IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF JUNE, 2020

BEFORE

THE HON'BLE MR.JUSTICE P.S. DINESH KUMAR

WRIT PETITION No.7906 OF 2020 (T-RES)

BETWEEN :

MRS. POONAM ANAND KISHORE VACHHANI
AGED ABOUT 62 YEARS
RESIDING AT NO.B-1107
PSJW APARTMENT NO.80
TAVAREKERE MAIN ROAD
KORAMANGALA
BENGALURU-560 029
KARNATAKA ...PETITIONER

(BY SMT. VEENA J. KAMATH FOR
SHRI. K. GOVINDRAYA KAMATH, ADVOCATE)
[THROUGH VIDEO CONFERENCE]

AND :

1. ASSISTANT COMMISSIONER OF
COMMERCIAL TAXES
ENFORCEMENT -16, SOUTHZONE-16
BENGALURU-560 047

2. M/S. ALFARA'A INFRAPROJECTS
PRIVATE LIMITED
REPRESENTED BY RESOLUTION PROFESSIONAL
MR. ABHAY NARAYAN MANUDHANE
ADDRESS:1221, MAKER CHAMBER V
NARIMAN POINT
MUMBAI-400 021

EMAIL ID:rp.aippl@gmail.com
eoi.alfaraa@gmail.co ... RESPONDENTS

(BY SHRI. SRIDHAR N. HEGDE, HCGP FOR R1)

. . . .

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 OF THE CONSTITUTION OF INDIA PRAYING TO DIRECT THE R-1 TO UN-SEAL THE PREMISES AND HANDOVER THE PHYSICAL POSSESSION OF THE SCHEDULE PREMISE OR ANY ORDER OR WRIT IN THE NATURE OF MANDAMUS AND ETC.,

THIS WRIT PETITION COMING ON FOR *PRELIMINARY HEARING* THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

Heard Smt.Veena J.Kamath, learned Advocate for petitioner through video conference and Shri. Sridhar N.Hegde, learned HCGP for State.

2. Smt. Veena J. Kamath, made following submissions:

- Petitioner is owner of property measuring 3,420 square feet situated in first floor of a building known as 'KAY ARR IVY'. She granted lease of this premises to M/s. Alfara'a Infra Private

Limited (for short 'Alfara') under a lease agreement dated 1st July 2017;

- Alfara has stopped paying rents from July 2018;
- Certain proceedings were initiated by the Assistant Commissioner of Commercial Taxes under the provisions of the Central Goods and Services Tax and Karnataka Goods and Services Tax Act, 2017 (for short 'GST Act'). Pursuant thereto, the premises in question was sealed by the Assistant Commissioner on 22nd September 2018. Petitioner approached the first respondent to unseal the premises. By a communication dated 17th July 2019, it was informed by the Additional Commissioner of Commercial Taxes that the property in question was unsealed on 17th July 2019 and handed over to Alfara on the same day. Petitioner reliably learnt that the property was again sealed on the very same day.

This is supported by a letter dated 11th November 2019 written by the Assistant Commissioner of Commercial Taxes to Alfara calling upon Alfara to depute a reasonable person for unsealing the premises and to continue the inspection proceedings. In such circumstances, petitioner has presented this petition with following prayers:

a. Direct the 1st Respondent to un-seal the premises and handover the physical possession of the schedule premise to the Petitioner forthwith, by issuance of the Writ of Mandamus or any order or writ in the nature of a Writ of Mandamus;

<u>Or in the alternative</u>

b. Direct the 1st Respondent to instruct the 2nd Respondent to participate in the un-sealing proceedings and consequently direct the Respondents to handover the possession of the schedule premise to the Petitioner forthwith, in a time bound manner, by issuance of writ of Mandamus or any other order or writ in the nature of a Writ of Mandamus.

3. Smt. Veena Kamath argued that petitioner is not getting monthly rents. Further, property has been sealed by the State. Petitioner is facing hardship for no fault on her part. Accordingly, she prayed for granting either of the prayers.

4. Shri. Sridhar Hegde, learned HCGP for State, opposing the petition, submitted that property has been sealed under the provisions of the GST Act as Alfara has defaulted to pay the taxes. The unsealing can be done in accordance with law. The Assistant Commissioner of Commercial Taxes has called upon the assessee Alfara to appear or to send an authorized person, but there is no response from Alfara. The proceedings under the GST Act are initiated against Alfara and petitioner has no *locus standi* to challenge the said proceedings.

5. I have carefully considered rival contentions and perused the records.

6. In substance, petitioner – landlord is seeking delivery of vacant possession of the premises which she has leased to Alfara. Incidentally, proceedings under GST Act have been initiated against Alfara and property has been sealed under Section 67(4) of the Act. The alternative prayer is to direct both respondents to handover possession of schedule premises to the petitioner forthwith, by issuing a writ of mandamus.

7. Undisputed fact is, petitioner has leased her property in favour of Alfara. It is petitioner's claim that Alfara has defaulted in paying monthly rent. In view of the admitted position that Alfara is in possession of the premises in question as a tenant on the strength of lease deed dated 1st July 2017, the prayer to issue a writ of mandamus and handover the premises in question to the petitioner cannot be granted in writ proceedings, as parties shall be governed by terms of lease.

8. In the circumstance, petition is misconceived and is accordingly ***dismissed***.

As prayed for by learned Advocate for petitioner, it is clarified that dismissal of this petition does not come in the way of petitioner seeking recovery of possession of the leased premises from Alfara by approaching appropriate forum in appropriate proceedings.

No costs.

Sd/-
JUDGE

SPS