



**NC: 2024:KHC:3457**  
**WP No. 12105 of 2022**  
**C/W WP No. 4167 of 2022**  
**WP No. 13933 of 2023**

MYSURU DISTRICT,  
MYSURU-571001

3. THE COMMISSIONER  
CITY MUNICIPAL OFFICE,  
HUNSUR,  
MYSURU DISTRICT-571105.

...RESPONDENTS

(BY SRI NAVEEN CHANDRASHEKAR., AGA FOR R1 & R2;  
SMT. GEETHADEVI., ADVOCATE FOR R4)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE WRIT IN THE NATURE OF MANDAMUS, DIRECTING THE R3 TO REMOVE THE LOCK PUT TO THE SCHEDULE SHOPS AND TO RESTORE POSSESSION OF THE RESPECTIVE SHOPS IN FAVOUR OF THE PETITIONERS AND PERMIT THE PETITIONERS TO RUN THEIR BUSINESS IN THEIR RESPECTIVE SHOPS TILL THE PETITIONERS ARE DULY AND LEGALLY EVICTED IN ACCORDANCE WITH LAW AND ETC.

THESE WRIT PETITIONS COMING ON FOR ORDERS AND HAVING BEEN RESERVED FOR ORDERS ON 18.12.2023, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

### **ORDER**

1. The petitioners in W.P.No.12105/2022 are before this Court seeking for the following reliefs:

a) *Declare that the respondents do not possess the legal competence/authority to auction the petition property for the second time, during the existence of the tenancy in the petition property which was leased out to the petitioners in Public auction conducted on 03.06.2000 under the Central Scheme namely "IDMST" to provide the*



*employment opportunity to the poor by providing the premises to run business which is source of income for the livelihood of the petitioners unless the lease hold rights in favour of the petitioner determined in accordance with law;*

- b) Alternatively to declare that extension of lease and acceptance of the rent by the R2, continuing the tenancy by the petitioners with assent of the respondents have resulted in conferring the petitioners the legal status of "TENANTS HOLDING OVER" u/s 116 of the Transfer Of Property Act;*
- c) Issue a writ of mandamus or order or any direction directing the respondents to fix the fair rent to the premises in possession of the petitioners and continue the lease till the petitioners violated the terms and conditions of the lease agreement and determined the lease by the respondents in accordance with law; and*
- d) Grant such other reliefs as this Hon'ble Court deems fit in the facts and circumstances of the case in the interest of justice and equity.*

2. The petitioners in W.P.No.4167/2022 are before

this Court seeking for the following reliefs:

- i) Issue a writ of Certiorari or any other appropriate writ or order or direction quashing the auction sale Notice dated 12.01.2022 at Annexure-B issued R4 as per Annexure-B;*
- ii) Issue a writ of mandamus or any other appropriate writ or order directing the 4<sup>th</sup> Respondent Municipality to provide the basic*



*amenities and decide the fair rent to the petitioners in accordance with law and,*

*iii) Such other reliefs as this Court deems fit to be awarded including cost of proceeding in the interest of justice and equity.*

3. The petitioners in W.P.No.13933/2023 are before this Court seeking for the following reliefs:

- a) Issue a writ in the nature of mandamus, directing the R3 to remove the lock put to the schedule shops and to restore possession of the respective shops in favour of the petitioners and permit the petitioners to run their business in their respective shops till the petitioners are duly and legally evicted in accordance with law.*
- b) Issue such other writ or direction or order as so deem fit to be granted by this Hon'ble Court under the facts and circumstances of the case.*
- c) Allow the writ petition with exemplary cost, in the interest of justice and equity.*

4. Under the centrally sponsored Scheme for Integrated Development of Small and Medium towns [IDSMT] initiated in the year 1979-80 and continued up to 2004-05, the Urban local bodies were provided with certain funds to put up infrastructure. One of the infrastructures which has



been put up is the shops for vending purposes at Hunsur, Mysore district. The said shops having been constructed in the year 2000 were put up for auction on 3.06.2000 for a lease period of five years initially.

5. The petitioners in W.P. No.12105/2022 were successful bidders in the public auction conducted on 3.06.2000 and they were awarded a lease of the respective premises for a period of 60 months. In terms of Clause (21) thereof, renewal of the lease was permitted and as such, were renewed from time to time. Even though the petitioners opposed any fresh auction on the ground that they had suffered severe losses during Covid period, the lease was not extended and Respondent No.2 conducted a public auction on 12.01.2022 for the said premises, as regards which certain persons were declared successful bidders.



6. The auction notification having been issued without termination of the lease in favour of the petitioners who are existing leaseholders, is contended to be bad in law which came to be challenged by them in W.P. No.4084/2022 when a coordinate Bench of this Court permitted the petitioners to participate in the said auction, the petitioners did participate in the auction. However, it is contended that the bids were vague and exorbitant prices for small premises had been quoted which the petitioners could not match and as such, it was contended that the public auction was a mockery.
7. In that view of the matter, the petitioners made a representation to respondent No.3-Deputy Commissioner on 28.03.2022 for extension of lease and fixation of rents which was not considered by the Deputy Commissioner. It is in that background that the petitioners are before this Court seeking for the aforesaid reliefs.



8. The petitioners in W.P. No.4167/2022 claim to be residents of Hunsur, Mysore district, being small traders and vegetable vendors who also claim to be in occupation of small shops in IDSMT building in Hunsur since the year 2000. The petitioners claim that they were given some documents on stamp paper to sign which are stated to be lease deed, terms and conditions of which the petitioners are not aware of since copy was not furnished to them. The petitioners had made payment of a sum of Rs.4,000/- as security deposit as regards which receipt came to be issued by respondent-Municipality. The Municipality has not provided any basic facilities of electricity, water, toilet and other facilities, as promised, despite which the petitioners have continued in the premises. On 12.01.2022 a Notification came to be issued for auction of the premises. The persons who participated in the auction were rich and as such, the petitioners who



are small traders could not outbid them. The petitioners having made the premises habitable and having been in the premises from the year 2000, claim that further proceedings in pursuance of auction cannot be continued and if the petitioners were to handover the premises in question, it would adversely affect their livelihood and in that background that the petitioners are before this court seeking for the aforesaid reliefs.

9. The petitioners in W.P. No.13933/2023 claim that they are tenants of the Municipality for more than 25 years paying rentals on a monthly basis i.e. between Rs.400/- to Rs.800/- per month. The petitioners having promptly paid rentals fixed. It is only on account of political motivation that the newly elected representatives have called upon the Corporation to evict the petitioners from the premises to allot it to persons of their own liking. Eviction notice having been issued on 18.10.2022,



the petitioners had approached this Court in W.P. No.24342/2022 wherein interim order of stay was granted. Finally on merits vide order dated 30.03.2023 the writ petition was allowed in part, eviction notice dated 18.10.2022 was quashed and respondents were permitted to take action in accordance with law including action under Section 106 of the Transfer of Property Act [‘T.P. Act’ for short] as regards the persons not participating in the auction and or not exercising their first right of refusal. Without taking such action, the rights of the petitioners have been disturbed and the petitioners made to evict the premises in question without following the due process of law, the materials of the petitioners have been removed from the premises and the premises locked and sealed by the officers of the Municipality which is not permissible since due process of law has not been followed and it is in that background that the





petitioners are before this Court seeking for the aforesaid reliefs.

10. From the aforesaid facts, it is clear that the petitioners in all the above three petitions claim to be the tenants of Municipality they having been inducted into the respective premises on payment of security deposit and monthly rentals. It is after an auction notification has been issued and third parties being successful in the auction that the petitioners were asked to vacate the premises which they did not and that stage the respondent-officials took the law in their own hands and forcibly evicted the petitioners and it is in that background the reliefs seeking for a direction to the Municipality to strictly follow the due procedure and applicable law in relation thereto have been sought for. Though of course reliefs have also been sought for that the respondent-authority cannot evict the petitioners in W.P. No.12105/2022.



11. Smt. Suman Hegde, learned counsel for the petitioner in W.P. No.12105/2022 and 4167/2022 submits that,

11.1.The petitioners were in fact street vendors and it is in order to rehabilitate them that these premises were provided to the petitioners on a monthly rental. The premises when provided did not have electrical power, water or toilet facilities, and the premises also not being in a habitable position, the petitioners made it habitable and usable for commercial purposes and as such, the premises being provided in order to rehabilitate the street vendors the provisions of The Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 would apply and the petitioners cannot be evicted in the manner sought to be done.



11.2. The petitioners were forcibly evicted from the premises by officers of the Municipality who had come along with pourakarmikas and police personnel who did not heed to the request made by the petitioners that since the matter was seized of before this Court, they could not be evicted and all their pleas to the officers of the Municipality to refrain from taking any action pending adjudication did not evoke any sympathy or empathy from the said officers who removed all the material from the shops and locked and sealed the premises, thus depriving the petitioners of their livelihood.

11.3. As of today the petitioners are carrying on their business outside the earlier shops on the street which is causing them untold harm and misery and as such, this court ought to intercede in the matter.



- 11.4. She has produced a pen drive and video recording of the occurrence of the events that had transpired when the premises were locked which is played in open court. Relying on the same she submits that possession of the premises was not voluntarily handed over but forcibly taken over by the Municipality.
- 11.5. She also submits that a resolution has been passed by the Municipality on 24.02.2011 extending the lease upto 2025 and as such she submits that the lease cannot be terminated before that.
12. Sri.P.M.Siddamallappa, learned counsel for the petitioner in W.P. No.13393/2023 would submit that even though the petitioner had replied to the notices under Section 106 of T.P. Act, there being dispute regarding ownership of the property, the Municipality has taken action against the petitioners without resorting to law despite the petitioners



having brought to the notice of the officers of the respondent that proceedings were pending in the court and in this regard he also relies upon the video produced by Smt.Suman Hegde, learned counsel for the petitioner in the above matters.

13. Ms.Geetha Devi, learned counsel for the Municipality would submit that,

13.1. Admittedly the lease period has expired and as such, the petitioners were required to hand over the vacant possession of the premises on such expiry, they not having done so necessary proceedings have been initiated by the Municipality which cannot be said to be illegal or contrary to law.

13.2. The petitioners have been given adequate and more opportunity to surrender their premises which they have not done, there being third parties who have succeeded in the auction, the shops in question are required to be



handed over to such successful parties who are putting pressure on the Municipality for handing over possession of shops and it is in that background that the municipality had called upon the petitioners to handover the possession.

- 13.3. There is no force that has been used, request was made by the officers of the corporation to the petitioners to handover possession which they have voluntarily handed over, the premises being locked and sealed, the petitioners are not allowing the Municipality to handover the premises to the successful bidders and in that background a stage has arrived where the Municipality is unable to handover the premises to the successful bidders on account of the petitioners vending in front of the said shops.



- 13.4. As regards the resolution dated 24.02.2011 she submits that though the resolution was passed by the Municipality extending the term of the lease, the said resolution was subject to approval by the State Government, which has been rejected and as such, the approval having been rejected the petitioners cannot claim under the said resolution.
14. Smt.Geetha Devi was called upon to make her comments on the videos produced by Smt. Suman Hegde, having noticed that there was an official videographer hired by the Municipality for recording the entire process, she was directed to produce videos relating thereto as recorded by the official videographer. In furtherance thereof, the said video has been produced in the CD as also pen drive, copies thereof made available to petitioners.



15. Sri.Naveen Chandrashekar, learned AGA for the State submits that the matter is between the Municipality and the petitioner, the State has nothing to do with. His submission is placed on record.
16. Sri.Mohamed Thahir, learned counsel appearing for proposed respondent No.5 in W.P. No.12105/2022 submits that he is one of the successful bidders of the auction and his interest is suffering on account of the Municipality not handing over the shop as regards the auction of which he has succeeded causing financial losses to the proposed respondent.
17. Heard Smt.Sumana Hegde, learned counsel for the petitioners in W.P. No.12105/2022 and 4167/2022, Sri.Siddamallappa, learned counsel for the petitioners in W.P. No.13933/2023, Sri.Naveen Chandrashekar, learned AGA for the State and Smt.Geethadevi.M.P, learned counsel for the Corporation, as also Sri.Mohamed Thahir, learned





counsel appearing for proposed respondent No.5 in W.P. No.12105/2022 and perused papers.

18. Having heard learned counsel for the parties, the points that would arise for consideration are:

**1. Whether on the expiry of a lease/license executed by the Corporation, Municipality or the like, would such Corporation, Municipality forcibly vacate the persons in occupation of the shops leased/licensed by the Corporation/Municipality or is required to follow any particular procedure?**

**2. Whether in the present case the handover of the premises by the respective petitioners can be said to be voluntarily handed over as per the submission of Ms. Geethadevi.M.P, learned counsel for the Municipality?**

**3. What order?**

19. I answer the above points as under:-

20. **ANSWER TO POINT NO.1: Whether on the expiry of a lease/license executed by the Corporation, Municipality or the like, would such Corporation, Municipality forcibly vacate the persons in occupation of the shops leased/licensed by the Corporation/Municipality or is required to follow any particular procedure?**



20.1. It is not in dispute that the premises in question have been constructed by using IDSMT funds and that the petitioners have been put in possession of their respective shops by the Municipality where the petitioners are carrying on business of vending fruits and vegetables, cereals or the like, suffice to state that petitioners are all petty traders dealing with day-to-day requirements.

20.2. All the petitioners claim to have been put in possession in the year 1999-2000, initially for a period of five years which has been extended from time to time on the basis of resolutions passed by the Municipality and in terms of the resolution dated 21.11.2011, it is claimed that the period of lease is extended till 2025 and as such the lease continues to be



in existence. The aspect of this resolution need not hold this Court much longer inasmuch as the said resolution is subject to approval by the State Government. The State Government has rejected the said approval vide its letter dated 26-10-2009 and as such it cannot now be contended by the petitioners that the lease/license continues to be in force or in currency.

20.3. The lease having expired, the Municipality brought the shops for auction, an Auction notification having been issued, on a challenge being made to the auction notification, this Court vide its order dated 21.2.2022 in WP No.4084/2022 permitted the petitioners to participate in the said auction. Some of the petitioners did participate by themselves or through their near and dear ones, some of them succeeded, where most of them failed in



the auction, third parties have succeeded as regards those shops.

20.4. In terms of **The Karnataka Grama Panchayat and Panchayathraj (Taluk Panchayat movable and immovable Properties Transfer) Rules, 2017**, Whenever a term of a lease of a shop or premises were to expire, it would but be required for the concerned Municipal Authority to bring it for auction where the current lease/license holder could also participate and if successful, lease/license could be executed in favour of such persons. Another option provided is that the lessee/licensee may choose not to participate in the said auction proceedings but could exercise right to first refusal, quoting higher than the bid quoted by the successful bidder or auction purchaser. The right to first refusal has also not been



exercised by the petitioners in this matter, most of the petitioners contending that the bids were on higher end and as such were false and the petitioners being small traders could not bid such higher amounts. Thus, categorically indicating that the petitioners were not interested in and did not exercise right to first refusal.

20.5. From the aforesaid it is clear that the lease/license has come to end, the petitioner's have not succeeded in the auction nor exercised the right of first refusal. Thus, the lease/license having come to an end, looked at from any angle. Once the lease/license comes to an end, it would be for the lessee/licensee to vacate the premises and hand over the same to the lessor/licensor to the Municipality therein. That not having been done, the only option available to the



Municipality is either to invoke the provisions of the T.P. Act for eviction or to invoke the provisions of **The Public Premises (Eviction of Unauthorised Occupants) Act, 1971**, to evict the lessee/licensees, since in this particular case there is no dispute that the property belongs to the Municipality and about the petitioner's being the lessee/licensor of the said premises.

20.6. The authorities cannot take the law into their own hands and cause forcible eviction of the lessee/licensee but are required to follow the due process of law by initiating necessary proceedings and obtain judicial/quasi-judicial orders for eviction and thereafter enforce the same.

20.7. Thus, the contention of Ms. Geethadevi.M.P. learned counsel for Municipality that on the expiry of the lease/license the Municipality



could evict the lessee/licensee without any particular order of a judicial or quasi judicial authority is rejected.

20.8. Hence, I answer point No.1 by holding that on the expiry of a lease/license executed by the Corporation, Municipality or the like, such Corporation, Municipality cannot forcibly vacate the persons in occupation of the shops leased/licensed by the Corporation/Municipality but is required to follow the procedure prescribed under the The Public Premises (Eviction of Unauthorised Occupants) Act, 1971, or The Transfer of Property Act.

**21. Answer to point No.2: Whether in the present case the handover of the premises by the respective petitioners can be said to be voluntarily handed over as per the submission of Ms. Geethadevi.M.P, learned counsel for the Municipality?**

21.1. Ms.Geethadevi.M.P., learned counsel contends that the petitioners have handed over the



vacant possession of their respective premises voluntarily, without demur and as such, once the said premises have been handed over by the petitioner, the lease/license has come to an end and there is no further action required to be taken by the Municipality for eviction or otherwise. The submission of Smt.Sumana Hegde and Sri.P.M.Siddamallppa is contra, in that they contend that the possession of said premises was taken forcibly.

21.2. The pen drive containing the videos of the occurrence of that day have been produced which are now part of the record. I have gone through the said videos, eschewing the pendrive produced by the petitioners I lay reliance on the videos produced in the pen drive of the municipality, since it is the actions on part of the municipality which are brought





in question and these videos are admitted to be true by the municipality.

21.3. The said videos indicate that more than 20 to 30 Pourakarmikas and 5 to 10 officers along with around 5 to 10 policemen had assembled on that day before dawn. Some of the pourakarmikas/officers were carrying new locks and keys and some of the pourakarmikas were carrying crowbars. A public announcement in the background indicating that action is being taken in terms of the orders of this Court since the lease has come to an end and auction proceedings have been culminated is being made repeatedly.

21.4. Initially one Babu who had been unsuccessful in his bid for shop No.51 handed over the premises in his possession (number not clear) to the officers without demur which was locked and sealed by the officers.



21.5. Thereafter several persons objected to the action on the part of the Municipality contending that the matter was still pending before this Court and as such they could not be evicted, they would abide by any orders passed by this Court and a request was made to the officers not to forcibly evict the shop keepers. This was answered to by the officers by contending that there is High court order/Deputy Commissioner order and there is no stay obtained by the petitioner in any court of law or order restraining the Municipality from evicting the petitioners. It was by stating so that most of the persons were called upon to open their premises, the material in the premises were removed and put on the footpath/road, the rolling shutters were pulled down, locked and sealed by the officers of the Corporation by applying wax



seal which they bought along with them. It is the legality of this action which is required to be examined.

21.6. Though it is clear that the lease has expired and auction proceedings were culminated, this court had never directed the Municipality to forcibly evict the shop keepers. In fact, this court had directed the Municipality to take necessary action in accordance with the law for eviction including that under section 106 of the T.P. Act. It was therefore as answered to point no.1 for the Municipality to initiate necessary proceeding for eviction and not to steamroll ignorant persons like the petitioners by contending that there is an order of this court and that the officers are implementing the orders of this Court.

21.7. The further statement made by the officers that there is no stay order or any order



restraining the municipality from evicting the petitioners is also a misconception in law inasmuch as the Municipality and its officers could not have taken law into their own hands and forcibly evicted the petitioners without following due process of law. What was required of the Municipality was to follow due process of law. The action taken by the Municipality in bringing crowbars, gathering in strength by making use of police powers, is not one recognized under law, this can only be said to be an abuse of the official powers vested in such officers.

21.8. From the video it is also seen that in a few places where the person in occupation was the successful person in the auction, no action was taken. It is further seen that when the shop continued to be in occupation of the earlier tenant like the petitioners and such



tenant was not available, the officers of the Municipality directed the pourakarmikas to break open of lock, removed all the contents of the shop, handed over the same to successful bidder and got his signature on a mahazar. Thus, in effect the officers of the corporation along with the pourakarmikas, police persons etc., have broken open a lock of a premises which was in possession of the someone else in the absence of such persons without following due process of law, removed material therein and handed over the possession to a successful bidder in the auction. This was never ever directed by this court nor does law permit such an action.

21.9. The State and its instrumentalities are required to be model litigants and are required to follow the due process of law if the State and its Authorities were to act like hooligans.



A private litigant could never have acted in the same manner and take law in their own hands. In order to maintain rule of law the State and its instrumentalities would have to follow the law applicable both substantive and procedural.

21.10. The same not having been done, I answer **point No.2** by holding that in the present case the respondents and its officials have taken law into their own hands and caused forcible eviction of the petitioners by wrongly contending it to be voluntarily when it is use of force and/or use of threat of force which prevailed upon those persons to handover the vacant possession of the premises, needless to say such action was not sanctioned by this court, contrary to the statements made by the officers of the municipality and contrary to the



public announcement being made over a  
loudspeaker.

**22. Answer to point No.3**

In view of the answers to the above points, I pass  
the following:

**ORDER**

- i. The petitions are allowed.
- ii. In view of the above observations and conclusions, I am of the considered opinion that the possession of the premises of the petitioners which has been forcibly taken over by the Municipality is required to be handed back to such petitioners within 10 days of the receipt of a copy of this order to enable them to carry on their business until their eviction in a manner known to and sanctioned by law.
- iii. Liberty however is reserved to the Municipality to take such action as permissible under the Transfer to Property Act, 1882 or under The Public Premises (Eviction of Unauthorised Occupants) Act, 1971.
- iv. The petitioner's having been dispossessed in an illegal manner, I am of the considered opinion that the Municipality is to be directed to pay compensation of a sum of Rs.200/- per day to all shopkeepers so dispossessed calculated from the day on which they were forcibly dispossessed i.e. 05.12.2022 till the date on which the



**NC: 2024:KHC:3457**  
**WP No. 12105 of 2022**  
**C/W WP No. 4167 of 2022**  
**WP No. 13933 of 2023**

premises are opened and handed over to the petitioners.

- v. The Secretary, Urban Development Department is directed to instruct all the Corporations, Municipalities coming under his jurisdiction to follow the due process of law and not to resort to forcible possession of the premises, which if had been done in the present matter would have avoided the entire litigation and the compensation which is awarded now. The attempt made by the officers of the Municipality to short circuit the process has resulted in a long and arduous journey for all concerned.
- vi. The Principal Secretary, Urban Development Department is directed to conduct an independent enquiry into the matter and take such action as permissible against the errant officials.

**Sd/-**  
**JUDGE**

LN/-  
List No.: 19 Sl No.: 1