IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

BEFORE:
The Hon'ble Justice Ravi Krishan Kapur

W.P.O No. 245 of 2019
Pradip Agarwal & Ors.
vs
Kolkata Municipal Corporation & Ors.

With

W.P.O No. 353 of 2019
Ashok Agarwal
vs
Kolkata Municipal Corporation & Ors.

For the writ petitioners (In WPO 245 of 2019)	: Mr. Jishnu Saha, Senior Advocate. Mr. Ajay Gaggar, Advocate. Mr. Uttiyo Mallick, Advocate. Ms. Trini Joarder, Advocate.
For the writ petitioners (In WPO 353 of 2019)	: Mr. Jishnu Chowdhury, Advocate. Ms. Poulami Banerjee, Advocate.
For the respondent no.4	: Mr. Sabyasachi Chowdhury, Advocate., Mr. Rajashri Dutta, Advocate. Mr. Kritin Saraf, Advocate.
For the KMC	: Mr. Alok Kr. Ghosh, Advocate. Mr. Swapan Kr. Debnath, Advocate. Ms. Piyali Sengupta, Advocate.
Judgment on	: 14.12.2023

Ravi Krishan Kapur, J.:

1. Both these writ petitions raise common questions and were heard analogously.

2. The petitioners assail a notice inviting tender bearing No. KMC/MKT/17/2018-19 and a letter of allotment dated 29 May 2019 issued by the Kolkata Municipal Corporation bearing reference no.DMC(M)/L/11/2019-20 pertaining to operation, maintenance and overall management of "Satyanarayan Park A.C Market".
3. Briefly, Kolkata Municipal Corporation (the licensor), being the owner of Satyanarayan Park situated at 141, Utkalmoni Gopobandhu Sarani, Kolkata – 700007 (the premises) had on 15 February, 1985 entered into a license agreement with Happy Homes and Hotels Pvt Ltd (the licensee) to develop, establish, remodel and improve the existing park into a two storied underground market for a period of 30 years (the agreement).
4. By the agreement, the licensee was granted powers to sublicense the premises and obtain premium as monthly license fees and other prospective charges including electricity, air conditioning, maintenance charges etc. However, the licensee did not have the authority to sell, mortgage, charge, lease or transfer the premises or any part thereof without prior permission from the licensor. It was also agreed that the licensee would handover peaceful possession upon expiry of the agreement and if necessary the licensor would further enter into a fresh agreement with the existing sub licensees. It is an admitted position that the licensee paid an amount of Rs. 30,00,000/- on account of premium and also paid license fees of Rs.40,000/- per month to the licensor. In addition, the licensee despite expiration of the agreement continued to remain in possession of the premises and collect license fees and other charges from the sub licensees. Significantly, there has been no default of

the underlying obligations by and between the licensor Corporation and the licensee.

5. The aforesaid arrangement carried on till May 2018 when the licensor published the impugned notice inviting bids for operation, maintenance and overall management of Satyanarayan Park AC Market bearing no KMC/MKT/11/2018-2019. Since the licensee was the sole bidder in the bidding process the tender was cancelled. Thereafter, two further notices inviting bids were published in 2018 and 2019 respectively wherein the licensee once again was the sole bidder. There being no other bidder participating in the tender process, the licensor issued a letter of intimation to the licensee and accepted the bid of the licensee. Pursuant to the aforesaid, the licensee has also paid a sum of Rs.4.07 crores as lease premium to the licensor.
6. The writ petitioners in both these petitions are occupants of individual shoprooms at the premises. It is alleged that upon termination of the agreement dated February 15, 1985 on February 14, 2015 the petitioners became direct licensees under the licensor Corporation and were obliged to pay the license fees, service charges and air conditioning charges directly to the licensor. In this context, the petitioners rely on the various clauses of the sub license agreement. The petitioners also allege that the licensee acted as a mere agent of the licensor for the given period of 30 years and that the sub-licensees were induced to believe that upon expiration and under the terms of the agreement, the sub-licensees would become direct licensees under the licensor Corporation. Thereafter, upon expiration of the agreement, the petitioner made representations to the licensor Corporation to accept the sub licensees as direct licensees or

tenants under the agreement. However, the licensor never responded to such representations. The petitioners also tendered cheques towards payment of license fees, maintenance charges and air conditioning charges to the licensee alongwith a covering letter dated 20 May 2019 which were returned by the licensee. It is further alleged that licensor in publishing the impugned tender and taking steps pursuant thereto has unilaterally resiled from a concluded contract.

7. On behalf of the respondents it is contended that the decision of the licensor in issuing a fresh tender is a policy decision and the same cannot be challenged in this proceeding. In any event, the disputes raised in the petition are purely contractual disputes and ought not to be adjudicated by this Court. Diverse proceedings have been filed by the different shop-owners which are pending before the Civil Courts. One of the shop-owners had also filed a writ petition which was dismissed as infructuous.

8. Judicial review of policy decisions is limited and circumscribed. Generally, on matters affecting policy which require expertise, the Courts leave such decisions on those who are most qualified to address the same. The terms of the invitation to tender are also not open to judicial scrutiny and the Courts ought not to interfere as they are in the realm of contract unless they are found to be arbitrary, discriminatory or actuated by malice. Insofar as the petitioners seek to challenge the decision to publish a notice inviting tender in 2018 requesting bidders to make over bids for maintenance and overall management of the market, the same is a policy decision and not justiciable. In contracts having a commercial element, some more discretion has to be conceded to the authorities so that they may enter into contracts with persons, keeping an eye on the

augmentation of revenue. *[Sterling Computers Ltd. v. M & N Publications Ltd. [(1993) 1 SCC 445, Tata Cellular v. Union of India (1994) 6 SCC 651, Global Energy Ltd. v. Adani Exports Ltd. [(2005) 4 SCC 435, Master Marine Services (P) Ltd. v. Metcalfe & Hodgkinson (P) Ltd. [(2005) 6 SCC 138, Dhampur Sugar (Kashipur) Ltd. v. State of Uttaranchal, (2007) 8 SCC 418* and *Shimnit Utsch India (P) Ltd. v. W.B. Transport Infrastructure Development Corpn. Ltd., (2010) 6 SCC 303, Rishi Kiran Logistics Private Limited vs. Board of Trustees of Kandla Port Trust & Others (2015) 13 SCC 233 paras 24-28].*

9. In any event, ordinarily, a disputed question of fact is not investigated in a proceeding under Article 226. This is however a rule of discretion and not an exclusion of jurisdiction. Each case has to be decided on its peculiar facts. The right which the petitioners seek are purely contractual right under the sub-license. The contention of the petitioners that they have become direct licensees/tenants of the respondent no.1 Corporation on the expiration of the license granted to the respondent no.4 and that an agreement is to be inferred by incorporation cannot be determined in a proceeding of this nature. In any event, numerous suits have been filed by different occupiers including the Satya Narayan Park AC Market Shop Keepers' Welfare Association before the Civil Court and the same are pending final adjudication. The question raised by the writ petitioners necessarily involve a combined interpretation of the clauses of the license agreement and squarely fall within the realm of contract. Similarly, the question of whether there was an irrevocable license coupled with grant of an interest as contended by the petitioners cannot be adjudicated in this proceeding. Any alleged relationship having been created upon the expiry

of the license agreement and upon the mere tender and acceptance of rent also cannot be gone into in this proceeding.

10. Moreover, in seeking to assert their rights under the sub-license agreements, the petitioners are indirectly seeking specific performance of their respective sub-license agreements. The disputes involved are purely contractual in nature. A right to relief flowing from a contract has to be claimed in a Civil Court and the Writ Court is not an option. In any event, there is no public element involved in this petition since the petitioners are asserting purely personal rights under their respective sub-licence agreements. The increase of license fees under the impugned tender is also an underlying issue between the parties and cannot be adjudicated by this Court.

11. All necessary pre requisites and norms of the tender process such as publishing and the tender bidding process have been strictly adhered to prior to confirming the bid in favour of the respondent no.4. Despite repeated publications, the respondent no.4 licensee was the only bidder. There is nothing which is palpably erroneous, malfide, arbitrary or capricious warranting any interference by this Court. There is also no irregularity in the decision making process or any contravention of law which warrants any interference. As a principle, the Writ Court does not sit as a Court of Appeal but merely reviews the manner in which the decision was made.

12. In view of the above, both the writ petitions, WP No 245 of 2019 and WP 353 of 2019 stand dismissed. There shall be no order as to costs.

(Ravi Krishan Kapur J.)