

A.P.S.R.T.C., Mushirabad and Others Vs N.R. Nagappaiah

Court: Andhra Pradesh High Court

Date of Decision: Dec. 15, 1997

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” Order 39 Rule 1, Order 39 Rule 2

Citation: (1998) 1 ALD 364 : (1998) 1 ALT 412

Hon'ble Judges: T. Ranga Rao, J; Motilal B. Naik, J

Bench: Division Bench

Advocate: Mr. C.V. Ramulu, SC for APSRTC, for the Appellant; Mr. M.V. Ramana Reddy, for Mr. P. Ganga Rami Reddy, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

T. Ranga Rao, J.

These two C.M. As. are filed against the common orders dated 25-6-1997 in I.A.Nos.656/97 and 657/1997 in

O.S.No.348 of 1997 on the file of the III Additional Subordinate Judge, Vijayawada

2. The facts in giving rise to the filing of these appeals are, briefly, as follows:

The first appellant, A.P.S.R.T.C. (for short "Corporation") which is a statutory body, having bus stations, offices throughout the State of Andhra

Pradesh, for the convenience of passengers provides many stalls, canteens, parking places, etc. The policy making authority of the Corporation

issues guidelines from time to time indicating the procedure to be followed in granting licences to run the said stalls, canteens, etc. The Corporation

issued Circular 5 of 1990 dated 12-1-90 prescribing new procedures for granting of licences to run the canteen for a period of sixyears with a

maximum licence period of 12 years subject to the satisfactory performance and fulfillment of other terms and conditions, with increase in licence

fee at the end of every three years at 20%, 30% and 30% at the commencement of 4th, 7th and 10th year respectively. The appellant published

tender notification on 30-8-90 inviting sealed tenders from reputed commercial organisations to run the canteen and departmental stores at Pandit

Nehru Bus Station, Vijayawada and the respondent became successful bidder to run the said canteen on a monthly rent of Rs. 85,333/- for a

period of three years from 16-7-91 to 15-7-94, as per the terms and conditions a deed of licence was executed and he carried on business on the

said premises and the said licence was renewed for a further period of three years from 16-7-94 to 15-7-97 and executed another deed of licence

on 25-7-94. The Appellant-Corporation issued a revised guidelines Circular No.64 of 1996, dated 10-10-96 to come into immediate effect,

changing the policy of granting licences in modification of the earlier Circular 5 of 1990, dated 12-1-90 fixing the licence period for stalls, canteens,

etc, at 5 years and the licence fee shall" be the same for the first three years and shall be increased by 10% for the 4th year, 15% for the 5th year

payable by the licensee in third and 4th years of licence respectively. It also provides that all the existing licences shall be deemed to have been

terminated at the end of their subsisting period of agreement and no extension shall be given and fresh tenders shall be called for. The respondent

submitted representation to the Corporation to renew the licence for a further period of three years from 16-7-97 to 15-7-2000. But the appellant

in pursuance of the new guidelines, called for sealed tenders dated 9-6-97 to run the canteen at the said Bus Station and published in local news

papers on 15-6-97.

3. The respondent-plaintiff filed a suit in O.S.No.348/1997 before the Subordinate Judge, Vijayawada, contending that as per the terms and

conditions of the tender notification, the period of contract is 12 years and there is a concluded contract in between him and the Corporation

basing on the said terms and conditions of the tender Notification dated 30-8-90 and granted licence to run the canteen in the said Bus Station and

formally entered into deed of licence in pursuance of the said concluded contract for a period of three years commencing from 16-7-1991 to 15-

7-94 and it was further renewed for a period of three years on enhanced rentals, as per the Corporation Rules from 16-7-94 to 15-7-97 and the

Appellant Corporation cannot unilaterally alter the concluded contract to the detriment of the plaintiff and he is ready and willing to pay the

enhanced fee as fixed in the Tender Notification, as he has already invested nearly Rs. 14 lakhs as the contract is for a period of 12 years and thus

sought a direction against the Corporation to execute the deed of licence in favour of the respondent-plaintiff to run the canteen in the said bus

station for a further block period of three years commencing from 16-7-97 to 15-7-2000 on payment of monthly enhanced licence fee at

Rs.1,02,399.60 Ps. and for consequential injunction restraining the Corporation and their agents and men from interfering with the conduct of the

business carried on by him in the said Bus Station. He also filed I.A.No.656/97 for interim injunction restraining the appellant-Corporation from

interfering with the canteen business in the said Bus Station and also filed I A No.657/1997 seeking injunction restraining the appellant from calling

fresh tenders inviting public to file tender papers to run the canteen in the said Bus Station.

4. The appellant filed counters resisting the petitions stating that the Corporation granted licences to the respondent-plaintiff to run the canteen in

the said Bus Station for a period of three years commencing from 16-7-1991 to 15-7-1994 on a monthly rent of Rs. 85,333/- and the said licence

was renewed for a further period of three years and in view of the revised circular 64/1996 fresh tenders were called for, for granting licence to run

the canteen at the bus station, Vijayawada commencing from 16-7-1997 for a period of five years. It is further stated that the appellant and the

respondent entered into a deed of licence incorporating the terms and conditions and the said terms and conditions are binding on both the parties.

It is specifically denied that there is no concluded contract in between the parties to run the canteen for a period of 12 years and the respondent

has to deliver vacant possession of the premises after expiry of the licence period and he is not entitled to any of the reliefs sought for.

5. The learned Subordinate Judge on considering the submissions of both the Counsel, allowed I.A.No.656 of 1997 making the interim injunction

granted on 12-6-97 absolute, restraining the Corporation from interfering with the canteen business of the plaintiff pending disposal of the suit for a

period of three years from 16-7-1997 to 15-7-2000 subject to payment of 30% enhanced licence fee and also allowed I.A.No.657/1997 granting

injunction against the appellant-Corporation from opening the tender covers relating to the canteen business pending disposal of the suit.

6. Aggrieved by the orders in I.A.No.656/1997, the Corporation filed CMA No.1950/97 and CMA No.2022/97 is filed against the orders in

I.A.No.657/1997.

7. As these two appeals arise out of the common order, hence they are being disposed of by this order.

8. On the grounds urged before us, the points that arise for consideration in these appeals are:

(i) Whether the respondent plaintiff is not entitled for interim injunction pending disposal of the suit restraining the appellant from interfering with the

running of canteen business in the said bus station at Vijayawada and the impugned order is unsustainable in law ?

(ii) Whether the respondent-plaintiff is not entitled for injunction restraining the appellant from opening the tender covers relating to the granting of

licence to run the canteen business at Pandit Nehru Bus Station, Vijayawada, and the impugned order is unsustainable in law ?

(iii) To what relief ?

Points I and II

9. The learned Standing Counsel for the Corporation, Sri C. V. Ramulu, strenuously submitted that the licence was granted to the respondent-

plaintiff to run the canteen for a period of three years only from 16-7-91 to 15-7-94 and it was renewed for a further period of three years from

16-7-94 to 15-7-97 on payment of enhanced licence fee and as the appellant-Corporation was not inclined to renew the said licence for further

period in view of the administrative instructions issued in Circular 64/1996 dated 10-10-96, the Corporation called for sealed tenders to grant

licence to run the canteen at the said Bus Station for a period of five years. He further submitted that as per the terms and conditions of the licence,

the respondent-plaintiff has to vacate the premises after expiry of the period of licence i.e. on 15-7-97 and he has no right to claim that he is

entitled to run the canteen in the said bus station for a further period of six years basing on the tender notification and requested to set aside the

impugned orders.

10. But the learned senior Counsel Sri M.V. Ramana Reddy, appearing for the respondent urged with equal vehemence that as per the recitals in

the tender notification dated 30-8-90 the appellant granted licence for three years in the first instance extendable for nine more years with

increased rents as per the Corporation Rules and as the Corporation accepted the proposals of the respondent-plaintiff to run the canteen in the

said bus station in pursuance of the said notification, the contract was concluded for a period of 12 years and in pursuance of the said contract, he

invested huge amount of Rs.14 lakhs and a deed of licence was formally entered into for a period of three years and it was further renewed for a

further period of three more years and the Corporation has to extend the period of licence for six more years at the interval of three years and it

cannot unilaterally alter the terms of the contract to the detriment of the respondent-plaintiff and the learned Subordinate Judge has rightly granted

injunctions in favour of the respondent-plaintiff and requested to dismiss the appeals.

11. It is not in dispute that in the tender notification dated 30-8-1990 it is mentioned that the licence is for a period of three years extendable for

nine more years with increased rents as per the Corporation Rules and the quotation of the respondent-plaintiff to pay the licence fee at Rs.

85,333/- per month was accepted and a deed of licence for three years from 16-7-91 to 15-7-94 was executed incorporating the terms and

conditions and after expiry of the said period of three years, the said licence was renewed for a further period of three years and executed a fresh

deed of licence on 25-7-94 incorporating the same terms and conditions. It is mentioned in the licence deed that the licence fee shall be payable on

or before 15th of every month and under Clause 8 of the said deed, the security deposit shall be liable to be forfeited in the event of licensee

committing breach of terms and conditions of the agreement, clause 10 thereof prescribes that the licensee shall make his own arrangements for

procuring necessary equipment for carrying on his business and clause 18 provides that the licence is terminable by giving one month's notice by

either party during the subsistence of the period of licence without assigning any reasons and the licensor reserves the right to terminate the licence

by giving one month's notice in case the premises is required for the use of the licensor. Clause 20 of the licence deed provides that on expiry of

the period of licence or on its termination, as the case may be, the licensee shall deliver vacant possession of the premises intact to the licensor

forthwith and in the event of the licensee failing to deliver vacant possession to the licensor, the licensor shall have right to take possession of the

premises by putting his own lock and key to the said premises and also entitled to invoke the provisions of A.P. Eviction for Unauthorised

Occupation Act, 1968.

12. The contention of the respondent-plaintiff is mainly based on the recitals mentioned in the tender notification dated 30-8-90, as it is mentioned

that the period of contract is for three years extendable for further nine more years on enhanced rentals as per the Corporation Rules. Therefore

taking into consideration the submission of both the Counsel and consideration of the other material on record we are of the considered view that

the said recitals "three years in the first instance extendable for nine more years with increased rents as per the Corporation Rules" means that the

period of licence is only for three years and extendable for further period of nine years with mutual consent. It is not a proposal inviting the sealed

tenders to grant licence to run the canteen for a period of 12 years and if that is the intention of the Corporation, it should have been specifically

mentioned that the period of licence is 12 years. The same is evident from the letter addressed by the Assistant Traffic Inspector of the said Bus

Station dated 30-5-1994 at the time of expiry of the period of licence and the reply given by him and they read as follows :

... The Divisional Manager (K) had informed that the licence period of canteen will expire on 15-7-94 and advised to obtain the application for

extension from you vide reference cited.

Therefore, you are hereby advised to submit your willingness either to continue to dis-continue the business.

Treat this as most urgent.

The respondent-plaintiff gave the reply as under:

... In pursuance to the letter under reference we wish to inform you that the Licence period of canteen expires by 15-7-1994.

We are willing to continue our business for further period of 9 years and request you to renew our Licence as per your norms. On hearing from

you, we are also willing to pay the Security Deposit amount for the difference amount of rents.

We solicit your favourable consideration and directions in the matter at the earliest..

Thus it is clear that the respondent-plaintiff mentioned in the letter dated 1-6-1994 that the period of licence expires on 15-7-94 and further

requested to extend for nine more years.

13. It is also pertinent to mention that the appellant and the respondent entered into a deed of licence to run the canteen business for a period of

three years in the first instance from 16-7-91 to 15-7-94 and it was further renewed for three more years and a fresh deed of licence was

executed. If the period of licence is 12 years, naturally they should have entered into a deed of licence for 12 years but not for the period of three

years. The rights and obligations of the licensee and the licensor are governed by the terms and conditions incorporated in the deed of licence and

the said terms are binding on both the parties.

14. At this juncture it is relevant to mention that it is specifically mentioned in the deed of licence under clause 20 that after expiry of the period of

licence, the licensee shall deliver vacant possession of the premises intact to the licensor forthwith and in the event of the licensee failing to deliver

the vacant possession, further steps were also incorporated in the said deed of licence. Therefore, the cumulative effect of all the aforementioned

circumstances, prima facie shows that the appellant-Corporation granted licence to the respondent-plaintiff for a period of three years from 16-7-

91 to 15-7-94 and renewed for further period of three years from 16-7-94 to 15-7-97 with mutual consent, and it cannot be construed that the

Corporation has agreed to grant the licence for a total period of 12 years and we are unable to accede to the contention of the learned Counsel for

the respondent-plaintiff that the period of contract is 12 years and there is a concluded contract in between the appellant and (he respondent-

plaintiff for the said period.

15. The appellant-Corporation, in view of the guidelines in Circular No.64/96 dated 10-10-96 called for fresh tenders thereby indicating that they

are not willing to renew the licence in favour of the respondent-plaintiff for further period to run the canteen at the said Bus Station after expiry of

the subsisting licence period i.e. 15-7-97.

16. It appears that the Appellant-Corporation, in pursuance of the Circular No.64/96 terminated some of the licences and some of the licensees

approached the High Court and a Division Bench of this Court in a decision S. Sudhakara Gupta Vs. APSRTC, Mushirabad, Hyd. and Others,

held that the Circulars issued by the Corporation from time to time are administrative decisions to achieve uniformity in the transactions entered into

by the various functionaries subordinate to it functioning at various places in the State and such decisions do not create any right much less

enforceable legal right in favour of the licensee.

17. It is submitted across the bar that the writ petitioners therein filed S.L.P before the Supreme Court against the said decision and the said SLP

was dismissed and the judgment became final.

18. The learned Subordinate Judge erroneously observed that the Corporation ought to have issued a notice terminating the licence, as if the sealed

tenders were called for to grant the licence to run the canteen at the said Bus Station during the subsistence of the licence period and thus the

observation is misconceived without properly appreciating the material on record and contentions of both the parties,

19. It is not in dispute that the appellant-Corporation is the owner of the premises and the respondent-plaintiff was inducted as a licensee to run the

canteen at the Bus Stand, Vijayawada, and after expiry of the period, he is not entitled to be in possession of the said premises as the possession

becomes unlawful and he is not entitled for the relief of injunction against a true owner and his remaining in possession of the premises after expiry

of the licence period is unlawful and the same view was taken by this Court in a decision APSRTC Rep. by its Managing Director v. Nallajerla

Jaya Lakshmi and others.

20. The facts leading to the above decision are similar to the facts of the case on hand, there the respondent entered into possession in the bus

station complex at Tanuku for running stalls after expiry of the period of licence and he sought injunction and this Court observed in Para 9 of the

judgment that possession of the plaintiff is not lawful and granting of injunction is an equitable relief and the same cannot be granted in favour of a

person who is in unlawful possession of the premises against a true owner and he is not entitled to the relief sought for.

21. This Court in another decision Kondapally Sambamurthy Vs. Ramakrishna Deo and Others, , held that once the licence is terminated the

licensee has no right to remain in possession of the property, if this be the position, the equitable relief of injunction under Order 39 Rule 1 CPC

cannot be granted to the petitioner whose licence to remain in possession came to an end so as to protect the possession against the true owner.

22. Thus on consideration of the material on record and submission of both the Counsel, we are of the opinion that the petitioner plaintiff failed to

establish prima facie case and the balance of convenience in his favour and hence, he is not entitled to the interim injunction restraining the

respondent-Corporation from interfering with his possession or not to open the tenders called for by it for granting licence to run the canteen at the

Bus Stand, Vijayawada, and hence the impugned orders are liable to be set aside and accordingly set aside.

23. In the result, the C.M.A Nos.1950/1997 and 2022/1997 are allowed with costs dismissing the I.A.Nos.656/97 and 657/1997 in

O.S.No.348/1997 on the file of the learned III Additional Subordinate Judge, Vijayawada However, the learned Subordinate Judge is directed to

dispose of the matter without being influenced by any of the observations made in this order.

MAS.

Dated 15-12-1997.

After delivery of the Judgment the learned senior Counsel Mr. M.V. Ramana Reddy, appearing on behalf of the respondents sought six weeks

time for enabling the respondents to take appropriate steps after the orders being passed by this Court in the appeals. The learned Counsel

appearing on behalf of the appellants though opposed the request, we are of the view that the respondents could be permitted to vacate the

premises within one month from to-day.