2021:APHC:7050

HIGH COURT OF ANDHRA PRADESH

WEDNESDAY ,THE THIRTY FIRST DAY OF MARCH

TWO THOUSAND AND TWENTY ONE

PRSENT

THE HONOURABLE SRI JUSTICE D.V.S.S.SOMAYAJULU

WRIT PETITION NO: 21399 OF 2020

Between:

1. M/s Fusion Foods Rep. by its Proprietor
   T. Marsha Vardhana Prasad SA) Nageswara Rao, Aged about 56 years,
   Rio 9-17-27/1,
   CBM Compound, Visakhapatnam, Visakhapatnam District

...PETITIONER(S)

AND:

1. Government of Andhra Pradesh, Rep. by its Principal Secretary
   MAandUD Secretariat, Velagapudi, Guntur District
2. The Visakhapatnam Metropolitan Region Development Authority rep by its Metropolitan Commissioner, Visakhapatnam, Visakhapatnam District
3. The Secretary, V.M.R.D.Authority,
   Visakhapatnam, Visakhapatnam Dist.

...RESPONDENTS

Counsel for the Petitioner(s): S SUBBA REDDY

Counsel for the Respondents: GP FOR MUNCIPAL ADMN URBAN DEV

The Court made the following: ORDER

2021:APHC:7050

***HON'BLE SRI JUSTICE D.V.S.S. SOMAYAJULU**

+ WRIT PETITION No.21399 of 2020

% **31stMARCH, 2021**

M/s Fusion Foods,Rep. by its Proprietor T.HarshaVardhana Prasad, S/o Nageswara Rao, Aged 57 Years, R/o 7-10-43/3, AishwaryaAavaas, Old Gajuwaka, Visakhapatnam, Visakhapatnam District.

... Petitioner

AND

$ Government of Andhra Pradesh, rep. by its Principal Secretary MA & UD Secretariat, Velagapudi, Guntur District and two others.

... Respondents.

! Counsel for the Petitioner : Sri S.Subba Reddy

^ Counsel for the 1st respondent : Government Pleader for Municipal Administration

^ Counsel for the 2nd& 3rdrespondents: Sri Surya Kiran Kumar Standing counsel for VMRDA

< Gist:

> Head Note:

? Cases referred:

1) 1978 (2) SCR 272
2) AIR 1995 AP 17
3) AIR 1998 KAR 76
4) AIR 1961 SC 1570
5) (2014) 15 SCC 197
6) (2012) 5 SCC 1
7) (1089) 3 SCC 293
8) (1985) 3 SCC 545
9) (1989) 4 SCC 131

HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

WRIT PETITION No.21399 of 2020

ORDER:

This Writ Petition is filed by the petitioner, which is proprietary firm, for the following relief:

> "....to issue a Writ, order or direction, especially one in the nature of Writ of Mandamus, declaring the notice vide R.C.No.3130/03/1-3, dated 14.11.2020 issued by 3rd respondent when the lease / license exists to vacate premises bearing D.No.11-1-7, T.S.No.1018, Visakhapatnam, without following due process of law as unjust, illegal, arbitrary, against principles of natural justice and violative of Articles 14, 19(1)g and 21 Constitution of India, and consequently set aside set aside the notice vide R.C.No.3130/03/1-3, dated 14.11.2020 to vacate premises; and pass such other order or orders as are deemed fit and proper."

The petitioner before this Court is represented by learned counsel Sri S.Subba Reddy; 1st respondent is represented by the learned Government Pleader for Municipal Administration; the 2nd and 3rd respondents are represented by Sri Surya Kiran Kumar, learned standing counsel for Visakhapatnam Metropolitan Region Development. The lead arguments were advanced on behalf of State by Sri KasaJaganmohan Reddy, learned Special Government Pleader. He was supported by the other learned counsel.

The petitioner is carrying on business under the name and style of Fusion Foods. The deponent is the sole proprietor. As per the averments in the affidavit the petitioner was allotted certain portion of land and some

structures by the VUDA / now VMRDA pursuant to a public auction. The allotment was given on 05.03.2003 for a period of nine years. When the initial license period expired on 10.10.2007, disputes arose between the parties leading to Court cases. However, by a proceeding dated 08.07.2015 the petitioner was once again put in possession of the property. The license was extended for a further period of nine years from 2015 to 2024. These facts are not in doubt.

The case of the petitioner is that while the license agreement was valid upto 2024, the respondents by the impugned notice 14.11.2020 sought to terminate the petitioner's license. On the very next day i.e., on 15.11.2020 it is submitted that (without service of the notice dated 14.11.2020) the petitioner was forcefully evicted from the premises. The respondents used police and other force to forcibly evict the petitioner. The petitioner, therefore, questions the manner and method in which he was dispossessed. According to him it is contrary to the Articles 14, 19, 21 of the Constitution of India. The prayer, therefore, is to declare the action of the respondents is illegal and to put him back in possession.

In reply to this Sri KasaJagan Mohan, learned counsel for the respondents argues that the petitioner managed to occupy the premises without valid permission from the Government which decided to cancel the lease and auction

the property afresh. It is submitted that for a very meagre rent / license fee the petitioner managed to get the permission extended for a further period of nine years. It is also urged that the petitioner is in possession of approximately 24,000 sq.ft., extra space contrary to the allotted schedule promises; that he has sublet the premises and that terms of the contract were violated totally. It is also urged that the representative of the petitioner was present when the eviction was carried out on 15.11.2020. It is also the submission of the learned counsel that what is granted is only a licenseand that the petitioner has no "possession" of the property which can be protected by this court. Therefore, learned counsel argues that the action of the respondent is perfectly legal and valid.

The respondents used the terms "lease" and "license" very loosely in the course of their correspondence and their pleadings. Even the petitioner is guilty of this.

After perusing the pleadingsthe following few facts, emerge from the counter filed by the respondent.

(a) the respondents agree that there is an agreement between the parties;

(b) it is also admitted that the period of license was extended from 08.07.2015 to 07.07.2024 (Para-18 of the counter)but wrongfully;

(c) that the petitioner violated the terms of the agreement by subletting the premises (Para-16 of the counter)

(d) that the representative of the petitioner was present at the time of taking over the subject premises and he signed the panchanama under protest (para-17 of the counter).

After hearing the learned counsels, considering the pleadings and the submissions made, this Court is of the opinion that the following points emerge for decision in this case:

(1) Whether the respondentshave 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 issublet 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?

ISSUE No.1:

As mentioned earlier the crux of the submissions as far as the respondents is concerned, as can be seen from paragraph – 11, is that the license was somehow extended in favour of the petitioner for the period 2015-2024. It is argued that the same is contrary to the prevailing practice of auctioning the properties so that higher rents could be realised. It is urged that the sanction from the Government is not obtained, thereby causing major financial loss to the respondents. They state that the petitioner "managed" to get the extension. It is to be noticed that this plea is raised in 2021. The petitioner has been in possession under the second period of license from 08.07.2015 onwards. This period would have expired in July, 2024. A reading of the counter does not state why, how and when the Government instructed the VMRDA to cancel the license and to take steps for a fresh auction. This court also notices that with a rejoinder affidavit the petitioner has filed the minutes of the meeting of August, 2015 when the action of the VMRDA /VUDA in extending the period was ratified. This meeting was held on 18.08.2015. Out of the 10 officers, who participated in the meeting, 9 officers are from the All India Services(one officer, represented the Directorate of Town and Country Planning). The counter does not state why and how this resolution, by which the action of VUDA was ratified, was cancelled. The counter also does not state what action was

taken after this meeting and when. The entire blame is thrown on the petitioner. Apart from that learned counsel for the respondents also relied upon the impugned letter dated 14.11.2020, wherein it is mentioned that the renewal should have been done under the provisions of G.O.Ms.No.56, dated 05.02.2011. In the opinion of this Court, the impugned G.O., or the case law that is relied upon pertains to grant of lease for a period of 3 years / 25 years etc., Rule 12 of the G.O., quoted talks of the "rents" to be secured; the procedure for renewal of a lease etc. In the opinion of this Court respondents, who have entered into a license deed, cannot rely upon a G.O. which pertains to the extension of the leases pertaining to Government property. In the impugned letter of 14.11.2020 the words 'lease' and 'license' are very freely used, overlooking the fact that what is entered into between the parties is a deed of license.Therefore, this Court holds that the respondents are unable to prove that the action taken by the petitioner in applying for and securing the renewal for a further period of nine years from 2015-24 is contrary to law or that it is the result of some malpractice. Except for stating that the petitioner "managed" to get the license extended, nothing else is mentioned in the counter or in the arguments. That such properties should be put up to public auction for granting a 'license' is also not clearly pleaded or proven. Even otherwise, the rules relied upon are essentially pertaining to the extension of leases and do not apply to licenses.

ISSUE No.2:

The parties entered into the deed of license dated 02.02.2009. The contents of this document are also referred to in the counter. This license agreement was extended by the proceedings of July, 2015, which is filed as a material paper. By this order, the license was extended from 2015-2024 and it was made clear that the terms and conditions of the applicable license deed hold good.

Clause 13 of the license deed states that if the licensee commits default in payment of rent or otherwise violates any of the conditions of the license or if the premises is required by the licensor, the license shall stand cancelled and then the licensor shall entitle to exercise the right of reentry and take possession of the premises after giving reasonable time. Similarly, Clause 21 states that on the expiry of the license period the licensee shall vacate the premises and handover the same. In Clause 25 it is mentioned that in case of cancellation of license the respondent would be entitled to summarily remove the licensee and his workers. Clause 26 talks about the provisions of the Indian Easements Act being read as a supplement to this lease agreement with reference to revocation. The Easement Act thus has been incorporated into the deed by express reference. As per Section 60 of the Easements Act license must be revoked by the grantor. Revocation may be express or implied. In case of revocation as per Section 63 the licensee is entitled to a reasonable time

to leave the property and to remove any goods which he has placed. As per Section 64, when the licensee has been evicted without any fault of his own, he is entitled to recover compensation. A reading of this clause and of the provisions of the Easements Act makes it clear that as per Clause-13 the license has to be terminated and then the right of reentry can only be exercised after giving a reasonable time. Although the words used in Clause 13 are not very happily worded, still the Court is of the opinion that in view of the Section 63 of the Act a licensee is entitled to a reasonable period after the termination of the license. The term of a contract cannot be contrary to the Statue and the incorporation is to the "revocation of the license" in Clause 26. The termination of the license is only possible under Clause 13 if the licensee commits a default in the payment of the fee or violates the condition of the license. If the respondent wants the premises for its own use different considerations will apply. In the case on hand the petitioner has not expressly cancelled the license. Directly action was initiated to vacate the petitioner. The last paragraph of the impugned letter clearly reads that a "vacation" notice is issued to the petitioner to "vacate" the premises and to handover the same. In the opinion of this Court termination on the specific grounds mentioned in Clause 13 are not made out. There is neither default in payment of the rent nor is there violation of any of the terms. The respondents have not stated that the premises is required

by them. In fact, the clauses of the deed are not mentioned at all in the impugned letter. Therefore, this Court holds that the impugned notice is incorrect. Even otherwise, the petitioner was entitled to a reasonable time to vacate. This Court notices that on 14.11.2020 the summary eviction order was given and on 15.11.2020 from 6 a.m. onwards the eviction was completed. This is totally contrary to the agreed terms and the law.

ISSUE No.3:

The allegations made against the petitioner is that he has sublet / sublicensed the premises to the third parties. The respondentsessentially relied upon the GST search conducted on the computer which shows that particular tax payers identity number was issued to the firm called "Srikanya Foods". They also filed one bill to show that the restaurant was being run beside GurajadaKalakshetramunder the name and style of "Srikanya Comfort". This is totally denied by the petitioner in his rejoinder and it is mentioned that the license was given for running restaurants only and for conducting food business. It is stated in the counter affidavit that the multi brand food outlet is being run to improve the sales. Therefore, Srikanya Comfort was a brand which was chosen to run a particular restaurant. It is also mentioned that the GST number on which the respondents relied upon is allotted to the deponent of the writ petitioner, who is the proprietor of the petitioner

firm. Apart from these documents, the respondents have not filed anything to show that to show that a sublicense was granted to a third party. This contention is also negatived.

ISSUE No.4:

This Court also notices that in the order, which is now impugned the alleged subletting or sublicensee of the premises is not a ground for vacating the premises. The only ground spelt out in the impugned order dated 14.11.2020 is that the "lease" was extended to the petitioner without following the relevant GOs on the subject. Therefore, the "failure to auction" etc., is the only ground urged in the impugned notice. As per the settled law on the subject, including the cases of ***Mohinder Singh Gill v The Chief election Commissioner***[1]the action of the respondents should be tested only on the basis of what is mentioned in the impugned order. The subsequent additions and subsequent interpretations are not permissible to justify the action. The same is reiterated in many cases including ***3 Aces, Hyderabad v Municipal Corporation of Hyderabad***[2]**.**Therefore, this Court holds that both on the legal ground mentioned above and factually also as the respondents did not prove that subletting was done, they cannot justify their action.

ISSUE No.5:

[1] 1978 (2) SCR 272
[2] AIR 1995 AP 17

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 staring 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 KalyanVyapar Pvt. Ltd.,***[3]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 sun set to sun raise is prohibited for effecting the civil arrest (Section 55 (1) of C.P.C.). Similarly, demolition of the property is also not to be done in this period. A Full Bench of this Court in ***3 Aces cases (2 supra),*** 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 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

[3] AIR 1998 KAR 76

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***[4]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.,***[5]the Hon'ble Supreme Court held in para-33 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 respondent 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

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[4] AIR 1961 SC 1570
[5] (2014) 15 SCC 197

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 ***RamlilaMaidan incident In Re***[6]. 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".

ISSUE No.6:

The last question that logically survives is what is the relief that is to be granted?

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

[6] (2012) 5 SCC 1

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 ***DwarkadasMarfaia and Sons v Board of Trustees of the Port of Bombay***[7] the Supreme Court of India was dealing with eviction only when the above principle was reiterated. In the leading case of ***Olga Tellis and others v Bombay Municipal Corporation and Others***[8]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.

In***Krishna Ram Mahale v ShobhaVenkata Rao***[9] the Hon'ble Supreme Court of India strongly condemned the use of force to take possession. In para 8/9 of the SCC report the issue of license etc., was discussed and the Supreme Court directed redelivery of possession through the Bombay High Court Receiver. Therefore, in line with this judgment of the Hon'ble Supreme Court of India there shall be a direction in this Writ itself to the respondents to redeliver the possession

[7] (1989 3 SCC 293
[8] (1985) 3 SCC 545
[9] (1989) 4 SCC 131

of the property to the petitioner within seven days from the date of pronouncement of this order. Thereafter, if they so desire respondents shall initiate action strictly in accordance with the provision of the contract and the law for the lawful termination of the agreement and / or the eviction of the petitioner. This order will not come in the way of the licensor / VMRDA from exercising any of its legal rights.

The petitioner, in the opinion of this Court, is also entitled to exemplary costs of Rs.25,000/-, because as mentioned earlier there is highhanded action by the respondents on a Sunday morning from 6 a.m. onwards, which is contrary to the law of the land and the agreement.

Accordingly, the Writ Petition is allowed with costs of Rs.25,000/-.

Consequently, the Miscellaneous Applications pending, if any, shall stand closed.

D.V.S.S.SOMAYAJULU, J

Date:31.03.2021.
Note: LR Copy to be marked
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