

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(s).8590-8591 OF 2018

(arising out of SLP (C) No(s). 14871-14872 of 2015)

BHARMAL MEDICAL STORE
CIVIL HOSPITAL BADNAGAR ETC.APPELLANT(S)
VERSUS

STATE OF MADHYA PRADESH
AND OTHERSRESPONDENT(S)

with

CIVIL APPEAL NO(s).8592 OF 2018

(arising out of SLP(C) No.21414 of 2015)

APNA MEDICAZEAPPELLANT(S)
VERSUS

STATE OF MADHYA PRADESH
AND OTHERSRESPONDENT(S)

JUDGMENT

NAVIN SINHA, J.

Leave granted.

2. The questions involved in these appeals being common, there being a minor variation in facts, they have been heard

together and are being disposed by a common order. Suffice to observe, that in the limited nature of the controversy, we propose to take notice of the facts only to the extent necessary for purposes of the present order.

3. Both the appellants are lessees of the State Government for the shop premises situated within the compound of the District Hospital, Ujjain, Civil Hospital, Nagda, Khachrod, Mahidpur, Badnagar etc. They have been asked in 2013 to vacate the shop premises and shift from the Civil Hospital compound. The justification is the formulation of a Government Scheme i.e. *Sardar Vallabh Bhai Patel Nishulka Aushadhi Vitaran Yojna* for supply of free essential drugs to all classes of patients by the Government. It is not in dispute that the shop premises was constructed by the authorities and does not fall in the category of an unauthorized construction. It was settled with the appellants by open bid in 2000/2001. The lease period has long since expired and the lease has not been renewed.

4. Learned counsel for the appellants submits that the notice to vacate the shops in the hospital premises is arbitrary. No show cause notice with an opportunity to convince the authorities not to order removal was provided. Closure of the shop will infringe the fundamental rights of the appellants under Article 19(1)(g) of the Constitution. The supply of generic medicines by the State Government will not be disturbed by the medicine shops being operated by the appellants. The presence of the shops would only aid availability of medicines to the patients.

5. Learned counsel for the State submitted that the medicine shops were permitted at a time when patients had to procure medicines on their own. With the advent of the new scheme for supplies of medicines by the Government, there exists no need for medicine shops within the hospital premises. In fact, the shop premises can be better utilized to facilitate supply of free medicines by the Government itself to the patients. The lease has long expired and no steps have been taken for renewal by the appellants.

6. We have considered the submissions. The laudable objective of the Government to ensure availability of free medicines to the patients in the civil hospital premises will have to be balanced with the competing interests of the appellants to earn their livelihood. If peaceful coexistence is possible, there is no reason why the shop premises should be shut down and the appellants be asked to vacate. The respondents in their counter affidavit have acknowledged the existence of a large number of medicine shops immediately outside the premises of the government hospital, to contend that it was sufficient to take care of the needs of patients. It is but a tacit admission by the respondents, for the need to have private medical shops in the vicinity for the convenience of the patients. Without further speculation, it would naturally be so for myriad reasons such as availability of timely supplies, logistics, nature of medicines required, etc. There can also be times when availability of a particular brand medicine may be a compelling necessity without awaiting government supply to be replenished. If for such eventualities a private medical shop is countenanced by the respondents at the gate of the hospital it is difficult to

appreciate their insistence for removal of the appellants. We are, therefore, unable to sustain the notice directing the appellants to vacate, and which in any event, has been ordered without an opportunity to the appellants for presenting their case and convincing the authorities not to remove them.

7. The shop premises, as observed above, are not unauthorized structures, but leases have long expired and no steps have been taken by the appellants for renewal of their leases. The rent was Rs.300-400/-. At the time of initial settlement also, it was done with the appellants on the basis of open bid. Considering the long passage of time since the lease has expired, and the appellants cannot claim an indefeasible right to continue irrespective of such considerations, we deem it proper to observe that it shall be open for the respondents to hold an open bid for the shops in question inside the hospital premises. The appellants can also participate in the same. Needless to say that the settlement will have to be made with the highest bidder. The present order cannot be construed as a complete embargo on

the respondents with regard to the shop premises for all times to come. Any future eventuality, for justifiable reasons, will always leave the authority a discretion for closure of the shops for valid and germane reasons.

8. Till such fresh bids are held, the appellants shall not be disturbed but shall continue to pay the enhanced rate of rent in the manner provided for in the agreement with effect from the date of the present order. If there are any arrears of rent, it shall also be deposited at the agreed rate within a period of four weeks. The impugned orders of the High Court are set aside. The appeals are allowed.

.....J.
[**RANJAN GOGOI**]

.....J.
[**NAVIN SINHA**]

.....J.
[**K.M. JOSEPH**]

NEW DELHI
AUGUST 27, 2018