

A.No.834 of 2020 in O.A.No.92 of 2020,

in

A.No.604 of 2020

SENTHILKUMAR RAMAMOORTHY, J

O.A.No. 92 of 2020 is filed for an order of interim injunction restraining respondents 1 and 2 from evicting the applicant from the playground of Pachaiyappa's College Higher Secondary School, Chennai-600 001 pending disposal of the application. A.No.834 of 2020 is filed to vacate the order dated 14.02.2020 in O.A.No. 92 of 2020 granting an ad interim injunction until 28.02.2020. A. No.604 of 2020 is to direct the respondents to allow the applicant to use the playground with liberty to renew the licence/lease for a further period of three years from 1.10.2019 as agreed by the Board of Trustees on the same terms and conditions of the latest lease/licence agreement or as per the terms. For the sake of ease of reference, the applicant in A.No.604 of 2020 and O.A. No.92 of 2020 is referred to as the applicant in this order and the respondents therein, including the vacate injunction applicant, as the respondents.

2. I heard the learned counsel for the applicant and the learned counsel for the first respondent.

3. By earlier order dated 14.02.2020, an order of ad-interim injunction was granted until today. Upon receipt of notice, the first respondent filed an application to vacate the order of injunction.

4. The learned counsel for the applicant submitted as follows. The applicant has been using the playground of Pachaiyappa's College Higher Secondary School, Chennai from the year 2003 as a site for sports and athletic activities. In the year 2017, the applicant requested the respondents for an extension of licence and such extension was granted for a period of three years under proceedings dated 06.06.2017 of the first respondent. The said licence was granted on condition that the applicant should pay maintenance charges of Rs.7 lakhs per annum and use the ground only between 06.00 a.m. and 08.00 a.m. and 5.00 p.m. and 7.00 p.m.

5. He pointed out that this extension of licence was for a period of three years from 01.10.2016 to 30.09.2019 with the option for

renewal with the consent of both the parties subject to usual terms and conditions and escalation at 10% on compound basis for every year. When the licence period was about to expire, by letter dated 30.09.2019, the applicant requested the respondents to extend the licence at the enhanced fee of Rs.7,70,000/- for the next three years. However, this request was refused by letter dated 29.11.2019 whereby the applicant was informed that the request for extension of license was rejected, upon consideration, for two reasons. The said reasons were that the first respondent had taken a policy decision that the playground of colleges/schools under the administration of the Pachaiyappa's Trust should not be leased/licensed for any other purpose especially commercial purpose. The second ground was that the proposed enhancement of licence fee to Rs.7,70,000/- is meagre especially considering the location of the ground. He pointed out that the present application is filed in the said facts and circumstances. Pursuant to the ad-interim injunction granted by this Court, he pointed out that a demand draft for a sum of Rs.4 lakhs was submitted to the first respondent in compliance with the said order so as to cover the licence fee for the period of October 2019-January 2020.

6. In support of the contention that the order of interim injunction should be made absolute in these circumstances, the learned counsel referred to and relied upon the order dated 01.08.2019 of this Court in **MRF Limited v. The Interim Administrator, Pachaiyappa's Trust Board in A.No.6560 of 2018 and O.A.No.805 of 2018**. He pointed out that the facts in the said case were substantially similar to the present case in as much as it pertained to the use of the ground of Pachaiyappa's College by MRF Limited for a further period of three years from 01.01.2018. After examining the facts and circumstances of the case, this Court permitted the applicant therein to continue to use the playground for a further period of three years from 01.01.2018 subject to certain terms and conditions that were set out at paragraph-35 of the said order. According to the applicant, the said order is squarely applicable to the facts and circumstances of the present case. The learned counsel, thereafter, refuted the contentions in the counter of the first respondent.

7. By referring to the inspection that was carried out by the first respondent, he pointed out that the said inspection was carried out on

28.01.2019 between 01.00 p.m. and 02.00 p.m. In light of the fact that the applicant was permitted to use the ground only between 06.00 a.m. and 08.00 a.m. and 05.00 p.m. and 07.00 p.m., he pointed out that no sports activities were permitted during the time of inspection between 01.00 p.m. and 02.00 p.m. Consequently, he contended that the finding at page No.4 of the typed set of papers [2nd page of the report] that there seems to be no sports activities on the ground is patently unreasonable. He strongly denied the finding in the report that the Prime Sports Academy (the Academy) has not provided tracks for track and field events, football field, volleyball court and other courts for the conduct of track and field and sports events as per the norms prescribed by the Sports Development Authorities and stated that the said finding is factually incorrect. With regard to the contention in the counter that the applicant is parking buses on the ground and not using it for sports activities, he submitted that the applicant was permitted to park four buses as per the proceedings dated 06.06.2017 and that only four buses are being parked and these buses are used to transport the students from their colleges to the ground for training and, thereafter, to their hostels.

8. With regard to the contention that the first respondent is not the owner of the land and that the Government has initiated proceedings for resumption of the land, he submitted that it is evident from the objection notice dated 23.01.2020 and the reply of the first respondent dated 12.02.2020 that the land has not been resumed as on date. He, thereafter, pointed out that the balance of convenience is also in favour of the applicant because a large number of students are availing the facilities provided at this ground and have achieved great success in various athletics and sport activities. He also referred to a general report of the Academy in support of this contention. The last contention of the learned counsel was that in light of the no objection certificate dated 12.02.2020, the first respondent does not have the *locus standi* to seek to vacate the order of interim injunction.

9. On the contrary, the learned counsel for the first respondent stated, at the outset, that the applicant does not satisfy any of the cardinal principles for the grant of interim injunction. The first contention of the learned counsel for the first respondent is that the applicant was merely permitted to use the playground for a limited number of hours for a period of three years and that this was not a

lease and would qualify as a licence. The said licence was admittedly granted for a period of three years, which commenced on 01.10.2016 and ended on 30.09.2019. Therefore, the licence period expired on 30.09.2019. In light of the fact that it is a licence, the learned counsel adverted to Section 14 of the Specific Relief Act, 1963 (the Specific Relief Act) and pointed out that, in terms thereof, a contract, which is in its nature determinable, cannot be specifically enforced. Consequently, it was contended that no interim injunction can be granted as per Section 41 (e) of the Specific Relief Act. The next contention of the learned counsel was that the land in question is admittedly owned by the Government. For this purpose, reliance was placed on the Town Survey Register which reflects that the land is classified as 'poromboke'. By relying on the aforesaid classification of the land, the learned counsel contended that even the first respondent cannot contest the request of the Government to resume the lands because the said land was given to the respondent for the limited purpose of utilizing it for sports and other activities subject to the power of resumption by the Government. In this connection, he also pointed out that the licence granted to the applicant by the erstwhile Board of Trustees of the first respondent was illegal because it violates

the terms and conditions of the grant by the Government to the first respondent. He also pointed out that the lands in question are sought to be resumed by the Government for transfer of the same to the Judicial Department. For all these reasons, the learned counsel for the first respondent contended that the order of injunction is not liable to be extended.

10. By way of rejoinder, the learned counsel for the applicant submitted that it is false to state that the first respondent is unaware about St. Joseph's College and its involvement. It is evident from page 2 of the typed set filed by the first respondent that several remittances were received from the St. Joseph's College of Engineering. He refuted the contention that good facilities had not been created by the applicant. He reiterated that the Interim Administrator's inspection report cannot be relied upon because the inspection was not properly conducted and that the inspection was carried out on a single day between 01.00 and 2.00 p.m. He also pointed out that the reasons cited in the counter of the first respondent are completely different from that cited in the reply dated 29.11.2019 whereby the request for extension of licence was rejected. For all these reasons, the learned

counsel submitted that the applicant cannot be called upon to vacate especially at the instance of the first respondent, which has already given its no objection to the Government.

11. I considered the submissions of the learned counsel for the respective parties and examined the records.

12. The short question that arises for consideration is whether the applicant has made out a *prima facie* case to make the order of interim injunction absolute. For this purpose, the starting point of enquiry should be the nature of rights created in favour of the applicant. The applicant asserts that a licence was originally granted in the year 2003 and, thereafter, extended from time to time. Nevertheless, the undisputed position is that the last extension was granted under proceedings dated 06.06.2017, which are on record. Clause-5 of the said proceedings is relevant and reads as follows:

"5. This permission is only for a period of 3 (three) years w.e.f. 01.10.2016 to 30.09.2019 with the option for renewal with

the consent of both the parties subject to usual terms and conditions and their satisfactory performance and escalation at 10% on compound basis for every year."

From the above clause, it is abundantly clear that the licence is for a period of three years with effect from 01.10.2016 to 30.09.2019 and this period has undoubtedly lapsed. Clauses 12 and 27 are also relevant and the said clauses are as under:

"12.On termination of the permission at any time the Prime Sports Academy authority should handover the ground as its where its condition without claiming any compensation therefor.

27. The permission granted for use by the Prime Sports Academy shall not create any right of ownership or tenancy either on the said ground or on the fixture to be created therein."

From Clause 12, it is evident that the permission/licence is expressly revocable by the first respondent and the applicant cannot claim compensation. Clause-27 provides that no rights of ownership or tenancy were created under the proceedings dated 06.06.2017. Thus, it is a licence *simpliciter*. The contentions of the learned counsel for the respective parties should be examined in the above context.

13. Section 52 of the Indian Easements Act, 1882 (the Easements Act) deals with licences in relation to immovable property. Section 63 thereof sets out the conditions in which a licence is deemed to be revoked. It provides, inter alia, in clause (c) that where a licence has been granted for a limited period and such period expires, the licence shall be deemed to be revoked. In this connection, the learned counsel for the first respondent relied upon Section 14 of the Specific Relief Act, which deals with contracts that cannot be specifically enforced and one such category is contracts which are determinable in nature.

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14. The Hon'ble Supreme Court dealt with the enforcement of contracts, which are determinable in nature, in **INDIAN OIL**

CORPORATION v. AMRITSAR GAS AGENCY (1991) 1 SCC 533 in

the context of a dealership licence of a petroleum outlet. In that context, the Hon'ble Supreme Court found that one of the clauses of the license enabled revocation by giving 30 days notice. On the facts of the said case, although proper notice was not given, the Hon'ble Supreme Court held that the maximum that can be claimed by the aggrieved person is damages for the notice period of 30 days because the contract is determinable in nature and, therefore, no specific relief could be granted as per Section 14(1)(c) of the Specific Relief Act. In one of my earlier orders, I discussed the categories of contract that are determinable by nature and concluded that there are two categories, namely, (i) contracts that are unilaterally and inherently revocable or capable of being dissolved such as licences and partnerships at will; and (ii) contracts that are terminable unilaterally on "without cause" and "without fault" basis. This licence falls in the first category. The rationale for refusing specific performance of such contracts is that it would be an empty formality, which could be nullified by subsequent termination.

15. Consequently, the contention of the learned counsel for the

first respondent is that no injunction should be granted to prevent the breach of a contract, the performance of which would not be specifically enforced. Section 41 of the Specific Relief Act specifies the circumstances in which injunctive relief should be refused and clause (e) thereof covers breach of a contract, which is not specifically enforceable. In this case, the admitted position is that the licence period expired on 30.09.2019. Therefore, it cannot be said that there is a breach of licence. Instead, the fact situation herein is that the applicant made a request by letter dated 30.09.2019 for extension of licence and, in response, the same was rejected by reply dated 29.11.2019. In a statutory context wherein an injunction cannot be granted even when there is a breach of a contract which is not specifically enforceable, *a fortiori*, an injunction certainly cannot be granted in respect of an expired license. As per Section 63 of the Easements Act, even where a license is revoked, the licensee is only entitled to a reasonable time to leave the property by removing any goods which she has been allowed to place on such property.

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16. Therefore, I am of the view that the applicant has failed to

make out a *prima facie* case for extension of the order of ad-interim injunction. The balance of convenience is also not in favour of the applicant especially in light of the fact that the lands in question are admittedly Government lands and the Government already initiated action to resume the said lands. Nevertheless, it is always open to the applicant to request the first respondent to grant a reasonable time to make alternative arrangements.

17. In the result, the ad-interim injunction granted on 14.02.2020 in O.A.No.92 of 2020 in A.No.604 of 2020 is hereby vacated and O.A.No.92 of 2020 stands dismissed. Consequently, A. No.830 of 2020 stands allowed. In view of the conclusion herein that specific performance cannot be requested in respect of an expired licence, A. No.604 of 2020 is also dismissed.

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