

THE HON'BLE SRI JUSTICE C.V.BHASKAR REDDY

WRIT PETITION Nos.30777, 30799, 30841, 30851 & 36413 of 2022

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CONTEMPT CASE Nos.1434, 1436 & 1439 of 2022

COMMON ORDER:

All these writ petitions and contempt cases have been heard together and are being disposed of by this common order.

2. Writ petition Nos.30777, 30799, 30841, 30851 and 36413 of 2022 have been filed by the respective writ petitioners praying this Hon'ble Court to declare the high-handed action of respondent No.2 in the writ petitions in insisting to vacate the subject shops/mulgies of DCMS Complex, Huzurabad without issuing any notice to them as arbitrary, illegal, violative of principles of natural justice and violative of Articles 14, 19(1)(g) and 21 of the Constitution of India and to consequently direct respondent Nos.1 and 2 in the writ petitions to continue them as tenants of the respective subject shops/mulgies extending the period of lease.

3. This Court, vide interim orders dated 28.07.2022 in W.P.Nos.30777, 30799, 30841 and 30851 of 2022 and dated 21.09.2022 in W.P.No.36413 of 2022, directed respondent Nos.1 and 2 in the writ petitions not to take any coercive steps against the writ petitioners. Seeking to vacate the said interim orders, vacate stay petitions have been filed by the respondents in the respective writ petitions and pending adjudication of the said vacate stay petitions, respondent Nos.1 and 2 have invited applications from the prospective lessees for granting lease in respect of the subject shops/mulgies and the prospective lessees filed implead petitions and got themselves impleaded as respondent No.3 in the respective writ petitions.

4. Alleging violation of the common interim order dated 28.07.2022 passed by this Court in W.P.Nos.30799, 30777 and 30841 of 2022, which has been subsequently extended by order dated 01.08.2022, Contempt Case Nos.1434, 1436 and 1439 of 2022 have been filed.

5. It is the case of the petitioners that respondent No.2/the District Cooperative Marketing Society Limited is registered under the provisions of the Cooperative Societies Act, 1964 (for short "the Act") and the Rules made thereunder and respondent No.1/District Cooperative Officer is the governing authority of all the affairs of respondent No.2. It is the further case of the petitioners that respondent No.2/Society has constructed a commercial complex, namely "DCMS Complex" in Huzurabad Town and Mandal, Karimnagar District, and offered the shops/mulgies constructed in the said complex for general public on leasehold basis. All the petitioners herein have entered into Lease/Rental Agreements on 01.07.2020 for respective shops/mulgies on a mutually agreed monthly rent of Rs.4,000/-, Rs.6,000/-, Rs.3,500/-, Rs.6,000/- and Rs.4,000/- respectively. As per the terms and conditions mentioned in the Lease/Rental Agreements, the lease period is from 01.07.2020 to 30.06.2022 i.e., for a period of two years.

6. Mr. S. Lakshmikanth, learned counsel for the petitioners, has contended that the petitioners have not violated any terms and conditions of Lease/Rental Agreements and in fact they have paid advance rent also. He further submits that since there is no clause for further renewal of lease period in the Lease/Rental Agreements, taking advantage of the same, respondent Nos.1 and 2 are trying to evict the petitioners without issuing any notice or following the procedure prescribed by law, as such the said

action on the part of respondent Nos.1 and 2 is illegal, arbitrary and unconstitutional. Learned counsel contends that respondent No.2/Society is a creature of Statute and is totally governed by the provisions of the Act and the Rules made thereunder, which is amenable to jurisdiction of this Court under Article 226 of the Constitution of India. He further submits that since respondent No.2/Society is discharging public duties, it falls under the definition of "State" under Article 12 of the Constitution of India and therefore, the writ petitions as filed against the Society even for enforcement of civil rights are maintainable and entreaties this Court to grant the reliefs as prayed in the writ petitions.

7. Learned Government Pleader for Cooperation has submitted that since the petitioners have entered into Lease/Rental Agreements for the respective subject shops/mulgies, which are only valid for a period of two years i.e., from 01.07.2020 to 30.06.2022, after expiry of the period of lease, they are supposed to vacate and handover the peaceful possession of the subject shops/mulgies, but instead the petitioners on one pretext or the other are trying to continue occupying the same by paying the measly rents. He further submits that in fact the property owned by respondent No.2/Society is a State largesse and every citizen has got right to participate in auction for leasehold rights of the shops/mulgies and there is lot of demand from unemployed youth to establish business in the vicinity of Huzurabad, which is urban town. Learned Government Pleader contends that the petitioners, being the lease holders/agreement holders are entitled to continue in the lease premises, as long as the lease period is valid and after expiry of the lease period, they are not entitled to continue in the leased premises, as

such continuation of the petitioners in the subject premises even after expiry of lease period amounts to unauthorized occupation and they are not only liable for eviction but also liable for initiation of criminal action. Learned Government Pleader also submits that this Court by way of interim order has only directed the official respondents not to take coercive steps against the petitioners, but there is no prohibition to put the subject shops/mulgies to allot the same to the prospective lessees. In fact, soon after expiry of lease period, the petitioners were informed to enter into new lease agreements, but they have not entered into any new lease agreements nor deposited the requisite amount to continue the lease and petitioners have voluntarily vacated and handed over the premises. In such circumstances, respondent No.2/Society has invited applications from the prospective lessees and in terms of the same they were granted lease which is valid from 01.07.2022 to 30.06.2027 and therefore, the cause in the writ petitions does not survive and the writ petitions are liable to be dismissed in *limine*.

8. Admittedly, the petitioners entered into Lease/Rental Agreements with respondent No.2 in respect of the subject shops/mulgies on 01.07.2020. As per Clause (1) of the lease conditions, the lease is valid for a period of two years i.e., from 01.07.2020 to 30.06.2022. There is no clause or condition for extension of lease either by mutual consent or at the option of the parties. A careful examination of the Lease/Rental Agreements would disclose that the petitioners have to vacate the subject premises after completion of the lease period in terms of the lease.

9. It is settled principle that leases are governed strictly in accordance with the conditions of lease and as such the lease made by respondent No.2 is to take effect according to their tenor. All provisions, restrictions, conditions and limitations contained in any such creation or conferment shall be valid and take effect according to their tenor. In the absence of renewal clause, the right of renewal/option of renewal shall be exercised if so desired by respondent No.2, but a mere desire in the context may not be enough and there should be an element of need for renewing the lease.

10. In these cases, the lease expired on 30.06.2022, whereas the writ petitions came to be filed on 25.07.2022. This itself shows that the desire of respondent No.2 is not in favour of the petitioners for further extension of the lease. It is the case of respondent No.2 that the society which is registered under the provisions of the Act is not discharging any statutory functions and the same is functioning strictly in accordance with the byelaws of the society. Therefore, the said society is not amenable to the jurisdiction of this Court under Article 226 of the Constitution of India, as no fundamental right of the petitioners is violated. Moreover, the relationship between the petitioners and respondent No.2 is lessee and lessor and the matter has to be decided on an agreement between the parties and no mandamus can be issued in this regard.

11. In the instant case, there do not exist any complicated disputed questions of fact precluding this Court from exercising its jurisdiction under Article 226 of the Constitution of India. It is the admitted case of the petitioners that they have entered into lease in respect of the subject

shops/mulgies with respondent No.2 by executing Lease/Rental Agreements on 01.07.2020 for a period of two years with effect from 01.07.2020 to 30.06.2022 on the agreed monthly rent. After expiry of the said lease period, when respondent Nos.1 and 2 have not expressed their desire of having lease extended on mutual agreeable terms for further period, the occupation of the premises by the tenant amounts to tenant at sufferance. Admittedly, as on the date of filing of the writ petitions, there was no lease either subsisting or existing in favour of the petitioners and the petitioners were in occupation of the subject premises contrary to the conditions of lease. The petitioners having enjoyed for a period of two years in terms of the conditions of lease, it is their responsibility to vacate the premises and handover the peaceful possession or to seek renewal of the lease agreeing the terms of respondent No.2.

12. Respondent No.2 being the Society registered under the provisions of the Act is discharging the duties for the welfare of its members and the society is answerable to its members for improving its financial conditions by leasing out the properties owned by respondent No.2. Respondent No.2 keeping in view the object of the registration of the society for the welfare and benefit of the members has taken a decision not to renew the lease for further period in favour of the petitioners only with an intention to let out the subject shops/mulgies to the persons who will offer high rent for the benefit of the society. Therefore, there is not fault on the part of respondent Nos.1 and 2 for not considering the renewal of lease as requested by the petitioners for further period.

13. Further, it is settled law that where interpretation of a contract arises in relation to immovable property and in working such a contract or relief thereof or any other fallout thereto may have the effect of giving rise to an action of civil nature or for claiming damages, the only appropriate remedy would be to institute a civil suit. The petitioners instead of invoking the jurisdiction of the Civil Court questioning their eviction have approached this Court under Article 226 of the Constitution of India and being violators of the terms and conditions of the lease are seeking a relief for extension of the lease contrary to the conditions of the lease agreements.

14. This Court while exercising the equitable jurisdiction under Article 226 of the Constitution of India generally may not come to the rescue of the violators of law and precisely in these cases the writ petitioners have approached this Court seeking a direction for issuance of mandamus directing respondent Nos.1 and 2 to renew the lease period under Article 226 of the Constitution of India. Further, the contention of the petitioners that they have not voluntarily vacated the premises and respondent Nos.1 and 2 have taken coercive steps for eviction from the subject shops/mulgies is a disputed question, since as per the contention of respondents No.3 in the writ petitions, they have submitted applications for allotment of respective shops/mulgies offering high rent and respondent Nos.1 and 2 were agreed for handing over the possession to respondents No.3 in the writ petitions. This shows that there is no coercive action on the part of respondent Nos.1 and 2 for eviction of the petitioners from the schedule premises in occupation. Further, according to the petitioners, they have

been forcibly evicted without following due process of law after expiry of the lease. If the said allegation of the petitioners had been correct, they would have definitely approached the concerned police for registration of a complaint or instituted a suit seeking injunction for protecting their possession. In the absence of adopting these two methods by the petitioners to protect their possession, a presumption can be safely drawn that they have voluntarily handed over the possession to the respondents.

15. Whether the petitioners have been evicted forcibly by adopting coercive methods or they have voluntarily surrendered the possession is a disputed question of fact which cannot be safely decided in favour of either of the parties in the writ jurisdiction. If the facts pleaded before the Court are of such nature, which do not have any complicated questions of fact requiring elaborate investigation of the same, it is settled law that High Court can exercise writ jurisdiction under Article 226 of the Constitution of India. The petitioners having been bound by the terms and conditions of lease were expected to honour and respect them and deliver vacant possession of subject premises on expiry of the lease. As such the petitioners are not entitled for any relief in exercise of writ jurisdiction and the writ petitions are liable to be dismissed.

16. So far as the contempt cases are concerned, they have been filed by the petitioners alleging violation of the common interim order dated 28.07.2022 passed by this Court in W.P.Nos.30799, 30777 and 30841 of 2022, which has been subsequently extended by order dated 01.08.2022,

whereby this Court directed respondents in the writ petitions not to take any coercive steps in dispossessing the petitioners.

17. Admittedly, the petitioners have filed the writ petitions after expiry of the lease. There is no evidence placed on record to show that they are in possession of the subject shops/mulgies as on the date of institution of the writ petitions. It is settled principle of law that always a disputed question of fact requires to be decided after considering the elaborate evidence. Therefore, in the absence of evidence, it cannot be said that respondent Nos.1 and 2 have adopted the procedure to circumvent the orders of this Court. Further respondent No.3 in all the writ petitions filed respective implead petitions stating that they have entered into lease agreements with respondent Nos.1 and 2 for a lease period from 01.07.2022 to 30.06.2027. The petitioners filed the writ petitions after the lease being entered by the impleaded respondents. According to them, the petitioners have vacated the premises and handed over to respondent Nos.1 and 2, who in turn handed over the same to them. According to the statement made in the affidavits filed in support of the implead petitions, even before the institution of the writ petitions by the petitioners, the implead respondents have entered into lease agreements and they were also put in possession.

18. In that view of the matter, this Court is of the view that there is no willful and deliberate violation of the orders passed by this Court on the part of respondent Nos.1 and 2 for subjecting them to the rigmarole of the contempt proceedings under the provisions of the Contempt of Courts Act. It is also settled position of law that public interest always prevails over the

interest of an individual. In the present case, if respondent No.2/Society receives more income from letting out the mulgies/shops, it is in the larger interest of the society members. Therefore, the petitioners are not entitled for any relief either in the writ petitions or in the contempt cases.

19. Resultantly, the writ petitions and the contempt cases are dismissed.

As a sequel, miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

C.V.BHASKAR REDDY, J

27.03.2023

Note: LR Copy to be marked.

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