

ITEM NO.601

COURT NO.1

SECTION XIIA

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal(C) No(s). 597-598/2017

(Arising out of impugned final judgment and order dated 03/01/2017 in CMA Nos. 970 and 987 of 2016 passed by the High Court of Judicature at Hyderabad for the States of Telangana and Andhra Pradesh)

M/S HOTEL MALLIGI PVT. LTD.

Petitioner(s)

VERSUS

HYDERABAD METROPOLITAN DEVELOPMENT AUTHORITY  
AND OTHERS

Respondent(s)

Date : 10/01/2017 These petitions were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE  
HON'BLE MR. JUSTICE N.V. RAMANA  
HON'BLE DR. JUSTICE D.Y. CHANDRACHUD

For Petitioner(s) Mr. Parag Tripathi, Sr. Adv.  
Mr. Sanjiv Sen, Sr. Adv.  
Mr. Sridhar Potaraju, Adv.  
Ms. Sindoor VNL, Adv.  
Ms. Rashmita Srinivas, Adv.  
Mr. P. Nagabhushanam, Adv.

For Respondent(s) Mr. Mukul Rohatgi, AG  
No.1 Mr. T.V. Ratnam, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

Taken on Board.

2. Issue notice. Mr. Mukul Rohatgi, learned Attorney General for India appears for the Caveator - Hyderabad Metropolitan Development Authority (for short, 'HMDA') and

accepts notice.

3. Learned counsel for the rival parties are agreed, that there is no other contesting respondent, and hence the matter can be heard and disposed of finally, today itself.

4. We have heard learned counsel for the rival parties.

5. The License Agreement dated 1.8.2011 contains the following renewal clause:

"Renewal

After expiry of the License tenure, the License shall be renewed on such terms and conditions as may be determined by the Licensor at its discretion "First Right of Refusal" for extension shall be based on review of satisfactory performance like regular payments to HMDA and compliances with GHMC and Traffic police rules etc."

It is not a matter of dispute, that the aforesaid agreement between the petitioner and the respondent expired on 30.09.2016.

6. The only issue that arises for consideration is, whether the petitioner has "First Right of Refusal", and on the basis thereof, whether the petitioner has a superior right over others, including those who may be willing to pay license fee, in excess of the offer made by the petitioner. Since the proceedings, which have emerged before this Court, arise out of two applications, filed under Section 9 of the Arbitration and Conciliation Act, 1996, we are of the view, that the afore-stated "First Right of Refusal" should be interpreted to determine, whether the petitioner has a superior right over others (who may be willing to pay license fee, in excess of what the petitioner is willing to pay) after the expiry of lease on

30.09.2016. Having heard learned counsel, we are of the view, that the petitioner would have such a superior right, under the extracted renewal clause.

7. In the above view of the matter, we hereby allow the respondent - HMDA, to initiate proceedings for fresh grant of license, by way of tender/auction, and afford the petitioner the "First Right of Refusal". In case, the petitioner agrees to pay at the higher rate, at which the license can be awarded by the respondent (based on the fresh tender/auction), the petitioner will be entitled to renewal, at such higher rate.

8. Despite the above, the question which still remains to be answered is, whether the petitioner should be restored possession (in view of the accepted position, that the petitioner has already been dispossessed) of the lease site/property. We are of the view, that it would be in the interest of the petitioner, as well as, of the respondent, that the petitioner is allowed to resume possession, subject to the condition, that the petitioner is ready and willing to pay the higher rate of license fee, as may be obtained by the process of fresh tender/auction(referred to above), for the period he is restored possession (whether or not, the petitioner exercises the 'First Right of Refusal'). The petitioner shall file an affidavit to this effect, whereupon, the petitioner shall be restored possession from 11.01.2017.

9. In view of the above order, all the applications preferred by the petitioner under Sections 9 and 11 of the

Arbitration and Conciliation Act, 1996, shall stand disposed of.

Disposed of in the aforesaid terms.

(Renuka Sadana)  
Assistant Registrar

(Parveen Kumar)  
AR-cum-PS