

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

WRIT PETITION No.30585 of 2016

ORDER:

1 This Writ Petition is filed under Article 226 of the Constitution of India seeking a writ of mandamus to declare the impugned notice dated 31.8.2016 vide No.C1/122(1)/2016-RM-NZB issued by the third respondent as illegal and arbitrary.

2 Heard Sri N.Vijay, learned counsel for the petitioner and Sri N.Vasudeva Reddy, learned Standing Counsel for respondent Nos.2 and 3.

3 It is an admitted fact that the 2nd respondent – Corporation allotted stall No.52 at Old Block, Bus Station, Nizamabad, in favour of the petitioner for running a canteen for a period of five years, which will expire by 20.9.2017. A fresh deed of licence was entered into between the parties on 26.2.2015 in place of the earlier one. It is the case of the petitioner that he has been carrying on the business without complaint of any nature from any corner, including the respondents. While so, to the dismay of the petitioner, the third respondent issued the impugned notice dated 31.8.2016 directing the petitioner to vacate the premises in question within ten (10) days, which, the petitioner contends, is contrary to the terms and conditions of the deed of licence.

4 The predominant contention of the learned counsel for the petitioner is that the impugned notice is not sustainable either on facts or in law. The crucial question that falls for consideration is whether the third respondent has terminated the licence period in pursuance of the terms and conditions of the deed of licence or not. For better appreciation of the rival contentions, it is not out of place to extract Clause 21 of the deed of licence, which reads as follows:

21. TERMINATION OF LICENCE: The licence is liable for termination with a 7 (days) advance notice on the following grounds:

(i) If the licensee defaults in payment of licence fee for three months consecutively or three times in a calendar year.

(ii) If the Licensee fails to do the business (for which licence is granted) in stall for a continuous period of NINETY (90) days.

(iii) If the licensee is found encroached on to the platforms, area meant for passenger movement or any other area/stall/shop.

(iv) If the licensee performs other business, other than the specified in tender notification or as recorded in the deed of licence.

(v) If the licensee is found doing or resorting to any unethical activities or indulging in moral turpitude.

(vi) In case of mis-behaviour/assault committed by the licensee, his/her representatives against the employees of the corporation.

(vii) For breach of terms and conditions of deed of licence.

5 Clause 21 of the deed of licence empowers the third respondent to terminate the licence if the petitioner violates any one of the conditions stipulated in the said clause. It is not the case of the third respondent that the petitioner has violated any one of the conditions stipulated in Clause 21 of the deed of licence. A perusal of the record clearly reveals that the respondents are intending to extend the platform of the bus station in order to avoid inconvenience to the public at large, more particularly, to the passengers. The impugned notice is issued under Sub-Clause (b) and (c) of Clause 22 of the deed of licence. Clause 22 of the deed of licence deals with calling fresh tenders / extension of the licence period. It is not the case of the respondents that the deed of licence dated 26.02.2015 is only an extension of licence period temporarily, thereby, to press into service Clause 22 of the deed of licence. Viewed from any angle, the conditions stipulated in Clause 22 of the deed of licence are not applicable to the facts of the case on hand.

6 Clause 35 of the deed of licence enables the third respondent to terminate the licence of the licensee by giving one month notice, if the premises is required for use of the licensor. It is not the case of the petitioner that the third respondent issued the impugned notice with an ulterior motive to allot the stall to some other person. The fact remains that the respondents require more space for extension of the platform. If that is so, the remedy available to

the third respondent is to issue the notice to the petitioner under Clause 35 of the deed of licence.

7 Viewed from any angle, the impugned notice issued by the third respondent is not sustainable either on facts or in law. Hence, it is liable to be set aside.

8 Accordingly, the writ petition is allowed, setting aside the impugned notice dated 31.8.2016 vide No.C1/122(1)/2016-RM-NZB issued by the third respondent. However, it is made clear that allowing of this writ petition does not preclude the respondents to terminate the licence of the petitioner in terms of the deed of licence. Miscellaneous petitions, if any pending in this writ petition shall stand closed.

September 09, 2016.
13

T.SUNIL CHOWDARY, J

