

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION Nos.17754 & 23200 of 2012

COMMON ORDER:

These two writ petitions are being disposed of by this common order as they were filed by the same petitioner.

W.P.No.17754 of 2012 was filed challenging the proceedings bearing No.Part 31/BPP/HMDA/2001, dated 01.06.2012, issued by respondent No.2. W.P. No.23200 of 2012 was filed challenging the proceedings in Lr.No.639 (part)/HMDA/BPP/2010, dated 07.06.2012, issued by respondent No.2 demanding rental dues to an extent of Rs.1,49,67,423/- and consequential cancellation of the lease dated 08.10.2010.

The petitioner is doing business in sales and exhibition of cars and entered into a lease agreement on 04.08.2006 with respondent No.2, who let out the property to the petitioner and he occupied the same. The petitioner was given on lease an open land on "*as is where is basis*" of an extent of 16,192 square metres forming part of Survey No.9 (part), Khairatabad, Hyderabad and a lease deed was executed on 04.08.2006 for a period of two years for the purpose of exhibition and parking of cars, as the activity of construction in the Government Shikham land was prohibited by the Hon'ble Supreme Court. The monthly rent fixed was Rs.4,57,500/- payable on or before 10th of every calendar

month. The petitioner was allowed to continue in possession of the property for the years 2008 to 2009 and an amount of Rs.6,03,900/- was being collected towards the enhanced rent over the initial agreed rent and thereafter, it was enhanced to Rs.7,24,000/- per month. After demise of the then Hon'ble Chief Minister, Sri Y.S.Rajasekhara Reddy, the Government of Andhra Pradesh identified the schedule property for setting up of a memorial in his honour. Accordingly, a notice of termination was issued on 14.12.2009 requesting the petitioner to vacate and handover the possession of land. The petitioner submitted a representation to continue in the said site till a concrete proposal is undertaken for the purpose of memorial and the petitioner was allowed to continue. In the meanwhile, the respondents approached the Hon'ble Supreme Court seeking permission for construction of Y.S.R. memorial, but no orders have been passed till today. However, respondent No.2 chose to allot an alternate land in the Necklace Road opposite to Sanjeevaiah Park and the petitioner entered into a separate lease deed on 08.10.2010 for the said purpose. Respondent No.2 issued a letter on 01.06.2012 stating that an amount of Rs.16,70,118/- was due upto 31.01.2010 and the amount was asked to be cleared on or before 23.05.2012. The petitioner was asked to vacate the site within a period of ten days as per the terms and conditions mentioned in the letter dated 30.05.2011 and also

pay the arrears by letter dated 01.06.2012. Challenging the same, the present writ petition was filed.

This Court, by order dated 15.06.2012, directed the respondents not to dispossess the petitioner on condition of the petitioner depositing an amount of Rs.16,70,118/- as indicated in the impugned letter dated 01.06.2012 for a period of one week initially and the said order was continued from time-to-time. Seeking vacation of the said order dated 15.06.2012, W.V.M.P.No.3057 of 2013 was filed by respondent No.2. It was stated in the affidavit filed in support of the vacate petition that the petitioner was continuing its business by virtue of renewal of licenses from time-to-time. After demise of the then Chief Minister, Sri Y.S.Rajasekhara Reddy, a group of Ministers suggested that the subject land can be used for setting up of memorial in his honour and the Government accepted the said suggestion. The Government issued a Memo on 19.03.2010 and 28.04.2010 and an appropriate application was filed before the Hon'ble Supreme Court seeking permission to the State Government to construct Y.S.R. memorial in the said land. The writ petitioner was allowed to continue for a period of six months from 01.06.2011 to 30.11.2011 at a monthly rent of Rs.7,24,680/-. The petitioner did not pay the service tax from April 2010 and it accumulated to Rs.17,16,767/- upto February 2012. As on 31.05.2012, the petitioner has to pay a

total amount of Rs.18,80,760/- towards service tax. The amount of Rs.16,70,118/- indicated in the letter dated 01.06.2012 is apart from the amount of Rs.18,80,760/- payable towards arrears of service tax.

A reading of the impugned letter dated 01.06.2012 makes it clear that the petitioner was due of some amount towards arrears of rent and service tax. The petitioner was asked to pay the arrears of rent, while granting interim order by this Court on 15.06.2012, and it appears that the petitioner paid the said amount. The lease/licence entered into by the petitioner with respondent No.2 expired long back and the same cannot be extended in the present proceedings nor the demand for payment of rent can be interfered. However, in view of the petitioner continuing in the premises by virtue of the interim order till today, the petitioner is liable to pay the amount for its use and occupation of the premises and the respondents are at liberty to recover the same.

Subject to the above observations, W.P.No.17754 of 2012 is dismissed.

So far as W.P.No.23200 of 2012 is concerned, learned Senior Counsel appearing for the petitioner submits that though the petitioner was allowed to do the preparatory work by virtue of the lease agreement dated 08.10.2010 in respect of the land of an extent of Ac.4.27 guntas in Necklace Road

opposite to Sanjeevaiah Park, Hyderabad, the petitioner never conducted the activity in the said premises and he also drew the attention of this Court to clause 4 of the said lease agreement, and submits that there cannot be any dual rent. He states that the petitioner was given possession of the land adjacent to IMAX theatre and it continued to be in possession of the same till today.

Though the learned Advocate General appearing for the respondents submits that the possession was handed over to the petitioner, pursuant to the lease agreement dated 08.10.2010 on 03.08.2010 itself and the petitioner acknowledged the same, there is no evidence to show that the petitioner continued its activity in both the sites. In the absence of any evidence, this Court cannot decide the liability of the petitioner for payment of the arrears of rent and cancellation of the lease for non-payment of such arrears of rent. Whether the petitioner is in arrears of rent in respect of the land in question, pursuant to the lease agreement dated 08.10.2010, is a disputed question of fact, which cannot be decided in the present proceedings.

In the circumstances, it is left to the parties to work out their remedies either with regard to the collection of rents or continuation of possession or otherwise, pursuant to the lease agreement dated 08.10.2010. Since the parties are relegated to other remedies, the declaration made by

respondent No.2 in the impugned proceedings stating that the lease/licence dated 08.10.2010 was cancelled stands in the way and the order dated 07.06.2012 only to that extent of cancellation of lease/licence dated 08.10.2010 is set aside.

Accordingly, W.P.No.23200 of 2012 is disposed of, and W.P.No.17754 of 2012 is dismissed. The interim order in W.P.No.17754 of 2012 dated 15.06.2012 with regard to dispossession stands vacated. No order as to costs.

Miscellaneous Petitions pending, if any, shall stand closed.

25.10.2016
MVA

A.RAMALINGESWARA RAO, J

