

IN THE HIGH COURT OF KARNATAKA, BENGALURU

THE HON'BLE MR.JUSTICE S. SUNIL DUTT YADAV

WRIT PETITION Nos.30447-30478/2017 (LB-RES) DATED:07-06-2019

K.C. Prakash, S/ o K.N. Chikkanarasimiah and Others Vs. The State of Karnataka, Represented by its Secretary, Urban Development Department, Vidhana Soudha, Bangalore-560 001 and Others

ORDER

These writ petitions have been filed under Articles 226 and 227 of the Constitution of India by the petitioners being aggrieved by the Official Memorandum No. ಜಿನಕೋ/ಸಿಬ್ಬಂದಿ/ಸಿಆರ್/09: 2017-2018 dated 06.06.2017 (Annexure- J) issued by the second respondent-Deputy Commissioner, Chikkaballapur District, Chikkaballapur and by the Public Auction Notification in No. ನಸಚಿ/ಕಂ.ಶಾ/ಹರಾಜು/ಸಿ.ಆರ್/04/2017-18 dated 13.06.2017 (Annexure- K) issued by the fourth respondent City Municipal Council, Chikkaballapur and have sought for the issuance of a writ in the nature of certiorari to quash the impugned notifications.

2. The petitioners state that they are petty traders carrying on their trade as tenants in shops constructed near the old Bus Stand of Chikkaballapur City by the erstwhile Town Municipal Council, now known as the City Municipal Council, Chikkaballapur. They state that they were allotted shops measuring approximately 10 ft. X 15 ft. on lease on monthly tenancy by the respondent No.4 about 20 years back. They further state that they were paying rents to the City Municipal Council, which has been admitted by the respondents and evidenced by relevant register entries which have been placed on record.

3. The petitioners state that a total of 44 shops had been constructed at different points of time by the City Municipal Council. They further state that it appears that since the structure was in a dilapidated condition, it was decided in a meeting amongst the respondents inter se that new Bus Stand-cum Shopping Complex be constructed in place of the old bus stand at Chikkaballapur. It appears that pursuant to the outcome of the said meeting amongst the respondents, the petitioners were summoned for a meeting on 02.04.2013 at 4.00 p.m. at the City Municipal Council, Chikkaballapur with the respondent No.3 chairing It was stated that under the Chief Minister's Small and Medium Town Development Scheme (CMSMTDS), a well-equipped shopping complex would be constructed. As an outcome of the meeting, the petitioners, who were the tenants, were called upon to pay arrears of rent before 03.04.2013 and were assured that persons not in arrears of rent would be allotted shops in the newly constructed shopping complex on a lottery basis in accordance with the guidelines as per the prevalent Government Circular. It was further assured that the rent and the deposit would be fixed in accordance with the guidelines in the circular. It is stated that pursuant to such assurance, the petitioners, who were tenants of about 39 shops whose names were incorporated in the list prepared by the respondents, were called upon to vacate their shops by 04.04.2013 by 5.00 p.m. and handover the keys of the same to the respondent No.4.

4. Accordingly, the process of vacating the shop premises came to be initiated on 05.04.2013 and the keys of the premises were handed over to the respondent No.4 as agreed earlier.

5. After completion of the new shopping complex, the petitioners state that the respondents did not take any steps towards adhering to their earlier assurances as regards allotment of shops. Thus, a representation dated 09.04.2015 was made to the respondent No.3. Another representation dated 04.11.2016 was made to the respondent No.2 seeking for allotment in terms of the assurance as was held out earlier. The petitioners state that as per Official Memorandum dated 06.06.2017, the petitioners had been disqualified from the process of allotment of shops by lease on the ground that they were tenants for more than 20 years and thus ineligible for being allotted shops on lease as per the guidelines contained in Government Circular No.UDD/221/GEL/2009 dated 26.10.2009 (hereinafter referred to as the " Government Circular of 2009 "). The Government Circular of 2009 stipulated that the lease period would be for a period of 12 years and the authorities were entitled to hold public auction for allotment of shops on lease basis. It is stated that the petitioners however came to know about this later after obtaining a copy through the Right to Information Act, 2005.

6. The Petitioners state that on further enquiry they came to know that the public auction would be held on 13.07.2017. The petitioners have contended that the grounds on which they have been denied re-allotment of shops were factually incorrect and contrary to guidelines issued by the Government via Government Circular of 2009. Being aggrieved by the impugned action and the impugned notification dated 13.06.2017, the petitioners have approached this Court by filing these writ petitions.

7. The Petitioners have further contended that they were tenants for over 20 years and paying rent to the City Municipal Council, Chikkaballapur and that their occupation falls within the meaning of the term ' tenants ' as used in the minutes of the meeting dated 02.04.2013. It has also been contended that, the doctrine of promissory estoppel applies and hence the respondents were obligated to make allotments.

8. The respondents on the other hand have contended that there did not exist lessor-lessee relationship between the petitioners and the respondent No.3 and that mere payment of rent by the petitioners does not amount to creation of tenancy relationship. Further, that the doctrine of promissory estoppel is inapplicable as the Deputy Commissioner was not authorized to make such assurances to the petitioners.

9. After having heard the learned counsel for the petitioners and the respondents at length and on perusal of their contentions, authorities relied upon, the following questions arise for consideration in the matter:

" 1. Whether the petitioners fall within the category ' tenants ' as envisaged under the minutes of the meeting dated 02.04.2013?

(a) Whether the applicability of the Karnataka Public Premises (Eviction of Unauthorized Occupants) Act, 1974 would exclude the operation of provisions of the Transfer of Property Act, 1882?

(b) If yes, whether the petitioners are unauthorized occupants within the meaning of the applicable legislation?

2. Whether the respondents are bound by their assurance as held out in the meeting dated 02.04.2013 as per the doctrine of promissory estoppel? "

In Re:Point for Consideration No. 1

10. The learned counsel for the respondents has contended that the Karnataka Public Premises (Eviction of Unauthorized Occupants) Act, 1974 [' Act ' for brevity] is a special legislation addressing the issues of unauthorized occupation of public premises i.e., the shopping complex in this case and would supercede the application of the Transfer of Property Act, 1882 which is a general legislation. He has relied on judgments of the Apex Court including Delhi Development Authority v. Anant Raj Agencies Private Limited reported in [(2016) 11 SCC 406] and Sheodhari Rai and Others v. Suraj Prasad Singh and Others., reported in AIR 1954 SC 758 in support of his contention.

11. The Transfer of Property Act, 1882 was enacted with the object of defining and amending the law pertaining to transfer of property by acts of parties and contains the law on the sale of immoveable property, mortgages of immoveable property, charges, leases of immoveable property, exchanges and transfer of actionable claims. The enactment governs every stage of the process through which the above mentioned modes of transfer of property are carried out, the relationship between a transferee and a transferor including creation of the relationship, terms and conditions during the subsistence of the relationship and the process of termination/forfeiture of the relationship and the legal consequences that follow.

12. The Karnataka Public Premises (Eviction of Unauthorized Occupants) Act, 1974 was a special legislation enacted to provide for a speedy remedy for the eviction of unauthorized occupants from public premises. The Act specifies as to when persons can be classified as unauthorized occupants, the procedure to evict unauthorized occupants, officers competent to declare persons as unauthorized occupants, provides for recovery of rent or damages and also confers onto the State, the power to make Rules to further the objects of the Act.

13. Section 2 (e) of the Act defines the term public premises as " any premises belonging to or allotted to State Government or taken on lease or requisitioned by or on behalf of the State Government. "The definition includes " any premises belonging to or taken on lease by on behalf of a local authority. " It is clear from the definition of public premises that the premises in question in the instant case are indeed public premises for the purposes of the Act for they belong to the City Municipal Council, Chikkaballapur and have allegedly been taken on lease by the petitioners.

14. Another relevant provision to be noticed is Section 2 (g) of the Act which defines ' unauthorized occupation ' as the " occupation by any person of the public premises, without authority for such occupation,

and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever. "However, for a person to be an unauthorized occupant within the meaning of the Act, such person has to be determined to be an unauthorized occupant in accordance with Sections 4 and 5 of the Act.

15. A perusal of the above-referenced provision reveals that for a person to fall within the definition of the term ' unauthorized occupant ', such person must

(1) occupy or continue to occupy public premises;

(2) such occupation or continuation of occupation must be without authority or must continue after such authority has expired.

16. It can be seen that the Karnataka Public Premises (Eviction of Unauthorized Occupants) Act, 1974 does not enumerate explicitly as to when a person is said to ' occupy public premises without authority ' or to ' continue occupation of public premises after the authority has expired ', the learned counsel for the respondents seeking to address this point placed on record the case of Mallikarjunappa v. Joint Director Of Industries And Commerce reported in ILR 1987 KAR 657, relying on Para- 8 of the judgment which states that " authorized occupation means the occupation of the public premises which is authorized or permitted by the authority having the power to permit such occupation ", which still does not answer the query. Taking note of the law as laid down by the Hon'ble Supreme Court in Board of Trustees of the Port of Bombay v. Sriyanesh Knitters reported in (1999) 7 SCC 359, it can be said that as the Karnataka Public Premises (Eviction of Unauthorized Occupants) Act, 1974 not an exhaustive and comprehensive code, the said Act has to be read in conjunction with other Acts wherever the same is silent in respect of any matter and recourse could be had to the general law. That apart, the Apex Court in the judgment referred to above (supra) has also held that it would be permissible to read the provisions of two Acts together when the same are complementary to each other.

17. The Karnataka Public Premises (Eviction of Unauthorized Occupants) Act, 1974 not specifically providing for circumstances and being ' silent ' as to, when occupation could be treated as being without authority or that occupants " continue occupation of public premises after such authority has expired " recourse ought to be made to the provisions of Transfer of Property Act, 1882 as regards the issue relating to permissibility of occupation. This is more so in the facts of the present case where the petitioners have been permitted to continue in occupation and had voluntarily handed over the keys of the tenants.

18. It is now to be determined whether the petitioners are unauthorized occupants of the public premises and whether the petitioners were intended to be construed as tenants as envisaged in the minutes of the meeting held on 02.04.2013.

19. The learned counsel for the petitioners has contended that the petitioners were occupying the public premises based on a lessor-lessee relationship and consequently, the word ' tenants ' as referred within the minutes of the said meeting obviously includes the petitioners.

20. The learned counsel for the respondents on the other hand contended that there existed no registered agreement of tenancy in the instant case and that the petitioners were in occupation as licensees and not lessees. It is further contended that the word ' tenant ' as referred to in the minutes of the meeting was a misnomer and was not intended to include relationships like that of the petitioners. The respondents have contended that once petitioners ' licence was terminated, the petitioners became unauthorized occupants within the meaning of the Karnataka Public Premises (Eviction of Unauthorized Occupants) Act, 1974. Without prejudice to the above contention, it is also contended that even if a tenancy agreement was entered into, the renewal of such tenancy is not automatic and that mere acceptance of rent is not sufficient to prove the existence of a lessor lessee relationship. He has relied on the judgment of Apex Court in Delhi Development Authority's Case (supra) to support his contention.

21. On the other hand, the respondents have contended that in the absence of a registered tenancy agreement, what is created is a month to month tenancy, the termination of which is governed by Section 106 of the Transfer of Property Act, 1882 and have relied on the decision of the Hon'ble Supreme Court of India in PARK STREET PROPERTIES PRIVATE LIMITED V. DIPAK KUMAR SINGH AND ANOTHER reported in (2016) 9 SCC268.

22. As regards the contention of the existence of a licensor-licensee relationship and not a lessor-lessee relationship between the petitioners and the respondents, the said contention without any pleading does not deserve acceptance.

23. The learned counsel for the respondents in his statement of objections contends that even though rents were being paid by the petitioners to the City Municipal Council, there was no subsisting rent based on tenancy agreement between both the parties.

24. The learned counsel for the respondents has further contended that assuming but not admitting that agreements were entered into, the were not renewed and if that were to be so, the relationship could have ended by the year 2006-2007. Accordingly, the learned counsel for the respondents contends that the petitioners continued to be in unauthorized occupation of the shops.

25. A careful perusal of the above-referenced statement of objections read in light of the learned counsel for the respondents ' oral contentions before this Court reveals that the existence of a licensor-licensee relationship which was never pleaded and appears to be only an afterthought made to counter petitioners ' contention. In light of the same, the learned counsel for the respondents ' contention of the presence of a licensor-licensee relationship cannot be accepted.

26. It is settled law that a tenancy relationship can be entered into orally, and need not be through a registered instrument. An application of this principle in the facts of the instant case results in the conclusion that the petitioners were occupying public premises in the nature of a lessor-lessee relationship on a month to month basis paying rent to the respondents as consideration for such occupation though there is no registered agreement of tenancy. In the instant case, the absence of a registered agreement and the acceptance of rent by the City Municipal Council and recognition of that possession till voluntary handing over of possession in terms of proceedings of the meeting dated 02.04.2013 would be sufficient to treat the petitioners as occupying the premises with assent of the lessor as lessees. The judgment of the Apex Court in Delhi Development Authority's case (supra) is distinguishable from the instant case for an agreement to the contrary ' within the meaning of Section 116 of the Transfer of Property Act, 1882 was entered into as comes out in the facts of the said case. There existed specific renewal clause (s) in the contract entered into between the lessor and the lessee and in the face of specific clauses which mandated seeking renewal of tenancy it was held that there could be no implied renewal by " the doctrine of holding over " on mere acceptance of the rent offered by the lessee.

27. Once the existence of a relationship of tenancy has been established, and taking note of respondents ' assent to continued occupation by collecting rent, this Court sees no reason to declare the continued occupation of the petitioners in the instant case as unauthorized for the second element of Section 2 (g) as laid down earlier has not been satisfied. It cannot be said that the petitioners ' occupation or continuation of occupation was without authority or that their occupation was continuing after such authority had expired.

28. More importantly, the procedure to declare the petitioners as unauthorized occupants as laid down within Sections 4 and 5 of the said State legislation has not been initiated at any point in time and hence, the question of treating the petitioners as unauthorized occupants is impermissible. Following the above referenced procedure is a condition precedent for declaration of a person as unauthorized. Thus, the petitioners are not unauthorized occupants within the meaning of Section 2 (g) of the Karnataka Public Premises (Eviction of Unauthorized Occupants) Act, 1974.

29. It can be reasonably construed that the word ' tenant ' as used in the minutes of the meeting has been used in the general sense of the word. The Oxford Dictionary defines the word ' tenant ' as a " person who occupies land or property rented from a landlord. "The Cambridge Dictionary defines the word ' tenant ' as " a person who pays rent for the use of land or a building. "It has been established that the Petitioners in the instant case were occupying the shopping complex in an authorized manner and that they were paying rent for the same. An analysis of the meaning of the term ' tenant ' as provided in the above-referenced dictionary meanings leads, in light of the circumstances in the instant case, to the conclusion that the Petitioners were indeed tenants (and not unauthorized occupants) within the meaning of the usage of the term in the minutes of the meeting held on 02.04.2013. Further, the petitioners cannot be said to be unauthorized occupants in

terms of the Karnataka Public Premises (Eviction of Unauthorized Occupants) Act, 1974. The point for consideration is answered accordingly.

In re: Point for Consideration No.2:

30. The next question that this Court needs to consider is as to whether the respondents are bound to allot shops to the petitioners by virtue of the doctrine of promissory estoppel in the instant case. It is settled law that this doctrine has also been extended against public authorities. For promissory estoppel to apply, a pre-existing contractual relationship is not necessary. Further, the rule of promissory estoppel can only be invoked if a party has substantially altered their position based on such promise.

31. The petitioners in the instant case contend that a promise of re-allotment of shops post reconstruction was made to them during the meeting held on 02.04.2013 by the Deputy Commissioner, City Municipal Council, Chikkaballapur and that the respondents are now estopped by such promise. The respondents, on the other hand, rely on the Hon'ble Supreme Court's verdict in the matter of State Of Kerala and others v. Kerala Rare Earth And Minerals Limited and others reported in (2016) 6 SCC 323, M/ s Jit Ram Shiv Kumar and others v. State of Haryana and others reported in (1981) 1 SCC 11 and Collector, District Gwalior and another v. Cine Exhibitors Private Limited and another reported in (2012) 4 SCC 441 to state that promissory estoppel cannot be invoked to enforce a promise which was made devoid of authority. They contend that the doctrine of promissory estoppel cannot be invoked in the instant case, for the Deputy Commissioner was not authorized to make such a promise to the petitioners. They argue that the Government Circular of 2009 had been superceded by the Government Circular No. 509 2014 dated 14.08.2015 (hereinafter referred to as the ' Government Circular of 2015 ') and that the new circular takes away the authority of the Deputy Commissioner to make decisions under Circumstance No.3 as provided in the Government Circular of 2015. The only dispute as regards the applicability of the doctrine of promissory estoppel is whether the instant case falls within Circumstance No.4.

32. The petitioners, as a response to the respondents' contention argue that the present case contrary to the respondents' contention falls within Circumstance No.4 as provided in Government Circular of 2015. They argue that the power of the Deputy Commissioner to make decisions has been taken away only in regard to Circumstance No.3 and that Circumstances No.1, 2 and 4 remain the same. Thus, the Deputy Commissioner was indeed authorized to take decisions pertaining to allotment of the newly constructed shops.

33. The learned counsel for the respondents contended that for the instant case to be brought within Circumstance No.4 as provided within the Government Circular of 2015 there must necessarily exist a subsisting rental agreement. Since in the instant case, there did not exist a subsisting rental agreement, Circumstance No.4 cannot apply and that Circumstance No.3 is the applicable Circumstance in the instant case.

34. This Court has examined the relevant Government Circulars. Circumstance No. 3 applies to situations wherein tenants occupying present commercial complex, requisition to continue the period of rent/lease of shops. Circumstance No. 4 applies in the case of building new shopping complex after demolishing the old shopping complex for leasing shops to an old tenant in the newly constructed shopping complex.

35. After having perused the Government Circular of 2009, it is to be noted that the translated copy placed on record by the petitioners is not accurate. A true reading of the circular provides that the only requirement for Circumstance No.4 to apply is that there must be a subsisting lease period. There is no such requirement of existence of a rental agreement under the said circumstance as provided in the Government Circular of 2015 as argued by the respondents' counsel in his statement of objections. Thus, this Court is of the opinion that Circumstance No.4 is the applicable circumstance in the instant case.

36. As can be seen from the Official Memorandum dated 06.06.2017 attached as Annexure- J to the Writ Petitions, the Deputy Commissioner has himself admitted that the applicable circumstance in the instant case is the circumstance No.4. There is no reason to go beyond such a stand taken by the authorities themselves.

37. In light of the abovementioned discussion, this Court is of the opinion that Circumstance No.4 is the applicable circumstance. Thus, the Deputy Commissioner indeed had the authority to allot the newly constructed shops even as per the Government Circular of 2015. Since the meeting held with the petitioners under the Chairmanship of the respondent No.3 on 02.04.2013 was held as per the directions of the Deputy Commissioner, as referred to in the minutes of the meeting held on 02.04.2013, it can be said that the Deputy Commissioner had promised allotment of the newly constructed shops to the petitioners. Further, the petitioners by vacating their shops and handing over the keys of the same to the respondent No.4 had altered their position to their detriment. It is thus clear that the elements of promissory estoppel are fulfilled. It is further to be noted that the assurance held out does not in any way militate against the operation of the circular of 2015. The respondents are thus estopped by this promise of theirs as made in the above-referenced meeting. Hence, the petitioners ought to be allotted the newly constructed shops in the shopping complex as promised to them as per the minutes of the meeting dated 02.04.2013. No material is placed before the Court to demonstrate that the doctrine of promissory estoppel is inapplicable as the promise made is against the law, on the contrary the promise made falls within the purview of the Government Circular of 2015. There is absolutely no reason for not accepting the plain words constituting an assurance to the petitioners as found in the minutes of the meeting dated 02.04.2013 and the attitude of the respondents in attempting to wriggle out of their assurance is unbecoming of a public authority falling within the definition of Article 12 of the Constitution of India. Such authority is required to act reasonably and fairly when dealing vis- a-vis the citizens.

38. The learned counsel for the petitioners also contends that the doctrine of legitimate expectation applies in the instant case and relies on multiple judgments to bolster his argument. This argument has not been responded to by the learned counsel for the respondents. This Court is of the opinion that this contention is

however not relevant to the instant case. The doctrine of legitimate expectation only affords a right of hearing to the petitioners and does not go beyond such a right of hearing.

39. Accordingly, the Official Memorandum No. ಜಿನಕೋ/ಸಿಬ್ಬಂದಿ/ಸಿಆರ್/09:2017-2018 dated 06.06.2017 issued by the second respondent, Deputy Commissioner, Chikkaballapur District, Chikkaballapur as per Annexure- J and the Public Auction Notification in No. ನಸಚಿ/ಕಂ.ಶಾ/ಹರಾಜು/ಸಿ.ಆರ್/04/2017-18 dated 13.06.2017 as per Annexure- K issued by the fourth respondent, City Municipal Council, Chikkaballapur proposed to be held on 13.07.2017, are set aside.

40. The concerned respondents to take steps for allotment of shops to the petitioners in terms of the Government Circular of 2015 in accordance with law, in light of the observations and discussions made above. Such allotment should be completed within a period of six weeks from today.

Accordingly, the writ petitions are disposed of.