IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Writ Petition NO. 11766 OF 2017

Sugati Beach Resort Pvt. Ltd. ...Petitioner
Versus
Union Of India And Ors. ...Respondents

with
Civil Application No.2798 of 2017

Mr.P.K.Dhakephalkar, Senior Advocate with Mr.S.R.Ganbavale with Mr.Mehul Shah, for the Petitioner.

Mr.S.S.Deshmukh, for the Respondents.

CORAM	**:**	**SHANTANU KEMKAR &** **G. S. KULKARNI, JJ.**
RESERVED ON	**:**	**30 NOVEMBER 2017**
PRONOUNCED ON	**:**	**22 DECEMBER 2017**

JUDGMENT : (Per G.S.Kulkarni, J.)

1. Heard the learned Counsel for the parties. The petitioner has participated in a tender issued by the Union Territory Administration of Daman and Diu/respondents dated 7 May 1997. The tender was for lease of the government property/land for a period of twenty years namely "Tourist Resort (Flamingo Resort) Ghoghla, Diu." The petitioner being a successful bidder, a lease agreement was entered between the President of India through respondent no.4 and the petitioner on 10 October 1997. There was an addendum to this agreement entered in 2009 acknowledging

the petitioner being party to the original lease deed dated 10 October 1997.

2. The case of the petitioner is that in pursuance of the lease, it has undertaken additions and alterations in the leased premises as also had undertaken repairs of the dilapidated structures and had reconstructed them. It is contended that the petitioner had also approached the authorities seeking permission for construction of swimming pool in the existing pond in the leased premises. The petitioner has referred to approvals of the respondents for construction of rooms in the resort. The petitioner thus contends that having undertaken the renovation and construction activities, there is a legitimate expectation that the lease period be extended beyond twenty years as granted under the lease dated 10 October 1997. However, the respondents by order dated 13 October 2017 informed the petitioner that the lease period of twenty years has expired on 9 October 2017 and that the Union Territory Administration of Daman & Diu as per its policy has decided that the said lease shall not be extended and the said property shall be put to open bidding process through re-tender for entering into a fresh lease. The petitioners are also informed that extension for a period of three months or till new lessee is selected through a bidding process, whichever is earlier at existing terms and conditions may be considered, subject to petitioner's written consent for the same and subject to written undertaking that the petitioner will

vacate the property immediately on expiry of three months or upon selection of a new lessee. Accordingly, the petitioner was called upon to hand over vacant possession of the said premises to the Collector, Diu or to submit its consent for extension of lease of three months. This order was forwarded by the Deputy Director (Tourism), Diu to the petitioner vide communication dated 18 October 2017.

3. The petitioner being aggrieved by the above communication and order, has filed the present petition. The contention as urged on behalf of the petitioner is that the petitioner has spent substantial amounts during the lease period in undertaking development and constructing rooms etc. on the lease property and having invested valuable amounts, it is a legitimate expectation of the petitioner that the lease ought to be extended. It is further submitted that the condition of extension as being imposed for a period of three months based on the undertaking, is also an arm twisting mechanism. The petitioner submits that the impugned action on the part of the respondent is illegal and seeks the following reliefs:-

> "A Rule be issued, record and proceedings be called for;
>
> B. This Hon'ble Court, by a writ of mandamus or a writ in the nature of mandamus and/or any other appropriate writ, order and direction, be pleased to quash and set-aside the order issued by the Respondent No.2, vide its communication no.DT/-ADM-2001/2017-18/1048, dated 13-10-2017, and, order issued by the Respondent No.3, vide its communication no.No.-4-56/DT/-ADM-Part 1/2001/2017-18/187, dated 18-10-2017.
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> C. Pending the hearing and final disposal of the present

petition the impugned order issued by the Respondent No.2, vide its communication no.DT/-ADM-2001/2017-18/1048, DATED 13-10-2017, and, order issued by the Respondent No.3, vide its communication no. No.-4-56/DT/-ADM-Part 1/2001/2017-18/187, dated 18-10-2017, be stayed/suspended.

D. Pending the hearing and final decision of the present writ decision, this Hon'ble Court be pleased to forbear the Respondents, from taking possession and/or sealing the premises of the Sugati Beach Resort Pvt.Ltd., situated at Ghoghlla, Diu.

E. Pending the hearing and final disposal of the present writ petition, this Hon'ble Court be pleased to fix the market rent of the lease property .e. Sugati Beach Resort Pvt.Ltd., situated at Ghoghla, Diu, in terms of Clause 2, of the Lease Agreement, to be paid by the Petitioner, from October,2017, for the additional period of 10 years."

4. After filing of the petition, the petitioner has also moved a civil application seeking amendment in the petition interalia contending that the Government policy which is referred in the decision dated 13 October 2017 not to extend the lease and to invite fresh bids, was never informed to the petitioner. It is contended that the policy is illegal and violative of the mandate of Section 229 and 230 of the Constitution. It is the case of the petitioner that the said policy would not be in public benefit and it would be a legal right of the petitioner to avail in its favour an extension of the lease period.

5. We have heard the learned Counsel for the parties. We have also perused the documents as placed on record. It is not in dispute that the petitioner is a beneficiary of lease deed dated 10 October 1997 which was in respect of the tourist complex which was granted to the petitioner under a tender dated 7 May 1997 which was described as under:

> "…..leasing out the entire tourist complex (Flamingo Resort) Ghoghla, Diu, i.e. tourist cottages and Bar-cum-Restaurant and Conference Hall, described in the Schedule annexed to these presents at Ghoghala-Diu. …."

It is not in dispute that the lease was for a period of twenty years and the same expired in May,2017. The clauses relevant in the context of the present dispute are clauses 2, 11, 16, 25 and 28 which read thus:

> "2. The lease initially shall be for a period of 20 years which may be renewed for a further period of 10 years at the option of the Lessor at the market rates prevailing at the end of the said period of 20 years and other things being equal, the lessee shall have first preference for allotment of Tourist Complex.
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> … … …
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> 11 The lessee shall not make any structural or other additions or alterations in the tourist complex or affix or attach thereto any fitting or fixtures or fastening whatsoever without the written permission of the Collector, Diu.
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> … … ..
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> 16. The leasee shall provide the furniture and the other equipment of good quality for the cottages and shall also provide all vessels, utensils, cutlery, crockery and all other equipment necessary for running the complex and maintain the same in good hygienic condition to the satisfaction of the Tourism Department, Diu. Similarly, good quality of table linen, bed sheets etc. shall also be provided for by the leasee.

> … … …
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> 25. The leasee shall construct at its own cost a swimming pool at appropriate place alongwith its maintenance within the complex with the approval of Collector, Diu and within the first three years of lease period. After the expiry of the lease period the assets will be the property of u.t. Administration of Daman and Diu.
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> … … …
>
> 28. The Collector, Diu, reserves the right to amend, revoke or modify the lease at his discretion as well as to withdraw all or any of the Terms and Conditions at any stage without assigning any reason whatsoever." (emphasis supplied)

6. Perusal of the above clauses clearly indicate that the rights as conferred under the lease agreement on the petitioner to use and utilize the lease property were restricted. It is not in dispute that the lease period was initially for twenty years and there is no mandate under the agreement, for the respondent to renew the same in favour of the petitioner. In any case clause 2 which uses the word "may be renewed" is however would be subject to the conditions as contained in clause 28. The parties have agreed to qualify clause (2) by clause (28) by which the Collector, Diu reserves the right to amend, revoke or modify the lease at his discretion and also withdraw all or any of the conditions at any stage without assigning any reason whatsoever.

7. On the above clear terms as contained in the lease agreement entered between the parties, we do not find that the approach of the

respondent-Union Territory Administration is in any manner arbitrary or contrary to law in issuing the order dated 13 October 2017 in deciding not to grant further extension of lease to the petitioner but to initiate bidding process through re-tender for entering into a fresh lease. In any event the action to re-auction the said government property for a fresh lease to be entered into is being done after completion of twenty years of lease and it is not something premature before the lease period could expire. The petitioner had adequate notice in view of the terms and conditions of the lease deed that at the end of the lease period of twenty years, a consequence of this nature is the fall out of the agreed terms and conditions of the lease deed. It also cannot be accepted that the petitioner being in this business is not aware of the policy of the Union Territory Administration.

8. We are also not impressed on the submission as urged on behalf of the petitioner that there is legitimate expectation of the petitioner for extension of lease in favour of the petitioner. This for the reason that if it was to be so then, clause (2) and clause (28) of the lease deed would not have been framed in the manner they appear in the lease deed, or clause 28 of the lease deed would not have formed part of the lease deed. We also cannot accept the contention of the petitioner only because certain construction is made and amounts are spent, there would be legitimate expectation of continuation of lease period. Whatever expenditure was

incurred or investment made during past twenty years during the subsistence of the lease, was for commercial exploitation of leased property and the petitioner has already reaped financial benefits by commercial use of the lease land in a tourist place like Diu. We, therefore, outrightly reject the submissions of the petitioner on legitimate expectation.

9. We are of the clear opinion that there is nothing arbitrary in the order dated 13 October 2017 passed by the respondents calling upon the petitioner to vacate the suit premises and to grant an opportunity to the petitioner to enter into an ad-hoc agreement of three months to continue in the premises till the tender process is completed. It appears to be the policy of the respondents to avail of a maximum benefit from the Government property and gain more revenue by initiating a new tender process. There would be nothing wrong in such a policy if the Union Territory Administration in public interest desires to enhance its revenue in such a manner. It therefore cannot be said that such a policy would breach any of the legal rights much less fundamental rights of the petitioner. There cannot be any fundamental right guaranteed to the petitioner to compel the respondent-Union Territory Administration to enter into a lease only with the petitioner. It is not the case that the petitioner is precluded from participating in fresh tender which may be floated by the Union Territory Administration and compete with the other market players. However, the intention of the petitioner is to avoid such fresh participation in the fresh

bids to be invited by the Union Territory Administration and in some manner hang on to the property raising such untenable contentions as noted by us above.

10. Apart from the above observations, we are also surprised at the approach of the petitioner to invoke the jurisdiction of this Court under Article 226 of the Constitution when the dispute that the petitioner is raising is purely under a lease deed, a contract between the parties, and the contentions as raised are in the nature of a challenge to the terms and conditions of the contract on a spacious plea that the lease deed created an absolute right in the petitioner for extension of the lease, however, which we see none.

11. In our considered opinion, the petitioner thus cannot seek an absolute legal right to seek extension of lease and for such a relief seek a writ of mandamus that the respondents be directed to enter into a further lease agreement with the petitioner. If such contention as urged on behalf of the petitioner is accepted, the very sanctity of the lease agreement dated 10 October 1997 and the terms and conditions contained therein between the parties is lost. In any case such prayer of the petitioner before this Court in Writ Petition under Article 226 of the Constitution is certainly not maintainable.

12. In the circumstances, we find no merit in the petition. The petition is accordingly rejected No costs.

13. In view of disposal of the writ petition, pending civil application does not survive. It is accordingly disposed of.

14. At this stage, Mr.Dhakephalkar, learned Senior Counsel for the petitioner seeks extension of the ad-interim relief. In the facts and circumstances of the case, the prayer is rejected.

(G.S. KULKARNI, J.) **(SHANTANU KEMKAR, J.)**