IN THE HIGH COURT OF JUDICATURE AT MADRAS

CAV ON:24/09/2014

DATED: 09/03/2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.5231 of 2004
and
W.P.M.P.No.6067 of 2004

Cosmopolitan Club,
Rep. by its Joint Secretary,
P.B.No.37, No.63, Mount Road,
Chennai - 600 002. ... Petitioner

Vs.

1.The Tahsildar,
Mambalam - Guindy Taluk,
Chennai - 600 078.

2.The Principal Secretary to Government,
Revenue Department,
Government of Tamil Nadu,
Fort St.George,
Chennai - 600 009.

3.The Commissioner for Land Administration,
Ezhilagam,
Chepauk,
Chennai - 600 005.

4.The District Collector,
Chennai District,
Chennai - 600 001.
(R2 to R4 impleaded as per order dated 12.09.2014 by CSKJ in W.P.M.P.No.197/2014 in W.P.5231/2004)
... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari or any other appropriate Writ, Order or direction, in the nature of a Writ, calling for the records relating to the notice issued by the respondent in A1/22603/84, (Lease), dated 29.01.2004 and quash the same.

For Petitioner : Mr.V.T.Gopalan
(Senior Counsel)
for Mr.V.P.Sengottuvel

For Respondents : Mr.M.S.Ramesh
(Additional Government Pleader)

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O R D E R

The petitioner is the Joint Secretary of the Petitioner's Club and he has been authorized to file the above writ petition on behalf of the petitioner's club namely Cosmopolitan Club. The petitioner submits that it is an ancient club having completed more than 125 years of its existence. The club is a Company Registered under the Indian Companies Act. The eminent personalities and several Hon'ble Judges have been Presidents of the club and the club has acquired a distinct status. As on date the club has more than 4000 members on its rolls. During 1930 when Golf was not a very popular sport, the Englishmen who were members of the petitioner's club planned to have a Golf Club in the city of Madras which was first of its kind. The Government by G.O.Ms.No.1494, Revenue Department, dated 27.07.1937, allotted an extent of 0.33 acres of Government Farm Land and subsequently an extent of 77.37 acres of farm land was allotted by G.O.Ms.No.4696, Revenue Department dated 27.12.1956, for the purpose of a Golf Course. The land was barren and the petitioner's club took extensive steps to develop the same into a Golf course by incurring expenditure running to several lakhs of rupees. The Government by G.O.Ms.No.3189, Revenue Department dated 09.11.1966 granted a renewal for a further period of 30 years till 30.06.1996.

2. The petitioner submitted that the Government while renewing the Lease vide G.O.Ms.No.3189, dated 09.11.1996 fixed the lease rent at Rs.5,800/- per annum for the entire extent. It is pertinent to point out at this juncture the lease which was granted under the Government Grants Act and a deed in the statutory format had been executed and under the grant the Government reserved to themselves the right to enhance the rent during the period of lease. The petitioner has paid the lease rent as fixed in the Government Order upto 30.06.1996 and as such there is no default.

3. The petitioner submitted that the petitioner on 19.01.1996, applied to the Government for renewal of the lease for a further period of 30 years. While the application for renewal was pending, the Government by letter dated 03.04.1997, granted renewal and stated that a governing council will be appointed, which will comprise of members of the Petitioner Club, nominees of the Government of Tamil Nadu and the Tamil Nadu Gulf Federation. The Petitioner challenged the said order dated 03.04.1997 before this Court in W.P.No.9043 of

1997. This Court by judgment dated 07.12.1998 held that the Government letter dated 03.04.1997 is one without jurisdiction and suffers from non-application of mind and quashed the condition imposed in the said letter dated 03.04.1997, appointing nominees. This Court made certain observations regarding the renewal of lease, which were favourable to the Petitioner.

4. The petitioner submitted that the Government ignoring the observations made by this Court in W.P.No.9043 of 1997, passed an order in G.O.Ms.No.278, Revenue Department dated 04.06.1999, rejecting the renewal of lease. The petitioner once again challenged the said order before this Court by filing in W.P.No.9636 of 1999. This Court by order dated 13.10.1999 dismissed the writ petition and observed that the Government could take appropriate further decision with due and proper care to protect the interest of the Golfers. The petitioner filed Writ Appeal No.2101 of 1999 and the Hon'ble Division Bench was pleased to protect the possession of the Petitioner Club, giving liberty to the Government to proceed further in the matter. Subsequently, the Respondent issued a notice under the Provisions of the Tamil Nadu Public Premises (Eviction of Un-authorized Occupants Act), which was also challenged by the Petitioner by filing a separate Writ Petition in W.P.No.20693 of 1999 in which this Court was pleased to grant stay of the impugned notice.

5. While the facts stood thus, the petitioner club in order to protect the interest of its members decided to enter into a memorandum of understanding with the Tamil Nadu Golf Federation as they had assured to bring in huge sums of money for the development of Golf Course to a much Superior standard. As a step in furtherance to the said memorandum of understanding, the Petitioner withdrew W.A.No.2101 of 1999 and W.P.No.20673 of 1999 in pursuance to the memorandum of W.P.No.20673 of 1999. In pursuance to the memorandum of understanding the petitioner and the Tamil Nadu Golf Federation. Jointly approached the Government for renewal of lease. The Government after careful consideration of the entire matter and that the renewal of the lease in favour of the petitioner would be ideal, by G.O.Ms.No.138, Revenue Department dated 24.03.2001, renewed the lease in favour of the petitioner club and appointed a Governing Body, consisting of 15 members, 5 from the Petitioner Club, 5 from the Tamil Nadu Golf Federation and 5 Government Nominees. The Petitioner Craves leave of this Court to refer to the G.O.Ms.No.138, dated 24.03.2001, as part and parcel of this affidavit for better appreciation of the renewal of the lease. The petitioner on 29.10.2001 has executed the Lease Deed in the statutory format and submitted the same to the respondent. In the said Government Order dated 24.03.2001, in paragraph 7(vii) it has been clearly stated that the lease rent from 01.07.1996 should be fixed in consultation with the District Collector of Chennai District and the Land Commissioner and lease rent to be collected from the petitioner club. It is submitted that till date the lease rent had not been fixed.

6. The petitioner further submitted that certain members of the Petitioner Club under the name and style "Cosmo Golfers Association" challenged the Government Order in G.O.Ms.No.138 before this Court by filing in W.P.No.6727 of 2001. The writ petition was admitted on 17.04.2001, but no interim orders were granted. The members of the said Cosmo Golfers Association, individually filed civil suits before this Court in C.S.Nos.74 of 2001 and 96 of 2001. The members of the Cosmo Golfers Association were members of the Petitioner and has no independent right under the memorandum and Articles of Association of the petitioner who were only Golf playing members. This Court by order dated 24.05.2001 dismissed the interlocutory application filed in the said suits. As against the said order the plaintiffs in C.S.No.96 of 2001 and Application No.140 of 2001 filed in O.S.A.No.302 of 2001. The Hon'ble 1st Bench of this Court by order dated 15.11.2001 ordered that if the Lease deed has not been finally executed pursuant to G.O.Ms.No.138, dated 24.03.2001, no further steps shall be taken for the execution of the Lease Deed, it was further made clear in the said order that the activities of the Golf Club shall continue, as are continuing on the said date. The order passed by the Hon'ble I Bench in C.M.P.No.15451 of 2001 in O.S.A.No.302 of 2001, dated 15.11.2001, was brought to the notice of this Court in W.M.P.No.9607 of 2001 in W.P.No.6727 of 2001, filed by Cosmo Golfers Association came up for hearing on 17.01.2002 in which Government is the 1st respondent and the said petition was dismissed. Thus the Government was aware of the order protecting the possession of the petitioner over the lease hold land, granted by this Hon'ble I Bench in C.M.P.No.15451 of 2001 in O.S.A.No.302 of 2001, dated 15.11.2001.

7. The petitioner further submitted that the petitioner on 13.04.2001 informed the 1st respondent furnishing the names of the nominees of the club, who are Elected Office bearers of the Club. The petitioner by letter dated 10.04.2001 requested the 1st respondent to attend a meeting of the Governing body. The said letter was also signed by the President of the Tamil Nadu Golf Federation. The Government Nominees namely the Secretary to Government Revenue Department, Secretary Youth Welfare and Sports Development Department and the District Collector, Chennai, uniformly stated that it is not proper for the Governing Body to meet before the execution of Lease. It is note worthy to mention at this juncture that in pursuance to G.O.Ms.No.138, the Tamil Nadu Golf Federation has already spent Rs.1 Crore for the Development of the Golf Course and the petitioner club has also collected the subscription from the members, to the tune of several lakhs. While that being so, to the Uttar shock and surprise, the Government by letter No.5612/Ni.Mu.2(1)/2002-3 dated 06.05.2002 issued a Show Cause Notice to the petitioner as well as the Tamil Nadu Golf Federation, alleging that, the condition No.7(ii) of G.O.Ms.No.138, dated 24.03.2001 has been contravened and to show cause why the lease

should not be canceled. The petitioner on 16.05.2002 submitted a detailed explanation to the Government and pointed out that there has been no contravention of G.O.Ms.No.138. In the personal hearing, which was afforded it was brought to the notice of the Government that the petitioner had addressed the nominees as early as on 10.04.2001 to attend the Governing Body meeting and it is the Government Nominees who failed to respond by stating that it would not be proper for the governing body to meet before the lease is executed. The Government was apprised of all the improvements affected to the course after G.O.Ms.No.138 was passed, the expenses incurred etc., and photographic evidence was also produced by the Tamil Nadu Golf Federation.

8. The petitioner further submitted that the Government without considering any of the points raised by the petitioner by a cryptic and arbitrary order in G.O.Ms.No.282, Revenue Department dated 28.06.2002, cancelled the lease granted in favour of the Club and also ordered for resumption of the land. The said order was challenged by the petitioner in W.P.No.23657 of 2002 and this Court was pleased to admit the Writ Petition on 01.07.2002 and ordered Status Quo to be maintained. Subsequently, the writ petition was admitted by order dated 08.10.2002, granted interim stay and injunction as prayed for till the disposal of the Writ Petition and imposed three conditions. The writ petition is still pending and the interim order is still in force.

9. While that being so, the respondent herein by order dated 29.01.2004, served on the petitioner on 04.02.2004, directed that the petitioner should pay a sum of Rs.119,78,58,312/- as lease amount for the period from 01.07.1971 to 30.06.1996. The respondent has relied upon a communication said to have been received from the Accountant General and has claimed lease rent retrospectively. The said order dated 29.01.2004, is impugned in this writ petition.

10. The petitioner submitted that the impugned order is unreasonable arbitrary illegal, out come of non application of mind, a colorable exercise of power, violative of Article 14 and the principles of natural justice and hence liable to be set aside. Hence, the above writ petition is filed.

11. While the above writ petition came up for final hearing the writ petitioner has filed additional affidavit in the name of the present honorary Sectary. He submits that the petitioner herein filed the above writ petition challenging the notice of the Tahsildar, Mambalam-Guindy Taluk, Chennai - 78 in No.A1/22603/84 (Lease), dated 29.01.2004 calling upon the Secretary, Cosmopolitan Club to remit a sum of Rs.119,78,58,312/- being the revised rent for the period between 01.07.1971 and 30.06.1996 i.e., for a period of 25 years on the basis of the market value and on the letter of the Accountant General, dated 16.06.1998.

12. The petitioner further submitted that the club has on its role a total number of 5534 members. If the amount demanded for the above said period and a sum of Rs.119,78,58,312/- is divided amongst the members irrespective of whether they were members or not during that period, each member will have to pay a sum of Rs.2,16,455/-. Even assuming without however admitting that the aforesaid lease amount is halved the liability of each member will come to Rs.1,08,228/-. Informal discussions with some members only resulted in sharp reaction with the threat from them that they would get out of the club. If such a thing is enforced on the members, there is every possibility of the club becoming defunct. Therefore, the club regretfully has to respectfully submit that they are not in a position to pay for any additional sums of money more than what is fixed by the Government. As a matter of fact when the Government renewed the lease from 01.07.1996, the Government did not make any revision for the period for which the Tahsildar has now made the demand.

13. The petitioner further submitted that to recognize any power by the Tahsildar who purported to act on the basis of the Accountant General remarks and which will have an effect of setting aside the order of the Government will only lead to anarchy and chaos in the administrative system besides the fact that the Tahsildar will have absolutely no jurisdiction at all to make the impugned demand and as such the impugned demand is a nullity. It is also relevant to note that under the Government Order dated 24.01.2009 renewing the lease for a period of 30 years from 01.07.1996 and fixing the lease amount, the Government fixed the lease amount of Rs.1 crore per annum for the period from 01.07.1996 to 23.03.2001 and for the period from 24.03.2001 to 30.03.2026, a sum of Rs.1.5 Crores.

14. Further, the day today administration of the Golf course, according to the order renewing the lease and fixing the rent is not exclusively vested in the club. Two committees have been formed for the land management. As far as the land management committee for Travancore Pavilion is concerned and there are four members from the Cosmopolitan Club and three representatives from the Government viz., Secretary, Revenue Secretary, Finance and Secretary, Sports with respect to the other bi-partite committee for the Golf course it consists of four members from the Tamil Nadu Golf Federation and three members from the Government. So far as the Golf course is concerned the Cosmopolitan Club have no part to play. They have a say only in the Travancore Pavilion. The lease deed in question is a compendium of both the Travancore Pavilion and Golf Course. Therefore, the Cosmopolitan Club is not the sole authority to take a decision and to make an offer of any amount relating to the lease of the Golf Course. That is why petition to implead the Government of Tamil Nadu has been filed and they have not been formed about the decision or stand of the Government of Tamil Nadu regarding enhancement of lease rent.

15. In view of the fact that the impugned order made by the Tahsildar is without jurisdiction, for reasons already stated above this Court may be pleased to allow the above said writ petition.

16. The Respondent/Tahsildar, who is attached to the Mambalam-Guindy Taluk, Chennai, has filed a counter statement and refuted the above writ petition. He submits that an extent of the land measuring 65.09 acres in Government Farm village was granted to the Cosmopolitan Club by way of licence for the purpose of a Golf course in the year of 1933. Out of the said extent 33 cents were converted into lease by G.O.Ms.No.1494, Revenue Department dated 22.07.1937. In the meanwhile, in the year of 1935 another extent of 1.77 acres and subsequently in the year of 1945 yet another extent of 10.84 acres were granted on a licence basis to the Cosmopolitan Club. The entire extent of the above land measuring 77.70 acres were subsequently converted as a grant under lease in G.O.Ms.No.4696, Revenue Department dated 27.12.1956. The lease was renewed for a period of 10 years from 01.07.1956 with an annual rent of Rs.15/- per acre. The lease was again renewed in G.O.Ms.No.3189, Revenue Department, dated 09.11.1966 for the period upto 30.06.1996. The Government has also directed that further renewal of lease shall be at the option of the Government.

17. The respondent further submitted that the Cosmopolitan Club has requested the Government on 19.11.1996 to renew the lease for a further period of 30 years. When the said request was under the examination of the Government in consultation with the Collector of Chennai District, the Tamil Nadu Golf Federation has requested the Government to lease the above said land, on the ground that it has the interest and ability to bring the Golf Course to international standard. The Federation has alleged that the improvements made to maintain the Golf Course by the Cosmopolitan Club falls short of what is required. The Government have requested the Secretary Service Sports Control Board Commander, K.S.Radhana, Armed Forces Headquarters, New Delhi, to visit the Golf Course at Chennai and make appropriate recommendation other necessary enquiries and inspection. His report revealed that the Golf Course lacked basic facilities and it detrivated due to the lack of maintenance etc. On a consideration of the report in proper prospective, the Government have suggested that the extension of lease for another 30 years might be granted subject to constitution of a governing Committee which would consist of members from the Cosmopolitan Club, Tamil Nadu Golf Federation and the State Government in equal numbers the Cosmopolitan Club did not agree to the said condition and the club filed Writ Petition No.9043/1997. This Court allowed the Writ Petition No.9043/1997 and quashed the impugned Condition No.4(1) of Government Letter No.4937/LDII(1)/1996-8, Revenue (LDII(1) Department, dated 03.04.1997. The High Court has also observed that it is open to the Government to consider the request of the Cosmopolitan Club for

renewal of lease in accordance with law as the option is reserved under the stamp. The Cosmopolitan Club had filed Writ Appeal in Writ Petition No.9043/1997, dated 11.01.1999.

18. The respondent submitted that the Government examined the request of the Cosmopolitan Club for renewal of lease beyond 30.06.1996. On examination of the request it has observed that the club had not taken adequate interest in maintaining the Golf Course properly. The Golf Course lacked basic facilities and had deteriorated over the years due to the total lack of maintenance and commitment on the part of the club. Moreover, whatever improvements that had been done in the land over the years, seem to have been done by the Golfers. Hence, the Government had considered that the land had not been done by the Golfers. Hence, the Government had considered that the land had not been properly utilized for the purpose for which it was given on lease. As the period of lease had already expired, the Government had rejected the request for renewal of lease beyond 30.06.1996 in G.O.Ms.No.278, Revenue Department, dated 04.06.1999. The Cosmopolitan Club had also been requested to hand over the possession of the land to Government.

19. The respondent further submitted that the Cosmopolitan Club had filed Writ Petition No.6936/1999, against the rejection of renewal of lease ordered in G.O.Ms.No.278, Revenue Department, dated 04.06.1999. This Court in its judgment, dated 13.10.1999, in writ petition No.9636/1999, had dismissed the writ petition with some observation. Against the judgment of the Cosmopolitan Club had filed Writ Appeal No.2101/1999 This Court in C.M.P.No.17646/1999, in Writ Appeal No.2101/1999, (Division Bench) had that the Cosmopolitan Club is in occupation of the lease land, there shall be an interim injunction for a period of four weeks restraining the respondents (Government and three others) from interfacing with the possessions of the Cosmopolitan Club in respect of land in T.S.No.2, Block 8 of Government Farm Village. At the same time the Government, Collector of Chennai and Tahsildar, Mambalam-Guindy Taluk, were permitted by this Court to initiate proceedings for eviction on the Cosmopolitan Club in accordance with law. But, if any order of eviction is passed, the same shall not be executed during the period of operation of injunction.

20. The respondent further submitted that the Government, as per the judgment of this Court, Chennai, in Writ Petition No.9636/1999, dated 13.10.1999, in their letter No.55796/10.II(1)/199-4, Revenue Department, dated 15.11.1999 had directed the Estate Officer and Personal Assistant (General) to the Collector, Chennai, to take necessary action to take back the leased land from the Cosmopolitan Club by invoking the provisions of Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act, 1975. As per the directions of the Government, the Cosmopolitan Club was issued notice under section 4 of the Tamil Nadu Public Premises (Unauthorised

Occupants) Act, 1975 in Ref.No.J5/43529/1997, dated 10.02.1999. The said notice was served on the Joint Secretary, Cosmopolitan Club on 11.12.1999. But, the Cosmopolitan Club had filed Writ Petition No.20673/1999 and W.M.P.No.30322/1999, against the notice under section 4 of the Tamil Nadu Public Premises (Unauthorized Occupants) Act, 1975. This Court, in its judgment, dated 14.01.2000, in W.M.P.No.30322/1999 in Writ Petition No.20673/1999 had granted interim stay for two weeks and equal time to file counters.

21. The respondent further submitted by the Cosmopolitan Club to this Court, that the subject matter was being settled with the Government of Tamil Nadu and pleaded before this Court to permit withdrawal of Writ Appeal as not pressed. Accordingly, this Court had dismissed the Writ Appeal No.2101/1999 as withdrawn and consequently in W.M.P.No.17645/1999 and 17646/1999 were also dismissed on 24.01.2001.

22. The respondent further submitted that the Government in their order in G.O.Ms.No.138, Revenue (LD-II (1) Department dated 24.03.2001had informed that as per the orders of this Court , in Writ Petition No.4092/2001, dated 02.03.2001 gave personal hearing to the Cosmo Golfers Association on 20.03.2001 and rejected their request on the ground that the Association had commenced just two years back in Government Letter (Ms).No.161, Revenue Department, dated 11.04.2001. However, the Government in their order No.138, Revenue (LD.II(1) Department, dated 24.03.2001, had leased the Land measuring 77.70 acres in T.S.No.2 Block No.8 of Government Farm Village for 30 years jointly in favour of Cosmopolitan Club and Tamil Nadu Golf Federation with certain conditions.

23. The respondent further submitted that the Commissioner, Land Administration Department, Chennai, in his letter No.C1/25779/1999, dated 06.06.2001, addressed to the Secretary to Government Revenue Department, Chennai - 600 009, recommended the proposals of the Collector in reference No.J5/19035/2001, dated 29.05.2001. Besides, that the letters received from the lessee i.e., Cosmopolitan Club and Tamil Nadu Golf Federation which confirmed the acceptance of the conditions stipulated in G.O.Ref.No.138, Revenue Department, dated 24.03.2001, and the rates of lease rent as fixed by the Government were also sent to Government.

24. The respondent that the Government in their Letter No.19504/LD-II (1)/2001-2 Revenue Department, dated 26.07.2001, have instructed to fix a realistic lease rent considering the prime location of the lands in question and send proposals to Government. The lease agreement duly executed by the joint lessees namely Cosmopolitan Club and Tamil Nadu Golf Federation on 18.10.2001 had some short comings. The Collector of Chennai in his letter on J5/19035/2001, dated 11.12.2001 had suggested that to convene a meeting of the Governing Committee, the Secretary to Government Youth

Welfare and Sports Development Department may be nominated as member secretary. Further, the Government had been informed that the execution of lease deed will be taken up after fixing the lease rent based on the proposals sent by the Commissioner, Land Administration Department, Chennai - 600 005.

25. The respondent further submitted that the Secretary to Government, Revenue Department, in his D.O.Letter No.19504/LD2(1) 2001-5 dated 21.05.2002 had requested to send a status report on the improvements made by the lessees in the Golf Course as ordered in G.O.Rt.No.138, Revenue Department, Dated 24.03.2001. In the Collector's D.O.Letter15/19035/2001, dated 26.02.2002, the report called for above has been sent. In the letter, the Government were informed that lessee is in possession of 33 Hectares-20 Acres-32.0 sq.mt (Or) 82 Acres and 05 cents in various Survey Numbers Blocks in Government Farm Village as against the extent of 77.70 Acres leased in T.S.No.2 Block No.8, Government Farm Village to the Cosmopolitan Club and Tamil Nadu Golf Federation.

26. The respondent further submitted that the Government in their letter No.5612/LD.2(1).2002-3, Revenue Department, dated 06.05.2002, have issued show cause notice to the lessees viz., Cosmopolitan Club and Tamil and Tamil Nadu Golf Federation, as to why the order of the Government in G.O.Rt.No.138 Revenue Department, dated 24.03.2001, should not be cancelled, since the conditions stipulated therein were not fulfilled, the show cause notice was served to the lessees on 07.5.2002. The Government in their order G.O.Rt.No.282 Revenue (LD.II(1) Department, dated 28.06.2002 had cancelled the lease granted jointly to the Cosmopolitan Club and Tamil Nadu Golf Federation, for the land measuring 77.70 acres in T.S.No.2, Block No.8 of Government Farm Village. The said Government order was served on the Honarary Secretary, Cosmopolitan Club and Executive Committee Member, Tamil Nadu Golf Federation on 29.06.2002. The Collector in his proceedings No.J5.19035/2001, dated 29.06.2002, has ordered to take possession of the land by the Tahsildar, Mambalam-Guindy Taluk.

27. The respondent further submitted that the Government in their order in G.O.Rt.No.282, Revenue Department, dated 28.06.2002, have decided to allot the resumed land from the ex-lessees, namely Cosmopolitan Club and Tamil Nadu Golf Federation, to the Tamil Nadu Sports Development Authority for the purpose of Golf Course only. As per the orders of the Government, the Collector in his proceedings No.J5.19035/2001, dated 29.06.2002, has issued enter upon permission to the Tamil Nadu Sports Development Authority and to make use of the land in T.S.No.2, Block No.8, Government Farm Village measuring 77.70 acres as Golf course only the subject land was handed over to the General Manager Sports Development Authority of Tamil Nadu on 29.06.2002 under Transfer Charge Certificate. The fact has been reported to Government in Collector's Office letter No.J5/19035/2001,

dated 29.06.2002. The Honarary Secretary, Cosmopolitan Club, has filed Writ Petition No.23651/2002 and W.M.P.Nos.32531/2002 and 32532/2002 aggrieved against G.O.Rt.No.282, Revenue Department, dated 28.06.2002. This Court, in its judgment dated 01.07.2002, has passed orders that "this Court is seized of the subject and there cannot be any alteration or change of positions or even any novel change introduced in the existing system by the party in physical possession of the properties and in strict adherence of this order there shall not be any interference or hindrance or disturbance to the party in physical possession and control of the subject and the status quo that is prevalent today shall continue till the time that the above writ petition is heard and decided by this Court. Further, the Associate Secretary, Tamil Nadu Golf Federation has filed Writ Petition No.23932/2002. Both the Writ Petition are pending before this Court. This Court in its order dated 08.10.2002 in writ petition M.P.Nos.325341/2002, 32532/2002 and 32908/2002 in Writ petitions Nos.32532/2002 and 23932/2002 has ordered that:

(i) The petitioner-federation in Writ Petition No.23932/2002 shall not violate any of the terms and the conditions of the grant;

(ii) The petitioner - Federation shall not make any permanent structure in the impugned Golf Course, without the leave of this Court; and

(iii) The 5th respondent/Sports Development Authority of Tamil Nadu are at liberty to inspect the impugned Golf Course, if it is so required.

The accountant General who audited this office has raised objection on the points viz., loss of revenue to Government due to non revision of lease rent, non fixation of lease and non collection of lease rent and in his letter No.AG(A) II-DP Cell SRR-178, dated 16.06.1998 and the Tahsildar has raised the lease rent based on the market value with effect from 01.07.1971, which works out to Rs.119,78,58,312/- from 01.07.1971 to 30.06.1996. Accordingly, a notice was issued to the Secretary, Cosmopolitan Club, in Tahsildar, Mambalam-Guindy Taluk, Ref.No.A1/22603/1984 (Lease) dated 29.01.2004. The receipt of the notice was acknowledged on 06.02.2004. Aggrieved to the notice of the Tahsildar, Mambalam-Guindy Taluk to pay Rs.119,78,58,312/-, the Joint Secretary, Cosmopolitan Club has filed the present Writ Petition and this Court in its order dated 05.03.2004 in the W.P.M.P.No.6067/2004 in Writ Petition No.5231/2004 has granted interim stay for one week. Further this Court also in their order dated 11.03.2004 extended the interim stay until further orders.

28. The respondent further submitted that the Government in their orders in G.O.Ms.No.3189, Revenue Department, Dated 09.11.1996 while renewing the lease, granted to the Cosmopolitan Club for the

period from the date of issue of Government order and till 30.06.1996 in payment of lease rent of Rs.5,800/- (Rupees five thousand eight hundred only) per annum for the entire extent subject to the condition that the Government reserve the right to revise the lease rent at the end of every five years besides other conditions. As per the orders of the Government the Accountant General in his letter No.AG(A)/VII-DP-Cell.SRR.178, dated 16.06.1998, has intimated the lease rent, as revised in the reference to the market value from 01.07.1971 to 30.06.1996. The amount so revised as lease rent is Rs.119,78,58,312/- for the period from 01.07.1971 to 30.06.1996. Hence, there is no violation of the principles of natural justice and not tainted with malafide and is a classical case or colourable exercise powers vested with the Tahsildar, Mambalam-Guindy Taluk. It is submitted that the Government in their order G.O.Ms.No.3189, Revenue Department, dated 09.11.1996, have renewed the lease granted to the Cosmopolitan Club for the period upto 30.06.1996 from the date of issue of order, subject to the conditions that the Government reserve the right to revise the lease rent at the end of every five years. Though the Government had fixed the lease rent as Rs.5,800/- per annum, the Government have every right to revise the lease rent on expiry of every five years from 09.11.1966. In consonance with Accountant General's letter No.AG(A)/ VII-DP-CELL.SRR.178, Dated 16.06.1998.

29. The Government in their order in G.O.Ms.No.3947, Revenue Department, dated 18.12.1970, have ordered to fix 7% of the market value of the land as lease rent. Where the lease land is meant for non-commercial use and 14% where the lease land is meant for commercial use. It is evident that the land leased to Cosmopolitan Club has been put into use purely for commercial use. Hence, the Accountant General has worked out the lease rent based on the market value of the land. There is no impediment to collect the arrears of lease rent since there is a specific clause in G.O.Ms.No.3189, Revenue Department, dated 09.11.1996 for the revision of lease rent for every five years. The petitioner has to pay the arrears of lease rent in pursuance of the Government Orders, for having enjoyed the benefits of utilizing the land under the term of lease.

30. The respondent further submitted that the petitioner has to present any grievances in fixation of lease rent before the Government, since the Government have ordered that it reserves the right to revise the lease rent at the end of every five years. The notice issued to the petitioner, requesting to pay the lease rent as fixed is based on the market value of the land by the Accountant General. In fact the petitioner has been served notice to pay the lease rent. The petitioner is having various appellate forums, like commissionerate of Land Administration and Government to raise objection to the rates fixed. The petitioner without exhausting the appeal provisions, straightaway approached this Court, which is a prematured one. It is submitted that the Tahsildar, Mambalam-Guindy

Taluk, had issued notice to the petitioner to pay lease rent as arrived at by the Accountant General. The Secretary to Government and Special Commissioner and Commissioner of Land Administration have in their letters dated 08.07.1998, 30.07.2001 and 12.01.2004, gave instructions to collect the dues towards lease rent from the lessees to meet the financial constraints of the Government. The petitioner is fully aware of the fact that the Government have got right to revise the lease rent at the end of every five years. Therefore, the petitioner need not be required to be given an opportunity when raising revised demand towards lease rent.

31. The respondent further submitted that the petitioner had contended about the jurisdiction of the Government in revising the lease rent, where the lease period had already been expired. The petitioner had not objected for the clause regarding revision of lease rent formed in the G.O.Ms.No.3189, Revenue Department, dated 09.06.1966 when the petitioner had not objected the said clause in time i.e., during the lease period the petitioner is bound to pay the revised lease amount as fixed for the lease land, based on the prevailing market value of the land. It is submitted that the Government in their order in G.O.Ms.No.278, Revenue (LD.TT(1)) Department dated 04.06.1999, have cancelled the lease lastly renewed in G.O.Ms.No.3189, Revenue Department, dated 09.11.1966 for the period upto 30.06.1996. Further, the Government in their G.O.Rt.No.138, Revenue (LD.II(1) Department dated 24.03.2001, have leased the land jointly to Cosmopolitan Club and Tamil Nadu Golf Federation, for a period of 30 years from 24.03.2001. The Government in the above said order in paragraph 7(v) (iii) had ordered to which the subject land was leased. Thus when the Cosmopolitan Club is bound to pay the lease rent for the period from 01.07.1996 to the date of issue of Government Orders, dated 24.03.2001. The petitioner is liable to pay the lease rent as revised as per the orders of the Government in G.O.Ms.No.3189, Revenue Department, dated 09.11.1966. The petitioner having used the land under lease and he is bound to remit the difference of the lease rent as fixed in pursuance to G.O.Ms.No.3189, Revenue Department dated 09.11.1966. The petitioner cannot escape from the payment of lease rent for the period and he used the land in term of lease, on the ground that the lease granted had been cancelled.

32. The respondent further submitted that the Government have been vested with powers to collect the dues i.e., revised lease rent from the petitioner, as ordered in G.O.Ms.No.3189, Revenue Department dated 09.11.1966. The petitioner cannot escape from making payment towards revised lease rent on the point of limitations. In fact, the petitioner is liable to pay the revised lease rent, only for having enjoyed the land in terms of lease. It is submitted that in G.O.Ms.No.3189, Revenue Department, dated 09.11.1996, the Government specifically reserve the right for the lease rent at the end of every five years. Further, the Government in their orders in

G.O.Ms.No.3947, Revenue Department dated 18.12.70, have ordered to fix lease rent at 7% of the market value of the land, when it is being utilized for non commercial purpose and 14% of the market value of the land, when the lease land is put into use for commercial purpose. In an exceptional case, the Government may fix the lease rent based on the usage of the land by the lessee. This Cannot be compared and questioned by the petitioner. Since, the petitioner had put the lease land into usage for commercial purpose. Hence, it is therefore humbly prayed that this Court may be pleased to dismiss the writ petition.

33. The highly competent Senior Counsel Mr.V.T.Gopalan, appearing for the petitioner and he has been assisted by the very competent counsel Mr.V.P.Sengottuvel, submits that the petitioner's club is an ancient club having completed more than 125 years of its existence. Further, as per the Government in G.O.Ms.No.3189 dated 09.11.1966 the lease period had been extended upto 30.06.1996 and fixed the lease rent at Rs.5,800/- per annum under the Government grants Act. Accordingly, the petitioner had admitted the said rent without default. The petitioner's Club made an application to the Government on 19.01.1996 for renewal of the lease for a further period of 30 years, while this application was pending, the Government by its letter dated 03.04.1997, granted renewal and stated that a governing counsel will be appointed which will comprise of members of the petitioner's club, nominees of the Government of Tamil Nadu and the Tamil Nadu Golf Federation. The said order was challenged before this Court by way of writ petition and the same was quashed by this Court and also made certain observations, regarding the renewal of lease to and infavour of the petitioner. Under the circumstances, the Government issued a G.O.Ms.No.278, dated 04.06.1999 and rejected the renewal of lease. Aggrieved by the said Government Order the petitioner had filed another writ petition before this Court and the same was dismissed on 13.10.1999 with the observation that the Government would take appropriate decision with due and proper care to protect the interest of the Golf Course. The dismissal order had been challenged by the petitioner by way of a writ appeal in which the Division Bench was pleased to protect the possession of the petitioner's club. Thereafter, the respondent issued notice for eviction, this also was challenged by the petitioner club by filing a writ petition No.20673 of 1999 in which interim stay was granted.

34. The very competent Senior counsel further submits that the petitioner's club in order to protect the interests of its members decided to enter into a memorandum of understanding with the Tamil Nadu Golf Federation, as they assured to bring huge sums of money for the development of the Golf course to a much superior standard. Thereafter, the petitioner's Club and Tamil Nadu Golf Federation jointly approached the Government for renewal of lease. The Government renewal of the lease in favour of the petitioner would be

appropriate and appointed a governing body consisting of 15 members, out of them, 5 from the petitioner's club, 5 from the Golf Federation and 5 from the Government Nominees. On 29.10.2001, the petitioner had executed a lease rent i.e., should be fixed in consultation with the District Collector and the Land Commissioner. Until now the lease rent had not been fixed. Some of the members from Cosmo Gulf Course Association challenged the G.O.Ms.No.138, dated 24.03.2001 regarding some conditions imposed by the Government by filing a writ petition before this Court, besides the said members have levelled two civil suits before this Court. The members of the Cosmo Gold Association has no independent Right to Act on their own accord. This Court dismissed the supplementary application for interim order along with the Civil Suits. Aggrieved by the said dismissal order in the annexed application original suit appeal No.302 of 2001 was filed. This Court had given an observation to the Cosmo Golf Course Association not to continue their own activities, as such this Court protects the interest and possession of the club.

35. The highly competent counsel submits that the petitioner had sent a request letter to the respondent to attend a meeting of the governing body, but the Government informed that before executing the lease, the Governing body to meet is not proper. Further, the Tamil Nadu Golf Federation has spent a sum of Rs.1 Crore for the development of the Golf course, besides the club has collected subscriptions from the members. Under, the circumstances the Government had issued a letter dated 06.05.2002 and sought an explanation for cancellation of the lease. On the said show cause notice the petitioner had submitted a comprehensive reply and also stated that there has been no contravention of G.O.Ms.No.138. Under the circumstances the Government had issued a G.O.Ms.No.282 dated 28.06.2002 and cancelled the lease and also ordered for resumption of the land, the said order was challenged before this Court by filing a writ petition and obtained an interim order restraining the Government and its G.O.Ms.No.282, dated 28.06.2002. Under the circumstances, the petitioner had issued the said impugned order and demanded a sum of Rs.119,78,58,312/- as lease amount for the period from 01.07.1971 to 30.06.1996, which is an arbitrary Act and violation of the principle of natural justice. Further, the Tahsildar had no jurisdiction to pass the said impugned order. The highly competent Senior Counsel Mr.V.T.Gopalan, further submits that the impugned order is nothing but a final order, as such the final order is not fit to proceed with said no prior notice and a comprehensive enquiry for enhancing the lease rent. Further, the impugned order runs against the statutory grant under the Government Grants Act. Further, the extended lease amount demanded for the period from 01.07.1971 to 30.06.1996 going beyond the limitation period.

36. The learned Senior Counsel has also filed additional typed set of papers and additional affidavit in the name of the petitioner

and argued that the petitioners club has on its rolls a total number of 5534 members. If the amount demanded by the respondent i.e., a sum of Rs.119,78,58,312/- is divided among the club members irrespective of whether they are members or not during the period between 01.07.1971 and 30.06.1996, each member will have to pay a sum of Rs.2,16,455/-. Even assuming though however admitting that the above said lease amount is halved the liability of each member will came to Rs.1,88,288/-. The highly competent counsel further submits that there was informal discussions held with some members only resulted in sharp reaction with the threat from them that they would get out of the Club membership. If such a thing is imposed on the members, there is every possibility of the club becoming defunct. Therefore, the Club regretfully has to respectfully submit that they are not in possession to pay any additional sums of money more than what is fixed by the Tahsildar. As a matter of fact when the Government renewed the lease from 01.07.1966 the Government did not make any revision for the period for which the Tahsildar has now made the demand. The Tahsildar has passed the said impugned order on the basis of the Accountant General's remarks which is tantamount to anarchy and chaos in the administrative process. Therefore, the impugned order is not suitable for execution against the petitioner's club.

37. The highly competent Senior counsel further submits that the Government had fixed the lease rent from 01.07.1962 to 23.03.2001 for a sum of Rs.1crore per annum and for the period from 24.03.2001 to 30.03.2026 for a sum of Rs.1.5 Crores per annum. Now, two committees have been formed for the land management. Therefore, the Cosmopolitan Club is not the sale authority to take a decision and to make an offer of any amount relating to the lease of the Golf Course. Hence, the learned Senior Counsel entreats the Court to allow the above writ petition.

38. The very competent Additional Government Pleader Mr.M.S.Ramesh, appearing for the respondents submits that it is an admitted fact that the entire land to an extent of 77.78 acres situated at Government Farm Village, comprised in Survey No.1/H2-D1, 1/1F1A, 1/1H2 in Mambalam, Guindy Taluk, let out to the petitioner's club on lease based agreement from the year 1933. Initially, the lease was in effect from 1933, thereafter the lease was renewed for a period of 10 years from 01.07.1956 with an annual rent of Rs.15/- per acre, thereafter the lease period had been extended from 09.11.1966 to 30.06.1966, wherein the Government had imposed a condition, that further renewal of lease shall be at the option of the Government. The petitioner's club had requested the Government on 19.01.1996 to renew the lease for a further period of 30 years. Accordingly, the lease period has been extended upto 30.03.2026 as per the Government order dated 24.01.2009 and the Government fixed the lease amount of Rs.1 Crore per annum for the period from 01.07.1996 to 23.03.2001 and for the period from 24.03.2001 to 30.03.2006 for a sum of Rs.1.5

Crores. The same was admitted by the petitioner's club. The petitioner's club had filed several writ petitions and civil suits of different issues. The instant writ petition challenging the impugned order dated 29.01.2004 for arrears of enhanced rent. The petitioner's club comes under the commercial category, therefore the Government is entitled to receive enhanced rent @ 14% since the club is for commercial purpose.

39. The very competent counsel further submits that the Accountant General had conducted an audit periodically and has worked out the lease rent based on the market value of the land, as such there is no impediment to collect the arrears of lease rent since there is a specific clause in the G.O.Ms.No.3189, dated 09.11.1966 for the revision of lease rent for every five years. The same was admittedly the lessee/Petitioner's Club. Therefore, the respondent had issued a notice to the petitioner and requested them to pay the lease rent as fixed and based on the market value of the land by the Accountant General, who is the competent authority to give a report pertaining to collection of enhanced rent. Accordingly, the Accountant General had furnished calculation periods for every five years. Further, the impugned order had been passed on the basis of authenticated records especially market value which has been maintained by the respondent as well as the Accountant General. The impugned order had been passed after affording sufficient opportunity to the petitioner on the basis of relevant records and also assigning valid reasons. The impugned order had been passed on the basis of G.O.Ms.No.3189, Revenue Department, dated 09.11.1966, for the revision of the lease rent for every five years. This specific condition has been categorically admitted by the petition and occupied by the petitioner. As such the petitioner is liable to pay the enhanced admissible rent. Therefore, the impugned order is well considered one and supported by documentary facts. Therefore, this order does not run against the principle of natural justice. Further, the Tamil Nadu Golf Federation and the petitioner's club are one and the same conformed by way of paying the annual rent promptly. The impleaded respondents and the respondent are attached to the State Government and they are travelling in tandem and working together for the State Administration. Therefore, the impugned order passed by the Tahsildar is the most appropriate one.

40. From the above factual position of the case the below mentioned issues arise:

(a) Whether the impugned order passed by the Tahsildar/respondent in an arbitrary manner and in violation of the principles of natural justice?;

(b) Whether the impugned order had been passed pursuant to the G.O.M.S.No.3189, Revenue Department, dated 09.11.1966 for the revision of lease rent for every five years ?;

(c) Whether the Accountant General's report is valid as per the G.O.Ms.No.3189, Revenue Department dated 09.11.1966 and also is he the competent authority for recommending the collection of enhanced rent arrears to compensate the Revenue loss to the State;

(d) Whether the impugned order had been passed on the basis of documentary proof and other mandatory facts?.

41. From the above discussions this Court is of the view that the respondents renewed the lease period for a further extension of 30 years to that affect G.O.Ms.No.3189, Revenue Department, dated 09.11.1966 with a specific condition that the lease rent will be revised for every subsequent five years. The same was agreed by the petitioner and occupied the subject matter of the land, besides the impugned order has been passed on the strength of the said Government Order and Accountant General's report, after determining the market value of the property. Therefore, the impugned order is well considered on the basis of the said Government Order and market value. As such the impugned order is sustainable under law and also suitable for execution;

(ii) The Accountant General, who is the recognized person to give his statement regarding market value of the property and Revenue loss to the Government. Considering the prevailing annual rent for the said property. Accordingly, the Accountant General has given a data processing by cancellation after scrutinizing the marketing value of the property and the purpose of occupation i.e., commercial purpose;

(iii) The further view of this Court is that the petitioner is occupying 77.70 acres of prime land in the centre of the City therefore the respondent is entitled to receive fair rent on the said property. The additional affidavit filed by the petitioner stating that the petitioner is paying lease amount of Rs.1 Crore per annum for the period from 01.07.1996 to 23.03.2001. Accordingly, the petitioner is liable to pay a sum of Rs.1 Crore per annum for the said property for a period of 25 years i.e., from 01.07.1971 to 30.06.1966 which is appropriate in the instant case considering the market value of the property and the purpose for occupation;

(iv) The impugned order had been passed after prior notice issued to the petitioner and demanded fair rant on the basis of market value. therefore, the impugned order is not violating the principle of natural justice, since prior notice issued to the petitioner as per the counter statement of the respondent. The same was not denied by the petitioner in their additional affidavit;

(v) The general view given by the petitioner stating that if the petitioner's club should direct its members to pay the enhanced lease amount, immediately they will cancel their membership and in this way cause the club to be defunct. This Court views their threat as a veiled threat and of course it would be immaterial if they should carry it out, our main concern is for the betterment of the State and for more accrued income for the Government.

42. Considering the facts and circumstances of the case and arguments advanced by the learned counsel on either side and on perusing the typed set of papers including the impugned order, this Court's view as in (i) to (v), the above writ petition with an observation that the petitioner shall pay a sum of Rs.25 Crores, without prejudice on or before 30th May 2015. Thereafter, the respondent is at liberty to issue a show cause notice to the petitioner and conduct a comprehensive enquiry and decide the actual arrears of rent for the relevant period. If the petitioner is not satisfied with the findings of the Court and they are at liberty to file an appeal after complying with this Court order i.e., they have to remit a sum of Rs.25 Crores to the respondent. There is no order as to costs. Consequently, connected miscellaneous petition is closed. Accordingly ordered.

-s/d-
Assistant Registrar( )
Dt:19/03/2015

True Copy

Sub-Assistant Registrar

To

1.The Tahsildar,
Mambalam - Guindy Taluk,
Chennai - 600 078.

2.The Principal Secretary to Government,
Revenue Department,
Government of Tamil Nadu,
Fort St.George,
Chennai - 600 009.

3.The Commissioner for Land Administration,
Ezhilagam,
Chepauk,
Chennai - 600 005.

4.The District Collector,
Chennai District,
Chennai - 600 001.

+ 1 cc to Mr.V.P.Sengottuvel, Advocate SR 12979

tka(co)
prk19/3

W.P.No.5231 of 2004
and
W.P.M.P.No.6067 of 2004