IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 30TH DAY OF JANUARY, 2025

BEFORE

THE HON'BLE MR. JUSTICE R.NATARAJ

WRIT PETITION NO.200190 OF 2025 (APMC)

BETWEEN:

MOHD. TOUFFIQ
S/O MAHEBOOB SAB,
AGE: 45 YEARS, OCC: BUSINESS,
R/O SHOP NO. 7. APMC MARKET YARD,
CHITTAPUR-585211.

...PETITIONER

(BY SRI. S. V. DESHMUKH, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
   REPRESENTED BY ITS PRINCIPAL SECRETARY,
   DEPARTMENT OF AGRICULTURE,
   VIDHAN SOUDHA, BANGALORE-560001.

2. THE DIRECTOR,
   AGRICULTURE PRODUCE MARKETING COMMITTEE,
   NO.16, 2ND RAJBHAVAN, ROAD,
   P. B. NO. 5309, BANGALORE-01.

3. THE SECRETARY,
   APMC CHITTAPUR,
   TQ. CHITTAPUR
   DIST. KALABURAGI-585211.

...RESPONDENTS

(BY SRI. MALLIKARJUN SAHUKAR, AGA FOR R1;
SRI. M. SUDHAKAR RAO, ADVOCATE FOR R2 AND R3)

Digitally signed by SACHIN
Location: High Court Of Karnataka

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE IMPUGNED NOTICES / ENDORSEMENT DATED 02.12.2024 BEARING SAM. KRU MA E/ KRU U MA SA/CHI/LE AND LI/695/2024-25 ISSUED BY THE RESPONDENT NO.3 VIDE ANNEXURE-D AND ETC.,

THIS PETITION, COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE R.NATARAJ

ORAL ORDER

The petitioner has challenged a notice dated 02.12.2024 issued by the respondent No.3 directing him to vacate the premises. He has also sought for a writ in the nature of mandamus directing the respondent No.3 to consider the applications dated 08.08.2023 and 06.01.2025 and convert his leave and licence to lease cum sale in respect of shop No.7 at APMC yard, Chittapur.

2. The petitioner contends that he was allotted a shop No.7 at APMC yard, Chittapur, for running a petty business in the year 2013. He was punctual in paying the rent. He requested the respondent No.3 to convert the leave and licence granted to him to lease cum sale as provided under Rule 12(2) of the Karnataka Agricultural Marketing (Regulation of

Allotment of Property in Market Yard) Rules, 2004 (henceforth referred to as 'Rules, 2004'). As his request was not considered, he filed W.P.No.201386/2022. This Court after considering the contentions of the petitioner, directed the respondent No.3 to consider the representation filed by the petitioner. In the meanwhile, before his representation was considered, the respondent No.3 has issued a notice dated 02.12.2024 calling upon the petitioner to quit and deliver vacant possession of the shop. The petitioner is therefore, before this Court challenging the said notice and has sought for a direction to respondent No.3 to consider his representation for conversion of leave and licence to that of lease cum sale.

3. The learned counsel for the petitioner reiterated the above contentions and claimed that even before the request of the petitioner was considered, the respondent No.3 is trying to dispossess the petitioner from the shop premises.

4. Per contra, the learned counsel for the respondent Nos.2 and 3 submits that eviction proceedings was initiated against the petitioner under the provisions of the Karnataka Public Premises (Eviction of Unauthorized Occupants) Act, 1974

and the possession of the shop was taken on 08.01.2025. He also contends that the request of the petitioner for conversion of his leave and licence to lease cum sale was rejected on 05.07.2023 and an appropriate endorsement was issued to the petitioner. He therefore, contends that the petitioner has not approached this Court with clean hands, as he has not produced the endorsement issued by the respondent No.3 rejecting his request. Learned counsel has placed on record a copy of the endorsement dated 05.07.2023 as well as the copy of the mahazar dated 08.01.2025 taking possession of the shop in question.

5. I have considered the submissions made by the learned counsel for the petitioner and the learned counsel for the respondent Nos.2 and 3.

6. It appears that the petitioner was allotted a shop in the APMC yard, Chittapur for running a petty business. It is not in dispute that the petitioner has been using the shop from the year 2013 till date for the purpose of his petty business. Rule 14 of Rules, 2004 provides for allotment of shops for the purpose of running a petty business and reads as follows:-

*"**14. Allotment of weigh bridges, etc.,:-** (1) Market committee may allot weigh bridges, sundry shops, canteen and tea stalls on leave and license basis through tender-cum-auction.*

(2) A market committee may subject to provisions of these rules allot weigh bridges, sundry shops, canteen and tea stalls in the market yard on leave and license basis through tender-cum-auction.

(3) Due publicity shall be given in respect of such allotment specifying its location, number of property, if any last date for making application and such other particulars by affixing a notice to the notice board of the office of the market committee and by publication in not less than two Kannada news papers widely circulated in the market area.

(4) Any person who is desirous of making an application for allotment under this rule shall make an application in Form VI to the market committee along with an earnest money deposit equal to two months minimum license fee or rupees five thousand whichever is more.

(5) The highest bidder shall remit twenty-five percent of the bid amount quoted by him after deducting the earnest money already deposited within three days from the date of auction failing which the EMD shall be forfeited and the second highest bidder will be given a chance for payment of such amount.

In case the second highest bidder also fails to pay the amount the market committee shall hold re-auction.

(6) The initial allotment shall be for a period of 11 months which may be renewed by the market committee for every 11 months subject to a maximum of 55 months."

7. Therefore, it appears that the shop was given to the petitioner on leave and licence basis and was to be in force for a period of 11 months, which could be renewed for every 11 months subject to maximum of 55 months.

8. A reading of the rules makes it clear that the shop so allotted on leave and licence can never be converted to a lease cum sale. It is only those shops or godowns, which are allotted to a market functionary, which can be converted for lease cum sale as provided under Rule 12(2) of the Rules, 2004 and the same is extracted below.

"***12. Restriction on transfer :-***

(1) xxx

(2) Where any market functionary who has been allotted a shop or godown, shop-cum-godown or other building on leave and license basis under rule 13 is continued in occupation of the same for a minimum period of 55 months and requests to

convert the said leave and license in to lease-cum-sale basis may be considered with prior approval of the Director of Agricultural Marketing and the value of the site, shop, godown or shop-cum-godown shall be determined by taking into consideration the following factors namely,-

(i) site value at 40% of the guidance value determined under the Karnataka Stamp Act 1957, and rules made thereby under or the value of the site approved by the Director of Agricultural Marketing under rule 5, whichever is higher.

(ii) The building value to be fixed by the Engineering Cell of the department after considering the depreciation of the building.

(iii) Any other expenditure incurred by the market committee on the site or building."

9. A market functionary is defined under Rule 2(8) of the Rules, 2004, which reads as follows:

"(8) Licensed market functionary" means a person holding license as a commission agent, trader, broker, importer, ginner, presser, crusher, stockist, warehousemen, exporter.

10. The petitioner is admittedly not a market functionary but is a vendor doing petty business. Therefore,

the petitioner cannot claim the benefit that is conferred upon a market functionary. Now that the respondent Nos.2 and 3 contend that the petitioner has been evicted from the shop premises and his representation for conversion of leave and licence to lease cum sale is rejected, nothing survives for consideration in this writ petition.

11. Hence, the petition is ***dismissed***.

12. However, liberty is reserved to the petitioner to challenge the endorsement issued by the respondent No.3 rejecting his request for conversion of leave and licence to lease cum sale.

Sd/-
(R.NATARAJ)
JUDGE

PMR
List No.: 1 Sl No.: 70