

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.04.2017

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

WRIT PETITION No.8710 of 2017

& WMP.No.9545 of 2017

M/s.Prakash Arts Pvt. Ltd.,
Rep. by its Regional Head M.Yogan,
Real Towers, No.2, 2nd Floor,
No.51/52, Royapettah High Road,
Chennai 600 004. ...Petitioner

Vs.

The Commissioner,
Coimbatore City Municipal Corporation,
Big Bazaar Street,
Coimbatore 641 001. ...Respondent

Prayer: The writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records from the file of the respondent herein in Proceedings Na.Ka.No.3360/2010/MH5, dated 30.03.2017, quash the same and to direct the respondent to renew the lease from 01.04.2017 to 30.03.2020 in pursuance of the tender notification dated 29.03.2010 and the agreement dated 30.04.2010.

For Petitioner : Mr.Gnanadesikan,
Senior Counsel for T.S.Venkateshan
For Respondent : Mr.Shiva Kumar

O R D E R

The Petitioner herein was a lessee of the respondent. Pursuant to the invitation made by the said respondent for submission of expression of interest for the work of developing New Footpaths and Roadside Parks with Advertisements Rights along the Avinashi Road including Operation and Maintenance for three years with Advertisements Rights.

2. Both the parties are governed by the lease agreement entered on 30.04.2010. The lease agreement speaks for a lease period of three years with a further period of three years for renewal. Clause 24 of the said agreement states that the

renewal shall not be denied for ordinary lapses or for any minor issues. After completion of the lease period, the project is left to discretion of the lessor for further extension. Clauses 17 and 18 of the said agreement speak about damage to the foot path by other Government Departments and responsibilities of the respondent, being the lessor to protect the interest of the lessee namely the petitioner.

3. In the year 2012, an underground drainage was laid by the respondent as per the Government of India project. This is a part of Jawaharlal Nehru Urban Development Scheme. The petitioner was informed about the scheme. The damage for implementing the scheme qua the petitioner's lease has also been quantified.

4. A dispute arose between the petitioner and the respondent. The petitioner filed a writ petition earlier in W.P.No.10609 of 2013 and obtained an interim order on 07.06.2013. The dispute was with respect to the demand for 3165 Mtrs., alone for the third year. The petitioner has sought for a direction for an extent of 3165 Mtrs alone with a consequential prayer for refund of the balance amount. Needless to state that the dispute has been raised by the petitioner before this Court. The interim order granted by this Court has been modified by putting the petitioner on terms. Though the petitioner has complied with the conditional order in part, he did not comply with the remaining part within time and paid the amount belatedly. However, there was no renewal of lease for the remaining three years after the expiry of the original lease period. Now the renewal period is also over.

5. Under those circumstances, the impugned order was passed asking the petitioner to hand over the possession, since the renewal period itself comes to an end on 31.03.2017 and further directing him to make the requisite lease amount for the aforesaid period. Except the belated compliance of the interim order passed in the pending writ petition referred to supra, no other amount has been paid.

6. The learned Senior Counsel appearing for the petitioner would submit that the damage has not been quantified properly. The petitioner was not able to do his business by way of advertisement due to the aforesaid damage caused. The calculation made in the impugned order demanding the payment of lease amount is not correct. As per Clause 17, a duty is imposed on the respondent to make sure that the path way is not damaged. There is no need to pay the rent as per Clause 9. As discretion is available to the respondent under Clause 31, the same will have to be exercised in a fair manner.

7. The learned counsel appearing for the respondent would submit that the dispute being purely contractual, no writ petition would lie. Admittedly, the renewal period is also over and the same was not renewed. The petitioner has not paid the lease amount for the remaining period. There is no need to exercise discretion considering the facts of the case. Such a discretion has to be seen contextually. Therefore no interference is required.

8. Coming to the issue pertaining to the discretion, this Court is of the view that when once the respondent decides that there is no need for further extension, then in the absence of any arbitrariness or irrationality involved, this Court is not inclined to interfere with the said decision made. Admittedly, in the case on hand, there is no renewal made. The issue involved in the earlier writ petition is something different. Therefore, nothing prevented the petitioner from paying the admitted rent. The question as to whether the petitioner is entitled for renewal or not under Clause 24 need not be gone into, since the said period is also over. Further more, even in the impugned order, the lease amount for the above said period is sought for. The petitioner has not challenged the proceedings of the respondent dated 29.10.2012. Reliance sought to be made on Clause 9 cannot be accepted. The lease is for the advertisement rights which factum is not in dispute. A further reliance made on Clauses 17 and 18 cannot be made applicable for the purpose of exercising the discretion by the respondent. In fact, even on these two Clauses namely 17 and 18, according to the respondent, it is complied with, whereas, according to the petitioner, the compliance is not satisfactory. This is a disputed question of fact, which cannot be gone into in this writ petition. This also happened in the year 2012, which the petitioner has not chosen to challenge till now.

9. Thus on a conspectus of the above, this Court is of the view that the petitioner, as a matter of right, cannot seek for further extension, that too, admittedly, when it has not paid the lease amount due, for a period of three years.

10. Coming to the other issues of the exact amount of liability, there appears to be some dispute between the parties. Admittedly, the petitioner has not been put on notice on this. There appears to be some mistake in the impugned order with respect to the demand made for the year 2016 starting from 01.04.2016 and thereafter. The learned counsel for the respondent would submit that this mistake might probably connote the liability till 31.03.2017. Be that as it may, in as much as the petitioner has not been put on notice on the liability which involves a civil consequence, it would be just and proper to permit the petitioner to give a reply on this. Thereafter, on a

consideration of the same, the respondent shall pass a speaking order on the liability of the petitioner to pay the amount to be quantified. The petitioner shall hand over possession within a period of fifteen days from the date of receipt of a copy of this order.

11. The writ petition stands disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Commissioner,
Coimbatore City Municipal Corporation,
Big Bazaar Street,
Coimbatore 641 001.

+1cc to Mr.T.S. Venkateshan, Advocate, S.R.No.23672

+1cc to Mr.R. Sivakumar, Advocate, S.R.No.23497

skv (CO)
md(26/04/2017)

WRIT PETITION No.8710 of 2017
& WMP.No.9545 of 2017

सत्यमेव जयते

WEB COPY