

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

W.P.No.8302 of 2016

ORDER:

This Writ Petition challenges the notice bearing No.P3/437(114)/2014-RM-WG dated 9.12.2015 issued by the Deputy Chief Traffic Manager, West Godavari Region, Eluru-3rd respondent, terminating the licence of the petitioner to run the business of Cycle Stand in S.No.17 at Eluru New Bus Station.

The undisputed facts are as follows:

2. The Respondent-Corporation invited tenders for allotment of site for running Cycle Stand at Eluru Bus Station, West Godavari District. The petitioner herein also participated in the said tenders and the tenders were opened on 16.12.2014 and the petitioner herein emerged as successful bidder by offering a sum of Rs.60,000/- per month as rent and the same was followed by acceptance by the Respondent Corporation and execution of Deed of Licence on 27.2.2015 and allotment of space of 13000 sft. for a period of four years commencing from 27.1.2015 to 26.1.2019. By way of impugned notice dated 9.12.2015, the 3rd respondent terminated the said licence. The said notice of termination of licence is under challenge in the present Writ Petition.

3. This Court, while admitting the Writ Petition on 15.3.2016, granted interim suspension of the impugned order. A vacate petition vide W.V.M.P.No.1511 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.

4. Heard Sri T.V.S.Prabhakar Rao, 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 four years, the Respondents are estopped by their conduct in terminating the licence. 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 principles of natural justice.

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 to carry out certain civil engineering works for modernisation of the Bus Station for free movement of travelling public and also for construction of another passenger way from the main road to Platforms 11, 12 and 13 which is passing through cycle stand. It is further submitted that as per condition No.48 of the deed of licence, the contract can be terminated by giving three months advance notice on either side. 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 27.2.2015 for a period of four 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 four 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 48 of the Deed of Licence, the impugned notice cannot be found fault with. In this context, it may be appropriate to refer to Clause 48 of the Deed of Licence, which reads as under:

“The contract can be terminated by giving three months advance notice on either side. In such circumstances, the deposits which may remain to the credit of the licensee will be refunded only after settling all the dues payable to the Corporation. Corporation shall not be liable to pay any damages that the licensee may suffer on account of such termination. However, the licensee is permitted to exercise this option only on completion of initial 9 months license period so as to complete

the minimum stipulated period of one year. Corporation reserves the right to terminate the contract any time during the subsistence of contract period by giving 3 months advance notice to the licensee.

Both the parties agree that they will implement this contract in its letter and spirit”.

10. In the instant case, it is the specific case of the Respondents herein that the subject premises is required to carry out certain civil engineering works for modernisation of the Bus Station for free movement of 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 arises out of contract cannot be agitated in a writ petition. In the

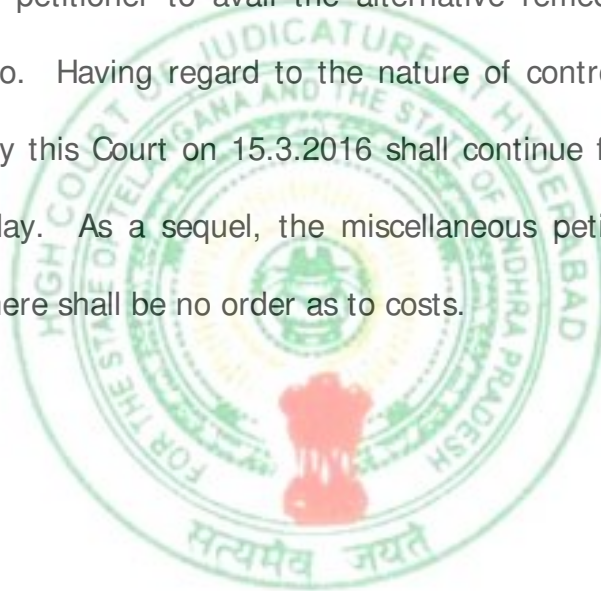
said judgment, this Court also left open for the petitioner therein to workout the remedies in appropriate forum.

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 15.3.2016 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.

Date: 4.4.2017
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A.V.SESHA SAI, J



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

W.P.No.8302 of 2016



4.4.2017

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