

THE HON'BLE SRI JUSTICE T.VINOD KUMAR

WRIT PETITION No.4125 OF 2024

Between:

Kotagiri jay Kumar

.....Petitioner

And

The State of Telangana, rep., by its Principal Secretary (MAUD),
Telangana Secretariat, Hyderabad and two others.

.....Respondents

Date of Judgment pronounced on : 21.02.2024

HONOURABLE SRI JUSTICE T.VINOD KUMAR

1. Whether Reporters of Local newspapers : Yes/No

May be allowed to see the judgments?

2. Whether the copies of judgment may be marked : **Yes**

to Law Reporters/Journals:

3. Whether His Lordships wishes to see the fair copy : Yes/No

Of the Judgment?

T. VINOD KUMAR, J

THE HON'BLE SRI JUSTICE T.VINOD KUMAR

WRIT PETITION No.4125 OF 2024

% 21-02-2024

Kotagiri jay Kumar

..... Petitioner

Versus

\$ The State of Telangana, rep., by its Principal Secretary (MAUD),
Telangana Secretariat, Hyderabad and two others.

..... Respondents

< **GIST:**

> **HEAD NOTE:**

!Counsel for the Petitioner : M/s. Kowlur Archana

^Counsel for the respondents : Leaned Government Pleader for
MA&UD for respondent No.1 and
Sri Jagan Madhav Rao, learned
Standing Counsel for respondent
Nos.2 and 3

? **Cases referred**

- 1 (2015) 7 SCC 728
- 2 2021 SCC OnLine SC 562
- 3 (2003) 7 SCC 410
- 4 (2006) 10 SCC 236

THE HON'BLE SRI JUSTICE T. VINOD KUMAR

WRIT PETITION No.4125 OF 2024

ORDER:

This Writ Petition is filed with the following prayer:

“to issue Writ Order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the respondents more particularly respondent No 2 in passing order vide Proc Roc No 2618/A1/2022-24 dated 03/02/2024 which was communicated to the petitioner on 07/02/2024 and subsequently seizing the petitioner’s leased premises on 13/02/2024 ie., Anand Bhavan Grand Restaurant Anand Bhavan Hotel Chat Mantra (Food Stall) at TOWN HALL, admeasuring 1420.58 Sq Yards, having carpet Area of 12,785.24 Sq feet along with open area of 5489.99 Sq yards the total extent of land admeasuring 6910.57 Sq. yards, situated at opposite to Municipal Park, Jagtial Town & District, without following due procedure of law, in contravention to the covenants of the Lease Deed dated 26/02/2022, as illegal arbitrary in violation of Articles 14, 21 and 300A of Constitution of India, in violation of principles of natural justice besides being in violation of the Municipalities Act and to consequently set aside order passed by the respondent No.2 vide Proc Roc No 2618/A1/202224 dated 03/02/2024, including the direction to the respondent No.2 herein to remove the seal/seizure forthwith in respect of the petitioner’s leased premises i.e., Anand Bhavan Grand Restaurant Anand Bhavan Hotel Chat Mantra (Food Stall) at TOWN

HALL admeasuring 1420.58 Sq Yards having carpet Area of 12,785.24 Sq feet along with open area of 5489.99 Sq yards the total extent of land admeasuring 6910.57 Sq yards, situated opposite to Municipal Park Jagtial Town and District”

2. Heard learned counsel for the petitioner, learned Government Pleader for MA&UD, Sri Jagan Madhav Rao, learned Standing Counsel appearing on behalf of respondent Nos. 2 and 3 and with the consent of the Counsel appearing for the parties, the Writ Petition is taken up for hearing and disposal at admission stage.

3. Petitioner contends that he was granted lease of the property which is popularly known as ‘town hall’ for a period of 5 years under registered rent/lease agreement dated 26.02.2022 on the terms and conditions agreed upon; that while the petitioner is carrying on its activities in the town Hall as agreed upon under the agreement, the 2nd respondent had issued notice dated 22.01.2024 claiming that the petitioner has violated various covenants of the agreement and called upon the petitioner to submit explanation within 7 days from the date of receipt of the notice; that the petitioner submitted his reply/explanation dated 29.01.2024; and that the 2nd respondent without considering the explanation/reply in its

correct perspective had issued the proceeding dated 03.02.2024 and had seized the premises/property leased to it.

4. Petitioner further contends that the action of the 2nd respondent in seizing the subject premises leased to it on the ground of alleged violations of the covenants of the agreement are all invented to cause hurdles, the business activity of the petitioner on account of change of Government; and that the petitioner is conducting its business activities in the subject premises as permitted under the agreement.

5. Petitioner further contends that as per the covenants of the lease deed, he is permitted to set up stalls to reflect the culture and traditions of Telangana and based on the existence of such covenant in the agreement, he had set up a hotel by obtaining trade license from the concerned Municipal authorities. Petitioner further contends that the 2nd respondent authority was fully aware of the petitioner carrying on the business of opening and running of restaurant in the aforesaid premises from the commencement of lease term itself and initiation of the action of the present nature, all of a sudden is motivated.

6. Petitioner further contends that though the impugned proceeding issued states that an Appeal to be preferred there against to the District collector, Jagtial or RDMA, Warangal, the same would not preclude the petitioner from invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India as the illegal and high handed acts of the present nature can be corrected in writ proceedings and mere existence of alternate remedy is not a bar.

7. *Per contra*, learned Standing Counsel appearing on behalf of respondent No.2 contends that the petitioner had breached the covenants of the agreement in all respects and he is not entitled to maintain the present Writ Petition.

8. Learned Standing Counsel while refuting the claim of the petitioner of being subjected to harassment on account of change of Government would submit that even in January 2023 much before the change of Government in December, 2023, the authorities issued notice for violation of terms of the lease deed, the petitioner had approached this Court by filing a Writ Petition *vide* W.P. No.1079 of 2023 and thereafter once again *vide* W.P. No.2725 of 2024 and the present Writ Petition is 3rd in

series, and that the said plea is taken only to cause prejudice against the respondent.

9. Learned Standing Counsel further contends that the lease of the town Hall was granted to the petitioner for a period of 5 years to run the same for the purpose it is meant to be used; that the town Hall has been constructed and intended to be used for providing a facility for holding meetings, exhibitions, functions and also Government programs; that the petitioner contrary to the basic object and purpose of the town Hall has changed the total nature of the property into a restaurant by running multiple outlets as per petitioner's own averments in the writ affidavit; and that the petitioner is not providing any facility for use of the town Hall as a place provided for meetings, exhibition to showcase products of Cottage Industries, Handlooms and in Educational matters.

10. Learned Standing Counsel further contends that going by the writ affidavit averments the same show that the petitioner instead of using the property leased as town Hall, had converted the premises more into a eatery / food court.

11. I have taken note of the contentions urged.

12. Before adverting to the contentions of the parties, it would be reminiscent to make a reference to the pre-independence days in order to understand the importance of Town Halls, particularly to 07.08.1905 when a formal proclamation of “*Swadeshi Movement*” was made with the passing of the ‘*Boycott*’ resolution in a meeting at the *Calcutta Town Hall* giving a new dimension and impetus to the freedom struggle.

13. It is also not long ago in the post-Independence era, that the Town Halls which exist at the District or Taluq level were used for conducting Science and Educational Fairs, whereat young students from various schools in the District and Taluq used to show case their talent and innovations to receive appreciation helping them to excel in their academic pursuits. In some places the Town Halls also housed libraries, the Asiatic Society of Mumbai is one such Library is one such. Such facilities had raised and honed brilliant minds, and who had in turn shaped our country. That apart, such Town Halls also play a major role in promoting cottage and handloom industries along with local produce and products.

14. It is unfortunate to note that we are living in a day where the State and its instrumentalities are oblivious to the purpose

behind creation of Town Halls, and are ignoring the Socialist approach which it is required to adopt, in the name of revenue generation to take up public works, are converting such facilities into commercial hubs rampantly, while the younger generation unmindful of the past and also what is store in future are considering such commercial facilities created by the State and its instrumentalities as the most happening place for them to '*chill*'.

15. Turning to the facts of the case, the grant of Lease of the Town Hall by the 2nd respondent in favour of the petitioner under the Agreement dt. 26.02.2022 is purely contractual and private and does not involve any element of public law. Though the 2nd respondent by exercising power under Section 55 of Telangana Municipalities Act, 2019 (for short 'Act') had entered into agreement with the petitioner, that by itself would not automatically lead to the conclusion of involvement of public law or public law issue.

16. Though as per Section 52(9) of the Act, it is the duty and responsibility of the Commissioner to provide for amenities and facilities like community halls, the agreement at hand was neither entered into for the purpose of maintaining nor

operating the town hall on behalf of respondent municipality as provided under section 52(9) of the Act to claim involvement of element of public law. On the contrary it is a contract purely of commercial nature where the municipality pursuant to a resolution passed by the council has leased the subject property on an agreed consideration payable by the petitioner as a lessee.

17. If the above aspect of law is taken into consideration, the agreement under which the immovable property of the 2nd respondent has been leased out would have to be construed as like any commercial contract governed by the provisions of Indian Contract Act, 1872. Once, the Agreement entered into between the petitioner and 2nd respondent is considered as contract like any other contract, for the enforcement of the covenants of the contract or for any breach thereof, the parties have to work out their remedies under civil law. Thus, a mere allegation that the subject premises was seized by the authorities under the capacity of the state would not by itself convert the inherent nature of the disputes. Resultantly, the same would not be amenable to writ jurisdiction.

18. The Supreme Court in **Joshi Technologies International Inc v. Union of India**¹, had brought out the distinction between the private and public law and held as under:

“70.8. If the contract between private party and the State/instrumentality and/or agency of the State is under the realm of a private law and there is no element of public law, the normal course for the aggrieved party, is to invoke the remedies provided under ordinary civil law rather than approaching the High Court under Article 226 of the Constitution of India and invoking its extraordinary jurisdiction.

70.9. The distinction between public law and private law element in the contract with the State is getting blurred. However, it has not been totally obliterated and where the matter falls purely in private field of contract, this Court has maintained the position that writ petition is not maintainable. The dichotomy between public law and private law rights and remedies would depend on the factual matrix of each case and the distinction between the public law remedies and private law field, cannot be demarcated with precision. In fact, each case has to be examined, on its facts whether the contractual relations between the parties bear insignia of public element. Once on the facts of a particular case it is found that nature of the activity or controversy involves public law element, then the matter can be examined by the High Court in writ petitions under Article 226 of the Constitution of India to see whether action of the State and/or instrumentality or agency of the State is fair, just and equitable or that relevant factors are taken into consideration and irrelevant factors have not gone into the decision-making process or that the decision is not arbitrary.

70.10. Mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirements of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness.

70.11. The scope of judicial review in respect of disputes falling within the domain of contractual obligations may be more limited and in doubtful cases the parties may be relegated to adjudication of their rights by resort to remedies provided for adjudication of purely contractual disputes.

71. Keeping in mind the aforesaid principles and after considering the arguments of the respective parties, we are of the

¹ (2015) 7 SCC 728

view that on the facts of the present case, it is not a fit case where the High Court should have exercised discretionary jurisdiction under Article 226 of the Constitution. First, the matter is in the realm of pure contract. It is not a case where any statutory contract is awarded.”

19. Further, in the facts of the present case, while the petitioner claims that there was no breach of the covenants of the Agreement, the 2nd respondent on the other hand contended that the petitioner by his own admission had stated to be running multiple food joints in the subject premises in the name of ‘Anand Bhavan Hotel’, ‘Anand Bhavan Grand Restaurant’, ‘Chat Mantra’, apart from running ‘New Grand Mandi & Biryani Barbie Que” at the entry point of the Town Hall which has not been disclosed and running of these food outlets cannot be considered as Telangana eateries and stalls reflecting the culture and traditions of “Telangana”. The said claims by each of parties not only involves the expression of intent of the parties entering into contract, but also involves factual aspects which are in dispute between the parties.

20. It is trite law that in writ jurisdiction under Article 226 of the Constitution of India, the Court cannot venture into

disputed questions of fact. (**See: Shubhas Jain Vs. Rajeshwari Shivam and Ors**²).

21. It is equally well settled that Courts cannot decide matters relating to a breach of contract in exercise of powers conferred under Article 226 of the Constitution of India. The Hon'ble Supreme Court in **National Highway Authority of India v. Ganga Enterprises and others**³, observed as under:

*“7. The Respondent then filed a Writ Petition in the High Court for refund of the amount. On the pleadings before it, the High Court raised two questions viz. (a) whether the forfeiture of security deposit is without authority of law and without any binding contract between the parties and also contrary to Section 5 of the Contract Act and (b) whether the writ petition is maintainable in a claim arising out of a breach of contract. Question (b) should have been first answered as it would go to the root of the matter. The High Court instead considered question (a) and then chose not to answer question (b). In our view, the answer to question (b) is clear . **It is settled law that disputes relating to contracts cannot be agitated under Article 226 of the Constitution of India. It has been so held in the cases of Kerala State Electricity Board v. Kurien E. Kalathil MANU/SC/0435/2000 : AIR2000SC2573 ,State of U.P. v. Bridge & Roof Co. (India) Ltd. MANU/SC/0969/1996 : AIR1996SC3515 and B . D . A . v . Ajai Pal Singh MANU/SC/0058/1989 : [1989]1SCR743, This is settled law.** The dispute in this case was regarding the terms of offer. They were thus contractual disputes in respect of which a Writ Court was not the proper forum. Mr. Dave however relied upon the cases of Verigamio Naveen v. Government of A. P. MANU/SC/0570/2001 : AIR2001SC3609 and Harminder Singh Arora v. Union of India MANU/SC/0148/1986 : [1986]3SCR63 . These however are cases where the Writ Court was enforcing a statutory right or duty. These cases do not lay down that a Writ*

² 2021 SCC OnLine SC 562

³ (2003) 7 SCC 410

Court can interfere in a matter of contract only. Thus on the ground of maintainability the Petition should have been dismissed.”

22. This principle was reiterated in the case of ***Noble Resources Ltd. Vs. State of Orissa and Ors***⁴.

23. On a conspectus of the aforesaid position of law and the issue at hand the following conclusions are to be necessarily arrived at:

1. The disputes arising under the contract of the present nature would not be amenable to writ jurisdiction; and
2. Since the Writ Petition filed also involves disputed factual aspect, the writ is not maintainable.

24. In view of the above, this Court is of the considered view that the Writ Petition as filed is not maintainable and the petitioner is not entitled for grant of any relief.

25. However taking note of the concession given by the 2nd respondent in the impugned order by filing of appeal to the District Collector or to RDMA, Warangal, this Court is of the view that though an Appeal is not strictly maintainable under the provisions of the Act, the petitioner can seek the revision of the impugned order passed by the 2nd respondent by approaching the District Collector since the said authority is

⁴ (2006) 10 SCC 236

subject to the jurisdiction of the District Collector under Section 53(5) of the Act, if he is so advised or else he is at liberty to work-out his remedies in civil law.

26. Subject to the above observations, the Writ Petition is disposed of. It is made clear that this Court has not expressed any opinion on the merits of the matter.

As a sequel, miscellaneous petitions pending if any shall stand closed.

Date: 21.02.2024

T. VINOD KUMAR, J

Note: L.R. copy to be marked.

B/o
MRKR/VSV

THE HON'BLE SRI JUSTICE T. VINOD KUMAR

WRIT PETITION No.4125 OF 2024

21.02.2024

MRKR/VSV