

Arun Kumar Vs. The State Of Karnataka

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Court : Karnataka

Decided On : Oct-25-2021

Judge : M.Nagaprasanna

Appeal No. : WP 18567/2021

Appellant : Arun Kumar

Respondent : The State Of Karnataka

Judgement :

1 IN THE HIGH COURT OF KARNATAKA AT BENGALURU R DATED THIS THE25H DAY OF OCTOBER, 2021 BEFORE THE HON'BLE MR. JUSTICE M. NAGAPRASANNA WRIT PETITION No.18567/2021 (LB - RES) C/W WRIT PETITION No.18968/2021 (LB - RES) WRIT PETITION No.18983/2021 (LB - RES) WRIT PETITION No.18989/2021 (LB - RES) WRIT PETITION No.18960/2021 (LB - RES) WRIT PETITION No.18969/2021 (LB - RES) IN W.P.NO.18567/2021 BETWEEN1 SRI. ARUN KUMAR AGED ABOUT52YEARS S/O SHANTHA GUPTA R/O PETE ARKALGUD ARKALGUD - 573 201.

2. SRI. SYED LIYAKATH S/O ABDUL JABBAR AGED ABOUT38YEARS K E B ROAD PETE ARKALGUD HASSAN DISTRICT - 573 102.

3. SAGEER AHAMAD SRI. NOORULLA KHAN S/O SAGEER AHMAD AGED ABOUT45YEARS K E B ROAD PETE ARKALGUD HASSAN DISTRICT - 573 102. 2

4. SRI. ABDULLA KHAN SINCE DEAD BY LRS AMARULLA KHAN AGED ABOUT 25 YEARS K E B ROAD PETE ARKALGUD HASSAN DISTRICT - 573 102
 5. SRI. DODDANNA S/O MOTAIAH AGED ABOUT 50 YEARS K E B ROAD PETE ARKALGUD HASSAN DISTRICT - 573 102
 6. SRI M R VENKATESHA S/O RAMEGOWDA AGED ABOUT 52 YEARS K E B ROAD PETE ARKALGUD HASSAN DISTRICT - 573 102 ... PETITIONERS [BY SRI.JAYAKUMAR S PATIL, SENIOR ADVOCATE A/W SRI.MOHAN P.S., ADVOCATE (PHYSICAL HEARING)]. AND 1 THE STATE OF KARNATAKA REPRESENTED BY ITS SECRETARY DEPT OF MUNICIPAL ADMINISTRATION VIKASA SOUDHA BANGALORE - 560 001
2. THE DEPUTY COMMISSIONER HASSAN DISTRICT HASSAN - 573 102 3
 3. ARKALGUD TOWN PANCHAYATH ARKALGUD TOWN HASSAN DISTRICT - 573 201 REPRESENTED BY ITS CHIEF OFFICER ... RESPONDENTS [BY SRI.NITHYANANDA K.R., HCGP FOR R1 AND R2 (PHYSICAL HEARING); SRI.H.T.NATARAJ, ADVOCATE FOR R3 (PHYSICAL HEARING)]. THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED AUCTION NOTICE DATED 2009.2021 AT ANNEXURE-E ISSUED BY THE R3 HEREIN. IN W.P.NO.18968/2021 BETWEEN 1 SRI MANJEGOWDA AGED ABOUT 52 YEARS S/O NINGEGOWDA R/O SWEEPERS COLONY ARKALGUD TOWN ARKALGUD 57320
 2. SRI. GOWDEGOWDA AGED ABOUT 62 YEARS S/O KARIGOWDA R/O P. CHAKANAHALLI DODDAMAGGE HOBLI, ARKALGUD TALUK HASSAN DISTRICT 57320
 3. SRI. MANJUNATHA AGED ABOUT 52 YEARS S/O HUCHEGOWDA R/O HENTAGERE ROAD 4 PETE ARKALGUD ARKALGUD 57320
 4. SRI. H.T. LOKESH AGED ABOUT 48 YEARS S/O THIMMEGOWDA R/O HENTAGERE ROAD PETE ARKALGUD ARKALGUD 57320 ... PETITIONERS [BY SRI.JAYAKUMAR S PATIL, SENIOR ADVOCATE A/W SRI.MOHAN P.S.,

ADVOCATE (PHYSICAL HEARING)]. AND1 THE STATE OF KARNATAKA REPRESENTED BY ITS SECRETARY DEPT OF MUNICIPAL ADMINISTRATION VIKASA SOUDHA BANGALORE - 560 001

2. THE DEPUTY COMMISSIONER HASSAN DISTRICT HASSAN - 573 102

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2. BHAVARALAL S/O RAMOJI AGED ABOUT38YEARS R/AT ARKALGUD NARASINGARAYA KRISHNARAYA LAYOUT KOTE, ARKALGUD TOWN HASSAN DISTRICT57320 HASSAN.

3. SRIDHARA S/O SUBBARAYASHETTY AGED ABOUT48YEARS R/AT PETE MAIN ROAD ARKALGUD TOWN HASSAN DISTRICT57320 HASSAN4 M T JAYALAKSHMI W/O A P MOHANKUMAR AGED ABOUT40YEARS R/AT PETE MAIN ROAD ARKALGUD TOWN HASSAN DISTRICT57320 HASSAN65. SMT. SUNITHA W/O ANNAPPA AGED ABOUT38YEARS RA/T CHOLENAHALLI VILLAGE KASABA HOBLI ARKALGUD TALUK HASSAN DISTRICT57320 HASSAN6 A.N. SUBBANNA S/O LATE A P NAGAPPA AGED ABOUT50YEARS R/AT PETE MAINROAD ARKALGUD TOWN HASSAN DISTRICT57320 HASSAN7 VENKATESH S/O RANGAIAH AGED ABOUT48YEARS R/AT HOUSING BOARD ARKALGUD HASSAN DISTRICT57320 HASSAN8 MAQBUL AHAMED S/O CHOTASAB AGED ABOUT58YEARS R/AT MUSLIM ROAD PETE ARKALGUD HASSAN DISTRICT57320 HASSAN9 A G BHASKAR S/O GANGADHARIAH AGED ABOUT35YEARS KEB ROAD, ARKALGUD HASSAN DISTRICT57320 HASSAN710. B C SHEKAR S/O CHANNAPPA SHETTY AGED

ABOUT40YEARS R/AT BASAVANAGUDI ROD ARKALGUD HASSAN DISTRICT57320 HASSAN11 A H RAJANNA S/O HANUMANTHEGOWDA AGED ABOUT50YEARS R/O TELAGAVE ROAD PETE ARKALGUD HASSAN DISTRICT57320 HASSAN12 M R RAMESH S/O RAMEGOWDA AGED ABOUT40YEARS R/O KOTE, ARKALGUD HASSAN DISTRICT57320 HASSAN13 BASAVARAJU M A S/O ANNEGOWDA AGED ABOUT50YEARS LIBRARY ROAD, ARKALGUD HASSAN DISTRICT57320 HASSAN. ... PETITIONERS [BY SRI.JAYAKUMAR S PATIL, SENIOR ADVOCATE A/W SRI.MOHAN P.S., ADVOCATE (PHYSICAL HEARING)]. AND1 THE STATE OF KARNATAKA REPRESENTED BY ITS SECRETARY DEPT OF MUNICIPAL ADMINISTRATION8VIKASA SOUDHA BANGALORE - 560 001

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2. SRI SANNEGOWDA AGED ABOUT45YEARS S/O HONCHEGOWDA R/O HULANGALA VILLAGE AND POST KASABA HOBLI9ARKALGUD TALUK HASSAN DIST57320

3. SRI THIMMEGOWDA AGED ABOUT55YEARS S/O PUTELOWDA PETE MACHAGONAHALLI ARKALGUD POST ARKALGUD TALUK HASSAN DIST57320 ... PETITIONERS [BY SRI.JAYAKUMAR S PATIL, SENIOR ADVOCATE A/W SRI.MOHAN P.S., ADVOCATE (PHYSICAL HEARING)]. AND1 THE STATE OF KARNATAKA REPRESENTED BY ITS SECRETARY DEPT OF MUNICIPAL ADMINISTRATION VIKASA SOUDHA BANGALORE - 560 001

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2. SMT SUSHEELAMMA AGED ABOUT 52 YEARS W/O LATE SRINIVAS K E B ROAD, PETE ARKALGUD HASSAN DISTRICT-573102

3. SMT KAMAKSHAMMA AGED ABOUT 55 YEARS W/O LATE ANNAJI GOWDA HENTAGERE ROAD, ARKALGUD HASSAN DISTRICT-573102 ... PETITIONERS [BY SRI.NAGAI AH., ADVOCATE (PHYSICAL HEARING)]. AND 1 THE STATE OF KARNATAKA DEPARTMENT OF MUNICIPAL ADMINISTRATION VIKASA SOUDHA BANGALORE - 560 001 REPRESENTED BY ITS SECRETARY. 11

2. THE DEPUTY COMMISSIONER HASSAN DISTRICT HASSAN - 573 102 3. ARKALGUD TOWN PANCHAYATH ARKALGUD TOWN HASSAN DISTRICT - 573 201 REPRESENTED BY ITS CHIEF OFFICER/ ADMINISTRATIVE OFFICER. ... RESPONDENTS [BY SRI.NITHYANANDA K.R., HCGP FOR R1 AND R2 (PHYSICAL HEARING); SRI.H.T.NATARAJ, ADVOCATE FOR R3 (PHYSICAL HEARING)]. THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE AUCTION NOTIFICATION THROUGH E-PROCUREMENT DATED 20.09.2021 ISSUED BY THE R3 VIDE ANNEXURE-S AND ETC. IN W.P.NO.18969/2021 BETWEEN 1 SRI PAPANNA @ LAKSHMEGOWDA AGED ABOUT 61 YEARS S/O SANNAPPA, R/O AN. NA. KRU. CIRCLE PETE ARKALGUD ARKALGUD-573201 HASSAN - 573 102 2. SRI NAVAB AGED ABOUT 45 YEARS S/O MOHAMMED GROUSE R/O K E B ROAD PETE

ARKALGUD, ARKALGUD, 12 HASSAN -573102 3. SRI ANNEGOWDA AGED ABOUT55YEARS S/O KULLEGOWDA PETE MACHAGOWDANAHALLI ARKALGUD-573201 HASSAN -573102 4. SMT BHAGYAMMA AGED ABOUT47YEARS W/O SHIVANANJAPPA R/O AA.NA.KRU EXTENSION FORT ARKALGUD, ARKALGUD HASSAN -573102 5. SRI SWAMYGOWDA AGED ABOUT53YEARS S/O KALEGOWDA R/O AA.NA.KRU EXTENSION FORT ARKALGUD, ARKALGUD HASSAN - 573102 6. SRI KRISHNEGOWDA AGED ABOUT55YEARS S/O RANGEGOWDA R/O AA. NA. KRU. EXTENSION FORT ARKALGUD, ARKALGUD HASSAN -573102 7. SRI H S SATHISH KUMAR AGED ABOUT43YEARS S/O SHIVAPPA R/O HENTAGEREKOPPALU PETE ARKALGUD, ARKALGUD HASSAN -573102 8. SRI MUZAHID SAB AGED ABOUT45YEARS S/O AMIR SAB13R/O K E B ROAD PETE ARKALGUD ARKALGUD HASSAN - 573102 9. SRI DHARMEGOWDA AGED ABOUT45YEARS S/O DEVARAJEGOWDA R/O KEB ROAD, PETE ARKALGUD ARKALGUD HASSAN -573102 ... PETITIONERS [BY SRI. NAGAIAH., ADVOCATE (PHYSICAL HEARING)]. AND1 THE STATE OF KARNATAKA DEPARTMENT OF MUNICIPAL ADMINISTRATION VIKASA SOUDHA BANGALORE - 560 001 REPRESENTED BY ITS SECRETARY.

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ORDER

S THIS DAY THE COURT MADE THE FOLLOWING:

ORDER

Petitioners in this batch of petitions, call in question an auction notification issued by the 3rd respondent/Arkalgud Town Panchayat, Arkalgud Town (hereinafter referred to as the Panchayat for short) seeking to auction 61 shops out of 112 shops which are under its control. The notification of auction is issued on 20th September, 2021 seeking to auction lease of shops on 28th, 29th and 30th October, 2021. A consequential direction is also sought by issuance of a writ in the nature of mandamus to consider their representations submitted for extension of lease up to 2024.

2. Heard the learned Senior Counsel Sri Jayakumar S.Patil representing the petitioners in most of the cases and Sri Nagaiah, learned counsel for one of the petitioners, learned 15 Additional Government Advocate representing the State and its authorities and Sri H.T.Nataraj, learned counsel appearing for the Panchayat in all these cases.

3. Brief facts leading to the filing of the present petitions, as borne out from the pleadings, are as follows:- The petitioners claim that they are carrying on business in the shops owned by the 3rd respondent/Panchayat for more than 25 years. Initially the shops were petty shops and thereafter the Panchayat collected advance amounts from the occupants of shops and constructed RCC roofed shops in place of petty shops. After such construction the respective lessees, who were in occupation of petty shops, continued to occupy the constructed shops and carried on their business. The lease that was entered into between the Panchayat and these petitioners and the like came to an end in the year 2012.

4. On the lease coming to an end, options were called from the occupiers of shops for extension of lease. It appears that 16 about 51 occupiers accepted the terms and conditions of lease and 61 did not. The extension of lease was made by the Panchayat on the basis of a circular issued by Government on 26th October 2009 directing that, in terms of Section 72(2) of the Karnataka Municipalities Act, 1964 the lease of properties coming under the control of Panchayats or the Municipalities, as the case would be, can be extended as per the terms and conditions stipulated in the said circular. The benefit of the circular was given to about 51 occupiers and lease was extended for 12 years from 1st April, 2012 by a

resolution of the Panchayat which was approved by the Deputy Commissioner, Hassan on 18th November 2014 and a consequential order extending the lease was also approved by the Deputy Commissioner on 2nd February 2015. Therefore, the occupiers of 51 shops have continued to hold the shops on extended lease based on the strength of a Circular dated 26th October 2009 for another period of 12 years from 1st April, 2012. 17

5. The left out 61 occupiers approached this Court seeking extension of lease and other benefits in several writ petitions. The first of the orders that was passed by this Court was in NAGARAJU AND OTHERS v. STATE OF KARNATAKA AND OTHERS. Identical order was passed in the other writ petitions in H.S. SATHISH KUMAR AND OTHERS v. STATE OF KARNATAKA AND OTHERS¹ -wherein this Court held as follows: 5. These petitions are disposed of with an observation that when the public property is leased to the public, it shall be for a particular period and after the completion of the said period, the petitioners or the persons in occupation of the said property have to vacate the same. It is however directed that after completion of the tenancy or lease period, the same has to be notified and call for applications from the interested persons and may allot on the basis of the eligibility and reservations has to be made to the backward classes. It has been observed from the notice issued that initially, lease was granted to the petitioners in the year 1982. It is directed that the Authorities to issue public Notification calling for prospective persons to make their applications and on receiving the same, the Authorities on the basis of the social justice, the same has to be dealt with. With these observations, petitions stand disposed of. 1 W.P.Nos. 18091 of 2016 and connected cases decided on 27th April 2016 18 This was the identical observation in both the aforesaid writ petitions.

6. When things stood thus, certain communications were issued against the petitioners and the like on 1st July 2019 directing that the petitioners shall vacate the shops on the ground that the auction notice had been issued for holding auction on 9th July, 2019. This was called in question by the petitioners in Writ Petitions Nos.30078-30079 of 2019. A learned single Judge of this Court by order dated 25th July, 2019 quashed the auction notification on the ground that there was no justification for the Panchayat to have issued notification of auction only in

respect of 61 shops and a direction was issued to strictly comply with the Government orders dated 14th August 2015 and 9th October 2015 which directed that a particular mode of auction ought to be undertaken by the Deputy Commissioner. 19

7. This was called in question by the Panchayat in Writ Appeal No.3940 of 2019. A Division Bench of this Court by Judgment dated 9th January, 2020 set aside the order dated 25th July 2019 passed in Writ Petition Nos.30078-30079 of 2019 of the learned single Judge solely on the conduct of the petitioners who had violated the undertaking by not vacating the shops or paying Rs.15,000/- as rent for the shops that were in their occupation. The relevant observation of the Division Bench is as follows: 17. In our considered view, it is not required to delve upon the competence of the issuance of auction notification or as to whether the Deputy Commissioner had delegated the same to the Chief Officer who had issued the notification dated 9.7.2019. It is the conduct of the petitioners which has to be considered. The fact is that, it is these very petitioners who had approached this Court in Writ Petition Nos.18000- 18003 of 2016 connected with Writ Petition Nos.9056- 65 of 2016 and this Court granted them one year time upto 6.4.2017 to vacate the premises in question failing which, the petitioners herein were to pay rent of Rs.15,000/- per month and the same to be deposited in this Court.

18. On a perusal of the records, it is clear that the petitioners have neither paid the rent nor deposited the same before this Court. Having failed to do so, the petitioners acted contrary to the order 20 passed by this Court and chose to challenge the subsequent notices as also the tender notification. It is this act of the petitioners that would disentitle them to the relief that the petitioners have got in the writ petitions in terms of the order passed by the learned Single Judge.

19. Having suffered an order before this Court in Writ Petition Nos.18000-18003 of 2016 connected with Writ Petition Nos.9056-65 of 2016 dated 6.4.2016, which became final, coupled with the fact that the petitioners did not comply with the direction made in the order by paying the rent of Rs.15,000/- per month and depositing the same before this Court, the petitioners could not have filed another writ petition challenging the auction notification and the notices issued to them.

The conduct of the petitioners ought to have been noticed by the learned Single Judge as it was not the plea of the petitioners before the learned Single Judge that the auction notification was without competence. The writ petitions ought to have been dismissed on the ground of conduct of the petitioners and non-compliance of the order passed by this Court in depositing the monthly rent of Rs.15,000/- after the expiry of the time limit fixed in the writ petitions, which was on 6.4.2017. In view of the previous writ petitions initiated by the writ petitioners, they have no right to challenge the consequential proceedings.

20. In the circumstances, we are of the considered view that an appropriate interference is called for without going into the validity of the Government Orders dated 9.10.2015 and 14.8.2015 as to who is the appropriate authority to issue the auction notification. The writ petitions will have to be dismissed only on the ground that the petitioners 21 could not have filed the instant writ petitions having suffered an order of time limit for eviction coupled with the fact of not complying with the directions issued in those writ petitions, all of which had become final. The aforesaid proceedings of this Court permitting the petitioners and the like to continue paying Rs.15,000/- per month or vacating the shops prior to notifying the public auction notification have become final.

8. The petitions now filed are calling in question auction notification issued on 20th September, 2021. The auction notification refers to all the afore-quoted orders and directs auction to be held in respect of 61 shops. This restricted auction notification is called in question on various grounds.

9. The learned Senior Counsel representing the petitioners would submit that if auction is to be held, it has to be held for all the shops and not piecemeal in the manner that it is notified. He would further contend that insofar as petitioners in Writ Petition No.18567 of 2021 are concerned the Panchayat did not 22 prefer any writ appeal against the order passed in the writ petition where the petitioners were parties and, therefore, would submit that setting aside the order of the learned single Judge is not binding on them as no appeal is preferred against the order in their writ petition.

10. On the other hand, the learned counsel appearing for the Panchayat would vehemently refute this submission and contends that the petitioners cannot challenge the auction notification having lost the legal battle before this Court. Insofar as the submission that 51 shops are left out is concerned, the learned counsel would submit that in the year 2012, on the basis of the circular and direction of the Government, occupiers of shops were granted extension of lease. He would admit that such extension of lease was not by way of a public auction, but was only on the strength of a circular, direction of the Government and resolution of the Panchayat and would submit that the extended period of lease of those occupiers would come to an end on 31.03.2024. Therefore, those 51 shops are left out of the notification. He would submit that objections filed in Writ Petition No.18567/2021 be treated as objections filed in all other connected cases and submissions made in aforesaid writ petition also be taken as submissions in all cases.

11. The learned Additional Government Advocate would also toe the lines of the Panchayat in aiding that Government orders were issued in the year 2015, with regard to public auction of the properties and extension of lease was granted in the year 2012 or 2014, as the case would be. Therefore, the circular what prevailed then and the extension of lease, cannot be found fault with or any direction issued by Government at that point in time was valid in law.

12. The submissions of the learned counsel appearing for the Panchayat and the Additional Government Advocate are unacceptable. The petitioners, though, have no right as on today to continue in the shops that they are occupying for having lost all their rights before this Court in the aforesaid writ petition. What cannot be lost sight is that the public property coming under precincts of the Panchayat has been bartered away on the basis of a circular in the year 2012 without public auction. There can be no justification for the Panchayat to have notified the auction only for 61 shops and not the other 51 shops as the extension of lease unilaterally on the strength of a circular without calling for public auction was itself illegal. The illegality cannot be perpetuated by partial auction of the properties controlled by the Panchayat.

13. Auction of properties coming within the precincts of the municipality is regulated by Section 72 of the Karnataka Municipalities Act, 1964 (Act for short) and the Karnataka Municipalities (Guidance of Officers, Grant of Copies and Miscellaneous Provisions) Rules, 1966 (Rules for short). Section 72 of the Act reads as follows: 72. Competency of municipal council to lease, sell and contract.- (1) Subject to the conditions and restrictions contained in sub- sections (2) to (9), and such other restrictions and conditions as the Government may by general or special orders specify, every municipal council shall be competent to lease, sell or otherwise transfer any movable 25 or immovable property which belongs to, or for the purpose of this Act has been acquired by it, and so far as is not inconsistent with the provisions and purposes of this Act, to enter into and perform all such contracts as it may consider necessary or expedient in order to carry into effect the said provisions and purposes. (2) No free grant of immovable property whatever may be its value, no grant for an upset price and no lease for a term exceeding five years, and no sale or other transfer of immovable property exceeding [twenty-five thousand]. rupees in value, shall be valid unless the previous sanction of the Government is obtained. (Emphasis supplied) Rule 39 of the said Rules reads thus: 39. Procedure in respect of lease, sale or auction.-. Save as otherwise provided in the Act or rules, when the Municipal Council proposes to lease, sell or auction any moveable or immoveable property, it shall give notice of such lease, sale or auction by - (i) affixing copies thereof on the notice board of the offices of the Municipal Council; (ii) exhibiting copies thereof in all municipal reading rooms and places considered by the Municipal Council to be conspicuous within the municipality (iii) publication in a daily newspaper having wide circulation within the municipality; (iv) by beat of drum or circulation of notice in the locality. 26 A Division Bench of this Court in the case of MOHAN P SONU V. STATE OF KARNATAKA² considering the purport of Section 72 of the Act has held as follows: 4. Section 72(1) and (2) at the relevant time, read thus: 72. Competency of Municipal Council to lease, sell and contract.- (1) Subject to the conditions and restrictions contained in sub-sections (2) to (9), and such other restrictions and conditions as the Government may by general or special orders specify, every Municipal Council shall be competent to lease, sell or otherwise transfer any movable or immovable property which belongs to, or for the purpose of this Act

has been acquired by it, and so far as is not inconsistent with the provisions and purposes of this Act to enter into and perform all such contracts as it may consider necessary or expedient in order to carry into effect the said provisions and purposes. (2) No free grant of immovable property whatever may be its value, no grant for an upset price and no lease for a term exceeding five years, and no sale or other transfer of immovable property exceeding five thousand rupees in value, shall be valid unless the previous sanction of the Government is obtained. Rule 39 of the said Rules, reads thus: 39. Procedure in respect of lease, sale or auction.-. Save as otherwise provided in the Act or rules, when the Municipal Council proposes to lease, sell or auction any moveable or immoveable property, it shall give notice of such lease, sale or auction by - 2 (ILR 1992 KAR1219 27 (i) affixing copies thereof on the notice board of the offices of the Municipal Council; (ii) exhibiting copies thereof in all municipal reading rooms and places considered by the Municipal Council to be conspicuous within the municipality (iii) publication in a daily newspaper having wide circulation within the municipality; (iv) by beat of drum or circulation of notice in the locality. We find it very difficult to uphold this submission. The object of Rule 39 has been stated in the Judgment of the learned single Judge of this Court in Jaichand v. Town Municipality, Robertsonpet [1976 (1) KLJ30]. We are in agreement with the view there expressed. The object of giving due publicity to the proposal to dispose of rights in respect of a property belonging to a local authority before it is so disposed of is quite obvious. The publication is necessary in order to realise the highest possible income and to prevent persons in-charge of the Municipal Council from disposing of the rights in favour of persons in whom they are interested. Disobedience of the provisions of Rule 39 can not be overlooked. It is a mandatory rule intended to protect public revenue. Matters relating to public revenue cannot be dealt with arbitrarily and in the secrecy of an office. Whatever done in that regard should be done in accordance with law, which, in the instant case, requires due publicity to be given to dispose of the property in the prescribed manner.

5. Section 72 is a further safeguard. Publicity given to the proposal of a Municipal Council to dispose of property rights under Rule 28 39 would attract offers from persons interested in acquiring such rights and these offers would enable the State Government to decide whether the sanction of the State Government that is

contemplated by Section 72 should or should not be given. Rule 39 is, therefore, complementary to Section 72 and both operate together.

6. In this view of the matter, we must hold that the learned single Judge was right in coming to the conclusion that the alienation of the said land in favour of the appellant without following the proper procedure set out by Rule 39 was bad in law. 8. In the result, the Appeal is dismissed. The second respondent (the Municipal Council) may alienate the said land following the procedure set out in the said Rule 39 and the said Section 72. The appellant shall be entitled to retain the building that he has constructed upon the said land for a period of six months from today. In the event that the 2nd respondent decides to alienate the said land as aforesaid and the alienation is made in favour of the appellant, the appellant shall not be bound by the undertaking to demolish the said building. In the event, however, of the appellant not securing a grant in his favour of the said land within a period of six months from today, ???, appellant shall be bound, in accordance with the undertaking given by him to Court and accepted by it, to demolish the said building. (Emphasis supplied) 29 Following the judgment in case of MOHAN P SONU (supra), a Co-ordinate Bench of this Court in the case of CHIEF OFFICER V. GUNASUNDARAMMANI³, has held as follows: 3. In the admitted facts there is no dispute that the immovable properties being shops in a commercial complex constructed by the TMC with financial assistance from the State Financial Institutions, to be refunded with interest were required to be disposed of, more appropriately the privilege to use the said shops by way of leasehold rights, in a manner known to law i.e., under Section 72 of the Karnataka Municipalities Act, 1964, for short Act r/w Rule 39 of the Karnataka Municipalities (Guidance of Officers, Grant of Copies, Miscellaneous Provisions) Rules, 1966, for short Rules, by public auction, since the said provisions relate to competence of Municipal Council to sell, lease or contract or otherwise transfer any immovable property belonging to it and, the procedure in respect thereof by auction and none other.

4. The declaration of law by a Division Bench of this Court in Mohan P. Sonu v. State of Karnataka [1992 (2) KLJ245] in the circumstances applies on all its fours. The Law Lords held that the object of giving due publicity to the proposal to dispose of rights in respect of the property belonging to a local authority before it is

so disposed of is quite obvious requiring publication in order to realise the highest possible income and to prevent persons in-charge of the Municipal Council from disposing of the rights in favour of persons in 3 ILR 2015 KAR2006 30 whom they are interested, and further that Disobedience of the provisions of Rule 39 cannot be overlooked. In addition it was noticed that Section 72 of the Act, and Rule 39 of the Rules were mandatory intended to protect public revenue which cannot be dealt with arbitrarily and in the secrecy of an office. It was further observed that the aforesaid provisions would attract offers from persons interested in acquiring such rights and these offers would enable the State Government to decide whether sanction has to be given or otherwise as contemplated by Section 72 and therefore, Rule 39 and Section 72 are complementary and operate together. (Emphasis Supplied) 5. Admittedly the Chief Officer, is said to be placed under suspension by the Deputy Commissioner after the agreement and compromise were entered into. The agreement dated 14.3.2005 to dispose of public properties more appropriately the leasehold rights for a period of 12 years in favor of the respondents is contrary to the Act and Rules supra. Rights invested/created or extinguished in favour of the respondents in the writ petitions so as to claim privilege for use of the public properties as leasehold rights by way of a private negotiation with the then Chief Officer, other than by way of public auction, is illegal and imperils Rule of law.

6. The agreement dated 14.3.2005 between the Chief Officer of the TMC and the respondents ex facie suffers from illegality and borders around fraud on power. The provisions of the Act and Rules being mandatory, the Chief Officer, TMC had no jurisdiction or authority in 31 law to enter into the agreement, to do away with public premises, in utter disregard to rule of law. Moreover, the allotment of public premises must confine to the mandate of Article 14 of the Constitution of India. Suffice it to observe that the agreement dated 14.3.2005 entered into by the then Chief Officer with the respondents in the petitions provides for illegal allotment founded upon ultra vires and illegal act of the Chief Officer.

7. Sequentially the compromise petition filed in Mediation, following which O.S. 14/2009 was decreed in terms thereof, is perpetuating an illegality, hence the compromise decree being an illegal decree cannot be legalized. The Chief Officer,

TMC and respondents perpetuated a fraud with the full knowledge of the law as applicable in the disposal of public properties, in other words abused judicial process to perpetuate illegality by paving way for a compromise decree. 10. If regard is had to the aforesaid observations and applying the same to the facts of these petitions, undoubtedly it is beyond cavil of doubt that the agreement dated 14.3.2005 Annexure-A entered into between the then Chief Officer of the TMC and respondents suffers from fraud on power and must stand negated. Sequentially it goes without saying that the compromise decree dated 25.11.2011 based upon the terms and conditions of the agreement, is also vitiated and cannot be allowed to stand.

11. Learned Counsel for the respondents 2, 4, 5, 6 and 12 in W.P. 26755/2012, at this juncture, submits that the respondents are legally entitled to possession of the properties since the said agreement states that they are entitled to possession of the 32 commercial complex strictly in accordance with law. This submission of the Learned Counsel requires, evidently consideration on two aspects. In the first place the agreement did not confer and could not have conferred any right to the privilege of use of the commercial complex, being a public premises, by respondents since neither Section 72 of the Act nor Rule 39 of the Rules provide for such an agreement by way of a private negotiation. In the second place since the agreement specifically records that respondents will be put in possession of the public premises, strictly in accordance with law, then respondents could not have enforced the decree, in execution, other than by way of public auction, hence the taking of possession of the public premises by breaking open the locks, is illegal and unsustainable. Looking at it from any angle, respondents could not have claimed a better right than to participate in a public auction of the privilege to use the public premises, by way of lease, and therefore, the submission of the Learned Counsel for the respondents 2, 4, 5, 6 and 12 is a specious plea. If truly the said respondents did want to secure possession of the said public premises strictly in accordance with law, would have had to await issue of a notification for auction of the privilege to use the terms by the petitioner as required by law.

12. Learned Counsel for the respondents submit that in terms of the circular dated 26.10.2009 Annexure-F of the State Government the Town Municipal Council was

permitted to give on lease the public premises to the respondents. If regard is had to the law declared by the Division Bench in Mohanrsonu's case (supra), it is needless to state that the Circular instructions contrary to Section 72 of the Act and Rule 39 of the Rules, are inoperative, 33 illegal and unenforceable. Even otherwise the Circular when not supported by statute has no force of law. Suffice it to notice that in State of Madhya Pradesh v. G.S. Dall And Flour Mills [1992 Supp (1) SCC150: AIR 1991 SC772 , the Apex Court held that executive instructions can supplement a statute, cover areas to which statute does not extend but they cannot run contrary to statutory provisions or whittle down their effect. In Kerala Finance Corporation v. Commissioner of Income Tax [(1994) 4 SCC375: AIR 1994 SC2416 following the opinion of Mukhaiji, J.

at the end of para 42 in State Bank of Travancore v. Commissioner of Income Tax [(1986) 2 SCC11: AIR 1986 SC757 , held that Circulars cannot detract from the Act. The Apex Court held that Circulars of the Board under Section 119 cannot override or detract from the provisions of the Act, is concerned, inasmuch as what Section 119 has empowered is to issue orders, instructions or directions for the proper administration of the Act or for such other purposes specified in sub-Section (2) of the section. Such an order, instruction or direction cannot override the provisions of the Act; that would be destructive of all the known principles of law as the same would really amount to giving power to a delegated authority to even amend the provision of law enacted by Parliament.

13. Thus, the Circular dated 26.10.2009 of the Urban Development Department, of the State, issuing instructions and directions to the Authorities of the local boards, being executive in nature, though, required to be issued in aid of functioning of the Act and with the object that the provisions of the Act are 34 properly administered, however, in the light of the ambiguity noticed supra, has no force of law. That circular insofar as it runs contrary to the Act & Rules, creating rights and obligations of the statute do not supplement the law. (Emphasis supplied) Therefore, on an analysis of the aforesaid provisions of the Act, the judgment of the Division Bench and the order passed by the Co- Ordinate Bench (supra), what can be unmistakably gathered is that public properties coming under the precincts of the Panchayat controlled by them, shall be let out on lease or rent only by way

of public auction. Both the aforesaid judgments, one rendered by the Law Lords and the other by the Co-ordinate Bench, are on consideration of Section 72 and its purport.

14. It is now germane to notice the orders passed by the Division Bench between the very same parties in the subject writ petitions. The Division Bench in the case of NAGARAJU AND OTHERS v. THE STATE OF KARNATAKA⁴ holds as follows:

3. The instant writ petitions were filed seeking to quash the notice dated 06.10.2015 issued by respondent No.3 directing the petitioners to vacate 4 W.A.No.2273/2017 disposed on 26th February 2020³⁵ their respective shops and hand over vacant possession within seven days. The learned Single Judge by placing reliance on the earlier order passed in Writ Petition No.9056 of 2016, disposed off the Writ Petitions by granting one years time to vacate the premises. Among other consequential directions, the said order is sought to be challenged herein.

4. The appellants Counsel submits that the order passed by the learned Single Judge, is erroneous. That they are entitled to continue in the premises.

5. The same is disputed by the respondents Counsel.

6. On hearing learned Counsels, we do not find any merit in this appeal. A series of writ petitions on the same question of law and facts were considered by this Court. By placing reliance on the earlier Government Order, it was held that all public properties require to be auctioned. The question of granting lease for whatever period or for whatever rent is opposed to the Government order. These are consistent orders being passed that wherever, public properties are involved, it has to be auctioned. Therefore, the same is also applicable to the instant case.

7. Under these circumstances, the order dated 06.04.2016 passed in Writ Petition Nos.18000-18003 of 2016 connected with Writ Petition Nos.9056-65 of 2016 by the learned Single Judge, is set aside. The petitioners shall hand over the vacant possession of the premises to the concerned respondents. 36

8. At this stage, the appellants Counsel, on instructions, undertakes to vacate the premises before the public auction takes place. The undertaking is taken on record. (Emphasis supplied) Therefore, the right of the petitioners to continue in the shops is absolutely bleak and they cannot, on any pretext, continue in the shops by paying meagre rent, as is submitted. The occupiers of other 51 shops also have not derived any right to continue in those shops on the strength of an illegal extension of lease again by paying a meagre rent. This is also as submitted. What is at stake by the act of the Panchayat is a huge loss of revenue to the Panchayat itself. When the law was clear way back in the year 1992 that the properties of Municipalities should be parted by way of public auction and several orders having been passed by this Court that all those properties should be leased out by way of public auction, the piecemeal auction by the Panchayat cannot be accepted. The Division Bench in the case of H.S.SATHISH KUMAR AND OTHERS VS. STATE OF KARNATAKA⁵ filed by several occupiers of shops in the Panchayat has held as follows:- 6. On hearing learned Counsels, we do not find any merit in this appeal. A series of writ petitions on the same question of law and facts were considered by this Court. By placing reliance on the earlier Government Order, it was held that all public properties require to be auctioned. The question of granting lease for whatever period or for whatever rent is opposed to the Government order. These are consistent orders being passed that wherever, public properties are involved, it has to be auctioned. Therefore, the same is also applicable to the instant case.

7. Under these circumstances, the order dated 27.04.2016 passed in Writ Petition No.18091 of 2016 and Writ Petition Nos.24126-24130 of 2016 by the learned Single Judge, is set aside. The petitioners shall hand over the vacant possession of the premises to the concerned respondents.

8. At this stage, the appellants Counsel, on instructions, undertakes to vacate the premises before the public auction takes place. The undertaking is taken on record.

9. The petitioners shall vacate the premises when the public auction is announced. It is also made clear that, the petitioners will be permitted to participate in the

auction, only if all the rents due are paid to the respondents. (Emphasis supplied)
5 Writ Appeal No.4812 of 2017 disposed on 26th February 2020 38 The very same Division Bench in Writ Appeal No.1723 of 2017 has reiterated what was held in Writ Appeal No.4812 of 2017. The Division Bench while holding that there was no merit in the appeal, holds that the question of granting lease for whatever period or for whatever rent is opposed to the Government order.

15. These are the consistent orders being passed wherever public properties are involved for leasing out, holding that they have to be auctioned. The question of partial auction defeats the very Act, Rules, judgments of this Court and the Government Orders concerning the Panchayat itself which was issued on 16th October 2015, following a Government order dated 14th August 2015. The Division Bench observes that any extension of lease or any rent that is chargeable would be contrary to the aforesaid Government order. Therefore, the findings in the writ appeal are binding upon the Panchayat.

16. There are number of Municipalities, Town Panchayats and Corporations; they own buildings, shops etc. located in their 39 precincts and controlled by them. There should be uniformity in grant of lease. Such uniformity can come about only when there is transparency in procedure; transparency in procedure can come about only when the properties are put to public auction and every citizen is permitted to participate in the auction. The provisions of the Act and the Rules have to be so construed so as to keep the individuals or a class interest subordinate to larger public interest. Public bodies have a right to put the properties belonging to them in auction and augment their income and deal with it in a manner more advantageous to them. Any direction not to hold auction or to renew the lease will lead to monopoly. If such right is allowed it would amount to nudging the other contenders. A few people cannot hold the entire Town Municipal Council to ransom by getting into properties and dictating their terms. Therefore, it is always necessary and desirable that such rights are auctioned out by way of public auction. 40

17. It is not in dispute that the earlier extension of lease in favour 51 occupiers of shops was not by way of public auction. It was a unilateral act on the part of the

Panchayat to which the public at large did not have opportunity to participate. It is, therefore, contrary to law as laid down by the Division Bench (supra) and violative of Article 14 of the Constitution of India. The situation that has now emerged in the subject lis is that, if the impugned auction is not interfered with, it would amount to upholding partial auction and permitting perpetuation of illegality, which would be contrary to the Act and the Rules. It would also amount to validating the illegal action of the Council in entering/renewing the lease of few of the occupiers without auction of the shops which came about in the year 2012.

18. To bring about such uniformity in the present process, I deem it appropriate to direct the Panchayat to conduct a public auction of all the properties in the precincts of the Panchayat controlled by it and not partial auction as is now sought to be held. In the auction all the present petitioners and the 41 occupiers of shops who are not parties to the lease would become entitled to participate along with general public. The process of auction shall be conducted and the auction purchasers shall be put in possession of the respective shops in terms of the Government Order dated 19th July, 2019. Any other contra indication in the said Government Order contrary to the statute cannot be taken recourse to by the Panchayat.

19. Therefore, the Panchayat shall now issue an auction notification to auction all the 112 shops that are with them and permit participation of all the petitioners and the occupiers of 51 shops in the auction proceedings along with the general public. The shops shall be allotted pursuant to the result of the auction in terms of Government Order dated 19th July 2019.

20. For the aforesaid reasons, I pass the following:

ORDER

(i) Writ Petitions are allowed in part. (ii) The impugned Auction Notification dated 20-09-2021 stands quashed. 42 (iii) The claim of the petitioners for extension of lease upto the year 2024, stands rejected. (iv) A Mandamus is issued to the 3rd respondent / Panchayat to issue fresh auction notification, notifying all the shops under its control and conduct public auction. (v) Successful bidders in the public

auction shall be allotted shops in terms of Government order dated 19th July, 2019. (vi) Till the auction notification is issued and the auction purchasers are put in place, the petitioners or the occupiers of shops in the 51 shops shall not be disturbed from their respective possession of shops. (vii) The present petitioners in all these petitions, if they are in occupation of any of the shops shall continue till a fresh auction notification is issued in terms of direction Nos.(iv) and (v) being complied with, subject to them paying the rent demanded by the Panchayat or the rent that is being paid by the other 51 occupiers of the shops. In the event, the rents are not paid, the benefit of continuance cannot be claimed by those occupiers of the shops. (viii) No equity shall be claimed by the petitioners in these petitions for their continuance, till such auction notification and its completion. Sd/-
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