

W.P.26755/2012  
& W.P.40708/2012

**IN THE HIGH COURT OF KARNATAKA, BENGALURU**

**DATED THIS THE 28<sup>th</sup> DAY OF JANUARY, 2015**

**BEFORE**

**THE HON'BLE MR.JUSTICE RAM MOHAN REDDY**

**WRIT PETITION Nos. 26755 OF 2012 &  
40708 OF 2012 (GM-CPC)**

**IN WP. NO. 26755 OF 2012**  
**BETWEEN:**

THE CHIEF OFFICER  
TOWN PANCHAYATH,  
T .NARASIPURA,  
REPRESENTED BY SRI.V T. WILSON  
AGED ABOUT 46 YEARS

... PETITIONER

(By Sri. NITYANAND V. NAYAK, ADV., FOR  
SRI.G.F HUNASIKATTIMATH, ADV.,)

**AND**

1. SMT. GUNASUNDARAMMANI  
W/O LATE RAMARAJE URS,  
AGED 53 YEARS  
INDIRA COLONY, T NARASIPURA.
2. SWAMY  
S/O CHINNASWAMY,  
AGED 33 YEARS  
SRI RAMPURA BEEDI, T NARASIPURA
3. S GIRISHA  
S/O LATE SIDDANARAYANA,  
AGED 38 YEARS  
SRI RAMPURA BEEDI, T NARASIPURA

4. SHASHIKALA  
W/O PRAKASHA,  
AGED 38 YEARS  
SRI RAMPURA BEEDI, T NARASIPURA
5. SMT. PREMA  
W/O SHIVASWAMY,  
AGED 63 YEARS, T NARASIPURA
6. K KUMARA  
S/O KALANAYAKA,  
AGED 38 YEARS  
NAYAKARA BEEDI, T NARASIPURA
7. M MAHADEVA  
S/O NARASALINGAIAH,  
AGED 38 YEARS  
INDIRA COLONY, T. NARASIPURA
8. SHIVANNA  
S/O LATE PUTTAMADASHETTY,  
MAJOR,  
HELAVARA BEEDI, HELAVARAHUNDI,  
T.NARASIPURA
9. BHAGYAMMA  
W/O LATE MAHADEVA,  
AGED 55 YEARS  
INDIRA COLONY, T.NARASIPURA
10. KRISHNA  
S/O LATE KULLAIAH,  
AGED 48 YEARS  
INDIRA COLONY, T.NARASIPURA
11. B PUTTARAJU  
S/O LATE BASAVANNA,  
AGED 53 YEARS  
NANJANAGUDU ROAD, T.NARASIPURA
12. M NAGARAJU  
S/O MARINAYAKA,  
AGED 48 YEARS  
NAYAKARA BEEDI, T.NARASIPURA

13. MAHADEVAMMA  
W/O LATE PUTTASWAMY,  
MAJOR  
VINAYAKA COLONY, T.NARASIPURA
14. SMT. SAKAMMA  
C/O APPALAIHAH,  
MAJOR,  
VINAYAKA COLONY, T.NARASIPURA
15. SMT. NINGASHETTY  
S/O SIDDASHETTY, VINAYAKA COLONY,  
MAJOR, T.NARASIPURA
16. SMT. SHARADAMMA  
W/O LATE PUTTASWAMY  
MAJOR  
INDIRA COLONY, T.NARASIPURA
17. GOWRAMMANI  
W/O LATE SANJEEVARAJE URS,  
MAJOR,  
INDIRA COLONY, T.NARASIPURA
18. PRESIDENT  
TOWN PANCHAYATH, T.NARASIPURA

... RESPONDENTS

(By Sri. N MANOHAR, ADV., FOR R1, R3, R7, R9, R10, R13 TO R17; SRI. SANDHYA JAMADAGNI ADV., FOR R2, R4, R5, R6, R8 AND R12; R18 SERVED AND UNREPRESENTED)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF CONSTITUTION OF INDIA PRAYING TO CALL FOR THE RECORDS, IN EX.CASE NO.15/12 ON THE FILE OF CIVIL JUDGE [SR.DN] & JMFC, AT T.NARASIPURA. QUASH THE ENTIRE PROCEEDINGS IN EX.CASE NO.15/12 IN THE FILE OF THE CIVIL JUDGE [SR.DN] T.NARASIPURA VIDE ANNEX-E & ETC.,

**IN WP. 40708 OF 2012****BETWEEN:**

THE CHIEF OFFICER  
TOWN PANCHAYATH,  
T.NARASIPURA – 571 124,  
REPRESENTED BY  
SRI V.T.WILSON,  
AGED ABOUT 46 YEARS

... PETITIONER

(By Sri. NITYANANDA V NAYAK, ADV.,)

**AND**

1. PUTTARAJU P  
S/O LATE PUTTASWAMY,  
THRIVENI NAGARA,  
T.NARASIPURA – 571 124.
2. V.MADAPPA,  
S/O LATE VENKATAIAH,  
AGED ABOUT 51 YEARS,  
CSF COLONY,  
T.NARASIPURA- 571 124.
3. BASAVARAJU  
S/O LATE APPAIAH SHETTY,  
T NARASIPURA,  
TRIVENINAGARA-571124.
4. D.PANDURANGA SHETTY  
S/O LATE SMT.RAJAMMA,  
REDDY COLONY,  
T.NARASIPURA -571 124.
5. PRESIDENT  
TOWN PANCHAYATH,  
T.NARASIPURA – 571 124.

... RESPONDENTS

(By Sri. N MANOHAR, ADV., FOR R1-R4;  
R5 – SERVED & UNREPRESENTED)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF CONSTITUTION OF INDIA PRAYING TO CALL FOR THE RECORDS, IN EX.CASE NO.25/12, ON THE FILE OF THE CIVIL JUDGE [SR.DN] & JMFC, AT T.NARASIPURA. QUASH THE ENTIRE PROCEEDINGS IN EX.CASE NO.25/12 ON THE FILE OF THE CIVIL JUDGE [SR.DN] T.NARASIPURA, VIDE ANNEX-C & ETC.,

THESE WRIT PETITIONS COMING ON FOR PRL.HEARING IN 'B' GROUP THIS DAY, THE COURT MADE THE FOLLOWING:

### **ORDER**

Facts briefly stated are:

- a) Respondents 1 to 17 in W.P.26755/2012 and respondents 1 to 4 in W.P. 40708/2012 jointly instituted O.S.14/2009 on the file of the Sr.Civil Judge and JMFC, T.Narasipur for a declaration that they are entitled to be put in possession of the newly constructed commercial complex being a public premises belonging to the petitioner, on monthly rentals, in terms of the agreement entered into between themselves and the petitioner-Town Municipal Counsel, arraigned as defendant, on terms and

conditions mentioned therein. In that suit, parties having reduced the terms of compromise into writing, placed it in Mediation, which, when accepted the suit was allowed by Judgment and Decree dated 25.11.2011;

- b) Thereafterwards, respondents 1 to 17 in W.P.26755/2012 filed Execution Petition 15/2012 to execute the said decree while respondents 1 to 4 in W.P.40708/2012 filed Execution Petition 25/2012 before the very same Court for the very same relief. The Executing Court by order dated 26.7.2012 in Execution Petition 15/2012 directed delivery of possession of the properties to respondents 1 to 17 in W.P.26755/2012, while by order dated 27.3.2012 in Execution Petition 25/2012 directed delivery of possession to respondents 1

to 4 in W.P. 40708/2012 and by a further order dated 7.8.2012 directed breaking open of the lock with police protection and delivery of possession to respondents 1 to 4 therein;

c) It appears that the order dated 26.7.2012 in Execution Petition 15/2012 to deliver possession of the premises to respondents 1 to 17 was stayed by this Court in W.P.26755/2012, while respondents 1 to 4 in W.P.40708/2012 were successful in executing the order dated 7.8.2012 by breaking open the lock with police protection and were put in possession of the said properties;

d) Respondents 1 to 4 in W.P.40708/2012, according to the learned counsel, have deposited monthly rentals in the Bank Account of the petitioner-TMC;

e) Hence these petitions;

- i) to declare the compromise decree dated 25.11.2011 in O.S.14/2009 on the file of the Sr. Civil Judge and JMFC, T.Narasipur as unenforceable and illegal;
- ii) to declare the agreement dated 14.3.2005 between the TMC and the plaintiffs in O.S.14/2009 as unenforceable, illegal and not conferring right in the plaintiffs of allotment of the public premises; and
- iii) to quash the proceedings in Ex.Petition Nos.15/2012 and 25/2012.

2. Petitions are opposed by filing statement of objections interalia not denying the facts supra. However respondents assert that their right to be put in possession of the public properties is on the basis of tenancy rights in terms of the agreement dated

14.3.2005 entered into between the Chief Officer of the TMC and themselves.

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 vs. STATE OF KARNATAKA & OTHERS**<sup>1</sup> 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 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

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<sup>1</sup> 1992 (2) KLJ 245

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 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.

8. The Apex Court in **S.Pratap Singh -v- State of Punjab**<sup>2</sup> stated thus:

“For the purposes of the present controversy the functionary who took action and on whose instructions the action was taken against the appellant was undoubtedly the Chief Minister and if that functionary was actuated by mala fides in taking that action it is clear that such action would be vitiated. In this context it is necessary to add that though the learned Attorney-General at first hinted

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<sup>2</sup> AIR 1964 SC 733

that he would raise a legal contention, that even if mala fides were established against the Chief Minister still the impugned orders could not be set aside, he did not further pursue the matter, but proceeded, if we may say so rightly, to persuade us that mala fides was not made out by the evidence on record. Such an argument, if right, would mean that even fraud or corruption, leaving aside mala fides, would not be examinable by a Court and would not vitiate administrative orders. As Lord Denning said in Lazarus Estates, Ltd. v. Beasley(1) "No judgment of a court, no order of a Minister, can be allowed to stand if it has been obtained by fraud."

(emphasis supplied)

9. In **Express Newspapers Pvt. Ltd. & Others - vs -Union Of India & Others**<sup>3</sup> at paragraphs 118 and 119 the Apex Court observed thus:

“118. Fraud on power voids the order if it is not exercised bona fide for the end design. There is a distinction between exercise of power

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<sup>3</sup> AIR 1986 SC 872

in good faith and misuse in bad faith. The former arises when an authority misuses its power in breach of law, say, by taking into account bonafide, and with best of intentions, some extraneous matters or by ignoring relevant matters. That would render the impugned act or order ultra vires. It would be a case of fraud on powers. The misuse in bad faith arises when the power is exercised for an improper motive, say, to satisfy a private or personal grudge or for wreaking vengeance of a Minister as in *S.Prattap Singh v. State of Punjab*, (1964) 4 SCR 733; (AIR 1964 SC 733). A power is exercised maliciously if its repository is motivated by personal animosity towards those who are directly affected by its exercise. Xxxxxx”

“ It was said by Warrington, C.J. in *Short v. Poole Corporation*, (1926) 1 Ch 66 that:

‘No public body can be regarded as having statutory authority to act in bad faith or from corrupt motives, and any action purporting to be of that body, but proved to be committed in

bad faith or from corrupt motives, would certainly be held to be inoperative.’

In Lazarus case at page 722 per Lord Parker, CJ :

‘Fraud’ vitiates all transactions known to the law of however high a degree of solemnity.’

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 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 **Mohan P.Sonu'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, 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<sup>4</sup>**, 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<sup>5</sup>** following the opinion of Mukharji, J. at the end of para 42 in **State Bank Of Travancore vs Commissioner Of Income Tax<sup>6</sup>**, 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

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<sup>4</sup> AIR 1991 SC 772

<sup>5</sup> AIR 1994 SC 2416

<sup>6</sup> AIR 1986 SC 757

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 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.

14. Respondents in W.P.40708/2012 it is submitted executed the order dated 7.8.2012 in Execution 25/2012 by breaking open the locks on the premises and took possession of the said shops and are paying rents at the rate of Rs.1500/- per month by depositing the same in Bank Account of the petitioner. In the view taken supra, Respondents 1 to 4 in W.P.40708/2012 must necessarily be directed to redeliver possession of the said shop premises, forthwith, since there is without authority of law, and cannot continue to occupy the premises.

15. It must be observed that the then Chief Officer of the TMC having acted contrary to law, which is a fraud on power requires drastic action which the State, it is hoped, would do so in accordance with law.

16. In the result, these petitions are allowed. Reliefs sought are accordingly ordered. The agreement

dated 14.3.2005 Annexure-A is declared illegal; the compromise decree dated 25.11.2011 in O.S.14/2009 is quashed; O.S. 14/2009 is dismissed with cost; Sequentially Execution 15/2012 and 25/2012 on the file of the Sr.Civil Judge and JMFC, T.Narasipur and orders passed thereon quashed and; Execution petitions are dismissed.

16. Respondents in W.P 40708/2012 are directed to redeliver possession of the shop premises in the very same condition when put in possession on 9.8.2012, to the petitioner-TMC by day after tomorrow. It is open to the petitioner and the State Government to lodge criminal prosecution against everybody involved in this fiasco and ensure its continuity until arriving at a logical end. Petitioner on taking possession of the public premises is directed to put up for public auction the privilege to use the premises, by way of lease, strictly in accordance with law.

W.P.26755/2012  
& W.P.40708/2012

Cost quantified at Rs.10,000/- in each petition,  
payable by the contesting respondents to the petitioner  
Town Municipal Council.

**Sd/-  
JUDGE**

ln.