

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.31331 of 2018

ORDER:

This Writ Petition is filed challenging the proceedings No.WLS/7/2018, dated 08.08.2018, issued by the 4th respondent directing the petitioners to remove NC Plot near North gate Kothavalasa as per the agreement, which was expired on 31.03.2018/

It is the contention of the petitioners that the agreement by way of licence (in short "the agreement"), dated 22.03.2014, is valid for five years. (It may be noted that each petitioner entered into an agreement of licence with the respondent-railway authorities individually on different dates, however, all of them are in the months of March and April, 2014). In terms of Clause 5(a) of the agreement, the agreement is valid for five years and they are entitled to continue in the said licence premises till March, 2019. Learned counsel for the petitioners would submit that the notices issued on 08.08.2018 directing the petitioners to vacate the premises within one week, alleging that the five years license period has expired, is wrong, untenable and contrary to the material on record. Learned counsel for the petitioners submits that they would without demur vacate the premises immediately after their license period of five years get over. In those circumstances, learned counsel for the petitioners prays for suspension of the impugned notice, dated 08.08.2018. Learned counsel for the petitioners further submits that the Clause 7 of the Agreement provided for compensating the licensee when his right is curtailed and the term of license does not run over the total

period of 5 years. He would also further submit that the petitioners would have no objection to vacate the premises if the compensation is paid to them in terms of the agreement.

On the other hand, learned Standing Counsel for railways by drawing attention to the Clause 5 of the Agreement submits that though the agreement by way of licence was entered into in the month of March-2014, the parties on their own have agreed that the five years period shall be with effect from 01.04.2013. He further submits that the petitioners were put on notice on earlier occasions informing them that they would be required to vacate the premises by 31.01.2018. In spite of the same, the petitioners had not chosen to vacate the subject premises and the said area is required for the purpose of making obstacle free approach road leading to the Limited Height Subway. Learned Standing Counsel further submits that whether the petitioners would be entitled to compensation or not is the issue cannot be decided in a Writ proceeding and the same can be decided only in appropriate proceedings.

Perused the record and having considered the respective submissions, with the consent of the both the parties, the Writ Petition is being disposed of at the admission stage.

A careful perusal of the agreement, no doubt, discloses that the agreement is entered in the month of March/April, 2014 and as pointed out by the learned counsel for the petitioners also the very stamp paper is of the year 2014. However, it is well settled when an agreement is interpreted the clause in the agreement in its entirety would be required to be considered. In the present case on hand at Para 5 of the agreement it is disclosed that the

respondent-railway authorities agreed to give temporary occupation of the land for five years with effect from 01.04.2013, in the form of licence, and the occupier is liable to have this license cancelled at any time upon such notice as is mentioned in clause-7 of the agreement. Clause-7 of the agreement stipulates seven days notice to be given to the occupier. In the present case on hand, there is no dispute, such notice has already been given to the petitioners. While Clause-5 of the agreement states that agreement shall be with effect from 01.04.2013 and Clause-5A deals with after 5 years, all plots shall be auctioned afresh and allotted to highest bidders duly giving first right of refusal to the present occupant. The effect of clause 5-A has to be reckoned with effect from 01.04.2013. The effect of Clause 5-A mentioning 5 years that the plots shall be auctioned after five years does not by itself create any independent right, but what all it declares is that after five years term as mentioned in the agreement the plots would have to be given only through auction and not otherwise. The stipulation of five years and the starting point of five years is contained specifically in Clause-5 as 01.04.2013. Viewed in that angle and, inasmuch as, the respondents had issued notices, as required under Clause-7 of the agreement, cautioning the petitioners, giving one more opportunity to them through the impugned notice asking them to vacate the premises forthwith, cannot be found fault in any manner.

It may also be further noted that in the impugned notice itself it was specifically mentioned that the land is urgently required by the railways for the purpose of making obstacle from approach road leading to the limited height subway. In other

words, the premises, in occupation of the petitioners, is required for getting a facility which would be useful for public at large. In that view of the matter also the interest of the petitioners vis-a-vis the interest of the public interest is weighed. There is no balance of convenience in favour of the petitioners for granting injunction and restraining the authorities from taking over the possession. Accordingly, there being no mention in the Writ Petition, the same is dismissed and further invocation of Article 226 is not appropriate as the clause is governed by the contractual terms.

While parting with the case, it may be noted that the observations made in the Writ Petition shall not be construed as preventing the petitioners for seeking compensation, if they are otherwise entitled, by approaching the competent Civil Court, which is required to be considered on its own merits.

As a sequel, pending miscellaneous petitions, if any, shall stand closed. No order as to costs.

CHALLA KODANDA RAM, J.

Date: 31.08.2018.
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