HONOURABLE SRI JUSTICE SANJAY KUMAR
AND
HONOURABLE SRI JUSTICE P. KESHAVA RAO

COMCA No.45 of 2019

JUDGMENT: (per the Honourable Sri Justice Sanjay Kumar)

1. This appeal, under Section 13(1A) of the Commercial Courts Act, 2015, arises out of the order dated 13.02.2019 passed by the learned Judge, Commercial Court-cum-XXIV Additional Chief Judge, City Civil Court, Hyderabad, in COP.No.251 of 2017. The said petition was filed by the appellants herein under Section 9 of the Arbitration and Conciliation Act, 1996, praying for a direction to restrain the State of Telangana and its Secretary, Youth Advancement, Tourism and Culture (PMU) Department, from taking action pursuant to the default notice dated 26.11.2015 and more particularly, from interfering with their possession over the petition schedule property.

2. The petition schedule property is an extent of Acs.130.00 guntas in Sy.No.12 (part), Jawahar Nagar Village, Shamirpet Mandal, Ranga Reddy District. This property was given on lease to the appellants under unregistered lease deed dated 07.07.2007 by the State for the purpose of developing a Golf course. The lease term reserved under the document was 33 years. It appears that development was not effected in terms of the agreement between the parties, be it for whatever reason, leading to the fallout of relations. The State therefore issued default notice dated 26.11.2015 calling upon the appellants to rectify the defaults committed vis-à-vis the lease agreement and the separate construction and management agreement executed by and between them, within a time frame. Failing the same, it stated that the said agreements would stand terminated and the appellants would be required to handover possession of the land with the immovable assets thereon.

3. By the order under appeal dated 13.02.2019, the Commercial Court held against the appellants on the ground that they failed to prove a *prima facie* case and establish balance of convenience in their favour. The Commercial Court however disposed of the petition with the observation that the authorities were at liberty to evict the appellants from the petition schedule property under due process of law. While so, it appears that the authorities thought it appropriate to once again issue another default notice on 17.06.2019, informing the appellants that it was in the nature of a notice before termination and giving them 30 days time to clear the outstanding lease rentals and additional development premium, aggregating to Rs.2,72,43,493/-, and also for complete grounding of the project, failing which they asserted that they would take over the project site immediately as per the norms of the agreement. This default notice was followed by letter dated 30.07.2019 issued by the Secretary to the Government, Youth Advancement, Tourism and Culture (PMU) Department, requesting the appellants to handover the possession of the project site at once failing which possession was deemed to have been resumed by his office on behalf of the Government. Thereafter, a panchanama was drawn up on 03.08.2019 to the effect that possession of the petition schedule property was taken over.

4. Having regard to the aforestated sequence of events, we are of the opinion that the authorities chose to exercise power arbitrarily and in brazen disregard of the requirements of law. It may be noted that the Commercial Court itself recorded that eviction of the appellants would have to be in accordance with the due process of law. Despite the same, it appears that the authorities did not choose to abide by the procedure prescribed by law and adopted the methodology of taking over possession of the leased premises by way of a panchanama. Such a procedure is

unknown to law. (See **State of U.P. and others vs. Maharaja Dharmander Prasad Singh and others**[1] and **Meghmala and others vs. G. Narasimha Reddy and others**[2]).

5. We therefore have no hesitation in holding that the taking over of possession by the authorities on 03.08.2019 is bereft of legal foundation and cannot be countenanced. That being said, we may note that the parties are yet to invoke the arbitration clause and seek resolution of their *inter se* disputes through the process of arbitration. It is also not in dispute that the subject land has not been put to any operational use, except for construction of a three floored building and some amount of development, by laying of roads and by way of fencing, by the appellants. In such circumstances, we are of the opinion that the appellants can be permitted to resume possession of the land and see to its upkeep, at their own cost, pending the arbitration process. They shall however maintain *status quo* in all other respects. Similarly, the State and its authorities shall also maintain *status quo* with regard to the title and status of this land. It is left open to the parties to approach the arbitral tribunal, as and when it is constituted, under Section 17 of the Arbitration and Conciliation Act, 1996, if they seek further interim protection.

6. At this stage, the learned Advocate General would assert that the appellants have to clear the lease rental dues if they wish to show their *bonafides*. We find merit in this submission. Sri R. Raghunandan Rao, learned senior counsel appearing for the appellants, would inform this Court that demand draft bearing No.045892 dated 30.07.2019 drawn on HDFC Bank for a sum of Rs.90,81,000/- is ready and two cheques drawn on HDFC Bank, both dated 31.08.2019, for sums of

[1] (1989) 2 SCC 505
[2] (2010) 8 SCC 383

Rs.90,81,246/- and Rs.90,81,247/- respectively are also readily available with him. He would state that this would be sufficient to clear the outstanding arrears. As the learned Advocate General states that this amount would have to be credited to the relevant account as per due procedure, we direct the appellants to deposit the aforestated instruments with the competent authority within a week from today.

7. The appeal is disposed of in terms of the above directions. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

P. KESHAVA RAO, J

Date: 08.08.2019.
ES/CCM

HIGH COURT FOR THE STATE OF TELANGANA ★ HYDERABAD ★