

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

WRIT PETITION No.27030 of 2017

ORDER:

Heard Sri C.Hari Preeth, learned counsel for the petitioner, learned Government Pleader for Prohibition and Excise (A.P) for respondents 1 to 5 and Sri T.Janardhan Rao, learned counsel for respondents 6 and 7.

2. An order granting 2B bar license in favour of the seventh respondent by the fourth respondent on 25.07.2017 is under challenge in the present writ petition.

3. According to the petitioner, he is the owner of the subject premises, in respect of which, the license has been granted by the fourth respondent and the seventh respondent did not obtain the lease deed from the petitioner under Rule 6(vi) of the A.P. Excise (Grant of Licence of Selling by Bar & Conditions) Rules, 2005 (for short, the Rules). It is submitted by learned counsel for the petitioner that according to Rule 45 of the Rules, the license granted in favour of the seventh respondent by the fourth respondent, which is the subject of this writ petition, is liable to be cancelled, as the same was obtained by misrepresentation and by fraudulent means.

4. On the other hand, it is submitted by the learned Government Pleader that the present writ petition filed under Article 226 of the Constitution of India is not maintainable in view of the availability of alternative remedy of appeal to the Deputy Commissioner of Prohibition and Excise, Chittoor District, the third respondent herein, under Section 63-A of the A.P. Excise Act, 1968.

5. Learned counsel for respondents 6 and 7 submitted that the sixth respondent is the owner of the subject premises and she executed a lease deed in favour of the seventh respondent.

6. It is clear from the material available on record that the sixth respondent instituted a suit bearing O.S.No.15/1997 on the file of the Court of IV Additional District Judge, Tirupati, Chittoor District, praying for cancellation of the gift deed dated 04.03.2015, registered on 05.03.2015, on which the petitioner relies upon. It is also brought to the notice of this Court that the petitioner instituted a suit bearing O.S.No.118 of 2017 on 06.07.2017 on the file of the Court of IV Additional District Judge, Tirupati, Chittoor District against respondents 6 and 7 for permanent injunction. In the said suit, the petitioner filed I.A.No.330 of 2017 under the provisions of Order XXXIX Rules 1 and 2 of CPC seeking temporary injunction to restrain the defendants therein, their men, agents, servants, followers, friends, etc., from in any way interfering and thereby dispossessing the petitioner from his peaceful possession and enjoyment of the scheduled property. Admittedly, the said suits are pending consideration before the Court of IV Additional District Judge, Tirupati, Chittoor District and no injunction order has been granted in either of the suits.

7. Since the fourth respondent already granted 2B license in favour of the seventh respondent basing on the lease deed obtained from the sixth respondent and as the said order is appealable under the provisions of Section 63 of the A.P. Excise Act, 1968 to the third respondent herein, this Court is not inclined to entertain the present writ petition in view of the said efficacious alternative remedy available to the petitioner.

8. For the aforesaid reasons, the writ petition is disposed of, keeping it open for the petitioner to file an appeal against the order impugned in the present writ petition before the third respondent under Section 63 of the A.P. Excise Act, 1968, within a period of ten days from the date of receipt of a copy of this order, raising all the grounds including the effect of Rule 6 of the Rules and, if as such appeal is filed within the time stipulated, the same be considered and disposed of in accordance with law within a period of four weeks thereafter, after hearing all the stake holders.

9. Consequently, miscellaneous petitions, if any, pending in this writ petition shall stand disposed of. There shall be no order as to costs.

Date: 21.08.2017
TJMR



A.V. SESA SAI, J