

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

W.P.No.18914 of 2016

ORDER:

This Writ Petition challenges the notice bearing No.P3/437(51)/2014-RM-WG dated 24.5.2016 issued by the 3rd respondent-Deputy Chief Traffic Manager, West Godavari Region, Eluru, terminating the licence of the petitioner to run the Canteen in new Bus Station, Eluru, West Godavari District.

The undisputed facts are as follows:

2. The 3rd respondent herein issued a notification on 24.2.2014, inviting tenders for licensing out a space for canteen business in Pucca Stall No.11 in new Bus Station, Eluru for a period of (7) years. The petitioner herein emerged as successful bidder by offering a sum of Rs.42,968/- per month for the first three years and Rs.49,413/- for the later two years and Rs.59,296/- for the subsequent two years towards the licence fee, excluding water and electricity charges. The same was followed by acceptance by the Respondent Corporation vide letter dated 17.5.2014 and execution of licence deed dated 30.6.2014. By way of impugned notice dated 24.5.2016, the 3rd respondent terminated the said licence and directed the petitioner to handover the premises by 23.6.2016. The above mentioned notice dated 24.5.2016 is under challenge in the present Writ Petition.

3. This court on 23.6.2016, granted *status quo*. A vacate petition vide W.V.M.P.No.3239 of 2016 supported by a counter affidavit is filed by the Respondents, denying the allegations and averments made in the writ affidavit and in the direction of justifying the impugned action. A reply

affidavit, so also an additional reply affidavit have been filed by the writ petitioner.

4. Heard Sri P.Sridhar Reddy, learned counsel for the petitioner and Sri S.V.Ramana, learned Standing Counsel for the Respondent-Corporation.

5. It is contended by the learned counsel for the petitioner that having granted licence for a period of (7) years, which is extendable upto 10 years, the Respondents are estopped by their conduct in terminating the licence only with an intention to secure more revenue by converting the same into shop rooms. It is further submitted that the unilateral termination of the licence of the petitioner, without being preceded by any notice and opportunity, is violative of the principles of natural justice. It is further submitted that the petitioner invested huge amounts for running the canteen, believing the Respondents that he would be permitted to run the Canteen for a period of 10 years as mentioned in the licence.

6. On the contrary, it is submitted by the learned Standing Counsel appearing for the Respondent Corporation that the present Writ Petition filed under Article 226 of the Constitution of India, obviously seeking enforcement of the contract, in the absence of any public interest, is not maintainable and for the redressal of the petitioner, the petitioner needs to approach the Civil Court, if he is advised to do so. It is further submitted by the learned Standing Counsel that the subject premises is required for the purpose of converting the same as passenger waiting hall, but not for construction of any shop rooms as alleged by the petitioner herein and the place proposed for construction of shops is a vacant place adjacent to Canteen place and has nothing to do with the existing canteen place. It is further submitted that as

per condition No.65 of the deed of licence, the licensor has right to terminate the licence by giving one month's notice, in the event of premises being required for use of licensor. In support of his submissions and contentions, the learned counsel placed reliance on the orders of this Court in W.P.No.26638 of 2015 dated 26.11.2015 and W.P.No.39117 of 2016 dated 21.12.2016.

7. In the above backdrop, now the issues that emerge for consideration of this Court are;

- (1) Whether the present Writ Petition filed under Article 226 of the Constitution of India is maintainable, in the facts and circumstances of the case?
- (2) Whether the petitioner herein is entitled for any relief under Article 226 of the Constitution of India ?

8. There is absolutely no dispute with regard to the factum of entering into contract by the petitioner with the Respondent Corporation by way of deed of licence dated 30.6.2014 and the period of licence which is extendable upto 10 years. According to the petitioner, because of the abrupt and sudden termination of the licence, petitioner herein is compelled to face irreparable loss and hardship. It is also the case of the petitioner herein that having agreed for a period of (7) years, the Respondents are estopped from going back from the said promise. It is also the specific case of the petitioner herein that the impugned action is also in total violation of principles of natural justice as the same was not preceded by any notice or opportunity of hearing to the petitioner herein.

9. On the other hand, it is the case of the Respondents that since the subject transaction is purely a contractual transaction, the Writ Petition is not

maintainable and it is the further case of the Respondents that as per clause 65 of the Deed of Licence, the impugned notice cannot be found fault with. In this context, it may be appropriate to refer to Clause 65 of the Deed of Licence, which reads as under:

“The licensor reserves the right to terminate the licence by giving one month’s notice in case the premises is required for use of the licensor”.

10. In the instant case, it is the specific case of the Respondents herein that the subject premises is required for the purpose of converting the same as passenger waiting hall. The counter also specifically denies the allegations in the writ affidavit that the Respondents are making constructions in the canteen place. Counter further undertakes that the Corporation would not call for any fresh tenders for establishment of Canteen at new Bus Station, Eluru. Counter further states that the present waiting hall is not sufficient and requires expansion and that the public at large are put to inconvenience as the present waiting hall is not sufficient to accommodate the travelling public. In this context, it would be appropriate to refer to the judgments cited by the learned Counsel for the Respondent Corporation.

11. In W.P.No.26638 of 2015, when a question arose as to the maintainability of the Writ Petition, this Court at paragraph 8 held as under:

“It is not disputed that if the work of the petitioner is not satisfactory and the maintenance of the contract area is not done properly, under clauses 41 and 42 of the contract, the respondents were entitled to terminate it. Clause 18 entitles respondent to terminate the contract with one month’s advance notice. The question whether the work of the petitioner was satisfactory or not is a disputed question of act and if the petitioner is of the view that the ground on which the contract is terminated is not valid, it is open to the petitioner to approach the Civil Court and seek relief of damages for unlawful breach of contract

by the respondent by establishing the grounds that seeking a relief of damages. Once a contract is concluded between the parties, it is settled law that the jurisdiction under Article 226 of the Constitution of India is not normally exercised to resolve contractual disputes.”

12. In W.P.No.39117 of 2016, while dealing with the rights under a contract and the alleged breach of terms of the contract, this Court by way of an order dated 21.12.2016, refused to entertain the Writ Petition under Article 226 of the Constitution of India and categorically held that any disputes arising out of contract cannot be agitated in a writ petition. In the said judgment, this Court also left open for the petitioner therein to workout the remedies in appropriate forum.

13. In the instant case also, the petitioner herein obviously praying for enforcement of terms of the contract, which does not involve any public interest. Therefore, this Court has absolutely no hesitation to hold that the present Writ Petition filed under Article 226 of the Constitution of India is not maintainable.

14. For the aforesaid reasons, the Writ Petition is dismissed, however with a liberty to the petitioner to avail the alternative remedy, if any, if he is advised to do so. Having regard to the nature of controversy, the interim order granted by this Court on 23.6.2016 shall continue for a period of two weeks from today. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

A.V.SESHA SAI, J

Date: 4.4.2017
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THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.No.18914 of 2016



4.4.2017

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