

(2017) 07 KAR CK 0011
In the Karnataka High Court
Case No : 10532-539 of 2017

SRI. R. GANGARAJU & ORS.

APPELLANT

Vs

THE STATE OF KARNATAKA & ORS.

RESPONDENT

Date of Decision : 04-07-2017

Acts Referred:

[Karnataka Municipalities Act, 1964](#), [Section 72\(2\)](#), [Section 72\(2\)](#) -
Karnataka Municipalities (Delegation of Powers of Government) Rules, 1965, Rule 3

Citation : (2017) 07 KAR CK 0011

Hon'ble Judges : Vineet Kothari

Bench : SINGLE BENCH

Advocate : M.P. SRIKANTH, RAMESH R, A.K. VASANTH

Judgement

1. The prayer made in the present writ petitions is with regard to the renewal of the lease of the shops of the petitioners by the 4th Respondent- Nelamangala Municipality.

2. The contentions raised before this Court in the present case are that the present petitioners were holding their leases for a period of 5 years and upon expiry of the said period of 5 years, they applied to the 4th Respondent- Nelamangala Municipality for renewal of the leases and though the 4th Respondent passed Resolution for extension of such leases in their favour, the State Government refused to approve the same and notices were served upon the present petitioners to the effect that the renewal of the leases cannot be approved, except by way of holding public auction for ascertaining the market value of the lease rentals and therefore, the petitioners may hand over the vacant possession of the shops to the 4th Respondent-Municipality.

3. The Division Bench of this Court in a recent decision rendered on 13.06.2017 in the case at Dharwad Bench in W.A.Nos.3931-45/2017 & Connected matters (Maruthi & Others vs. The Commissioner) dealt with the same controversy and negating the aforesaid contention raised on behalf of the petitioners held as

under:- " 5. Having considered the rival submissions at Bar, we are of the considered opinion that the earlier Circular dated 26.10.2009, Annexure-M came to be superseded by the later Circular dated 14.08.2015. No renewal of these leases of the appellantspetitioners was ever approved by the State Government. Thus, no vested right of renewal existed in favour of the appellants-petitioners, when the respondent- Municipal Council proceeded to serve them the impugned notices under the provisions of the Public Premises Act, 1971. The said Resolution dated 27.08.2014 was not approved by the State Government and the respondent-Municipal Council was directed to proceed further to hold the public auction in terms of the later Circular dated 14.08.2015.

6. We are of the further considered opinion that the right of the present appellants-petitioners to participate in the public auction is nowhere curtailed by the Circular dated 14.08.2015 and the petitioners, like the other members of public can also participate in such public auction for these shops" Lease rights. Without proper challenge being laid to the Circular dated 14.08.2015, we do not find any ground to hold that the said Circular dated 14.08.2015 is invalid, illegal and is not applicable in the facts and circumstances of the present case.

7. The contention of the learned counsel for the appellants-petitioners that the said Circular dated 14.08.2015 cannot be applied retrospectively, since their request for renewal of leases was pending much prior coming into force of the said Circular is misconceived. The representation or request for renewal is something else and the actual renewal of these leases is something else. Without the approval of the State Government, obviously, the renewal of the lease deeds in favour of the appellantspetitioners could not have been made.

8. The provisions of Section 72(2) of the Act, 1964 are not applicable in the present case, as there was no renewal of the leases in favor of the appellants-petitioners for a period less than five years, as contended by the learned counsel for the appellants-petitioners.

9. Holding of the public auction for determining the fair market rent, on the contrary, is the transparent and fair method of determining the proper market value or rent for these shops, which is not open to challenge, muchless by the present appellants-petitioners, whose leases admittedly got expired before approaching this Court. We are not impressed with the argument advanced by the learned counsel appearing for the appellants-petitioners that since after expiry of the lease period, they have already over stayed in these shops for a period 2-3 years by now and they are also ready and willing to pay the higher rents, the respondent-Municipal Council be directed to consider their cases for renewal of their leases, even at this stage. No such mandamus direction contrary to the Circular dated 14.08.2015 can be given by the Court. The appellants-petitioners have not even chosen to lay a challenge to the said Circular dated 14.08.2015 and except the contention that the said Circular dated 14.08.2015 is not applicable to their cases, nothing beyond that has been argued before the Court.

10. In view of the above, we are satisfied that the learned Single Judge was justified in refusing to grant the relief sought by the present appellants-petitioners and there is no merit in the above writ appeals and same deserve to be dismissed.

11. Accordingly, the above writ appeals are dismissed. No order as to costs".

4. The learned counsel for the petitioners has raised an additional submission before this Court that the petitioners by way of seeking amendment to the writ petitions also seeking to challenge the communication of September, 2015 issued by the Under Secretary, Department of Urban Department (no specific date is mentioned therein) that the powers of allotment of Situation No.3 specified in the Government Circular dated 14.08.2015 shall be conferred on the Deputy Commissioner of the concerned District. He submitted that such powers cannot be delegated to the Deputy Commissioner of the District, since in accordance with Rule-3 of the Karnataka Municipalities (Delegation of Powers of Government) Rules, 1965, the powers under Section 72(2) in the said Schedule may be delegated to the Commissioner of the concerned municipality only.

5. This argument raised by the learned counsel for the petitioners is of little help to the present petitioners, since the impugned communication namely, Notices to the petitioners dated 19.01.2017 Annexure-B series are given by the Chief Officer of the Nelamangala Municipality and it refers only to a communication dated 19.01.2015 of the Deputy Commissioner. There is no exercise of powers under Section 72(2) of the Karnataka Municipalities Act, 1964, which deals with the "Competency of municipal council to lease, sell and contract" and sub-Section(2) of Section 72 provides that no free grant of immovable property shall be valid unless the previous sanction of the Government is obtained in the case where the lease is for a term exceeding 5 years and sale of immovable property exceeding value of Twenty five thousand rupees or more is involved.

6. The present is not the case, where the Deputy Commissioner of the District is invoking the powers under Section 72(2) of the Act, 1964, delegated or otherwise. The impugned communication by the Chief Officer, Nelamangala Municipality is only to give effect to the policy decision taken by the State Government in the Circular dated 14.08.2015 which is neither under challenge nor as held by this Court in the aforesaid decision, can be validly assailed, as the same is the best mode to introduce more transparency and fairness in the system of ascertaining the present market value of the rentals. It has been observed in that judgment also that the present petitioners/existing lessees are also equally entitled to participate in such public auction and therefore, their right of being considered or participation has not been curtailed by the respondent- State.

7. Consequently, the additional argument of the learned counsel for the petitioners is also liable to be turned down and the same is accordingly rejected.

8. The present writ petitions are therefore disposed of in the same terms. No

costs.