

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No. 12362 OF 2012

ORDER :

This Writ Petition has been filed to declare the action of the respondents in seeking to collect the revised licence fee / ground rent at Rs.1,931/- per day for the unused space of 105.73 square feet allotted to the petitioner at platform Nos. 5 and 6 of *Guntakal* Railway Station towards *Gooty* end, as illegal and arbitrary. A consequential relief to set aside the notice and the letter dated 14.04.2012 and 03.06.2011 respectively issued by the 5th respondent, has also been sought for.

The facts, precisely, which led to initiation of this Writ Petition, are as follows:

The petitioner was a licensed contractor for running a catering stall at platform Nos. 5 and 6 of *Guntakal* Station towards *Gooty* end. At his request, *vide* representation dated 14.04.2010, the petitioner was stated to have allotted an unused space of 105.73 square feet adjacent to his catering stall, on 16.12.2010, the provisional ground rent of which was fixed at Rs.1,080/- per annum, subject to the terms and conditions specified therein.

While the things stood thus, to his surprise, the petitioner was served with a letter dated 10.05.2011 to the effect that the rent for the additional space was revised to Rs.1,931/- per day and hence, advised him to pay the difference of the rent from 16.12.2010 to 10.05.2011, at Rs.2,80,846/-. The petitioner, therefore, through the letter dated 23.05.2011 addressed to the 5th respondent, informed his intention to vacate and surrender the

said additional space to the Railway Administration with effect from 23.05.2011. However, he was issued another letter dated 03.06.2011, which required him to pay the licence fee at Rs.1,931/- per day, totalling to Rs.3,14,524/-, for the additional space allotted from the date of its allotment. Subsequent thereto, the petitioner was issued yet another letter dated 14.04.2012 stating that the Administration decided to terminate his stall licence and also initiate legal action in case he defaults to remit the above-said amount within 15 days from the date of its receipt. Hence, the Writ Petition.

A counter-affidavit sworn to by *Sri B.N. Victor Babu*, Senior Divisional Commercial Manager, South Central Railway has been filed stating that as per the Head Quarters guidelines issued in letter dated 18.04.2011, the rent / licence fee at the revised rates has been levied on the petitioner and hence, it cannot be said as an arbitrary excise.

Learned counsel representing *Sri Avinash Desai*, learned counsel for the petitioner mainly contends that the policy decision taken by the Railway Board on 18.04.2011, through which rent / licence fee was revised, cannot have retrospective effect. According to her, when the licensor expresses his intention to enhance the licence fee, the licensee has every right to take a decision whether to continue in / or vacate the premises. To fortify the said contention, she places reliance upon a judgment rendered by the High Court of Calcutta in ***Divisional Railway Manager, Eastern Railway v. Kalighat Railway Plot-holders Association***. Thus contending, the learned counsel seeks to set aside the notice dated

14.04.2012 and the letter dated 03.06.2011 impugned in this Writ Petition.

Conversely, learned Standing Counsel for the 6th respondent *Sri T.S. Venkata Ramana* would submit that the Railways Catering Tourism Corporation Limited, after considering various factors, including valuation of the land, has taken a policy decision to revise the ground rent / licence fee, *vide* Head Quarters Guidelines issued in letter dated 18.04.2011. Taking cue from the said guidelines, the learned Standing Counsel contends that the same cannot be interfered with by a Court of law on the ground of its being arbitrary or illegal. He further contends that though the petitioner used the premises from the date of its allocation on 16.12.2010 till 28.05.2011, he has not paid even a single pie till date towards rent. If any dispute arises out of the contract, the proper course open to the petitioner is to invoke the arbitration clause, but not by way of approaching this Court under Article 226 of the Constitution, is what strenuously the learned Standing Counsel urges.

From a careful consideration of the material available on record as well as the rival contentions made by the learned counsel, it is clear that the issue lies in a very narrow compass. As is not in dispute, the petitioner was allotted the additional space on a provisional ground rent of Rs.1,080/- per annum, which was subsequently, hiked to Rs.1,931/- per day. No doubt, it appears to be exorbitant. In the allotment letter dated 16.12.2010 also, admittedly, nowhere it has been mentioned that the ground rent would be enhanced at a later point of time. In this context, it would be better, if the terms and conditions are extracted:

- 1) The vacant space to be utilized for only stocking of materials connected to catering stall.
- 2) This allotment is purely on temporary basis and you have to vacate the place as and when required by the Railway Administration.
- 3) The Railway have the right to take over the spaces and when required with a short notice.
- 4) No structure is allowed.
- 5) The vacant space should be maintained neat and clean at any given time.
- 6) The provisional ground rent is fixed as Rs.1080/- (Rupees one thousand eighty only) per annum. The same should be paid immediately within 3 days.
- 7) The date of allotment of unused space is w.e.f. 16.12.2010.

However, the learned Standing Counsel seeks to rely on the guidelines issued *vide* letter dated 18.04.2011, whereunder a policy decision has been taken so as to enhance the licence fee for the spaces rented in the premises belonging to the Railways. Normally, this Court would be very slow in interfering with the policy decisions taken by the respective departments, but however, this Court finds some substance in the argument made by the learned counsel for the petitioner that once the licensor expresses his intention to enhance the licence fees, the licensee has a right to take decision whether to retain the licence or vacate the property. If new rate of licence fee is not acceptable to the licensee, he is free to vacate the property and he cannot be imposed the licence fees at an enhanced rate from an anterior date. In the judgment cited *supra*, the High Court of Calcutta has also held that if a policy in vogue is overridden by the policy notified at a later point of time, it would have prospective effect i.e. from the date of its notification only, but not from the anterior date. Though it has been rendered in different context, the ratio laid down in the above-said judgment is apt and is applicable to the facts of the present case on hand.

Sofar as the submission made by the learned counsel for the respondents that the petitioner, for redressal of his grievance, has to avail the remedy under the Arbitration & Conciliation Act, 1996 is concerned, the same does not merit any consideration, for, the allotment made of the additional space is not governed by the contract which is in existence. Apart from that, keeping in view the meagre amount involved, this Court is of the opinion that this is not a fit case for both the parties to invoke the arbitration jurisdiction at this stage. Viewed from any angle, levying the revised rent at Rs.1,931/- per day on the petitioner is unsustainable, hence, the notice dated 14.04.2012 and the letter dated 03.06.2011 by which the demand has been made are set aside.

The Writ Petition therefore, stands allowed. No costs.

Consequently, the miscellaneous Applications, if any shall stand disposed of.

CHALLA KODANDA RAM, J

20th December 2016

ksld