

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

W.P.Nos.27000 and 32860 of 2018

COMMON ORDER:

Since these two writ petitions are inter related, this Court deems it appropriate to dispose of these writ petitions by way of this common order.

2. W.P.No.27000 of 2018 prays for a direction to the respondents 2 to 4 herein not to renew the licence to the Bar of the 5th respondent herein in the premises bearing No.D.No.7/3359 and 7/3361, Srinivas Nagar, Proddatur, YSR Kadapa District.

3. In W.P.No.32860 of 2018, challenge is to the orders of the Deputy Commissioner of Prohibition and Excise, Kadapa District vide proceedings Rc.No.A1/340/2017, dated 20.07.2018 and proceedings in RC.No.A1/340/2017, dated 31.08.2018. Petitioners in these two writ petitions jointly purchased the premises bearing D.No.7/3359 and 7/3361 by way of a registered sale deed dated 31.07.2008. Petitioner in W.P.No.27000 of 2018 who is the co-owner of the premises executed a lease deed on 20.04.2013 for a period of 5 years in favour of the petitioner in W.P.No.32860 of 2018, leasing out his share of the property. On 28.05.2018, petitioner in W.P.No.27000 of 2018 got issued a legal notice, stating *inter alia* that despite the expiry of the lease period on 20.04.2018, petitioner in W.P.No.32860 of 2018 is running the bar and restaurant in the subject property without there being any extension of the lease period. By way of the said legal notice dated 28.05.2018, ultimately the Excise and Prohibition authorities were called upon to stop the renewal of the license of bar and restaurant. On 05.07.2018, pursuant to the said legal notice, the Deputy Commissioner of Prohibition and Excise, Kadapa issued a show cause notice, asking the petitioner in W.P.No.32860 of 2018 to submit an explanation as to why the

action should not be taken under Rule 11 (1) (vi) of A.P. Excise (Grant of Licence of Selling by Bar and Conditions of Licence) Rules, 2017.

4. According to the petitioner in W.P.No.32860 of 2018, he submitted an Explanation. Thereafter, vide proceedings Rc.No.A1/340/2017, dated 20.07.2018, the Deputy Commissioner on the ground that the petitioner in W.P.No.32850 of 2018 failed to produce the lease agreement as contemplated under Rule 11 (1) (vi) of the Rules, directed the Prohibition and Excise Superintendent to close down the subject bar and restaurant. The same was followed by proceedings Rc.No.A1/340/2017, dated 31.08.2018 by which the Deputy Commissioner of Prohibition and Excise directed the Prohibition and Excise Superintendent to close down the subject bar and restaurant.

5. It is submitted by Sri O.Manohar Reddy, learned counsel for the petitioner in W.P.No.32860 of 2018 and the fifth respondent in W.P.No.27000 of 2018 that the action impugned is highly illegal, arbitrary and unreasonable and opposed to the very spirit and object of the provisions of A.P. Excise Act, 1968 and the Rules framed there-under. It is the further submission of the learned counsel that since the petitioner herein was already granted the license for the period commencing from 01.07.2017 till 30.06.2022 by way of an order dated 06.07.2017 of the Prohibition and Excise Superintendent on the basis of the lease agreement dated 20.04.2013 executed by the petitioner in W.P.No.27000/2018, the insistence on lease agreement is permissible under the Rules.

6. On the contrary, it is submitted by the learned Government Pleader so also the learned counsel for the petitioner in W.P.No.27000 of 2018 and learned counsel for the 6th respondent in W.P.No.32860 of 2018 Sri K. Sitaram, that absolutely there is no illegality nor there exists any infirmity in

the impugned action and in the absence of the same the impugned action is not amenable for any judicial review under Article 226 of the Constitution of India. It is further submitted by the learned Government Pleader that the license granted in favour of the petitioner in W.P.No.32760 of 2018 is a fresh license as per Rule 6 of the Rules and according to Rule 11 (1) (vi) of the Rules, it is incumbent on the part of the applicant of the license to produce the lease deed on a stamp paper and in the instant case beyond 19.04.2018 there is no valid lease in favour of the petitioner herein. In elaboration, it is further contended by the learned counsel for the petitioner in W.P.No.27000 of 2018 and that the license granted in favour of the petitioner in W.P.No.32860 of 2018 is contrary to Rule 11 (1) (vi) of the Rules and the respondent authorities ought not to have granted the license for a period of 5 years without there being any valid lease agreement for the said period.

7. The sum and substance of the case of the petitioner in W.P.No.32860 of 2018 is that as per Rule 11 (1) (vi) of the Rules, the applicant should be either owner or lessee of the premises and once the license is granted in his favour for a period of 5 years, it is not open for the Deputy Commissioner to pass the impugned order.

8. Rule 11 of the Rules deals with restriction for grant of license and as per Clause (vi) of Sub-Rule 11, Licence in Form-2B or 2B (P) shall not be granted unless the applicant produces lease deed on the stamp paper for the proposed licensed premises. Admittedly, the lease deed executed in favour of the petitioner in W.P.No.32860 of 2018 by the petitioner in W.P.No.27000 of 2018 came to an end on 20.04.2018. It is also a reality that there is no extension subsequently. The contention that once the license is granted from 01.07.2017 till 18.06.2022 basing on the lease agreement which was in force as on the date of license the Deputy Commissioner cannot initiate any action,

in the considered opinion of this Court cannot be approved. This court is in agreement with the contention advanced by the learned counsel for the petitioner in W.P.No.27000 of 2018 that the very grant made in favour of the petitioner in W.P.No.32860 of 2018 is contrary to Rule 11 (1) (vi) of the Rules. The effort of the petitioner is that he wants to continue in the premises without any valid lease, which is mandatory as per the above said provision of law. If the interpretation sought to be pressed into service by the learned counsel for the petitioner in W.P.No.32860 of 2018 is to be accepted, in the considered opinion of this Court, the provisions of Rule 11 as referred to supra would become redundant.

9. For the aforesaid reasons, W.P.No.32860 of 2018 is dismissed and W.P.No.27000 of 2018 is closed as no orders are required to be passed in the said writ petition in view of the findings in W.P.No.32860 of 2018. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

Date:08.10.2018
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A.V.SESHA SAI, J

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



W.P.Nos.27000 and 32860 of 2018

Dated 08.10.2018

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