IN THE HIGH COURT OF ANDHRA PRADESH :: AMARAVATI

HON'BLE MR. JUSTICE ARUP KUMAR GOSWAMI, CHIEF JUSTICE
&
HON'BLE MR. JUSTICE NINALA JAYASURYA

WRIT APPEAL No. 258 of 2021

(Taken up through video conferencing)

Visakhapatnam Metropolitan Region
Development Authority(VMRDA),
rep. by its Metropolitan Commissioner,
Visakhapatnam, Visakhapatnam District,
and another. …. Appellants/
2nd and 3rd Respondents

Versus

M/s. Fusion Foods,
rep. by its Proprietor T. Harsha Vardhana Prasad,
S/o.Nageswara Rao, aged about 56 years,
r/o.91727/1, CMB Compound, Visakhapatnam,
Visakhapatnam District, and another. …. Respondent No.1/
Writ petitioner

Counsel for the appellants	: Mr. S. Sri Ram, Advocate General, For Mr. Kasa Jagan Mohan Reddy
Counsel for respondent No.1	: Mr. S. Subba Reddy
Date of hearing	**:** 11.08.2021
Date of Pronouncement	: 17.09.2021.

JUDGMENT

(Per Ninala Jayasurya, J)

Aggrieved by the order dated 31.03.2021 passed by the learned Single Judge in W.P.No.21399 of 2020, the 2nd and 3rd respondents therein filed the present appeal.

2. By the order under assailment, the learned Single Judge while holding *inter alia* that the action of the appellants in evicting the writ petitioner / 1st respondent on 15.11.2020 a Sunday, from the subject matter premises, by issuing a

communication purportedly a "Vacation Notice" dated 14.11.2020 is not as per the procedure established by Law, directed redelivery of possession.

3. Heard Mr. S. Sri Ram, learned Advocate General, appearing for Mr. Kasa Jagan Mohanreddy, learned counsel for the appellants and Mr. S. Subba Reddy, learned counsel for the 1st respondent/writ petitioner.

4. The writ petitioner / 1st respondent's case as projected in writ petition, in brief, is thus:

Pursuant to invitation of applications for allotment of Drive-In-Restaurant situated at Gurajada Kalakshetram bearing Door No.11-1-7 in T.S.No.1018, Waltair Ward, Visakhapatnam District (hereinafter referred to as 'premises') by Visakhapatnam Urban Development Authority (VUDA) (presently Visakhapatnam Metropolitan Region Development Authority-VMRDA), the petitioner being the highest bidder was allotted the premises *vide* R.C.No.3130/2003/1-3 dated 05.03.2003 for a period of 9 years. The petitioner was put in possession of the premises and raised some constructions, after obtaining necessary permissions. As the term of license would expire by 10.07.2012**,** the petitioner requested the authorities to extend the license *vide* letter dated 11.08.2011 for a period of 33 years. However, a Vacation Notice was issued on 01.05.2012 which led to filing of a civil suit as also a writ petition. Ultimately, VUDA took possession of the premises on 14.05.2014, but *vide* proceedings Rc.No.3130/2003/1-3 dated 08.07.2015, VUDA extended the license period in favour of the petitioner by one more term i.e., for 9 years from 2015 to 2024.

5. Against the background of the above stated position, it is pleaded in the writ petition that the 2nd and 3rd respondents / appellants, sought to vacate the writ petitioner by issuing a notice *vide* R.C.No.3130/2003/1-3 dated 14.11.2020 styled

as Vacation notice on the premise that certain irregularities were observed by the Government in its Letter No.21646/H2/2011 dated 14.11.2020 under reference 2nd cited in the notice, in granting extension of license / lease to the writ petitioner. It is on the basis of the said purported notice, the writ petitioner alleged that the officials of the appellants / 2nd and 3rd respondents along with the police personnel on 15.11.2020 in the morning hours at 5-00 a.m., entered the premises in question, removed the articles and put up a seal to the gate in a high-handed and arbitrary manner and the same is violative of Articles 14, 19(1) (g) and 21 of the Constitution of India, apart from principles of natural justice.

6. The appellants / 2nd and 3rd respondents filed a detailed counter-affidavit *inter alia* admitting the factum of extension of license and the relevant averments at para Nos.11 and 12 read thus:

> *"11. While so, M/s. Fusion Foods i.e., petitioner herein submitted a representation to the Government (MA & UD Department) on 03.09.2014 to allow him to continue as a licensee in the schedule premises with new terms and the Government forwarded the same to the then Vice Chairman, VUDA to furnish remarks to the Government for taking further necessary action vide Letter No.12297/H2/2014 dt.05.09.2014. It was decided to grant license for the schedule premises in favour of M/s. Fusion Foods for one more term i.e., 9 years vide proceedings Rc.3130/2003/3 dt.08.07.2015.*
>
> *12. Upon the queries raised by the Government with regard to grant of license for the schedule premises from 08.07.2015 to 07.07.2024 vide Letters of the Government on 03.02.2017 and 26.10.2017, the then Vice Chairman, VUDA informed the Government vide Letter, dt.24.11.2017 that a legal opinion was obtained from the Standing Counsel to the VUDA on 06.07.2015 and accordingly, the license for one more period of 9 years was granted from 08.07.2015 to 07.07.2024. In the above backdrop, the Government sent a Letter Rc.No.21646/H2/2011, dt.14.11.2020,*

addressed to the present Metropolitan Commissioner, VMRDA, stating that while the Government rejected continuation of the license period in the above circumstances, the petitioner i.e., M/s. Fusion Foods managed to get the license period granted for 9 more years from 08.07.2015 to 07.07.2024 vide proceedings Rc.No.3130/2003/I-3, dt:8-7-2015 without going for public auction and without obtaining any further sanction from the Government, causing major financial loss to the VMRDA. The Government, therefore, has requested the VMRDA to cancel the license to M/s. Fusion Foods and to take action afresh for auction as per the rules being followed and to make use of the property appropriately, which could help the authority to realize more resources and to recover the dues, if any, immediately so as to avoid financial loss to the authority. In pursuance of the orders of the Government, the Authority of VMRDA i.e., Metropolitan Commissioner, issued vacation Notice vide Rc.No.3130/03/3 dt.14.11.2020 to the petitioner i.e., M/s Fusion Foods to vacate the premises and to hand over the same premises to the Estate Officer, VMRDA and directed to clear the pending dues to the VMRDA, if any. Inspite of the efforts of the VMRDA to serve the said vacation notice on the petitioner on 14.11.2020, the petitioner avoided to receive notice on 14.11.2020 and so, the said vacation notice was displayed at the Door Number of the Schedule premises to get the premises vacated by the petitioner. At the time of service of notice it was found that one M/s Srikanya Comfort was holding part of the premises on sublease from the petitioner."

7. Alleging that the writ petitioner suppressed the facts and violated the conditions of license i.e., Clause 10 by inducting a 3rd party i.e., M/s. Srikanya Comfort into the premises, it is stated that as the extension was granted in violation of the prevailing norms, the Government has taken corrective steps to ensure that the anomalies are rectified. While setting out the other conditions of license allegedly violated by the writ petitioner, it is prayed that the writ petition be dismissed.

8. By way of reply to the counter-affidavit, the writ petitioner filed an affidavit *inter alia* stating that VUDA *vide* proceedings 11.09.2018 granted permission to the petitioner to run a multi brand food outlet instead of single sale outlet in the licensed premises in order to improve sales and filed the said proceedings along with other documents including resolutions passed in the VUDA Board Meeting dated 18.08.2015 ratifying the extension of license granted *vide* proceedings dated 08.07.2015, the resolution dated 20.07.2017 wherein it was mentioned that license is valid upto 2024 and the writ petitioner was advised to approach the authority with regard to petitioner's request for extension of license from 9 years to 33 years, one year prior to the expiry of license period.

9. The learned Single Judge, after hearing the arguments and considering the materials on record, formulated the following points for consideration:

> "*1.Whether the respondents have proved that the extension of the license was wrongfully obtained and whether the State action is correct in issuing the "impugned" notice?*
>
> *2. Whether the terms of the deed of license have been followed?*
>
> *3. Whether the premises is sublet or sublicensed?*
>
> *4. Whether the respondents have justified the stand taken in the notice, dated 14.11.2020, or they have attempted to improve on the same?*
>
> *5. Lastly, whether the procedure established by law needs to be followed and whether it has been followed?*
>
> *6. To what relief?"*

10. After answering the issues, the learned Single Judge while imposing costs of Rs.25,000/- issued a direction to the appellants / 2nd and 3rd respondents to redeliver possession of the property to the writ petitioner, within a period of 7

days from the date of passing of the order and further that if the respondents so desire, shall initiate action, strictly in accordance with the provisions of the contract and the law for the lawful termination of the agreement and/or the eviction of the writ petitioner. The learned Single Judge also made it clear that the order will not come in the way of licensee / VMRDA from exercising any of its legal rights.

11. Against the above said order, the present appeal came to be filed.

12. Advancing the arguments on behalf of the appellants, Mr. Sri Ram, learned Advocate General submits that the writ petition itself is not maintainable and therefore the order of the learned Single Judge is liable to be set aside on that ground. He submits that the tenure / term as extended in favour of the 1st respondent / writ petitioner is not in accordance with the Rules governing the field and further that there is no ratification of renewal of license in favour of the writ petitioner / 1st respondent by the Government. In those circumstances, he submits that the Vacation Notice was issued to the writ petitioner / 1st respondent and there is nothing to find fault with. He also states that in fact, the writ petitioner / 1st respondent is not in actual possession of the premises in question, but another entity is existing / inducted in violation of terms of license.

13. Elaborating his submissions, the learned Advocate General contends that the agreement between the parties in the present case is not a statutory contract and the writ petition is not maintainable, the direction to restore possession on the basis of such writ petition is not tenable. He further contends that the ratio of **Mohinder Singh Gill v The Chief Election Commissioner**[1], does not apply to

[1] (1978) 2 SCR 272 = AIR 1978 SC 851

cases arising out of contractual matters and the learned Single Judge committed an error in making the said case, applicable to the facts of the present case. While referring to various dates, events including the filing of civil suit and writ petition by the 1st respondent / writ petitioner on an earlier occasion, the learned Advocate General submits that VUDA took possession of the premises on 14.05.2014 and thereafter issued proceedings dated 08.07.2015 extending the license for one more time of 9 years i.e., upto 2024. Since the Government found irregularities in the grant of extension, notice dated 14.11.2020 was issued, he states. With reference to the averments in the affidavit and the contentions raised therein, he submits that no prejudice was pleaded by the 1st respondent / writ petitioner, though action initiated is sought to be projected as violative of principles of natural justice. He also submits that the plea in the writ petition that had a notice been issued, the writ petitioner would have established his case by submitting a reply is not tenable in the context of issues relating to contractual matters. The extension of license was fraught with irregularities, hence action was initiated, as illegality cannot be perpetuated, he submits. While stating that the appellants / respondents followed the process, he further submits that the findings of the learned Single Judge does not disclose the consideration of the Government Orders in force and are also contrary to record. He submits that the Indian Easement Act viz., Sections 60 and 61 provides for right to revoke the license, that reliance on **3 Aces, Hyderabad v. Municipal Corporation of Hyderabad**[2] by the learned Single Judge though it arose in the context of statutory actions is misplaced.

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[2] AIR 1995 AP, 17

14. The learned Advocate General also places reliance on **Heisler v. Anglo-Dal Limited**[3] and sums up his argument that the writ petition on the basis of contractual terms cannot be maintained and the order of the learned Single Judge is therefore, liable to be set aside.

15. Mr. S. Subba Reddy, learned counsel appearing for the 1st respondent / writ petitioner supported the judgment of the learned Single Judge *inter alia* stating that the same was rendered on a thorough consideration of the matter with reference to the materials available on record and calls for no interference by this Court. He submits that the whole action was initiated by the appellants / 2nd and 3rd respondents under the guise of Vacation Notice dated 14.11.2020 issued on the basis of Government's Letter dated 14.11.2020. According to the learned counsel, the Notice dated 14.11.2020 was not served, but pasted in the premises on 15.11.2020 and copy of the Government's Letter dated 14.11.2020 was not even communicated to the writ petitioner. He submits that the process of eviction / dispossession was commenced in the early morning on 15.11.2020, a Sunday at 6-00 a.m. and the writ petitioner signed on the Panchanama under protest. He submits that no opportunity was given to the writ petitioner / 1st respondent and the appellants acted in an arbitrary and high handed manner with the help of police personnel. He submits that G.O.Ms.No.56 dated 05.02.2011 on which reliance is placed by the appellants is applicable to leases, but not to licenses. Further, while drawing the attention of this Court to the Minutes of VUDA Board Meeting dated 18.08.2015, he submits that the extension of license was ratified by the VUDA and further vide minutes of Meeting of VUDA dated 20.07.2017 while confirming that the license is valid upto 2024, the writ petitioner was asked

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[3] (1954) ALL ER 770

to approach the authority, one year prior to expiry of the lease period with reference to his request for extension of license period from 9 years to 33 years. He submits that, when that was the admitted position, the action of the appellants / 2nd and 3rd respondents in the absence of any allegation of violation of terms / conditions of license, is not sustainable. Further, the other allegation of introducing the 3rd party etc., in violation of conditions of license does not even form part of the Vacation Notice and the justification as sought to be projected on the basis of such violations, without even giving an opportunity to the writ petitioner cannot be countenanced. He also submits that the reasons for eviction mentioned in the notice are different from those stated in the counter-affidavit, which are introduced for the first time, and therefore the justification sought to be made is impermissible in Law. He submits that the action of the appellants / 2nd and 3rd respondents in dispossessing the writ petitioner / 1st respondent on 15.11.2020 at 6-00 a.m., even before the expiry of 24 hours from the issuance of notice dated 14.11.2020 is writ large, speaks volumes of high handedness and therefore, the learned Single Judge rightly issued the directions and they are sustainable in the facts and circumstances of the case. Accordingly, he prays that the writ appeal be dismissed.

16. At the outset, it may be appropriate to note that as opined by the learned Single Judge, there is no dispute with regard to issuance of proceedings dated 08.07.2015 by VUDA and extension of license in favour of the writ petitioner / 1st respondent for a period of 9 years from 2015 to 2024, as is evident from the Vacation Notice dated 14.11.2020 impugned in the writ petition. Further, in the said notice, it is nowhere mentioned about violation of any of the conditions of license by the writ petitioner / 1st respondent, but a reference is made to Government's Letter No.21464/H2/2011, bearing the ostensible date 14.11.2020

on the basis of which the appellants / 2nd and 3rd respondents swung into action, in no time and resorted to the action impugned in the writ petition under the guise of Vacation Notice dated 14.11.2020. Further, to the specific assertions made in the para No.8 of the writ affidavit regarding action resorted to by the appellants / 2nd and 3rd respondents on 15.11.2020 in the early morning along with police personnel in dispossessing the writ petitioner, there is no denial and the same are deemed to have been admitted.

17. Coming to the contentions articulated by the learned Advocate General, they are broadly to the effect that the license in question is an ordinary contract between the parties, but not statutory contract rendering it amenable to writ jurisdiction under Article 226 of the Constitution of India. The learned Single Judge, therefore, committed an error in entertaining the writ petition and issuing directions by the order under appeal. The Government observed certain irregularities in granting extension of license to the writ petitioner / 1st respondent and to put the things in order and to prevent perpetration of illegality, the appellants / 2nd and 3rd respondents, initiated action by following due process of issuing Vacation Notice. The writ petitioner also violated various terms / conditions of the license by inducting a 3rd party etc., and further that the learned Single Judge misapplied the decisions rendered in **Mohinder Gill's case** (referred 1 supra) and **3 Aces' case** (referred 2 supra) to the facts of the present case.

18. Before appreciating the contentions advanced by the learned Advocate General, the Vacation Notice dated 14.11.2020 may be reproduced hereunder:

"VISAKHAPATNAM METROPOLITAN REGION

DEVELOPMENT AUTHORITY

VACATION NOTICE

Rc.No.3130/03/I-3, 14/11/2020

Sub:- VMRDA – Visakhapatnam – Revenue Section – cancelation the license/lease – notice to vacate the premises – Reg.

Ref:- 1. This office proceedings Rc.No.3130/2003/I-3, Dt.8-7-2015.
2. Govt. letter No.21646/H2/2011, Dt.14-11-2020 from the Secretary to Govt., MA & UD Department, Velagapudi, AP.

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It is to inform that in the reference 1st cited, the then Vice Chairman, VUDA has issued proceedings of license subject to the conditions specified in the order.

It is to inform that in the reference 2nd cited, the Government has observed that, The VC, VUDA has extended the license/lease for a period of 9 years from 2015 to 2024, and the following Irregularities were observed in the extension of license/lease:

i. *Government have already rejected the request of M/s. Fusion Foods, Visakhapatnam for extension of license/lease but without considering the same, the lease was extended.*
ii. *Under provisions of G.O.Ms.No.56 MA & UD Department dt.05-02-2011, which is being followed by the authority, the renewal of lease beyond 3 years shall be with the prior sanction of the Government only.*
iii. *Further, under Rule 12 of said rules, rent at 10% of the current market value of the property per annum i.e. both building and land as per market value of the land and construction rates of the structures and buildings fixed by Registration Department under the Andhra Pradesh Revision of Market Value Guidelines Rules, 1998 (or) Rent at 33 1/3 percent above the earlier rent, (or) Prevailing rent of such properties in the vicinity whichever is higher.*
iv. *Further, the Honorable High Court of AP in WP No.6354 of 2009 Dt.25-08-2009, between B.Krishna Reddy Vs. Government of AP, held that, in the considered view of the court constitutional and public*

law concerns do not enable further renewal of lease nor enable the officials to avoid the transparent public process of granting lease of the property.

v. *The Authority without following the above rules have extended the license/lease at a nominal rent, without going for public auction and without obtaining any sanction from the Government, causing major financial loss to the Authority.*

vi. *As a normal practice also the Authority should have followed an open and transparent process in disposal of public property by lease to fetch maximum revenue to the Authority.*

The Metropolitan Commissioner, Visakhapatnam Metropolitan Region Development Authority (VMRDA), Visakhapatnam is hereby requested to take necessary action to cancel the license/lease and to take action for fresh auction as per the rules being followed or to make use of the property for appropriately, which could help the authority to realize more resources and to recover the dues if any immediately, so as to avoid financial loss to the Authority.

Therefore, vacation notice is hereby issued to M/s. Fusion Foods for vacation of the premises and to hand over the same premises to Estate Officer, VMRDA, further you are informed to clear pending dues to VMRDA if any.

The Estate Officer, VMRDA is requested to takeover possession of the premises without fail.

Metropolitan Commissioner

To
Sri T. Harshavardhana Prasad,
Fusion Foods,
9-17-27/1, CBM Compound,
Visakhapatnam-3.

Copy to Estate Officer, VMRDA for necessary action."

19. A bare reading of the said Notice, would make it clear that the appellants / 2nd and 3rd respondents resorted to the alleged action by issuing purported

Vacation Notice, on receipt of letter dated 14.11.2020 from the Government, wherein the Government is stated to have observed certain irregularities in granting extension of license. There is no whisper about any violation of the conditions of license. Thus, it is obvious that the appellants / 2nd and 3rd respondents acted at the instance of the State Government as it's instrumentalities, but not on any purported grounds of infraction of contractual terms or in their capacity as licensors. Curiously, though the said notice speaks of taking necessary action to cancel the license / lease by the Metropolitan Commissioner, VMRDA, the writ petitioner / 1st respondent was dispossessed / evicted while license is subsisting by deploying police personnel in less than 24 hours on a Sunday. The action of the appellants / 2nd and 3rd respondents, thus, is independent of the contractual relationship between the parties and based on the directive of the State Government to its instrumentalities. In such circumstances, the actions of the authorities / appellants should be fair, reasonable and in compliance with the principles of natural justice, but should not smack of arbitrariness. In the present case, admittedly, no order of cancellation, much less, a notice proposing cancellation was issued. A copy of the Government's letter was not even served on the writ petitioner / 1st respondent. Since the appellants / 2nd and 3rd respondents, as seen from the notice sought to initiate purported action on the ground of certain irregularities stated to have been observed by the Government, the writ petitioner should have been afforded a reasonable opportunity, which is conspicuously absent in the case on hand and constitutes violation of principles of natural justice. In such view of the matter, the invocation of jurisdiction under Article 226 of the Constitution of India is valid.

20. Further, the learned Single Judge recorded categorical findings with regard to the high handed action on the part of the appellants / 2nd and 3rd respondents while dealing with issue No.5 which reads thus:

"Issue No.5:

The last question that survives for consideration is whether the action taken by the respondent is correct. What is clearly visible is that on 14.11.2020 the impugned notice was issued. It is stated that the petitioners did not receive the same. Therefore, it was pasted on the wall (para-12). On 15.11.2020 which is a Sunday starting from 6 a.m., in the morning the procedure for eviction has started. A reading of the panchanama, which is filed, shows that the process to vacate the petitioner started at 6 a.m., when the men, mediators, police force and 11 lorries went to the site and started the eviction proceedings. Therefore, it is clear that even prior to 15.11.2020 preparations were started for eviction. Lorries were organized, mediators were secured, staff was allotted and even a police force was summoned. The rejoinder affidavit and the photographs show the presence of police also.

Both as per the terms of the license and as per the provisions of the Indian Easement Act, the petitioner is entitled to a reasonable period of time after the license is validly terminated. In the case hand, learned counsel for the respondents argued that since it is a mere license the petitioner cannot be deemed to be in "possession of the property". However, this Court notices that a licensee, who is permitted to occupy the property also has certain rights which are stipulated both by the agreement and by the law. He has a right to occupy the premises and use the same. Even if the license is validly terminated the petitioner is entitled to a reasonable time to vacate the premises. As per the judgment of the Karnataka High Court in ***Keventer Agro Limited v. Kalyan Vyapar Pvt. Ltd., (AIR 1998 KAR 76)*** *a licensee, who is unlawfully terminated and evicted has two concurrent options (a) to sue for recovery of possession and also (b) to sue for damages for the wrongful eviction. In the case on hand, this Court does not find any justification for starting the eviction from 6 a.m.,*

in the morning. The period between the sunset to sunrise is prohibited for effecting the civil arrest (Section 55 (1) of Cr.P.C.). Similarly, demolition of the property is also not be done in this period. A Full Bench of this Court in ***3 Aces case (AIR 1995 AP 17),*** *has given guidelines regarding demolition. These principles must also be applied in this Court's opinion to eviction namely (a) no evictions on holidays / Sundays; (b) No eviction after sunset before sunrise; (c) adequate notice to withdraw / vacate. The gathering of the police force for the purpose of eviction of the tenants / licensee is another disturbing feature. A person in occupation when faced with such a force of the State has no option but to meekly surrender. If he does not do so and tries to protect his possession, he may also be charged that (Sic. with) the offences like obstructing public servant in the discharge of his duty etc. He is thus literally stuck between two unenviable options. In the case on hand, the need or the necessity for the summary eviction starting from 6 a.m. is not at all explained. It is not the respondent's case that there was resistance from the petitioner or that some rowdy elements were present in the said premises. Hence, this Court is of the opinion that there was blatant violation and use of force in this case. As far back as in 1961 in the case of* ***Bishan Das v State of Punjab (AIR 1961 SC 1570)*** *the Hon'ble Supreme Court of India frowned upon the use of force for eviction and on the basis of an executive order. Time and again the Hon'ble Supreme Court of India held that the use of force for eviction is contrary to the "Rule of Law". In the case of* ***G.Manikyamma v Roudri Co-op Housing Society Ltd., [(2014) 15 SCC 197]*** *the Hon'ble Supreme Court held in para-3 that use of Police force to forcefully evict even encroachers / squatters was inconsistent with the rule of law. In view of the facts and the law it cannot be said that the petitioner was lawfully evicted. When the respondents with 11 lorries and men go ahead at 6 a.m., in the morning and started the eviction process, the petitioner had no option but to surrender.*

This Court, therefore, holds that the action of the respondents is incorrect. It is also clearly held that the use of police force without any prior resistance or obstruction is uncalled for particularly by a State

instrumentality. Usage of police force for a routine eviction is not correct. Only in cases in which the respondents have faced resistance or such other trouble from the tenants / licensees they should use the police force for the purpose of eviction. Guidance can be found in the judgment of the Hon'ble Supreme Court of India in ***Ramlila Maidan incident In Re [(2012) 5 SCC 1]*** *. Eviction should be carried out during the normal working hours and should not be resorted to early in the morning or late at night. These sort of actions would infuse a fear psychosis into the minds of the tenants / public. Unless and until there is grave pressing emergency, the use of these kind of methods should be avoided. This Court of the opinion that the procedure established by law is to be followed even in case of the license. Neither is there a valid termination nor is there any authority for taking over of the property in this manner. In the opinion of this court the petitioner was not evicted as per the "procedure established by law".*

Under the aforementioned circumstances, the contention that the writ petition is not maintainable as there is no statutory contract, but an ordinary contract between the parties cannot be appreciated. Accordingly, the submissions made by the learned Advocate General are rejected.

21. Insofar as the argument that to prevent perpetration of illegality, action was initiated, it is to be noted, as submitted by the learned counsel for the writ petitioner / 1st respondent, extension of license was ratified by the VUDA in its Board meeting dated 18.08.2015 and in the Minutes of the meeting dated 20.07.2017, with reference to the request for extension of lease from 9 years to 33 years, the writ petitioner was advised to approach the authority, one year prior to the expiry of lease period. It is worth noting that the meetings on both the occasions were conducted by no other than by the Principal Secretary to Government, Municipal Administration & Urban Development Authority as

Chairman. Therefore, the presumption that can be drawn from the above stated undisputed position is that the petitioner is in possession of the premises in question under a valid extension of license. Therefore, this Court is not in a position to accept the submission of the learned Advocate General that no notice is required for termination of license.

22. Another submission of learned Advocate General is that in view of G.O.Ms.No.56 dated 05.02.2011, extension is not valid. G.O.Ms.No.56 dated 05.02.2011 was issued by the Government making certain amendments to the Andhra Pradesh Municipalities (Regulation of Receipts and Expenditure) Rules, 1968. Though the appellants / 2nd and 3rd respondents, pressed the said G.O., into service, a reading of the same would disclose that it relates to lease or renewal of lease of immovable properties, but not with reference to license. In this regard, the learned Single Judge categorically opined that the petitioner was granted a license and the appellants / respondents who have entered a license deed, cannot rely upon a G.O., which pertains to extension of lease pertaining to the Government property. This Court finds no reason to interfere with the said view taken by the learned Single Judge, as the same is well founded.

23. With regard to the contentions that the writ petitioner violated the terms / conditions of the license and therefore the action is justified, this Court is of the opinion that the appellants / 2nd and 3rd respondents must stand or fall on the reasons given in the purported Vacation notice as their actions falls foul of Article 14 of the Constitution of India, according to the writ petitioner / 1st respondent. Testing the said argument from the said perspective, reliance was placed on **Mohinder Gill's case** (referred 1 supra) by the learned Single Judge and the same is tenable. Further, the observations made by the learned Single Judge

that the guidelines regarding demolition as set out in **3 Aces's case** (referred 2 supra) must be applied, even in case of eviction by the State authorities is well founded.

24. Be that as it may. Considering the matter in the context of actions of the State instrumentalities, the learned Single Judge, while answering issue No.6 held as follows:

> "*Normally the licensee has a right to seek for damages and may be restoration by filing a proper case under Section 6 of the Specific Relief Act, but in the opinion of this Court the use of force is a factor which should be kept in mind by this Court. The actions of State instrumentalities should be informed by reason and guided by the law. A licensee, who is neither a proclaimed offender nor a rowdy sheeter etc., was thrown out summarily by use of force. There is no allegation of resistance / obstruction either. This process has also started at 6 a.m. in the morning on 15.11.2020, which is also a Sunday. This Court as mentioned earlier does not find any rationale or reason behind this method. Whenever there is arbitrariness in State's action Article 14 springs in. In* ***Dwarkadas Marfatia and Sons v Board of Trustees of the Port of Bombay*** *[(1989) 3 SCC 293] the Supreme Court of India was dealing with eviction only when (Sic.where) the above principle was reiterated. In the leading case of* ***Olga Tellis and others v Bombay Municipal Corporation and Others*** *[(1985) 3 SCC 545] the Hon'ble Supreme Court of India held that forceful eviction of pavement dwellers affected their right to life under Article 21. The use of such force in the opinion of this Court particularly in the facts and circumstances of this case is absolutely uncalled for."*

This Court is not persuaded to take a different view to that of the learned Single Judge which is well considered on the basis of materials available on record.

25. The judgment referred to by the learned Advocate General in **Heisler case** (referred 3 supra), in the opinion of this Court is not applicable to the facts of the present case. The arguments advanced with reference to Sections 61 and 62 of Indian Easement Act, merits no consideration in the light of the conclusions arrived at in the attending circumstances of the case, and are accordingly rejected.

26. It is trite Law that even an encroacher has to be evicted in accordance with law only. The writ petitioner / 1st respondent stands on a better footing in the present case. The learned Single Judge while recording the cogent reasons held that the petitioner was not evicted as per the procedure established by Law. This Court finds no reason to take contrary view to that of the learned Single Judge. The appellants / 2nd and 3rd respondents took law unto their hands and with the help of police personnel dispossessed the writ petitioner which is not expected of the appellants / 2nd and 3rd respondents, who are instrumentalities of the State. Such actions send wrong signals to the society. Suffice to state that State actions are no exceptions to Law, nor the same be above Law. This Court with much reluctance is constrained to make these observations, by resting the matter there, with an expectation that the State / its authorities would endeavour to uphold the Rule of Law.

27. In this context, it is apposite to refer to the expression of the Hon'ble Supreme Court in the Constitution Bench Judgment in **Bishan Das & Others v. State of Punjab & Others** [4].

In the said case, the action of the State and its officials in dispossessing the writ petitioners was challenged *inter alia* contending that the same amounts to

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[4] (1962) 2 SCR 69 : AIR 1961 SC 1570

flagrant violation of fundamental rights of the petitioners to hold and possess the subject matter property, unless and until they are evicted by due process of law. Allowing the said writ petition, the Hon'ble Supreme Court held as follows:

> *"12. Learned counsel for the respondents has drawn our attention to the statement of Ramji Das made in 1925 and the order of the Revenue Minister dated December 13, 1954, and has contended that Ramji Das himself admitted that he was a mere trustee. Be that so; but that does not give the State or its executive officers the right to take the law into their own hands and remove the trustee by an executive order. We must, therefore, repel the argument based on the contention that the petitioners were trespassers and could be removed by an executive order. The argument is not only specious but highly dangerous by reason of its implications and impact on law and order.*
>
> *13. As to the second argument, it is enough to say that it is unnecessary in this case to determine any disputed questions of fact or even to determine what precise right the petitioners obtained by the sanction granted to their firm in 1909. It is enough to say that they are bona fide in possession of the constructions in question and could not be removed except under authority of law. The respondents clearly violated their fundamental rights by depriving them of possession of the dharmasala by executive orders. Those orders must be quashed and the respondents must now be restrained from interfering with the petitioners in the management of dharmasala, temple and shops. A writ will now issue accordingly.*
>
> *14. Before we part with this case, we feel it our duty to say that the executive action taken in this case by the State and its officers is destructive of the basic principle of the rule of law. The facts and the position in law thus clearly are (1) that the buildings constructed on this piece of Government land did not belong to Government, (2) that the petitioners were in possession and occupation of the buildings and (3) that by virtue of enactments binding on the Government, the petitioners*

could be dispossessed, if at all, only in pursuance of a decree of a Civil Court obtained in proceedings properly initiated. In these circumstances the action of the Government in taking the law into their hands and dispossessing the petitioners by the display of force, exhibits a callous disregard of the normal requirements of the rule of law apart from what might legitimately and reasonably be expected from a Government functioning in a society governed by a Constitution which guarantees to its citizens against arbitrary invasion by the executive of peaceful possession of property. As pointed out by this Court in Wazir Chand v. State of Himachal Pradesh [(1955) 1 SCR 408], the State or its executive officers cannot interfere with the rights of others unless they can point to some specific rule of law which authorises their acts. In Ram Prasad Narayan Sahi v. State of Bihar[(1953) SCR 1129] this Court said that nothing is more likely to drain the vitality from the rule of law than legislation which singles out a particular individual from his fellow subjects and visits him with a disability which is not imposed upon the others. We have here a highly discriminatory and autocratic act which deprives a person of the possession of property without reference to any law or legal authority. Even if the property was trust property it is difficult to see how the Municipal Committee, Barnala, can step in as trustee on an executive determination only. The reasons given for this extraordinary action are, to quote what we said in Sahi case (referred above), remarkable for their disturbing implications."

28. Considering the matter in its entirety, this Court is of the opinion that the learned Single Judge is justified in issuing the directions in the order under appeal which warrants no interference. Accordingly, the appeal fails and the same is dismissed.

29. In view of the dismissal of the appeal, the possession of the subject matter property shall be redelivered to the 1st respondent / writ petitioner, within a period

of 7 days from today. No order as to costs. Pending miscellaneous applications, if any, shall stand dismissed.

ARUP KUMAR GOSWAMI, CJ **NINALA JAYASURYA, J**

BLV

IN THE HIGH COURT OF ANDHRA PRADESH :: AMARAVATI

HON'BLE MR. JUSTICE ARUP KUMAR GOSWAMI, CHIEF JUSTICE
&
HON'BLE MR. JUSTICE NINALA JAYASURYA

WRIT APPEAL No.258 of 2021

17th day of September, 2021

BLV