all Government Hospitals. In pursuant to the said scheme, the Dy. Director, Food and Medicine Administration, Ujjain issued a show-cause notice to the petitioner and all similarly placed shopkeepers. The petitioner along with others approached this Court by way of various writ petitions. By common order dated 30.9.2013, all the writ petitions were allowed and impugned orders were quashed.

3. Being aggrieved by the aforesaid order, State Government preferred W.A. No.808/2014 only against the order passed by learned Single Judge in W.P. No.10117/2013. By order dated 15.4.2015, the writ appeal was allowed and the

order passed by Writ Court was set aside. Against the said order, the writ petitioners approached the apex Court by way of Special Leave Petitions (SLP). By order dated 14.5.2015, the apex Court granted status quo in favour of the writ petitioners. During pendency of this petition, now by order dated 27.8.2018, Civil Appeal Nos. 8590-8591 of 2018 have been allowed and the impugned order passed by Division Bench of this Court has been set aside.

4. After the order passed by the Division Bench of this Court on 15.4.2015, the Chief Medical & Health Officer, Ujjain issued notice to the petitioner for handing over the vacant possession of the shop in question. Thereafter, a show-cause notice has been issued before cancellation of drug licence of the petitioner. Since the petitioner did not vacate the shop in question, therefore, vide order dated 9.5.2015, his drug licence has been cancelled, hence the present petition before this Court.

5. Shri Jagdish Baheti, learned counsel for the petitioner, submits that the writ petition filed by the present petitioner i.e. W.P. No.10057/2013 was allowed and against which, the State Government did not prefer any writ appeal, therefore, the order passed in favour of the petitioner has attained finality and there was no occasion for petitioner to approach the apex Court. Hence, the respondents have wrongly issued the impugned orders and the same are liable to be set aside.

6. After notice, respondents have filed the return by submitting that notice dated 7.5.2015 was issued in compliance of order dated 15.4.2015 passed in W.A. No.808/2014 whereby the order passed in the writ petitions in favour of writ petitioners were set aside. All the writ petitions filed by the petitioners were allowed by a common order, therefore, as a consequence of it, the petitioner was rightly directed to vacate the shop in question.

7. Shri Mayank Purohit, learned Govt. Advocate appearing for the respondents/ State, submits that now the apex Court has directed for allotment of the shops by way of inviting fresh bid and liberty has been granted the allottee/shop-keepers to participate in it. He has drawn attention of this Court to Para 7 and 8 of the judgment dated 27.8.2018 passed by the apex Court in Civil Appeals and submitted that the writ petition be disposed of in the same terms.

8. In reply to above, Shri Baheti, learned counsel for the petitioner, submits that the case of the present petitioner is on the better footing than the writ petitioners who preferred SLP before the apex Court. In those petitions, the petitioners did not pay the lease-rent, whereas the present petitioner has deposited the lease-rent till December, 2018, therefore, the respondents have wrongly cancelled the lease.

9. The petitioner has not filed copy of the lease by which shop in question was allotted on payment of lease-rent to him. The terms and conditions of the lease-deed are not available before this Court. It is correct that the present petitioner filed W.P. No.10057/2013 against notice dated 1.8.2013. Said writ petition was decided along with other identical writ petitions filed before this Court, by

common order dated 30.9.2013. All the writ petitions were allowed by the said order and thereafter, State Government filed writ appeal against the order passed in W.P. No.10117/2013 and by order dated 15.4.2015, the Division Bench allowed the writ appeal on the ground that the tenancy was only for a period of 11 months and the respondent has not produced any documents to demonstrate that the agreement was subsisting on the date of filing of the writ petition. Accordingly, the order passed in the writ petition was set aside. Para 13 to 15 of the aforesaid judgment of Division Bench are reproduced below :

"13. The respondent is a shop-keeper running a medical shop in the Government Hospital premises. The State Government framed a scheme viz. Sardar Vallabh Bhai Patel Nishulka Aushadhi Vitaran Yojna and by the said scheme the State Government are providing generic medicines free of charge, and, therefore, if the shops are being run in the hospital premises, then, they shall adversely affect the object and motive of the scheme of the Government.

14. The tenancy agreement was only for eleven months only. The respondent has not produced any document to demonstrate that the agreement was subsisting on the date of filing of the writ petition.

15. Thus, we are of the view that the action of the Collector Ujjain directing the respondent to shut down their shops is just and proper by following the due procedure. The impugned order 30/09/2013, passed in W.P. No.10117/2013 is accordingly set aside.

Thereafter, some of the writ petitioners approached the apex Court by way of SLPs. Initially, status quo order was granted in their favour and now, all the SLPs. have been finally decided. The apex Court has held that the shop premises are not unauthorized structures, no steps have been taken for renewal of lease and considering the long passage of time since the lease has expired, the appellants cannot claim an indefeasible right to continue in respect of such consideration and the liberty has been granted to the respondent State to hold an open bid for the shops in question inside the hospital premises. Para 7 and 8 of the aforesaid judgment of apex Court are reproduced below :

"7. The shop premises, as observed above, are not unauthorized structures, but leases have long expired and no steps have been taken by the appellants for renewal of their leases. The rent was Rs.300-400/-. At the time of initial settlement also, it was done with the appellants on the basis of open bid. Considering the long passage of time since the lease has expired, and the appellants cannot claim an indefeasible right to continue irrespective of such considerations, we deem it proper to observe that it shall be open for the respondents to hold an open bid for the shops in question inside the hospital premises. The appellants can also participate in the same. Needless to say that the settlement will have to be made with the highest bidder. The present order cannot be construed as a complete embargo on the respondents with regard to the shop premises for all times to come. Any future eventuality, for justifiable

reasons, will always leave the authority a discretion for closure of the shops for valid and germane reasons.

8. Till such fresh bids are held, the appellants shall not be disturbed but shall continue to pay the enhanced rate of rent in the manner provided for in the agreement with effect from the date of the present order. If there are any arrears of rent, it shall also be deposited at the agreed rate within a period of four weeks. The impugned orders of the High Court are set aside. The appeals are allowed."

10. In view of the above, it is apparent that the apex Court has directed the State Government to hold an open bid for the medicine shops inside the hospital premises. A liberty has been granted to the original allottees i.e. the writ petitioners to participate in the same and also permitted to continue to remain in possession and to pay the enhanced rate of rent till such fresh bids are held. Therefore, in principle, the apex Court has held that leases have expired and no steps have been taken for renewal of the lease and fresh bids are required to be called for allotment of shops in question.

11. In view of the above, this writ petition is also disposed of and the respondents are directed to hold an open bid for allotment of the shop in question and the petitioner is permitted to continue in possession and to pay the lease-rent at the enhanced rate till fresh bids are held. The petitioner is also free to participate in the bid. Accordingly, order dated 7.5.2015 (Annexure P/1) is quashed.

12. So far as cancellation of licence vide order dated 9.5.2017 is concerned, the same is also liable to be and is hereby quashed because the licence was cancelled only on the ground that the petitioner did not vacate the shop in question despite order dated 15.4.2015 passed in W.A. No.808/2014.

13. Since the said order has been set aside by the apex Court and the petitioner is continuing in possession by virtue of order of this Court dated 28.12.2015, Shri Baheti, learned counsel for the petitioner, submits that the respondents have not cancelled the allotment in favour of the petitioner, therefore, they be directed to pass fresh order in respect of allotment of the shop in question.

14. In view of the order passed by the apex Court, no such direction is required to be issued. All the allotments of shops in Govt. Hospital premises at Ujjain have been cancelled with liberty to hold fresh open bid and the said order is also applicable in the case of present petitioner, hence, the prayer made by learned counsel for the petitioner is declined.

15. With the aforesaid, this petition stands disposed of. No order as to costs.