

HONOURABLE SRI JUSTICE S.V. BHATT

W.P.No.15980 of 2017

ORDER :

Heard Mr. Vedula Venkata Ramana, learned senior counsel for petitioners and the learned Advocate General for respondents 1 and 2.

The petitioners challenge letter No.109164/PMU/EO/2006 dated 18.04.2017 and the challenge is confined to the following portion:

“..stands resumed and vested with the Government (YAT & C Department) at once this day 20.04.2017 on serving this notice on you and failing which the possession is deemed to have been resumed by the said officer on behalf of the Government and any further occupation or presence by you or your representative or employees or workers will be treated as unauthorized occupation and encroached and will summarily be evicted”.

Before referring to respective submissions of counsel appearing for parties, a few introductory circumstances are adverted to.

On 07.07.2007, lease agreement, admittedly between petitioners and the respondents, was entered into. The lease is for a period of 33 years. In the working of the lease agreement dated 07.07.2007, a few differences have arisen and notices/replies were exchanged between the parties. The second respondent issued default notice No.109164/PMU/ES/2006 dated 26.11.2015, calling upon the petitioners to undertake the following exercise:

“Hence, take notice that if you fail to rectify the above and all other defaults under the Article 16 of Lease Agreement and Article 13.5 of Construction & Management Agreement within 90 days i.e., on or before 26.01.2016, the said agreements shall stand terminated on the immediate next day of expiry of the said date. Also, if you fail to handover the possession of the land with all the immovable asset to the officials of this department on the same day of termination, this department shall have the right to enter into the land and resume the possession by conducting panchanama and the department shall not be liable or responsible for any loss or damage and you will be held responsible for the consequences arising thereof”.

The petitioners against the instant notice have pursued twin remedies of filing the reply and trying to convince the second respondent and also filed petition under Section 9 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') before the learned III Additional Chief Judge, City Civil Court, Hyderabad, and the same is taken on file as O.P.No.864 of 2016 apprehending that the notice is taken to unexpected end and thereby dispossess the petitioners from the schedule property covered in the lease agreement. On 29.04.2016, the learned trial Judge has passed the following order:

“ Petitioner Counsel present. Respondent and Respondent counsel are called absent. No representation even in late hours after lunch. Hence, posted to 06.06.2016 for counter and hearing. Meanwhile, there shall (sic be) interim injunction sought for till then”.

The case of petitioners is that the said interim order is subsisting as on date and the learned Advocate General firstly submits that he is not aware whether interim order dated 29.04.2016 is extended or not. He makes alternative submission and contends that even assuming that the interim injunction granted in favour of petitioners is subsisting as on date, that is a strong circumstance to dissuade the Court to exercise its jurisdiction under Article 226 of Constitution of India in respect of the very same cause of action.

Mr. Vedula Venkata Ramana contends that the termination of lease agreement, no doubt, presents independent cause of action to work out comprehensive reliefs and the aggrieved party has to work out the remedies in accordance with the dispute resolution clauses under the lease agreement. He makes the stand of petitioners clear that to the grievance against termination of lease agreement, the petitioners are not canvassing the same in this writ petition and reserve the right to pursue the other remedies. According to him, the communication dated 18.04.2017 bristles with patent illegalities and

virtually amounts to improper exercise of discretion available to a contracting party and respondents cannot assume unilateral assumptions of possession without recourse to law. According to him in view of the order dated 29.04.2016 in O.P.No.864 of 2016, the respondents for all purposes are prevented from taking any decision on the default notice dated 26.11.2015. The injunction includes forcible dispossession. When the respondents are prevented from disturbing the petitioners by way of an injunction, through the letter dated 18.04.2017, the second respondent is well within his jurisdiction to request the petitioners to deliver possession and it is for petitioners to obey or not to obey. However, refusal of such request does not enable the second respondent to presume that the respondents are in possession and the possession, if claimed by petitioners will be treated as unauthorized occupation and encroachment. According to him, power of re-entry is not presumed unless and until the lessor takes recourse to the procedure prescribed by law, property delivered through process of law and till then the possession in favour of respondents cannot be presumed. Therefore the prayer is limited to the extent of protecting possession of petitioners.

Learned Advocate General contends that the writ petition challenging the communication dated 18.04.2017 is not maintainable. According to him, the communication dated 18.04.2017 even if issued contrary to the injunction granted by the trial Court on 29.04.2016, the communication present different cause of action before the very Court that granted injunction. The circumstance viz., assuming reentry and possession by respondents is not a sufficient ground to exercise discretion and jurisdiction against the communication dated 18.04.2017 under Article 226 of the Constitution of India. He further contends that

because of breach committed by petitioners, the default notice has worked out completely and nothing further remains at the hands of respondents. He places strong reliance on the decision of the Honourable Supreme Court in **Joshi Technologies International Inc. v. Union of India and others**¹ and contends that the writ petition is liable to be dismissed.

Learned Advocate General alternatively submits that the possession if has to be taken pursuant to termination of lease agreement, is always in accordance with law and the prayer is superfluous and prays for dismissing the writ petition.

Learned counsel appearing for the parties do not dispute that in spite of the ratio laid down by the Apex Court in **Joshi Technologies International Inc.**, it cannot be read as an absolute bar for this Court to exercise its jurisdiction under Article 226 of Constitution of India and the exercise of discretion and jurisdiction depends on case to case basis. However, the counsel for petitioner contends that case for exercising jurisdiction is made out and on the contrary, it is opposed by contending that this Court ought not to exercise jurisdiction under Article 226 of Constitution of India.

I am considering the grievance of petitioners that the respondents are assuming reentry and thereafter presuming possession in their favour, treating the petitioners as unauthorized occupants or encroachers. All other aspects relating to termination of lease agreement etc. or consequences of order in O.P.No.864 of 2016, it is made clear that this Court is not advertent to and these are considered at appropriate stage and as provided by law.

The Supreme Court in **State of U.P and others v. Maharaja Dharmender Prasad Singh**² considered the scope of re-entry by a lessor upon cancellation of lease and the scope of judicial review

¹ (2015) 7 SCC 728

² AIR 1989 SC 997

under Article 226 of Constitution of India. For brevity, the well settled proposition of law on the power of lessor to reenter the property is not adverted to, but keeping in view the ratio on this principle the writ petition is disposed of.

It is matter of record that the respondents have been restrained by way of injunction both from acting pursuant to default notice dated 26.11.2015 and also taking possession by the trial Court vide order dated 29.04.2016. Now, without reference to order dated 29.04.2016, the second respondent terminated the lease agreement, requests the petitioners to deliver possession, in default presumes re-entry and declares that the petitioners are unauthorized occupants and will be treated as encroachers. The respondents being one of the parties to lease agreement cannot declare on the contested issues and claim automatic reentry and possession of subject matter of lease agreement.

After considering the totality of circumstances and the communication dated 18.04.2017 of the second respondent, I am satisfied that the communication does not fall as a routine case for relegating the party to workout remedies under Section 9 of the Act but for the present having regard to the stage of dispute, possession etc. to meet the ends of justice, the parties are directed to maintain *status quo*.

Hence, the parties are directed to maintain *status quo* for a period of four weeks from today.

After the order is dictated, the learned Advocate General consents that the writ petition can be disposed of with the above order dictated as interim order. Hence, the writ petition is disposed of.

Now, it is left open to the parties to workout their remedies in accordance with law. Any observation made in this order shall not be treated as this Court expressing a view accepting or refusing the facts in issue between the parties. The trial Court is to consider the case on its merits and dispose of the issue uninfluenced by this order.

Accordingly, the writ petition is disposed of. No costs.

Pending miscellaneous petitions, if any, shall stand closed.

Date: 04.05.2017
sj/va

S.V. BHATT, J

