

IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 6TH DAY OF JUNE, 2024

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PRESENT

THE HON'BLE MR JUSTICE KRISHNA S DIXIT

AND

THE HON'BLE MR JUSTICE RAMACHANDRA D HUDDAR

WA NO.1983 OF 2016 (LA-RES)

BETWEEN:

CITY MUNICIPAL COUNCIL,
CHANNAPATNA, RAMANAGARA DISTRICT
REPRESENTED BY ITS MUNICIPAL COMMISSIONER
CHANNAPATNA,
RAMANAGARA DISTRICT-562 160

...APPELLANT

(BY SRI.A.V.GANGADHARAPPA., ADVOCATE)

AND:

1. SIDDARAMU @ RAMU
S/O PUTTARAMEGOWDA
AGED ABOUT 38 YEARS
RESIDING AT NO.15,
RAJA KEMPEGOWDA EXTENSION
2ND STAGE, APPAGERA MAIN ROAD
CHANNAPATNA TALUK, CANNAPATTANA
RAMANAGARA DISTRICT - 562 160.

2. THE ADMINISTRATION
CITY MUNICIPAL COUNCIL
CHANNAPATNA,
RAMANAGARA DISTRICT.

(CAUSE TITLE AMENDED AS PER ORDER
OF THE COURT DATED 29/11/2016

...RESPONDENTS

(BY SMT.JAYNA KOTHARI, SENIOR COUNSEL FOR
SRI NAVEEN CHANDRA V., ADVOCATE)

THIS WA IS FILED UNDER SECTION 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE ORDER PASSED IN THE WRIT PETITION 32442/2015 DATED 2/6/16.

THIS WA HAVING BEEN HEARD AND RESERVED FOR ORDER, THIS DAY, **KRISHNA S. DIXIT.J.**, PRONOUNCED THE FOLLOWING:

JUDGEMENT

This intra-court Appeal seeks to call in question a learned Single Judge's order whereby, 1st respondent's W.P.No.32442/2015 (LB-RES) having been favoured, relief has been granted to him. The operative portion of the order reads as under:

"19. In these circumstances, writ petition is allowed, quashing the impugned notice - Annexure M dated 8.6.2015 and the respondent Municipal Council is directed to execute the lease deed for a period of twenty years in respect of Shop No.9 in favour of the petitioner commencing from 2010 when the petitioner was put in possession of the said Shop under orders of the Hon'ble Supreme Court vide communication of the Municipal Council - Annexure F dated 8.3.2010. The same may be executed within a period of three months from today. No costs."

2. After service of notice, the 1st respondent having entered appearance through his counsel. The said

respondent having died, his L.Rs are brought on record with leave of the court.

3. BRIEF FACT MATRIX OF THE CASE:

(a) Appellant happens to be a Local Body established under the provisions of the Karnataka Municipalities Act, 1964. It had issued a Notification dated 30.09.2009 calling for applications for the grant of lease of certain shopping premises by way of public auction. The 1st respondent having 80% *locomotor disability*, got an order dated 2.6.2007, whereby, the Commissioner for *Persons with Disabilities* had directed the Appellant-Municipality to allot one shop premises as provided under the erstwhile Persons with Disabilities Act, 1995 read with The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) (Karnataka) Rules, 2003. {Now this is re-enacted as Rights of Persons with Disabilities Act, 2016}. This order was unsuccessfully challenged by the Appellant in W.P.No.10523/2007 and the same came to be dismissed by a learned Single Judge vide order dated 02.06.2007.

(b) In Appellant's W.A.No.886/2008, a Co-ordinate Bench of this Court whilst partly allowing the same, directed the allotment of one shop premises at a concessional rate i.e., with a rebate of 20% of the amount of auction whereby, two others were allotted the adjoining shops. The allottee had filed SLP (C) No.12756/2009 wherein, vide interim order dated 18.12.2009, the appellant – Municipality was directed to deliver the shop in terms of Writ Appeal order within four weeks on a monthly rent of Rs.1,500/-, keeping open the question of deposit & compensation. Later, this SLP came to be disposed vide final order dated 11.11.2011 *inter alia* with a direction that the 1st respondent shall pay Rs.1,500/- as monthly rent and Rs.1,50,000/- as deposit.

(c) In the meanwhile, the Municipal Commissioner vide O.M. dated 8.3.2010 allotted one shop to the 1st respondent in terms of interim order made in SLP subject to its outcome and the same came to be disposed off later as already mentioned above. By notice dated 8.6.2015, the 1st respondent was directed to get a registered lease of

premises for a period of twelve years, failing which his deposit would be forfeited. Petitioner's challenge to the same came to be favoured by the impugned order whereby, the direction *inter alia* has been given for elongating the lease period to twenty years. This is how the present appeal filed by the Municipality is placed at our hands.

4. Having heard the learned counsel for the parties and having perused the Appeal Papers, we are inclined to grant indulgence in the matter for the following reasons:

(a) Admittedly, the 1st respondent was in the occupation of subject premises since 2006, under the earlier arrangement. The Commissioner for Disabilities vide 2007 order had directed allotment of the same as provided under the erstwhile 1995 Act & the 2003 Rules promulgated thereunder. Challenge to the said order was conditionally disposed off in Municipality's Writ Petition, Writ Appeal & later, Special Leave Petition, particulars of which are furnished above. In none of these proceedings, the allotment is mentioned for any specific period,

although the monthly concessional rent & advance deposit were stipulated by the Apex Court. The interim order dated 18.12.2009 granted in SLP No. 12756/2009 reads as under:

"...Interim direction to the first respondent Municipal Council to deliver the shop as per the order of the High Court, within four weeks, on a monthly rent of Rs.1,500/- keeping the question of deposit open as also the question of compensation".

(b) In terms of above order, the allotment was effectuated from 08.03.2010. Therefore, this allotment is not under any public auction but in terms of statutory order made under the provisions of erstwhile 1995 Act on the specific ground of 80% locomotor disability of the allottee. After turning the pages of 1995 Act and the new 2016 Act, as also the Rules promulgated thereunder, we find no indication that allotments of the kind can be treated as being heritable so that the spouse & children can succeed to the so called 'estate' of the deceased allottee. There is nothing even in 2007 order of the Commissioner for Disabilities nor in the Allotment Records to warrant heritability. We hasten to add that if allotment

was of a site, house or the like, obviously that would have been of permanent character subject to all just exceptions and the same could have had heritability. Thus, allotment of the kind comes to an end either by efflux of time or by death of the allottee, whichever is earlier. The 1st respondent – allottee having passed away, that too after the expiry of twelve years of allotment, his widow & children do not have anything to inherit. Therefore, they cannot be called as his “legal representatives”, but may be termed as “legal heirs”, consistent with what the Apex Court observed *in CUSTODIAN OF BRANCHES OF BANCO NATIONAL ULTRAMARINO vs. NALINI BAI NAIQUE, 1989 Supp (2) SCC 275*. Thus in all fairness, they should yield the shop back to Municipality.

(C) The 2015 Act having been repealed, the 2016 Act is at place now. We have turned the pages of this new statute and the Rules promulgated thereunder namely, the Rights of Persons with Disabilities Rules, 2017, too, although their invocability is arguable, the rights having accrued under the erstwhile statute. Even this does not

intend to protect the dependents of *person with disability*, once he breathes his last. It hardly needs to be stated that the courts in the guise of interpretative process cannot expand the scope of a Welfare Legislation of the kind beyond what is intended by the Legislature nor they cannot manhandle the provisions of a statute to rope in others whom its intent & policy content do not admit to the precincts of law. In **GORRIS V. SCOTT, (1874) L.R. 9 Exch. 125**, an English Court was concerned to interpret a statute providing that animals carried on board ship should be kept in pens. The defendant carrier had failed to enclose in pens the plaintiff's sheep which had accordingly, during a storm, been washed overboard. Had they been safely penned, this could not have happened. The plaintiff's suit for breach of statutory duty was rejected by the court on the ground that this statute had been enacted in order to prevent infection spreading from one owner's animals to those of another, and should not therefore be used to provide a remedy for a totally different grievance, not contemplated by the Law Maker. In any event, such allotments other than those having permanent character

are not heritable and therefore, the heirs of deceased allottees cannot seek succession intestate, testamentary or otherwise.

(d) The submission of learned Sr. Advocate Smt. Jayna Kothari appearing for the respondent - allottee that her client stands on par with the auctioneers who had secured lease for a tenure of twenty years and therefore, he too should be given the same tenure, is bit difficult to countenance, and reasons for this are not far to seek: Firstly, no Rule or Ruling supporting such a claim is brought to our notice. Secondly, the argument of parity even otherwise does not avail because of obvious differences obtaining in the mode of allotments namely one is made under a socio-welfare legislation whereas, the others are by normal mode of public auction. These dissimilarities galoring on record repel the contention of equality/parity. An argument to the contrary would amount to treating unequals as equals, and that would offend the doctrine of equality enacted in Article 14 of the Constitution of India. Added, if a lease is granted to others

for a tenure not legally permissible that cannot be a ground for claiming parity in treatment.

(e) There is yet another reason for not countenancing the claim of respondent for the elongation of tenure of allotment for twenty years: Section 72 of 1964 Act *inter alia* provides for leasing of properties belonging to municipalities. Sub-sections (1) & (2) of this provision being relevant, are reproduced:

"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 twenty-five thousand in value, shall be valid unless the previous sanction of the Government is obtained..."(underlining is ours)

The Government vide Circular dated 26.10.2009 has prescribed a maximum period of twelve years for the lease of these properties. Very rightly, no exception has been made in the paragraphs of this Circular for elongating the tenure, so specifically fixed. Obviously, this Circular having been issued in terms of Section 72(2) of the said Act has statutory force and therefore, an allottee of a public premises cannot claim that the tenure of allotment should be longer than beyond twelve years. The learned Single Judge could not have lightly construed such an instrument of law to the prejudice of public interest and conversely to the advantage of a private citizen. No writ can be issued in derogation of law. Writ Courts in the guise of doing justice cannot transcend the barriers of law, to say the least. Obviously, they cannot arrogate to themselves the extraordinary power vested in the Apex Court of the country under Article 142 of the Constitution. After all, we are Judges and therefore, cannot act like *mughals* of bygone era. More is not necessary to specify.

(f) There is yet another aspect which merits advertence. As already mentioned above, it is the Municipality to which the shopping complex belongs. As the owner, it is entitled to deal with its property in any way it wants, subject to regulation by the law. We have already seen above the provisions of Section 72 of the 1964 Act and the Government Circular of 2009 issued under its Sub-section (2) prescribing a maximum period of twelve years for transfer by way of lease. We repeat that this period is prescribed as being the maximum and therefore, the discretion to make an allotment for a shorter period does not give the allottee a cause of action in law, discretion to do it remaining with the Municipality. However, that discretion has to be exercised in accordance with rules of reason & justice, is true. A lease being a matter of contract, Courts cannot rewrite the same, in the absence of statutory enablement, kind of which avail in Labour Legislations. That being the position, impugned order of the learned Single Judge directing extension of the lease tenure suffers from legal infirmity and therefore, is liable to be voided.

(g) All the above being said, some reprieve needs to be granted to the widow of deceased 1st respondent so that she can shift her business to some other premise within a reasonable period. We have perused the affidavit filed by the appellant and the counter affidavit filed by the said widow who is personally present before us. There is a huge residential building which now on the death of respondent has devolved upon his widow & children. They are residing in a part of that and obviously the remaining part is tenanted to some other person. Business is being run in the subject shop. If the widow is asked to vacate the same forthwith, she & the minor children may be put to a great hardship. Some reasonable period to vacate the shop premises needs to be granted so that business can be shifted to some other place. The Municipality and such other authorities view the claim of allottee's widow for issuance of license/altered license with leniency to facilitate such shifting.

In the above circumstances, this Appeal succeeds; the impugned order of the learned Single Judge is set

aside; the writ petition filed by the 1st respondent herein is liable to be and accordingly dismissed. All pending Applications pale into insignificance.

The heir of deceased 1st respondent i.e., his widow is permitted to remain in the occupation of shop till 31.12.2024, subject to complying with the usual conditions of allotment and that she shall peaceably quit the premises on or before the said date, failing which, the appellant-Municipality can take the premises back with the assistance of jurisdictional Police.

Costs made easy.

This Court places on record its deep appreciation for the able research & assistance rendered by its official Law Clerk cum Research Assistant, Mr.Raghunandan K S.

**Sd/-
JUDGE**

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JUDGE**

Snb/cbc/Bsv