

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.02.2015

CORAM:

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE MR.JUSTICE M.VENUGOPAL

W.A.No.1640 of 2014
and
M.P.No.1 of 2014

Paul Sankar

...Appellant/Petitioner

Vs.

1. Union of India,
Custodian of Enemy Property for India,
Currimboy Road,
Mumbai-600 038.
 2. The District Collector,
Chennai-600 001.
 3. The Secretary to Government,
Revenue Department,
Fort St. George, Chennai-19.
 4. N.Murali Kumaran
 5. M/s.Kurinji Minerals,
No.86, Adam Shaib Street,
Royapuram, Chennai.
- सत्यमेव जयते...Respondents/Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent Act, against the order dated 20.04.2012 and made in W.P.No.25727 of 2009 by the Learned Judge of this Court.

W.P.No.25727 of 2009:

Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records of the first respondent's proceedings in Endst No.6(5)/pak/1970 dated 8.10.2007 and quash the same and consequently direct the respondents 1 and 2 to renew the lease

agreement dated 7.10.2004 of the Apostolic Student Centre trust towards the operations in the land measuring 19 grounds 1200 sq.ft comprised in S.No.32/1, part block No.11 of Sembium Village, Perambur Taluk, Chennai.

For Appellant : Mr.M.Jagan
for M/s.N.Chandrasekaran

For Respondent : Mr.P.S.Sivashanmugasundaram
Nos.2 & 3 Special Government Pleader

For Respondent-4 : Mr.A.Thiyagarajan, SC
for Mr.R.Gopinath

For Respondent-5 : Mr.T.Mohan
for Mr.M.Lakshmipathi

J U D G E M E N T

[Judgment of the Court was delivered by M.VENUGOPAL, J.]

The Appellant has focused the instant intra Court Writ Appeal which arises from the order dated 20.04.2012 in W.P.No.25727 of 2009 passed by the Learned Single Judge.

2.The learned Single Judge while passing the impugned order dated 20.04.2012 in W.P.No.25727 of 2009 in para 19 had observed to the effect that "even if such extension of lease is granted it would be contrary to the provisions of the Enemy Property Act, 1968, which specifies that the lease could be granted only for a period of three years, at a time. Further, it has been stated, on behalf of the respondents 1 to 3, that the lease agreement granted in favour of one S.Victor Selvaraj had been cancelled, on 14.09.2006, as he had violated the terms and conditions of the lease agreement, dated 07.10.2004. When S.Victor Selvaraj had not chosen to challenge the cancellation of the lease agreement, on 14.09.2006, and as such cancellation had become final, the present writ petition filed by the petitioner herein cannot be held to be maintainable in the eye of law. As such, the writ petition filed by the petitioner is devoid of merits" and accordingly, dismissed the same.

3.At the outset, this Court pertinently points out that on 12.01.2015 when the main Writ Appeal is taken up for hearing, the Learned counsel appearing for the Appellant expressed his inability to argue the matter and as such, the matter was adjourned for four weeks, as a last opportunity and the matter was directed to be

posted on 10.02.2015.

4. When the main Writ Appeal was taken up for hearing today, the Learned counsel for the Appellant was unable to address this Court and hence, this Court had decided to go through the pleadings and documents placed before the Writ Court and also before this Court. Accordingly, this Court had considered the entire gamut of the subject matter in issue with great care, caution and circumspection.

5. It is to be borne in mind that the Appellant/Petitioner had filed the Writ Petition in W.P.No.25727 of 2009 on the file of this Court, questioning the proceedings dated 08.10.2007 of the First Respondent. In fact, he had prayed for quashing of the said proceedings and also, to renew the Licence Agreement dated 07.10.2004, in respect of the land measuring 19 grounds 1200 sq. feet comprised in S.No.32/1, Part Block No.11 of Sembium Village, Perambur Taluk, Chennai.

6. The Appellant/Petitioner in the grounds of the Writ Appeal had stated that the Learned Writ Court failed to note that the Appellant/Petitioner is the Secretary of the Apostolic Student Centre Trust, which is a Child Development Centre helping the downtrodden people from the year 1976.

7. Also in the Writ Appeal, a ground is raised by the Appellant that the Writ Court had failed to note that S.Victor Selvaraj, Director of the Appellant's Centre had requested for issuance of Lease Agreement Certificate to the effect that the Lease Agreement was valid for a minimum period of 25 years extendable up to 99 years. Also, it is the stand of the Appellant that the Agreement was entered into, by S.Victor Selvaraj to run the Trust, as he is the Secretary of the Trust.

8. Yet another stand of the Appellant is that the Learned Writ Court had failed to appreciate that the Appellant/Petitioner had made a specific request to the Second Respondent dated 05.11.2005 and obtained permission for putting up construction in the Lease Property for carrying the activities of the Trust.

9. The Appellant takes a stand that Lease Property is in possession of the Trust and this aspect of the matter was not taken into account by the Learned Single Judge, at the time of passing of the impugned order in the Writ Petition. Moreover, the Appellant/Petitioner is ready to pay the lease amount but wilfully and wantonly, his request to receive the said amount was denied.

10. Another plea of the Appellant is that order dated

08.10.2007 was not served to it and indeed, the Respondents had not served any notice of hearing to the Appellant requiring him to appear for any enquiry before choosing to re-allot the lands in favour of the Respondents 4 and 5. It is also the ground of the Appellant that when the representatives of the Respondents 4 and 5 had entered into the lands under its occupation on 25.11.2009, it came to know that the order dated 08.10.2007 was passed.

11.It transpires that the Appellant/Petitioner (Trust) in the present case on 30.01.2003 had applied to the Second Respondent about the particulars and documents to the lease out of the Enemy land and the Second Respondent had furnished the same in Sembium Village bearing No.32/1, Part Block No.11 of Sembium Village measuring an extent of 19 grounds 1200 sq. feet admeasuring vacant land for the purpose of carrying out the activities of the centre in helping the poor people. Moreover, based on the orders of the Second Respondent/District Collector, Chennai to his Additional Personnel Assistant along with the Tahsildar carried out the inspection and furnished the Inspection Report dated 02.08.2003 together with his letter dated 28.04.2003 recommending for grant of lease in favour of the Appellant/Trust.

12.It comes to be known that the Second Respondent/District Collector, Chennai had issued a letter to the Sub Inspector of Police, Thiru.Vika Nagar (Law and Order) dated 28.10.2004 mentioning that the land in T.S.NO.32/1 Part Block of Sembium Village measuring an extent of 19 grounds 1200 sqft. belongs to Custodian of Enemy Property of India.

13.The clear cut case of the Appellant/Trust (as seen from the affidavit of the Writ Petition No.25727 of 2009) is that the District Revenue Officer of Chennai by means of letter dated 21.04.2004 also recommended for grant of lease determining the Annual Lease Rent of Rs.1,43,200/-. As a matter of fact, on 07.10.2004, a Lease Agreement was entered into between the First Respondent and S.Victor Selvaraj, President of the Apostolic Student Centre Trust and the Trust took possession of the aforesaid property and was carrying out his social service charitable trust activities since then periodically by paying the Annual Lease Rent and electricity charges peacefully.

14.According to the Appellant/Petitioner, the Appellant had requested the Second Respondent/District Collector, Chennai for issuance of Lease Agreement Certificate for a period of 25 years and on 10.01.2005, the Second Respondent/District Collector, Chennai by letter No.J4/9160/99 dated 10.01.2005 issued certificate to the effect that the lease for the aforesaid property in question is valid for more than 25 years etc. Also, the Appellant was

informed that the lease valid for more than 25 years was even extendable beyond that period subject to the payment of lease rent/revised lease rent at the interval of every three years regularly. Apart from that, the Appellant/Petitioner by means of making a specific request dated 05.11.2005 addressed to the Second Respondent, had obtained permission for putting up construction to facilitate proper impartment of education to the needy and poor in the proposed structure and in reality, it constructed a building comprising of 1456 sqft. providing classrooms for the purpose of imparting education and a watchman shed comprising 300 sqft. In this manner, the Appellant had incurred an enormous expenditure of more than Rs.3 lakhs.

15. When that be the fact situation, it is the stand of the Appellant that it was shocked and surprised to note that the District Revenue Officer had overlooked an earlier undertaking of the Second Respondent/District Collector, Chennai and cancelled the 'Lease' on 21.07.2006 with some ulterior motive, (after it refused an illegal demand of Rupees Five Lakhs by the Fourth Respondent for continuation of lease and this was complained to the Hon'ble Chief Minister Cell).

16. The principle stand taken on behalf of the Appellant in the Writ Petition No.25727 of 2009 is that 'Lease' in question is a subject matter in dispute and this Court in W.P.No.25727 of 2009 had granted interim orders and also called for the records. In such circumstance, the impugned order/letter dated 08.10.2007 ought not to have been passed.

17. There is no two opinion of prime fact that the Second Respondent/District Collector, Chennai is the Competent Authority in regard to the grant of Lease of Enemy Properties. In reality, the lease cannot be granted for more than three years period. The other fact which cannot be brushed aside is that after cancelling the 'Original Lease', the 'Lease' pertaining to the property in issue was granted in favour of the Respondents 4 & 5 and all the more, the possession was handed over to them as early as on 27.08.2008.

18. The crucial aspect which crops up for rumination is that when the 'Lease' was issued in favour of S.Victor Selvarj in his personal/individual capacity, the Appellant, as the Secretary of the Trust cannot maintain the present Writ Petition, in view of the fact that he has no locus standi.

19. In the instant case, one cannot ignore a very vital fact that as against the Appellant/Petitioner the specific complaints were made before Thiru. Vika Nagar Police Station, Chennai and the

matter was taken up for investigation. At this juncture, it is to be borne in mind that the Respondents 4 and 5 were granted the Lease and they paid the rent amounts and are said to be in continuous possession and occupation of the property in issue.

20.A closer scrutiny of the clauses of the Lease Agreement dated 07.01.2004 (executed between the First Respondent/Union of India, Custodian of Enemy Property for India, Mumbai and S.Victor Selvaraj, Director of the Apostolic Student Centre Trust) unerringly points out that the lease was granted in his personal capacity for carrying out his commercial activities. In this connection, this Court relevantly points out that in terms of the ingredients of the Enemy Property Act, 1968, beyond three years time, no power is bestowed on the authorities to enter into a 'Lease'. Originally, the 'Lease' was granted for three years period commencing from 07.10.2004 till 31.10.2007. That apart, the Lease in respect of the terms in issue granted in favour of the lessee concern ought not to be assigned or transferred or given on sub lease in favour of third parties. Furthermore, the renewal of lease on mutually agreed terms between the parties (Lessor and Lessee) can only be effected for a period of three years. Per contra, beyond three years, the Enemy property Act, 1968, does not confer any power on the authorities concerned to grant Lease in favour of the party in respect of the property concerned.

21.One cannot be oblivious of the fact that cancellation of Lease Agreement on 14.09.2006 was not assailed by S.Victor Selvaraj, in view of the fact that he had breached the covenants of the Lease Agreement dated 07.10.2004. Therefore, the ground reality is that cancellation of Lease Agreement dated 14.09.2006 had become final, conclusive and binding on the parties concerned. In this backdrop, this Court is of the considered opinion that it is not open to the Appellant to file the Writ Petition (W.P.No.25727 of 2009) seeking to call for the records of the First Respondent proceedings in Endst No.6(5)/pak/1970 dated 08.10.2007 and quash the same. Also, he is not entitled to seek a consequential relief praying for issuance of an order by this Court in directing the Respondents 1 and 2 to renew the Lease Agreement dated 07.10.2004 of the Apostolic Student Centre Trust in respect of operations concerning land mentioned in the Writ Petition.

22.Viewed in that perspective and also, this Court on going through the impugned order dated 20.04.2012 passed by the Learned Single Judge in W.P.No.25727 of 2009 is of the considered view that the said order in dismissing the Writ Petition is a Just, Valid and Sound one in the eye of law, warranting no interference in the hands of this Court sitting in an Appellate Jurisdiction. Resultantly, the Writ Appeal fails.

23.In Fine, the Writ Appeal is dismissed leaving the parties to bear their own costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

DP

To

1. Custodian of Enemy Property for India,
Union of India,
Currimboy Road,
Mumbai-600 038.
 2. The District Collector,
Chennai-600 001.
 3. The Secretary to Government,
Revenue Department,
Fort St. George, Chennai-19.
- 1 CC to Mr.R.Gopinath, Advocate SR.No. 7518
- 1 CC to Mr.M.Lakshmipathi, Advocate SR.No. 7519

सत्यमेव जयते

W.A.No.1640 of 2014
and
M.P.No.1 of 2014

SV (CO)
PSI (02.03.2015)

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