

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.Nos.32686, 9382 and 14891 of 2017

and

W.M.P.Nos.10351 to 10353, 15996, 16133 and 16134 of 2017

Koppadi Prem Kumar (Minor),
represented by his father and natural guardian,
Koppadi Asirvadam

.. Petitioner in W.P.No.32686 of 2017

M/s.Regency Ceramics Limited,
Rep. by its President,
having Registered Office at
6-3-1090/A/7, IMS House,
3rd Floor, Somajiuguda,
Near Kathriya Hotel,
Raj Bhavan Road,
Hyderabad-500 082.

.. Petitioner in W.P.Nos.9382 and 14891 of 2017

Vs.

1. The Regional Administrator-cum-Deputy Collector,
Yanam.
2. The Commissioner,
Yanam Municipality, Yanam.

.. Respondents in W.P.No.32686 of 2017

1. Government of Puducherry,
Represented by its Joint Secretary,
Revenue Department,
Puducherry.

2. The Deputy Collector (Revenue),
Puducherry.

3. The Deputy Tahsildar (Revenue),
Sub-Taluk Office,
Yanam.

.. Respondents in W.P.Nos.9382 and 14891 of 2017

Writ Petition No.32686 of 2017 filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus to direct the respondents to deliver the possession of Government land bearing T.S.No.B/7/2 APT to Sports Authority of India for the purpose of establishing sports training centre.

Writ Petition No.9382 of 2017 filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for and quash the order of the third respondent dated 13.04.2017 under Reference No.B1/41/DCRY/2001-02 pursuant to G.O.5 dated 12.04.2017 passed by the first respondent as being totally illegal, invalid and non-est in the eyes of law and consequently direct the respondents to consider the representation forbearing them from interfering with the possession and enjoyment of the lands situate at T.S.No.B/7/2 in Yanam Revenue Village for exchange of the land dated 19.09.2003.

Writ Petition No.14891 of 2017 filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned G.O.Ms.No.05, dated 12.04.2017 passed by the first respondent and quash the same as being illegal, invalid and non-est in the eyes of law and consequently forbear the respondents from interfering with the petitioner's possession and enjoyment of the lands situate at T.S.No.B/7/2 in Yanam Revenue Village till the disposal of the Writ Petition.

For Petitioners : Ms.Vasudha Thiagarajan in W.P.Nos.9382 &
14891 of 2017
Mr.A.P.Satyamurthy in W.P.No.32686 of 2017

For Respondents : Mr.A.Gandhi Raj, Government Pleader
(Pondicherry)
assisted by Mr.J.Kumaran, Govt. Advocate
(Pondicherry)

ORDER

Writ Petition No.32686 of 2017 is filed praying for issuance of a Writ of Mandamus to direct the respondents to deliver the possession of Government land bearing T.S.No.B/7/2 APT to Sports Authority of India for the purpose of establishing sports training centre.

2. Writ Petition No.9382 of 2017 is filed praying for issuance of a Writ of Certiorarified Mandamus to call for and quash the order of the third respondent dated 13.04.2017 under Reference No.B1/41/DCRY/2001-02 pursuant to G.O.5 dated

12.04.2017 passed by the first respondent as being totally illegal, invalid and non-est in the eyes of law and consequently direct the respondents to consider the representation forbearing them from interfering with the possession and enjoyment of the lands situate at T.S.No.B/7/2 in Yanam Revenue Village for exchange of the land dated 19.09.2003.

3. Writ Petition No.14891 of 2017 is filed praying for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned G.O.Ms.No.05, dated 12.04.2017 passed by the first respondent and quash the same as being illegal, invalid and non-est in the eyes of law and consequently forbear the respondents from interfering with the possession and enjoyment of the lands situate at T.S.No.B/7/2 in Yanam Revenue Village till the disposal of the Writ Petition.

4. The case of the petitioner in W.P.Nos.9382 and 14891 of 2017 is that there is a licence agreement entered into between the Deputy Collector (Revenue), Yanam and the petitioner-Company for exchange of land. According to the petitioner-Company, there was a sanction of Lieutenant Governor of Puducherry according exchange of lands on 04.02.2000 by G.O.Ms.No.14/2000, Revenue Department and the same was granted on the basis of the payment of licence fee of Rs.1,38,510/- for a period of 19 years subject to the condition that the licensee should vacate the land as and when required by the Government for any public purpose. According to the petitioner-Company, they have been operating in the lands licensed to it and the land owned by it and the lands offered for exchange are in the custody of the first respondent-Joint Secretary to Revenue Department. No formal documents evidencing the exchange of lands have been executed, and the petitioner-Company has also surrendered its land to an extent of H00-A26-Ca40 bearing T.S.No.C/1/22/7, R.S.No.25/3 C.S.No.188 at Kanakalapet for the purpose of constructing a water tank by the respondents at its request in March 2005.

5. It is also stated by the petitioner-Company that there was a rift among the labourers and the strike was called on 03.01.2011. Thereafter, the workers, in collusion and connivance with each other, and goondas and hooligans, caused unrest and riot on 27.01.2016, and attacked and ghaeroed the then President-Operations and murdered him. The properties belonging to the Company were looted and extensively damaged and the petitioner-Company had suffered loss of more than Rs.1,000 Crores which adversely affected the manufacture and production of the petitioner-Company. The petitioner's representation with regard to the exchange of land is pending from 2004 and there has been other correspondences between the first respondent-Joint Secretary to Revenue Department and the Central Government with regard to the approval for the exchange, which is awaited. There has been several requests by the petitioner-Company, but it went unheeded.

6. It is further averred by the petitioner-Company that on

07.12.2014, the second respondent-Deputy Collector (Revenue) issued a show cause notice seeking to cancel the licence agreement and restore the possession to the Government. In response to the same, the petitioner, by letter dated 11.12.2014, expressed prejudice that would be caused if the licence agreement is cancelled before 2019, since the administrative blocks and other important Departments of the petitioner-Company are situated in the lands licensed to it. While the petitioner was actively pursuing its request for exchange of lands and also requested that the licence agreement shall not to be cancelled or terminated, the first respondent-Joint Secretary issued Government Order in G.O.Ms.No.5, dated 12.04.2017, in and by which the sanction was accorded by the Government of Puducherry for termination of licence and reversal of land to an extent of H00-A.24-Ca.30 situate in T.S.No.B/7/2 of Yanam Revenue Village with immediate effect.

7. According to the petitioner, on 13.04.2017, the third respondent-Deputy Tahsildar (Revenue) issued notice intimating that the possession will be taken on 17.04.2017 and that the same was not served on the petitioner-Company. However, on 15.04.2017, certain persons from the respondents' office visited the petitioner's factory premises and it was informed to the petitioner-Company's security guard that the possession will be taken on 17.04.2017 and the copy of the notice dated 13.04.2017 was handed over to the security men at the factory premises. As the petitioner-Company is left with no other effective alternative remedy, the petitioner-Company has to approach this Court by filing W.P.Nos.9382 and 14891 of 2017 for the relief mentioned supra.

8. It is the case of the father of the petitioner in W.P.No.32686 of 2017 that his minor son (petitioner) is a student actively involved in sports. The Sports Authority of India decided to establish a sports training centre in Yanam and accordingly the training centre was established and it is presently functioning at YSR Indoor Stadium at Yanam. Considering the insufficient space, the respondents in W.P.No.32686 of 2017 decided to accommodate the training centre at some other place belonging to the Government of Puducherry. The land situated in T.S.No.B/7/2 belongs to the Government of Puducherry, which was previously lent to the petitioner-Company in W.P.Nos.9382 and 14891 of 2017. The lease was cancelled and the land was long back abandoned by the said petitioner-Company. The action of lending the Government land for commercial purpose is illegal. The said land is essential for establishing sports training centre. Hence, the petitioner in W.P.No.32686 of 2017 sent a representation, dated 25.10.2017 to the respondents, requesting them to hand over the land for the purpose of establishing training centre. Thereafter, on 04.12.2017, another representation was sent by the petitioner in W.P.No.32686 of 2017 to the respondents. Since the said representations are

pending, the petitioner has filed W.P.No.32686 of 2017 for the relief stated supra.

9. The respondents 1 to 3 in W.P.No.9382 of 2017 have filed counter affidavit, wherein it is stated that the Writ Petition is not maintainable and that the proper forum of the petitioner is to approach the Civil Court, as the relief sought for is civil in nature. According to the respondents, there was licence agreement as stated by the petitioner on 28.03.2000 and it is for a period of 19 years from 28.03.2000 and the same was registered as Document No.62/2000 in SRO, Yanam. It is further stated that when the dispute between the parties is contractual in nature, the Apex Court has held that the writ jurisdiction cannot be invoked. That apart, as Clause 7 of the licence agreement provides for arbitration, the petitioner ought to have approached the arbitrator seeking the relief. It is further submitted that without prejudice to the maintainability of the Writ Petition on two grounds, namely that the petitioner has got a right to approach the Civil Court and that the petitioner has got alternative remedy before the arbitrator, it is stated that the petitioner is a defaulter of contractual licence fee from the year 2012. On the date of termination, the petitioner owe a sum of Rs.14.50 lakhs to the respondents. Though many demands were raised from time to time, the petitioner turned deaf ears to the same. In terms of Clause 2(a) of the licence agreement, there is an obligation for the petitioner to pay the yearly licence fee. In terms of Clause 3 of the licence agreement, in case of default in payment of yearly licence fee, the Government is at liberty to revoke the licence granted under the said lease agreement.

10. The above vital facts have not been brought to the attention of this Court by the writ petitioner in the affidavit. When huge amount is due, and that the facts have not been narrated in the affidavit, W.P.No.9382 of 2017 has got to be dismissed on the ground of suppression of facts. Learned Government Pleader (Pondicherry) appearing for the respondents stated that the petitioner has offered to re-align the drains by re-routing the same through the lands owned by them bearing T.S.Nos.A/8/13/8, A/8/14/1,2 and A/8/7/1, and for the lands that were already acquired by the Government, compensation has been offered. Hence, the question of exchange proposal cannot be considered. It is further stated that the alternative place which the petitioner offers, is fully surrounded by water. It is further submitted that the land in question had been acquired and the amount of Rs.1,36,756/- being compensation in lieu of acquisition, has been deposited in Civil Court on 16.12.2005. The petitioner knowing that the said land is under acquisition proceedings, has offered to exchange the subject land. The petitioner never objected to the acquisition proceedings, nor raised any objection before any forum.

11. According to the respondents in W.P.No.9382 of 2017,

much water has flown now over a period of time and that the petitioner is aware of the fact that the Government has not considered the exchange proposal in favour of the petitioner-Company. Further, notwithstanding the proposal of exchange, the petitioner is always under the obligation to pay the annual licence fee till such time the Government issues order accepting the exchange of lands and the exchange deed is executed. Admittedly, no such exchange of land is authorised by the Government, nor any deed is executed to that effect. Admittedly, the petitioner is in default of payment of licence fee from 2012-2013 onwards. The so-called exchange proposal does not in any way absolve the petitioner from adhering to the obligation to pay the annual fee under the licence agreement while it was subsisting. It is further stated by the learned Government Pleader that the respondents, after awaiting for a reasonable time for the petitioner to keep up its promise to pay the licence fee and resume operations, the order terminating the licence was issued by G.O.Ms.No.5, Department of Revenue and Disaster Management, dated 12.4.2017 by taking into consideration the facts mentioned by the petitioner and after giving opportunity to the petitioner. That apart, it has been stated that the Company has been locked out and the land is kept idle and it has not been used and it can never be used in the near future for which it has been licensed. The Government is in need of the licensed property for accommodating the Government ANM Hostel-cum-Training Centre and also sports hostel. It is further stated that this Court has granted an order of status-quo on 17.04.2017 and in view of the same, the respondents are unable to utilise the land for public purpose and that in any event, in terms of licence agreement, the petitioner has no locus-standi to continue in the lands in question.

12. In reply, Ms.Vasudha Thiagarajan appearing for the petitioner-Company in W.P.Nos.9382 and 14891 of 2017 submitted that the land which is sought to be exchanged, is not the land that was acquired by the Government and compensation has been paid. The respondents have made incorrect averment in the counter that the petitioner is trying to hoodwink this Court to suit its convenience. The petitioner having suffered loss not due to the petitioner's fault, but due to the unforeseen circumstances at the instance of the labourers and others, owes several thousands of Rupees to Banks. The exchange of land is under consideration by the Central Government and that the petitioner has introduced several colleges and industries and that several hundreds of employees have been employed and that the Government, instead of giving a helping hand, is trying to knock out the industry, which is not going to help anyone, much less the respondents. The petitioner was paying the licence fee periodically till the unfortunate incident which took place on 27.01.2012. The petitioner-Company made payment upto 2011. Till the date of the said incident, the petitioner has been paying

the licence fee regularly and that the petitioner was not at default in paying the amount, but however, pursuant to the assurance made before this Court, the petitioner has taken a Demand Draft for Rs.10 lakhs, as seen from the order dated 29.06.2017, and the said Demand Draft was renewed more than once, as the learned counsel for the respondents had not taken it. It is submitted that pursuant to the orders of this Court, the amount was drawn and the respondents ought to have accepted the amount without prejudice to the contentions of both parties and that the licence period is up to March 2019. Whether the petitioner-Company would be entitled to seek renewal after March 2019 or not, for a period of five years, as contemplated in the licence agreement, is a matter to be decided at that time and when the non-payment was on account of the reasons beyond the control of the petitioner-Company, quoting that as a ground for termination is not only arbitrary, but also illegal. It is further stated that if the Central Government accepts the exchange of lands, which is not the subject matter of acquisition, as stated by the respondents, the entire issue can be given a quietus.

13. Heard both sides and perused the materials available on record.

14. The above facts are not in dispute. For the sake of convenience, Clauses 1, 2, 3, 5, 6, 7 and 9 of the licence agreement dated 28.03.2000 entered into between the petitioner-Company and the second respondent-Deputy Collector (Revenue) are extracted below:

"NOW THIS INDENTURE WITNESSETH THAT the LICENSOR hereby grants a license over the said land unto the LICENSEE on the following terms and conditions:

(1) In consideration of the license fees hereby reserved and the LICENSEE's observing the covenants contained in these presents the LICENSOR doth hereby demise up to the LICENSEE, the land measuring H00-A24-Ca30 and more fully described in the schedule hereunder (hereinafter referred to as the said land) to have and to hold the same on license for a term of 19 years (Nineteen years) (hereinafter referred to as the term) from 28.03.2000 to 27.03.2019 paying therefor during the said term to the LICENSOR on yearly license fee of Rs.1,38,510/- (Rupees One Lakh Thirty eight thousand five hundred and ten only) payable from the date of execution of this Agreement. The first of such payment to be made on the day of executing this deed and the subsequent annual payments on or before 28th of March every year. This license fee is subject to revision after the expiry of every five years from this date.

2. The LICENSEE hereby covenants with the LICENSOR as follows:

a) That the LICENSEE shall duly pay the yearly license fee mentioned in para (1) during the said terms at the time and in the manner aforesaid and also all cesses, rates and assessments as are now or at any time hereafter payable in respect of the said land.

b) That the LICENSEE shall on the termination or revocation of this license, restore the said land to the Government in as good conditions as is consistent with the forgoing conditions.

3. The Government may revoke the license wholly or in part if the annual licence fee, other cessess, rates and assessments due to the Government, or Municipality, Commune Panchayat shall remain unpaid for fifteen days after they have become payable whether formally demanded or not or if the LICENSEE shall have broken any of the conditions herein contained and assume control or otherwise dispose of all or any part of the land and any buildings, fences and structures thereon and the LICENSEE shall not be entitled to any compensation therefor.

5. The LICENSEE shall remove immediately any building, fence or structure, on receiving notice from the LICENSOR and in default of immediate compliance with any such notice, the LICENSOR shall have power to remove the same and the LICENSEE shall upon demand made by or on behalf of the LICENSOR pay the cost of storing the materials removed and take delivery of the same. The LICENSEE shall have no claim to any materials removed under this conditions which shall not have been taken delivery of the cost of removable and storage of which shall not have been paid by the LICENSEE on demand as abovesaid.

6. In the event of the termination of the license under clause (2) (b) and 3, the Government shall be at liberty to levy proportionate license fee up to the date of such termination.

7. If any dispute or difference shall at any time hereinafter arise, between the Government or their officers on the one part and the LICENSEE on the other part as to the right, duties or liabilities of either party in respect of any matter or thing relating to or arising out of the license or the construction or the measuring all or any of the provisions herein contained the said dispute or difference shall be referred for settlement to Arbitration of the Collector for the time being and his decision shall be final.

...

9. The LICENSEE should vacate the land as and

when required by the Government for any public purpose."

15. Since the learned counsels for the petitioners in all these Writ Petitions have addressed arguments on the merits of the matter, de-hors the provisions contained in the arbitration clause, which is extracted supra, and without reference to the alternative remedy of approaching the Civil Court or arbitrator, this Court is inclined to take up the matter on merits, as there should be a finality to the litigation and relegating the matter to alternative remedy, is going to create further round of litigation instead of giving quietus to the matter.

16. As per the pleadings extracted supra, it is clear that there has been a licence agreement and that there is a communication dated 10.02.2000 by the Deputy Collector (Revenue) to the petitioner-Company that there cannot be any permanent structure in the licensed land and that the licensee shall vacate the land as and when acquired by the Government for public purpose.

17. In this case, admittedly, the permanent structure is there and that the petitioner's period was to expire on 27.03.2019. For more than a year, the petitioner-Company has not paid the licence fee for the reasons quoted by them. In terms of the agreement, it is a duty cast upon the petitioner to pay the licence fee and that the reasons given by them, cannot be a ground for continuation of licence. It has also been categorically stated by the respondents/Government that they require the land for public purpose and that in terms of the agreement and the relevant portion of the clauses of the agreement extracted supra, the petitioner has to vacate the land as and when required by the Government for public purpose.

18. The respondents/Government stated that they are not interested in exchange of lands and that certainly, if any comments are going to be called for from the Central Government, they are going to suggest that it is not feasible to accept the exchange of land, even assuming that the said land(s) is/are not acquired by the land acquisition proceedings. It is further stated that at no point of time, they are interested in extending the licence, and even assuming for the sake of argument that the petitioner-Company is not a defaulter, the respondents are not interested in extending the licence beyond March 2019. Since the petitioner-Company is a defaulter in terms of the above clauses of the agreement extracted supra, the petitioner is not entitled to the relief sought for in these Writ Petitions.

19. I find much force in the contentions of the respondents. Since there is default in paying licence fee by the petitioner-Company and that the land(s) is/are required for

public purpose, I find that the petitioner-Company is a defaulter in paying the licence fee. Hence, I find no merits in W.P.Nos.9382 and 14891 of 2017. The petitioner-Company, cannot as a matter of right, seek for exchange of land(s) and it is only at the discretion of the respondents, and only after taking the opinion from the Puducherry Government, the respondents are inclined to accept the proposal with regard to the exchange of alternative site.

20. Hence, for the foregoing reasons, W.P.Nos.9382 and 14891 of 2017 are dismissed. The petitioner-Company is given 40 days' time from the date on which this order copy is made ready, to vacate the premises in question and hand over the same to the respondents-authorities, failing with it is open for the respondents-authorities to enter into the premises with the assistance of the Police force.

21. In view of the dismissal of the above said two Writ Petitions mentioned supra, no further orders are required in W.P.No.32686 of 2017, which is closed, as the respondents in W.P.No.9382 of 2017 and the writ petitioner in W.P.No.32686 of 2017 stated that the land(s) in question has been handed over for the purpose of sports.

22. No costs. W.M.Ps. are closed.

Sd/-

Assistant Registrar (CS IX)

//True copy//

Sub Assistant Registrar

cs

To

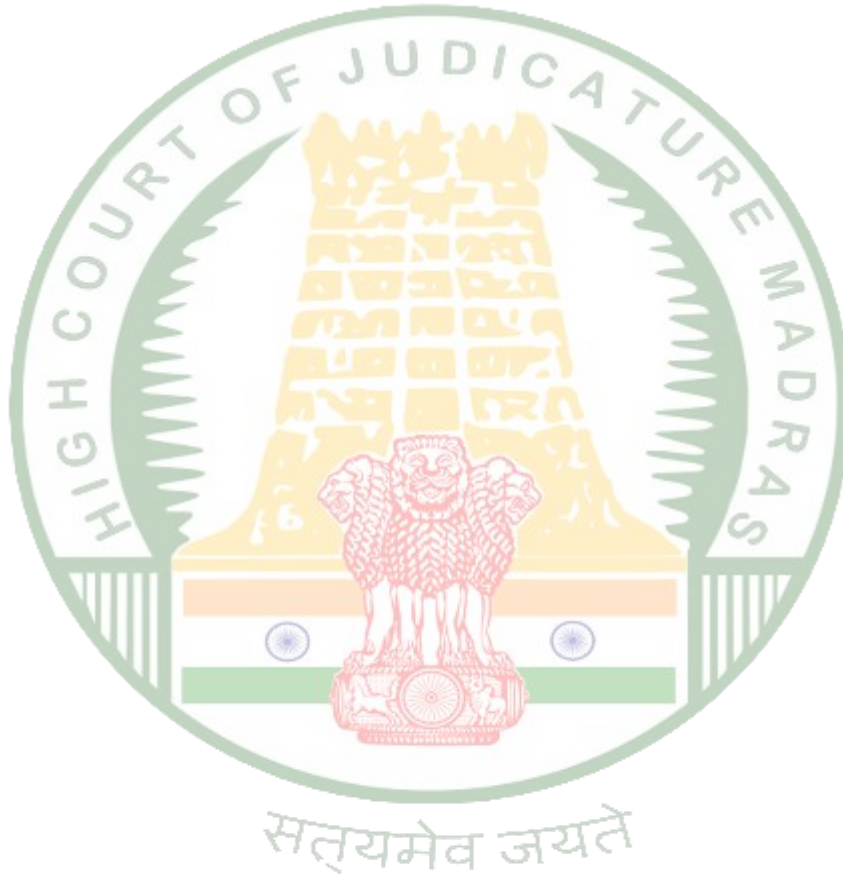
1. The Regional Administrator-cum-Deputy Collector, Yanam.
2. The Commissioner, Yanam Municipality, Yanam.
3. Government of Puducherry, Represented by its Joint Secretary, Revenue Department, Puducherry.
4. The Deputy Collector (Revenue), Puducherry.

5. The Deputy Tahsildar (Revenue),
Sub-Taluk Office,
Yanam.

+2cc to Mr.R.Thaiagarajan, Advocate SR.No.91162, 91163
+3cc to Government Pleader Puducherry SR.No.90662

W.P.Nos.32686, 9382 & 14891 of 2017

GN(06/02/2018)



WEB COPY