

HIGH COURT FOR THE STATE OF TELANGANA

CIVIL MISCELLANEOUS APPEAL NO.163 OF 2022

Between :

Telangana State Tourism Development Corporation
Limited, Tourism House, # 3-5-891, Himayathnagar,
Hyderabad, Telangana, rep.by its Managing Director,
Sri B.Manohar Rao.

.... Appellant/
Respondent

Vs.

M/s. A.A. Avocations Pvt. Ltd.,
H.No.8-2-696/1/K, Road No.12, Banjara Hills,
Near Grand Sitara Hotel, Hyderabad, rep.by
D.Shivacharan Goud and another.

....Respondents/
Petitioners

DATE OF JUDGMENT PRONOUNCED : 09.06.2022

HONOURABLE SRI JUSTICE P.NAVEEN RAO
&
HON'BLE SRI JUSTICE SAMBASIVARAO NAIDU

1. Whether Reporters of Local Newspapers : Yes
may be allowed to see the Judgments ?
2. Whether the copies of judgment may be : **Yes**
marked to Law Reporters/Journals
3. Whether Their Lordship wish to : No
see the fair copy of the Judgment ?

*** HONOURABLE SRI JUSTICE P.NAVEEN RAO
&
HON'BLE SRI JUSTICE SAMBASIVARAO NAIDU**

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!Counsel for the appellant : Sri M.Surender Rao, learned senior
counsel for Sri Zeeshan Adnan
Mahmood

Counsel for the Respondents : Sri P.Mohith Reddy

<Gist :

>Head Note:

? Cases referred:

(2020) 15 SCC 585
MANU/WB/0110/2022
MANU/GJ/1520/2019= AIR 2019 Guj 130
(2020) 19 SCC 119= 2019 SCC Online SC 135

HONOURABLE SRI JUSTICE P.NAVEEN RAO
&
HON'BLE SRI JUSTICE SAMBASIVARAO NAIDU
CIVIL MISCELLANEOUS APPEAL NO.163 OF 2022

JUDGMENT: (*Per Hon'ble Sri Justice P.Naveen Rao*)

Heard Sri M.Surender Rao, learned senior counsel for Sri Zeeshan Adnan Mahmood learned counsel for the petitioner and Sri P.Mohith Reddy learned counsel for the respondents.

2. This appeal is filed against the order dated 27.12.2021 passed in Arbitration O.P.No.72 of 2021 on the file of XXV Additional Chief Judge, City Civil Court at Hyderabad. The appellant is the owner of large extent of land in Survey No. 403/P, Durgam Cheruvu, Shaikpet village. On the above land, it has developed a portion of the land towards eco-tourism and party area named "*DURGAM CHERUVU ECO TOURISM DECK AND PARTY AREA*". Earlier said property was leased out to another licensee. But differences arose between the owner and licensee leading to termination of lease. Consequently, it has called for tenders to grant fresh lease and in the process, the first respondent was identified as a new lessee.

3. Briefly noted to the extent relevant, the facts are as under:

(i) The first respondent-company is a subsidiary company of the second respondent company incorporated under the provisions of the Companies Act, 2013 and is actively engaged in running several restaurants, canteens etc. The first respondent and the Appellant had entered into Lease agreement dated 28.02.2019 with respect to property called as “*Durgam Cheruvu Eco Tourism Deck and Party Area*” belonging to respondent located in Sy.No.403/P at Durgam Cheruvu, Shaikpet village and Mandal, Hyderabad (for brevity called as schedule property) totally admeasuring 12,391.27 square yards. As per the terms and conditions stipulated in the Deed of Lease, the first respondent was *inter alia* granted permission for operating and maintaining “*Durgam Cheruvu Eco Tourism Deck and Party Area*” for a period of ten years.

(ii) Though relationship started on a high note, soon differences cropped up leading to exchange of correspondence and hurling of allegations on one another. The differences are primarily on taking over possession of the subject property and payment of lease amount. While lessee alleged that he was unable to commence operations as premises was not handed over, the lease deed was not registered and non removal of pre-existing fixtures, permanent structures, breweries etc., the lessor contended that unfettered possession was already granted, that the registration of lease agreement is the responsibility of the lessee, that it is

the responsibility of the lessee to remove all fixtures, permanent structures, breweries as the property was handed over on 'as is where is basis'.

(iii) The pandemic seem to have added to already strained relationship between the parties.

(iv) The first respondent submitted a representation dated 31.08.2020 to the Hon'ble Minister for Prohibition and Excise, Sports & Youth Services, Tourism and Culture and Archeology, Telangana, requesting for waiver of rent for a period of thirty three (33) months from July, 2019 to March, 2021 contending that the first respondent was prevented from commencing its commercial activity due to the reasons attributable to the appellant. It was further indicated in the said letter that the onset of Covid-19 pandemic had further handicapped the first respondent and prevented it from initiating any activity on the site.

(v) Vide letter No.509/TGPMU/A1/2020, dated 15.03.2021 the Department for Youth Advancement and Culture was pleased to grant the first respondent waiver of rent for the period June, 2019 to December, 2019 and April - September, 2020 and directed to commence/recommence its facilities with immediate effect and upon doing so request of first respondent for waiver of rent for the period from

October, 2020 to March, 2021 would be considered by the appropriate authority.

(vi) Vide representation dated 09.04.2021 the first respondent informed the appellant that it has commenced the works and that it required an additional period of six months to complete the construction and developmental activity undertaken by it on the site and requested the appellant to consider its request for waiver of rent until December, 2021.

(vii) The appellant vide its letter dated 04.06.2021 rejected the first respondent's request for waiver of rent and further called upon the first respondent to pay the rents that were due except for the period of June, 2019 – December, 2019 and April, 2020 – to September, 2020.

(viii) It is the further case of first respondent that the appellant raised arbitrary demands with respect to payment of monthly rent without fulfilling its obligations. While so, on 22.08.2021 a few officials claiming to act at the behest of appellant barged into the schedule property, illegally tried to dispossess the first respondent from the schedule premises without following due process of law and contemplated to terminate the Lease Deed dated 28.02.2019 and to invite fresh tenders.

4. The chronology of events narrated above, clearly point out to serious differences on various aspects of terms of contract and straining of relationship. This strained relationship resulted in respondents taking recourse to clause 10 of the lease agreement, that envisages resolution of disputes through means of arbitration.

5. Pending commencement of the arbitral proceedings before the Tribunal, respondents filed A.O.P No. 72 of 2021 in the Court of XXV Additional chief Judge, City Civil Court, Hyderabad under Section 9 of Arbitration and Conciliation Act, 1996 (for short the Act, 1996) praying to grant interim protection till arbitral proceedings commenced. Respondents contended that the appellant is proposing to take coercive steps to dispossess them from the schedule property without following due process of law and in such an event, grave prejudice would be caused to them. They prayed to restrain the respondents from taking any coercive steps, to restrain from illegally and forcefully dispossessing the first respondent from the suit schedule property and to restrain the appellant from interfering with business of the first respondent. The Court below, allowed the application and granted interim injunction as prayed by the respondents on the condition that respondents should deposit monthly rents from October, 2021 till December, 2021 within two

months and to ensure that lease deed is registered before 31.1.2022. Aggrieved thereby, this Appeal is preferred.

6. Extensive submissions are made by learned senior counsel appearing for the appellant and learned counsel appearing for the respondents on various aspects touching upon merits of the claims and causes for *inter se* disputes. However, the primary submission of the learned senior counsel is on the issue of maintainability of A.O.P No. 72 of 2021 in the Court of XXV Additional chief Judge, City Civil Court, Hyderabad.

6.1. According to learned senior counsel, inter-se dispute is a commercial dispute and all matters arising out of commercial transactions should be filed before the Commercial Court only and the ordinary Civil Court has no jurisdiction. Learned senior counsel has taken us through the definition in Section 2 (1) (c) (vii), provisions in Sections 10 and 12 of the Commercial Courts Act, 2015.

6.2. Learned senior counsel pointed out that a specific plea is raised on maintainability of A.O.P. on three grounds, but said objections were not even considered by the court below. In fact, issue of maintainability ought to have been considered as a preliminary issue before going into the merits. Copy of the written agreements filed before the Court below

where such objections were taken is placed on record from page numbers 119 to 141 of the appeal paper book.

7. *Per contra*, according to learned counsel for respondents, not all contracts are commercial in nature and only such of those disputes which are commercial in nature alone have to be resolved by the commercial Court. That, in the instant case, it was a lease agreement granting lease of the land owned by the Appellant Corporation. As material on record would clearly disclose commercial activity has not commenced and property is not put to use, therefore the dispute involved *inter se* is not a commercial dispute and A.O.P is maintainable before the Civil Court. In support of said contention, learned counsel for respondents placed reliance on decision of the Supreme Court in **Ambalal Sarabhai Enterprises Limited Vs. K.S. Infraspace LLP and another**¹, judgment of the Calcutta High Court in **Shree Balaji Sarees Private Limited Vs Shristi Infrastructure Development Corporation Limited**² and judgment of Gujarat High Court in **Uday Autolink Pvt.Ltd Vs Govindji Becharji Thakor**³.

¹ (2020) 15 SCC 585

² MANU/WB/0110/2022

³ MANU/GJ/1520/2019= AIR 2019 Guj 130

8. As the issue of application of Commercial Courts Act, 2015 goes to the root of the matter, the Court has taken up the same as a preliminary issue.

9. Before going into the aspect of whether dispute is a commercial dispute or an ordinary civil dispute, it is pertinent to note that after conclusion of arguments by the respective counsel, the Court below permitted them to file written arguments. In the written arguments filed by the appellant, he has raised three preliminary objections. First is on lack of jurisdiction. In paragraph no. I-A., appellant contended that since transaction is commercial in nature and value of the commercial dispute is above one crore, Civil Court has no jurisdiction and person has to avail the remedy provided under the Commercial Courts Act, 2015. Further, objection raised was that counsel who did not hold vakalat and who is not a designated senior counsel, argued the matter on behalf of respondents and same is not valid. It was further contended that as it was a lease agreement, without paying rents, no injunction can be granted. In support of said contention, reliance was placed on the decision of the Supreme Court in **Balakrishna Dattatraya Galande Vs Balakrishna Rambharose Gupta and another**⁴. Wherein, Supreme

⁴ (2020) 19 SCC 119= 2019 SCC Online SC 135

Court held that if a lessee does not pay rent for a long time, the possession of the lessee cannot be said as a lawful possession entitling him to get permanent injunction.

10. From paragraph-18 of the order impugned herein, it is seen that the Court below acknowledged written arguments filed by the appellant. However, the Court below has not recorded the preliminary objections raised by the appellant and there is no discussion on the validity of the said preliminary objections. In paragraph 3.1 the Court below recorded "*objection is not maintainable*". It is not elaborated on why it was not maintainable and which of the three objections were not maintainable. All three objections raised by appellant on maintainability of A.O.P go to the root of the very litigation and Court below ought to have decided the validity of those three objections on maintainability of the A.O.P before going into the merits. Thus, on that ground alone, the order of the Court below is vitiated and is liable to be set aside.

11. Having regard to the said finding, ordinarily, the matter should go back to Court below. However, as the aspect of jurisdiction of the Civil Court to entertain the A.O.P filed by the respondents under Section 9 of the Act, 1996 on the ground that it is a commercial dispute goes to the root of the matter, we have set out to consider this aspect in greater detail.

12. Section 2 (1) (c) of the Act, 2015 defines what is meant by '**commercial dispute**' and instances are mentioned in various clauses incorporated therein. For this case, Clause (vii) is relevant – which reads as '**agreements relating to immovable property used exclusively in trade or commerce**'.

13. In so far as this case is concerned, '**commercial dispute**' means *a dispute arising out of agreements relating to immovable property used exclusively in trade or commerce* [Section 2 (1) (c) (vii)]. Thus, a dispute arising out of agreement relating to a property is a commercial dispute, if such immovable property is used exclusively for trade or commerce.

14. According to Section 10 (3) of Act, 2015, if subject matter of an arbitration is a '**commercial dispute**' of a '**specified value**', all applications or appeals arising out of arbitration clause of contract filed under the provisions of the Arbitration and Conciliation Act,1996 (Act 1996) would ordinarily lie before any principal civil Court of original jurisdiction in a district and heard and disposed of by the Commercial Court exercising territorial jurisdiction over such arbitration where such Commercial Court has been constituted. Section 12 prescribes mechanism to determine what is '**specified value**'.

15. On a cumulative reading of Section 2 (1) (C) (vii), Section 10⁵ and Section 12⁶, it is apparent that if a dispute arising out of an agreement concerning immovable property which is exclusively used in trade or commerce and whose '**specified value**' is more than one crore, then, it is a '**commercial dispute**' and only the commercial Court has jurisdiction to deal with application filed under Section 9 of the Act, 1996.

16. In this backdrop of statutory scheme, it is necessary to look into the terms of lease agreement in issue. Relevant clauses to consider in this case are introductory paragraph⁷, clauses 1, 3, 5⁸, 7⁹

⁵ **10. Jurisdiction in respect of arbitration matters.**—Where the subject-matter of an arbitration is a commercial dispute of a Specified Value and—
(1) If such arbitration is an international commercial arbitration, all applications or appeals arising out of such arbitration under the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) that have been filed in a High Court, shall be heard and disposed of by the Commercial Division where such Commercial Division has been constituted in such High Court.

(2) If such arbitration is other than an international commercial arbitration, all applications or appeals arising out of such arbitration under the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) that have been filed on the original side of the High Court, shall be heard and disposed of by the Commercial Division where such Commercial Division has been constituted in such High Court.

(3) If such arbitration is other than an international commercial arbitration, all applications or appeals arising out of such arbitration under the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) that would ordinarily lie before any principal civil court of original jurisdiction in a district (not being a High Court) shall be filed in, and heard and disposed of by the Commercial Court exercising territorial jurisdiction over such arbitration where such Commercial Court has been constituted.

⁶ **12. Determination of Specified Value.**—(1) The Specified Value of the subject-matter of the commercial dispute in a suit, appeal or application shall be determined in the following manner:—

(a) where the relief sought in a suit or application is for recovery of money, the money sought to be recovered in the suit or application inclusive of interest, if any, computed up to the date of filing of the suit or application, as the case may be, shall be taken into account for determining such Specified Value;

(b) where the relief sought in a suit, appeal or application relates to movable property or to a right therein, the market value of the movable property as on the date of filing of the suit, appeal or application, as the case may be, shall be taken into account for determining such Specified Value;

(c) where the relief sought in a suit, appeal or application relates to immovable property or to a right therein, the market value of the immovable property, as on the date of filing of the suit, appeal or application, as the case may be, shall be taken into account for determining Specified Value; [and]

(d) where the relief sought in a suit, appeal or application relates to any other intangible right, the market value of the said rights as estimated by the plaintiff shall be taken into account for determining Specified Value; 2* * 3* * * * *

(2) The aggregate value of the claim and counterclaim, if any as set out in the statement of claim and the counterclaim, if any, in an arbitration of a commercial dispute shall be the basis for determining whether such arbitration is subject to the jurisdiction of a Commercial Division, Commercial Appellate Division or Commercial Court, as the case may be.

(3) No appeal or civil revision application under section 115 of the Code of Civil Procedure, 1908 (5 of 1908), as the case may be, shall lie from an order of a Commercial Division or Commercial Court finding that it has jurisdiction to hear a commercial dispute under this Act.

⁷ **INTRODUCTORY PARAGRAPH OF LEASE DEED.**

The lessor shall handover over to lessee the physical possession of the scheduled premises after removal of encroachments, tents, structures, fixtures and micro brewery installed and set up by the Ex-Licensee. The lessor shall handover unfettered land of 12,391.27 sq yards, free of all encroachments and equipments in the area described in the site schedule and map annexed hereto.

⁸ **5 Manner of payment of lease amount:**

5(a) The lessee shall make payment of lease amount and the commission of sale of Rs.90,000/- or 2 % of gross revenue whichever is higher. The lease amount is payable from the date of execution of the lease agreement or handover of the unfettered scheduled land

and 10¹⁰. Clause-1 deals with “Lease”; Clause-3 deals with “Lease Amount”; Clause-5 deals with “Manner of Payment of Lease Amount”; Clause-7 deals with “Termination” and Clause-10 deals with “Dispute Resolution”.

17. In the introductory paragraphs of lease agreement, appellant declared ‘*whereas the lessor is in absolute possession and control of the ‘DURGAM CHERUVU ECO TOURISM DECK AND PARTY AREA’.*

Clause 1 deals with ‘**Lease**’—The lease has been granted to develop,

after removal of all encroachments, tents, structures, fixtures and micro brewery installed and setup by the Ex-Licensee, whichever is later, however not later than 1st June 2019.

.....

5(b) The Ex-Licensee has litigated by filing suit against the corporation which are pending in various Courts. OS No. 684 of 2017 before XI Additional Chief Judge, City Civil Courts, Hyderabad, Writ Petition No. 26230 of 2015 and WP No. 7238 of 2016 before High Court. The Ex-Licensee M/s Jolly Rogers has not yet withdrawn the above cases. However, irrespective of pendency of above cases the lessee came forward to start operations and payment of rents from 1st June, 2019 or earlier.

.....

5(g) The lessee should initiate action to commence commercial operations within six months from the date of handover of the unfettered scheduled land after removal of all encroachments, tents, structures, fixtures and micro brewery installed and setup by the Ex-Licensee. The Lessor shall handover unfettered land of 12,391.27 sq yards free of all encroachments and equipments.

⁹
7. Termination:

- a. Deed of lease cannot be terminated by lessee during the lock-in-period of one (1) year from the date of entering into deed of lease.
- b. In case the lessee decides to terminate the deed of lease during lock-in-period, the lessee to pay the lease amount for the remaining of the lock-in-period besides forfeiture of security deposit.
- c. If any violations of this lease Agreement conditions are committed by the lessee the security deposit will be forfeited.
- d. Security deposit will not be refunded to the lessee, if the lease agreement is terminated by lessor for the breach of conditions by lessee or the lease under the terms of the agreement before completion of lock in period.
- e. Whenever the Deed of lease is terminated by the lessor for breach of conditions of the Deed of lease committed by the lessee and the lessor is at liberty to initiate eviction proceedings and recovery of amounts due from the lessee as per the provisions of related acts governing the revenue recovery provisions including A.P. Public Premises (Eviction of Unauthorized Occupants) Act, 1968 and A.P. Revenue Recovery Act 1864 and A.P. Rent Revenue Sales Act, 1839.
- f. The lessee shall be responsible and liable for the consequences and or penalties levied by respective Government Departments if he fails to register deed of lease within three month.

¹⁰
10. Dispute Resolution: If any dispute shall arise between the parties hereto concerning the construction interpretation or application of any of the provisions of the lease deed whether during the continuance of this lease deed or after the termination thereof by whatever cause such dispute shall be settled amicably. Failing which the dispute or difference shall be referred to the arbitrator and the arbitrator shall enter in to reference within 2 (two) months and shall pass an award within 6 (six) months from the date of reference and it shall be binding on all the parties in accordance with the provisions of the Arbitration and Conciliation Act, 1996. The Arbitration shall be conducted in accordance with the Arbitration and Conciliation Act, 1996.

manage, operate and run the DURGAM CHERUVU ECO TOURISM Deck and party area'. Clause 3 deals with '**Lease Amount**'. Clause 5 deals with '**Manner of payment of lease amount**'. Clause 7 deals with '**Termination of Lease**'. Clause 10 incorporates resolution of disputes through means of **arbitration**.

18. On a cumulative reading of lease deed and pleadings, it is seen that the appellant developed approximately 12,391.27 sq yards of land out of larger extent of land in Survey No. 403/P, Shaikpet village as Eco Tourism Deck and Party Area. It entered into lease agreement earlier with another lessee to maintain and operate hospitality services in the area. But that relationship failed, compelling the appellant to get back possession of the property and to go for fresh lease. In the process, the first respondent became the lessee. It is thus seen that land no more remained a plain/ barren land but was developed for commercial purposes. The earlier lessee put the land to use, built certain structures, tents, fixtures and installed micro brewery. Commercial operations were carried out in the property by previous licensee before terminating the license. The present licensee takes the place of previous licensee to use the schedule property for commercial purposes. Thus, the schedule land is already put to use exclusively for commercial purposes.

19. From the clauses of the lease agreement, it is evident that the appellant earlier granted lease of the schedule property to another lessee for the very same purpose and said lessee built certain, tents, structures, fixtures and micro brewery. Disputes arose between earlier lessee and appellant and litigation is pending in the Courts.

20. The terms of lease agreement clearly indicate that the suit schedule land was already put to use for commercial purposes by earlier lessee. Therefore, Section 2 (1) (C) (vii) is attracted and dispute *inter se* between the appellant and the respondents is a commercial dispute.

21. To contend that subject land is '**not put to use**' '**not actually used**' therefore, Commercial Court has no jurisdiction, learned counsel for respondents placed reliance on three decisions referred to above. We have carefully gone through the said decisions. Those decisions concern immovable properties which were not actually used/put to use for commercial purposes. There is no quarrel with the proposition of law on scope of Section 2 (1) (c)(vii). But looking at the facts of the case, on hand, it is seen that the suit schedule land was already '**put to use**/' '**used**' for commercial purpose. The previous licensee had erected tents, structures, fixtures and micro brewery and was using the schedule property for commercial purposes. Therefore, the suit

schedule land was already put to '*use*/' '*actual use*' for commercial purposes and therefore the definition of '*commercial dispute*' as incorporated in Section 2 (1) (C) (vii) is attracted in the instant case. To treat immovable property as used for commercial purposes, it is not necessary that present licensee should commence operations. It is sufficient if immovable property was already put to use for commercial purposes. It is also appropriate to note that in addition to structures etc erected by earlier license holder, the supervisor office and canteen form part of the schedule property, indicating already that the property has become a commercial property. Thus, there is no iota of doubt that the schedule property is a commercial property.

22. It is not in dispute that arrears of rent was more than two crore. Therefore, the '*specified value*' of the subject dispute is more than one crore and in view of specific provision in Section 10 read with Section 12 of the Act, 2015, application under Section 9 of the Act, 1996 has to be filed in a designated Commercial Court only and Civil Court has no jurisdiction to deal with such applications. Therefore, the order under challenge is not sustainable and is accordingly set aside.

23. In the result, appeal is allowed.

24. However, it is open to respondents to avail appropriate remedy that may be available under the Commercial Courts Act, 2015. It is made clear that there is no expression of opinion on merits. All other issues are left open to be urged in appropriate proceedings. Pending miscellaneous applications, if any, stand closed.

P.NAVEEN RAO,J

SAMBASIVARAO NAIDU,J

Date: 09.06.2022
KKM/pt/tvk

HONOURABLE SRI JUSTICE P.NAVEEN RAO
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