

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

WRIT PETITION No.22708 of 2008

ORDER:

Petitioner seeks Writ of Mandamus to call for the records relating to the Proceedings No.21012/68/2005-LM, dated 19.05.2006 and set aside the same holding it as illegal, arbitrary and violative of Articles 14 and 21 of the Constitution and consequently direct the respondents to consider the case of the petitioner for grant of lease in building R-40 and adjacent (3) sheds which were earlier leased out to him at Begumpet Airport on the same terms and conditions as was extended in favour of other 4 aviations viz. M/s.Flytech Aviation, M/s.Sigma Aviation, M/s.Rajiv Gandhi Aviation and M/s.A.P.Aviation Academy.

2a) The petitioner after retiring from Air Force service, with the noble aim to coach the children in Aero-Space Technology, applied to the 3rd respondent for allotment of suitable place. After lengthy correspondence, the respondents decided to lease out building No.R-40 located near Begumpet Airport, which was in a dilapidated condition. Therefore, he sought for the permission of authorities to renovate the entire structure and make it fit for utility and started the Institute. Initially the petitioner was granted lease for three years on 01.11.1998 and thereafter, additional three sheds were also leased out to him by an additional agreement dated 17.02.1999.

b) In the entire state of Andhra Pradesh there are only five unique institutions including the petitioner which undertakes teaching. The other

four institutes are also located within the vicinity of Begumpet Airport. Except the petitioner's Institute, the lease of other four institutes were continued by the respondents. Aggrieved by the action of the respondent authorities the petitioner filed W.P.No.22038 of 2003 which was dismissed by the High Court directing the petitioner to make a representation to the respondents. Thereafter, petitioner submitted a representation to the competent authority. Since no action has been taken, again he filed W.P.No.25981 of 2005 which was disposed of directing the 2nd respondent to consider the representation of the petitioner within eight (8) weeks and pass orders. As the authorities have not taken any action, once again he was constrained to file W.P.No.464 of 2008. During the pendency of the said writ petition, the respondents passed the impugned proceedings dated 19.05.2006, rejecting the application of the petitioner. Hence writ petition was disposed giving liberty to question the said rejection order.

Hence, the instant writ petition.

b) Respondents filed counter *inter alia* contending that Quarter No.40 admeasuring 216.26 sq. mts. @Rs.25/- per sq. mt. per month; three old barracks admeasuring 273.60 sq. mts. each @ Rs.25/- per sq. mt. per month and parking area for aircraft adjacent to Quarter No.40 admeasuring 20 sq. mts. @ Rs.1076/- per sq. mt. per month were allotted to the petitioner in the year 1998-99 on lease basis for a period of three years only. When the petitioner failed to vacate the premises even after expiry of lease period, the Estate Officer and Airport Director,

Hyderabad, Begumpet, Hyderabad initiated proceedings under Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (for short “the Act”) in Case No.3 of 2002 and passed order No.AAI/NAD/HYD/HYD/EST-IAME/2002, dated 02.07.2002 treating the lessee as an unauthorized occupant and thereafter the petitioner was evicted from the premises on 08.10.2003.

c) It is further contended that the other institutions who are the lessees of the Airport Authority of India (AAI) are being continued as per the terms and conditions of their lease agreements and petitioner is no way concerned with them. The petitioner has not been allotted any land/premises at present and he cannot insist AAI for allotment of the land to him, as the allotment is the policy matter of AAI.

d) It is also contended that the petitioner filed W.P.No.25981 of 2005 on the ground that his representation was not considered and disposed. The said writ petition was disposed by order dated 07.12.2005 directing the Chairman, AAI to consider and dispose of the representation of the petitioner dated 28.04.2005. Thereafter, the Executive Director (LM), AAI vide letter No.21012/68/2005-LM dated 16/19.05.2006 informed the petitioner that the land/building/structure near old terminal building for commercial purposes having nexus with aviation activities are allotted by AAI as per policy and that once AAI management decided to consider and allot land for purposes such as establishing of Flying Training Institute etc. tenders would be invited and the petitioner may participate in the same subject to fulfilling the conditions prescribed in

tenders. Aggrieved by the said communication dated 19.05.2006, the petitioner filed W.P.No.464 of 2008 and it was dismissed on 25.06.2008 observing that representation of the petitioner was disposed of by AAI and no further direction was required to be given in the said writ petition and if the petitioner was aggrieved by the decision communicated to him by the AAI, he was at liberty to challenge the same in accordance with the provisions of law. Instead of challenging the same, he filed the instant writ petition which is not maintainable. Respondents thus prayed to dismiss the writ petition.

3) Heard arguments of Sri Pratap Narayan Sanghi, learned counsel for petitioner; Sri K.Laxman, Assistant Solicitor General for respondent No.1 and Sri E.Madan Mohan Rao, learned counsel for respondent No.2 and 3.

4) As can be seen, the respondent authorities have leased out Quarter No.R-40 (Abandon building) and three sheds for a period of three years i.e. from 01.11.1998 to 31.10.2001. In the licence agreement dated 29.04.2000 it was clearly mentioned the licence period may be further extended as mutually agreed between the parties. Be that it may, after termination of lease period, since the petitioner has not vacated the premises, the Estate Officer initiated proceedings under the Act in Case No.3/2002 and evicted the petitioner. The record shows challenging the eviction, the petitioner filed W.P.No.22038 of 2003 and the said writ petition was dismissed by order dated 29.10.2003, observing it cannot be said respondent authorities have not followed due procedure completed

under the Act and having regard to the fact eviction process has already been completed, petitioner is at liberty to approach the Airport Authority for delivery of articles, which were kept in their safe custody and if the petitioner makes such representation/application, the same shall be considered by the respondents and permit the petitioner to remove the articles to a safer place. Thereafter, it appears the petitioner submitted a representation to the respondent authorities for allotment of land and building i.e. Building No.R-40 and adjacent sheds along with aircraft parking and he also filed W.P.No.25981 of 2005 on the ground that his representation 28.04.2005 was not considered by the respondents. The said writ petition was disposed of by order dated 07.12.2005, directing the 1st respondent to consider and dispose of his representation. Thereafter, the petitioner filed another W.P.No.464 of 2008 on the allegation that his representation was not considered in spite of direction given in W.P.No.25981 of 2005. When the said writ petition was pending the impugned proceedings No.21012/08/2005-LM, dated 19.05.2006 were issued by 3rd respondent stating that with regard to representation of the petitioner for allotment of building/structure along with other land near Old Terminal Building, the said land and building/structure No.5 for commercial purposes having nexus with aviation activities are allotted by AAI as per policy and once AAI management has decided to consider and allot land for purposes such as establishment of Flying Training Institute etc. tenders will be invited and petitioner may participate in the same subject to fulfilling the conditions prescribed in the tenders. In view of said proceedings W.P.No.464 of

2008 was dismissed. Challenging the aforesaid proceedings dated 19.05.2006 the present writ petition is filed.

5) Learned counsel for petitioner vehemently argued that impugned proceedings are illegal, arbitrary and discriminatory inasmuch as the respondent authorities being the statutory authorities, showed discrimination against the petitioner in not extending the lease while permitting the other four aviation institutions to continue. In view of such glaring discrimination the impugned order is liable to be set aside. He placed reliance on the judgment of the Apex Court in *Lok Prahari vs. State of U.P.*¹.

6) Opposing the writ petition, learned Assistant Solicitor General would strenuously argue that allotment of space in the respondent premises is a policy matter and the petitioner cannot claim any preemption in this regard particularly when his conduct during the currency of lease and after termination of the lease was not proper as he failed to remit the rents properly and failed to vacate the premises after termination of lease which forced the authorities to initiate proceedings under the Act. He would further argue that the other aviation institutions are concerned, of the said aviation institution stands on a different footing depending upon the terms of the lease entered into with AAI and the petitioner cannot claim any discrimination.

7) On a careful scrutiny of material on record, I find force in the submission of learned Assistant Solicitor General. The AAI authorities

¹ (2018) 6 SCC 1

on a contractual basis granted licence to the petitioner to run his aviation institute for three years i.e. from 01.11.1998 to 31.10.2001 on agreed rent. On termination of the lease when the petitioner failed to vacate the premises, the respondent authorities were constrained to initiate proceedings under the Act. The petitioner on a number of occasions resorted to writ jurisdiction of this Court but in none of those instances, he could able to establish that he had a right to continue in the premises of the respondent. Ultimately in the impugned proceedings the respondent authorities made it clear that as and when tenders are called for, the petitioner may participate in the same subject to fulfilling the conditions prescribed in the tenders. Except harping that the impugned proceedings are illegal, arbitrary and discriminatory, the petitioner could not show any plausible ground to establish his contention. As rightly argued by learned Assistant Solicitor General, leasing out of the premises is a policy decision and as and when the respondents invite tenders, the petitioner may participate in the same subject to his fulfilling conditions prescribed in the notification. Therefore, the impugned proceedings, in my considered view, do not suffer from any perversity or illegality to interfere.

8) It should be noted that though petitioner contended that the respondents showed bias and discrimination against him while continuing lease of other aviation institutions, however, he could not point out the nature of the discrimination showed against him. It is the firm contention of the respondents that depending upon the terms of the

lease, the other aviation institutions are continued and on that ground the petitioner cannot plead discrimination. The aforesaid contention is perfectly right because the petitioner failed to explain the nature of discrimination allegedly showed against him by the respondent authorities. As rightly argued by the learned Assistant Solicitor General, continuation of other aviation institutions in the premises of the respondents will depend upon the terms and conditions of the respective leases. Hence, the petitioner cannot attribute bias and discrimination. The cited decision will not advance his cause.

9) At the outset, I find no merits in the contention of the petitioner. Accordingly, this writ petition is dismissed. No costs.

As a sequel, pending miscellaneous petitions, if any, shall stand closed.

Date: 21.12.2018
Murthy

U.DURGA PRASAD RAO, J