

**Maruthi Vs. The Commissioner**

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**SooperKanoon Citation :** [sooperkanoon.com/1194707](http://sooperkanoon.com/1194707)

**Court :** Karnataka Dharwad

**Decided On :** Jun-13-2017

**Judge :** Dr.Vineet Kothari and Dr.H.B.Prabhakara Sastry

**Appeal No. :** WA 3931/2017

**Appellant :** Maruthi

**Respondent :** The Commissioner

**Judgement :**

R IN THE HIGH COURT OF KARNATAKA DHARWAD BENCH DATED THIS THE13H DAY OF JUNE 2017 PRESENT THE HONBLE DR. JUSTICE VINEET KOTHARI AND THE HONBLE DR. JUSTICE H.B. PRABHAKARA SASTRY WRIT APPEAL Nos.3931-45/2017 C/W WRIT APPEAL Nos.3946-56/2017 & 3962/2017(LB-RES) IN WA Nos.3931-45/2017 BETWEEN:

1. MARUTHI S/O HANAMANT JADHAV AGED ABOUT39YEARS OCC:BUSINESS R/O SHOP NO.1, BASAVA SANKEERNA MEVIN BAZAAR, MUDHOL TQ:MUDHOL, DIST:BAGALKOT-587313
2. VISHWANATH S/O BHIMAPPA HANDRAL AGED ABOUT65YEARS OCC:BUSINESS R/O SHOP NO.2, BASAVA SANKEERNA MEVIN BAZAAR, MUDHOL TQ:MUDHOL, DIST:BAGALKOT-587313

3. MEHBOOBSAB S/O SAYYADSAB SHERPYADE Date of Judgment 13.06.2017 in WA Nos..3931-45/2017 C/W WA Nos.3946-56/2017 & 3962/2017(LB-RES) Maruthi & Others Vs. The Commissioner, City Municipal Council, Mudhol 2 AGED ABOUT67YEARS OCC:BUSINESS R/O SHOP NO.3 BASAVA SANKEERNA MEVIN BAZAAR, MUDHOL TQ:MUDHOL DIST BAGALKOT-587313

4. BABURAO S/O SANTHAPPA JADHAV AGED ABOUT64YEARS OCC:BUSINESS R/O SHOP NO.4 BASAVA SANKEERNA MEVIN BAZAAR, MUDHOL TQ:MUDHOL DIST BAGALKOT-587313

5. SHIVANAND S/O CHANNAMALLAPPA MAHALINGESHWARMATH AGED ABOUT56YEARS OCC:BUSINESS R/O SHOP NO.5 BASAVA SANKEERNA MEVIN BAZAAR, MUDHOL TQ:MUDHOL DIST BAGALKOT-587313

6. SANGRAMSINGH S/O BHIMASINGH RAJPUT AGED ABOUT48YARS OCC:BUSINESS R/O SHOP NO.6 BASAVA SANKEERNA MEVIN BAZAAR, MUDHOL TQ:MUDHOL Date of Judgment 13.06.2017 in WA Nos..3931-45/2017 C/W WA Nos.3946-56/2017 & 3962/2017(LB-RES) Maruthi & Others Vs. The Commissioner, City Municipal Council, Mudhol 3 DIST BAGALKOT-587313

7. SANGAMESH S/O SIDDAYYA HIEMATH AGED ABOUT42YEARS OCC:BUSINESS R/O SHOP NO.7, BASAVA SANKEERNA MEVIN BAZAAR, MUDHOL TQ:MUDHOL DIST:BAGALKOT-587313

8. RACHAPPA V KAREHONNA AGED ABOUT61YEARS OCC:BUSINESS R/O SHOP NO.8, BASAVA SANKEERNA MEVIN BAZAAR, MUDHOL TQ:MUDHOL, DIST:BAGALKOT-587313

9. BHIMAPPA S/O SAIDAPPA GHORPADE AGED ABOUT44YEARS OCC:BUSINESS R/O SHOP NO.9, BASAVA SANKEERNA MEVIN BAZAAR, MUDHOL TQ:MUDHOL, DIST:BAGALKOT-587313

10. PANCHAYYA S/O NANDAYYA PANCHAKATTIMATH AGED ABOUT59YEARS OCC:BUSINESS R/O SHOP NO.10, BASAVA SANKEERNA MEVIN BAZAAR, MUDHOL TQ:MUDHOL, DIST:BAGALKOT-587313

11. RATAN S/O KUPPAJI CHOWDHARY Date of Judgment 13.06.2017 in WA Nos..3931-45/2017 C/W WA Nos.3946-56/2017 & 3962/2017(LB-RES) Maruthi & Others Vs. The Commissioner, City Municipal Council, Mudhol 4 AGED ABOUT45YEARS OCC:BUSINESS R/O SHOP NO.11, BASAVA SANKEERNA MEVIN BAZAAR, MUDHOL TQ:MUDHOL, DIST:BAGALKOT-587313

12. DANESH S/O IRAPPA TADASLUR AGED ABOUT46YEARS OCC:BUSINESS R/O SHOP NO.12, BASAVA SANKEERNA MEVIN BAZAAR, MUDHOL TQ:MUDHOL, DIST:BAGALKOT-587313

13. SHANTAWWA W/O THOTANAGOUD BILEBAL AGED ABOUT45YEARS OCC:BUSINESS R/O SHOP NO.13, BASAVA SANKEERNA MEVIN BAZAAR, MUDHOL TQ:MUDHOL, DIST:BAGALKOT-587313

14. MALLAPPA S/O MAGEPPA MASARADI AGED ABOUT65YEARS OCC:BUSINESS R/O SHOP NO.14, BASAVA SANKEERNA MEVIN BAZAAR, MUDHOL TQ:MUDHOL, DIST:BAGALKOT-587313

15. KEVALRAM S/O SAVALRAM CHOWDHARY @ SOLANKI AGED ABOUT37YEARS OCC:BUSINESS R/O SHOP NO.15, BASAVA SANKEERNA MEVIN BAZAAR, MUDHOL Date of Judgment 13.06.2017 in WA Nos..3931-45/2017 C/W WA Nos.3946-56/2017 & 3962/2017(LB-RES) Maruthi & Others Vs. The Commissioner, City Municipal Council, Mudhol 5 TQ:MUDHOL, DIST:BAGALKOT-587313 ... APPELLANTS (BY SRI. GIRISH A YADAWAD, ADV.) AND:

1. THE COMMISSIONER CITY MUNICIPAL COUNCIL BUS STAND ROAD, MUDHOL TQ:MUDHOL DIST:BAGALKOT-587313 (BY SRI. R.K. KULKARNI, ADV.) ...RESPONDENT THESE WRIT APPEALS FILED U/S4OF THE KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE

ORDER

PASSED IN THE WRIT PETITION10480- 104814/2016 DATED74/17. IN WA Nos.3946-56/2017 & 3962/2017 BETWEEN:

1. RAVI S/O SADASHIV GAVALI AGE:

40. YEARS, OCC: BUSINESS, R/O SHOP NO.1, NEW CHAVADI BUILDING, GANDHI CIRCLE, MUDHOL, TQ: MUDHOL, DIST: BAGALKOT58731 2. RAMESH S/O KRISHNAJI GODKHINDI AGE:

51. YEARS, Date of Judgment 13.06.2017 in WA Nos..3931-45/2017 C/W WA Nos.3946-56/2017 & 3962/2017(LB-RES) Maruthi & Others Vs. The Commissioner, City Municipal Council, Mudhol 6 OCC: BUSINESS, R/O SHOP NO.2, NEW CHAVADI BUILDING, GANDHI CIRCLE, MUDHOL, TQ: MUDHOL, DIST: BAGALKOT58731 3. NAGARAJ S/O SHATANAPA SABOJI AGE:

41. YEARS, OCC: BUSINESS, R/O SHOP NO.3, NEW CHAVADI BUILDING, GANDHI CIRCLE, MUDHOL, TQ: MUDHOL, DIST: BAGALKOT58731 4. ASHOK S/O GUNDU BORADE AGE:

52. YEARS, OCC: BUSINESS, R/O SHOP NO.4, 1ST FLOOR, NEW CHAVADI BUILDING, GANDHI CIRCLE, MUDHOL, TQ: MUDHOL, DIST: BAGALKOT58731 5. MAHADEV S/O PANDURANG KHANDOBA AGE:

58. YEARS, OCC: BUSINESS, R/O SHOP NO.1, NORTHERN CMC COMPLEX, NEAR OLD TREASURY OFFICE, MUDHOL, TQ: MUDHOL, DIST: BAGALKOT58731 Date of Judgment 13.06.2017 in WA Nos..3931-45/2017 C/W WA Nos.3946-56/2017 & 3962/2017(LB-RES) Maruthi & Others Vs. The Commissioner, City Municipal Council, Mudhol 6. HANAMANT7S/O MURIGEPPA MADIWAL AGE:

69. YEARS, OCC: BUSINESS, R/O SHOP NO.2, NORTHERN CMC COMPLEX, NEAR OLD TREASURY OFFICE, MUDHOL, TQ: MUDHOL, DIST: BAGALKOT58731 7. ARJUN S/O RAMLING TERADAL AGE:

53. YEARS, OCC: BUSINESS, R/O SHOP NO.3, NORTHERN CMC COMPLEX, NEAR OLD TREASURY OFFICE, MUDHOL, TQ: MUDHOL, DIST: BAGALKOT58731 8. ABDULRAJAK S/O HUSSAINSAB ATTAR AGE:

54. YEARS, OCC: BUSINESS, R/O SHOP NO.4, NORTHERN CMC COMPLEX, NEAR OLD TREASURY OFFICE, MUDHOL, TQ: MUDHOL, DIST: BAGALKOT58731 9. NABISAB S/O MAKTUMSAB BUDIHAL AGE:

66. YEARS, OCC: BUSINESS, R/O SHOP NO.1, SOUTHERN CMC COMPLEX, NEAR OLD TREASURY OFFICE, Date of Judgment 13.06.2017 in WA Nos..3931-45/2017 C/W WA Nos.3946-56/2017 & 3962/2017(LB-RES) Maruthi & Others Vs. The Commissioner, City Municipal Council, Mudhol 8 MUDHOL, TQ: MUDHOL, DIST: BAGALKOT58731 10. CHANDRASHEKHAR S/O BHIMAPPA KULALI AGE:

40. YEARS, OCC: BUSINESS, R/O SHOP NO.2, SOUTHERN CMC COMPLEX, NEAR OLD TREASURY OFFICE, MUDHOL, TQ: MUDHOL, DIST: BAGALKOT58731 11. MAULASAB S/O RAJESAB BUDIHAL AGE:

51. YEARS, OCC: BUSINESS, R/O SHOP NO.4, SOUTHERN CMC COMPLEX, NEAR OLD TREASURY OFFICE, MUDHOL, TQ: MUDHOL, DIST: BAGALKOT58731 (BY SRI. GIRISH A YADAWAD, ADV.) AND:

1. THE COMMISSIONER ...APPELLANTS CITY MUNICIPAL COUNCIL, BUS STAND ROAD, MUDHOL, TQ:MUDHOL, DIST BAGALKOT-587 313 ...RESPONDENT (BY SRI.R.K. KULKARNI, ADV.) THESE WRIT APPEALS FILED U/S40F THE KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE Date of Judgment 13.06.2017 in WA Nos..3931-45/2017 C/W WA Nos.3946-56/2017 & 3962/2017(LB-RES) Maruthi & Others Vs. The Commissioner, City Municipal Council, Mudhol 9 THE

ORDER

PASSED IN THE WRIT PETITION10782- 107827/2016 & 107829-107835/2016 DATED74/17. THESE APPEALS COMING ON FOR

ORDER

S THIS DAY, DR. VINEET KOTHARI. J, DELIVERED THE FOLLOWING: C O M M O N

## **JUDGMENT**

Mr. Girish A Yadawad, Adv. for the appellants. Mr.R.K. Kulkarni, Adv. for the respondent.

1. The above writ appeals are directed against the order dated 7.4.2017 passed by the learned Single Judge, disposing of the batch of the WP Nos.107823-827/2016 & WP No.s.107829- 835/2016 C/W WP Nos.104800-814/2016(LB-RES) holding that the respondent-City Municipal Council, Mudhol is entitled to proceed under the provisions of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 against the present appellants- petitioners, who have not handed over the vacant possession of the Municipal Council shops, after the expiry of their respective lease period.

2. The case set-up by the petitioners before the learned Single Judge as well as this Court is that, when under the erstwhile Date of Judgment 13.06.2017 in WA Nos..3931-45/2017 C/W WA Nos.3946-56/2017 & 3962/2017(LB-RES) Maruthi & Others Vs. The Commissioner, City Municipal Council, Mudhol 10 Circular dated 26.10.2009, the respondent-Municipal Council has taken a resolution dated 27.08.2014 vide Annexure-D seeking to renew their respective leases at higher rent and had sent it for approval of the State Government, while the process of approval was pending, the State Government came out with another Circular dated 14.08.2015 vide Annexure-N, taking a policy decision that the new leases would be granted for a period of 12 years, only after determining the market rent of said shops by holding the public auction for respective shops in the municipal markets.

3. The petitioners-appellants have urged that in pursuance of the Resolution passed by the Municipal Council, the respondent-the Commissioner, Municipal Council was bound to renew the said lease deeds of the petitioners-appellants for a period of five years or even less than that which would not require an approval of the State Government in accordance with the Section 72(2) of the Karnataka Municipalities Act, 1964. Having not done so, the petitioners cannot be compelled to go for public auction in terms of the new Circular Dated 14.08.2015. Date of Judgment 13.06.2017 in WA Nos..3931-45/2017 C/W WA Nos.3946-56/2017 & 3962/2017(LB-RES) Maruthi & Others Vs. The Commissioner, City Municipal Council, Mudhol 11 4. The respondent-Municipal Council in their Statement of Objections filed in this Court have categorically stated that despite the proposal of the renewal of these leases in favour of the appellants-petitioners having been

sent to the State Government, the Director of Planning and Urban Development Cell, office of the Deputy Commissioner, Bagalkot vide his letter dated 24.06.2015 had asked the Municipal Council to comply with the provisions of the new Circular dated 14.08.2015 and if such public auction had been held, then send the same for approval by the State Government. The Municipal Council thus took, steps for public auction by first evicting the present appellants-petitioner under the provisions of the Public Premises(Eviction of Unauthorized Occupants) Act, 1971, issuing the notices on 3.5.2017. After such eviction the vacant possession is obtained under the provisions of the said Act of 1971 that they can proceed further by holding public auction in terms of new prevailing Circular dated 14.08.2015. Date of Judgment 13.06.2017 in WA Nos..3931-45/2017 C/W WA Nos.3946-56/2017 & 3962/2017(LB-RES) Maruthi & Others Vs. The Commissioner, City Municipal Council, Mudhol 12 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 appellants-petitioners 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. Date of Judgment 13.06.2017 in WA Nos..3931-45/2017 C/W WA Nos.3946-56/2017 & 3962/2017(LB-RES) Maruthi & Others Vs. The Commissioner, City Municipal Council, Mudhol 13 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 appellants-petitioners 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. Date of Judgment 13.06.2017 in WA Nos..3931-45/2017 C/W WA Nos.3946-56/2017 & 3962/2017(LB-RES) Maruthi & Others Vs. The Commissioner, City Municipal Council, Mudhol 14 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. Date of Judgment 13.06.2017 in WA Nos..3931-45/2017 C/W WA Nos.3946-56/2017 & 3962/2017(LB-RES) Maruthi & Others Vs. The Commissioner, City Municipal Council, Mudhol 15 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. Sd/-  
JUDGE Sd/- JUDGE JTR/-

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