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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **O.M.P.(I) (COMM.) 98/2024 & I.A. 7752/2024**
M/S FINE GREEN CONSTRUCTIONS PVT LTD

..... Petitioner

Through: Ms. Binisa Mohanty, Adv.
versus

RAIL LAND DEVELOPMENT AUTHORITY & ORS.

..... Respondent

Through: Mr. Bharat Malhotra, Adv.
Mr. Neeraj, Mr. Vedansh Anand, Adv.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

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10.04.2024

1. This is a petition seeking the following prayers:-

“a) Direct the Respondents Nos.1 to 3 and their men/ officers/ employees to not to interfere with the possession and enjoyment of the petitioner, ingress/egress/ its tenants over the Multifunctional Complex at Salem Railway Station; and/or;

b) Allow the Petitioner/ its tenants/ passengers/ general public to access the Multifunctional Complex at Salem Railway Station without hinderance; and/or;

c) Remove the poles that have been erected by the Respondents around the Multifunctional Complex at Salem Railway Station”

2. The brief facts are that the respondent No. 1 is the Rail Land Development Authority which is a statutory authority constituted under the Railways (Amendment) Act, 2005 and falls under the supervision and control of the Ministry of Railways.

3. The respondent No.1 is primarily responsible for development of



vacant railway land for commercial use for the purpose of generating revenue by non-tariff measures.

4. The respondent No. 2 is the Southern Railways which is one of the zones of Indian Railways, Headquarters at Chennai.
5. For the purpose of developing various multi-functioning complexes across the country, the Ministry of Railways authorised the respondent No.1 to undertake the development project of multi-functional complexes.
6. In furtherance to the above, the respondent No.1 invited tenders and bids to undertake the development of multi-functional complex at Salem Railway Station.
7. M/S Fine Aromas Pvt. Ltd was declared as the successful bidder and was issued letter of acceptance dated 01.09.2014. Subsequently, a lease agreement dated 30.12.2014 was entered into between the petitioner and the respondent No.1 for a period of 45 years.
8. On 30.11.2015, the respondent No.1 issued completion certificate in favour of the petitioner for completion of the construction of multifunctional complex at Salem Railway Station.
9. It is stated that in the year 2016, the respondent No.2 attempted to construct a wall covering the multi-functional complex of the petitioner for which the petitioner filed W.P. (C) 30769/2016 before the High Court of Judicature at Madras.
10. It is stated that the respondents constructed an escalator shed whereby some rights of the petitioner were infringed.
11. Thereafter, the petitioner wrote numerous letters to the respondents to remove the shed, but the same was not done.



12. Since the respondents did not remove the escalator shed, the petitioner on 10.05.2019 terminated the lease agreement entered into between the petitioner and the respondent No.1.
13. The petitioner also filed W.P.(C) 11105/2019 before the Hon'ble Andhra Pradesh High Court which was disposed of on 07.11.2019 directing the respondents to consider the representations of the petitioner dated 10.05.2019 and 01.07.2019.
14. Since there was no response from the respondents, the petitioner filed arbitration application No. 15/2020 under Section 11 of the Arbitration and Conciliation Act, 1996 before the Hon'ble Andhra Pradesh High Court seeking appointment of an arbitrator.
15. In the meanwhile, W.P. (C) 30769/2016 was disposed of on 07.09.2021 confirming the interim orders restraining respondent Nos.1 and 2 from putting up a wall.
16. The petitioner also filed a writ petition bearing No. 6961/2024 before the Hon'ble Madras High Court seeking the same relief as sought in the present petition, i.e. removal of iron fencing.
17. In the present petition, it is stated that on 11.03.2024, the officials of the respondent No.1 started erecting poles and carrying out construction activity outside the multi-functional complex to block the petitioner's access to the complex.
18. Notice was issued in the present petition and on 02.04.2024, the statement of Mr. Malhotra, learned counsel for the respondent No.1 was recorded that there is no construction going on in the right of way granted to the petitioner in terms of the lease.
19. Ms. Mohanty, learned counsel for the petitioner states that in the



present case, the petitioner has right to enjoy the use and occupation of the multi-functional hall and putting of iron grill is interfering with the rights of the petitioner.

20. Ms. Mohanty, learned counsel further states that in case the respondents were having any disputes regarding non-payment of lease rentals, they should have invoked the arbitration clause, which they have not done. She submits that the right of way to the multi-functional complex be protected till the conclusion of the arbitration proceedings.
21. I have heard learned counsels for the parties.
22. In the present case, lease was granted to the petitioner to use and occupy the multi-functional hall on payment of lease rental charges.
23. The petitioner *vide* legal notice dated 10.05.2019 terminated the lease, but despite the same has not handed over vacant and peaceful possession of the multi-functional hall to the respondents.
24. On one hand, the petitioner continues to use/ occupy/ enjoy the multi-functional hall, collect lease rentals from its tenants and on the other hand, on account of having terminated the lease, does not pay any lease rentals to the respondents.
25. As per the respondent No.1's reply, total outstanding amount is about Rs. 2.18 crores. In addition, there is outstanding lease premium of Rs. 91 lakhs totalling to about Rs. 3.09 crores.
26. Even as per the calculation handed over by the petitioner, the admitted claim is about Rs. 1.98 crores.
27. During the course of arguments, I had put across to the learned counsel for the petitioner that without prejudice, the petitioner should deposit at least 50% of the admitted amount of Rs. 1.98 crores till the conclusion



of the arbitration proceedings.

28. Learned counsel for the petitioner states that the petitioner will be unable to comply with the same and at best can only pay Rs. 3 lakhs-3.5 lakhs per month which is the rent being collected by the petitioner from the tenants.
29. In the present case, the petitioner has filed the present petition under Section 9 of the Arbitration and Conciliation Act, 1996. The petitioner has already filed a writ petition in the Hon'ble Madras High Court seeking identical relief.
30. The ambit and scope of Section 9 of the Arbitration and Conciliation Act, 1996 is to preserve the subject matter of the arbitration during the pendency of the arbitration proceedings.
31. In the present case, as per the petitioner's own showing, the petitioner has already terminated the lease agreement and continues to occupy the same without any permission, lease, license or operation of law. The possession of the petitioner is that of an unauthorised occupant.
32. The petitioner also has not paid any lease amount to the respondents since the year 2017.
33. Hence, I am of the view that the petitioner does not have any right to seek the reliefs as prayed for as the petitioner itself has terminated the lease agreement. The petitioner is seeking to use and occupy the multi functional hall and prevent the respondents from creating any fetters in the use and enjoyment of the multi functional hall. Since the status of the petitioner is that of an unauthorised occupant, the petitioner cannot be permitted to press claims which were only available under the lease agreement dated 30.12.2014 (which the petitioner has terminated). In



addition, the petitioner is also pursuing identical reliefs in a writ petition.

34. Hence, the petition is dismissed.
35. The observations made hereinabove are only for the purposes of deciding this petition and shall have no bearing on the merits of the arbitration proceedings.
36. The documents handed over in Court today are taken on record.
37. The next date of 29.04.2024 stands cancelled.

JASMEET SINGH, J

APRIL 10, 2024 / (MS)

Click here to check corrigendum, if any