

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

and

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.A.No.1992 of 2010

and M.P.No.1 of 2010

The Town Club
rep. by its President
K.P.S.Mani

..Appellant/Petitioner

versus

1. The District Collector,
Tiruvannamalai District,
Tiruvannamalai - 606 604.

2. The Tahsildar,
Office of the Tahsildar,
Arni - 632 301

...Respondents/Respondents

[Cause title accepted vide order of Court dated 08.09.2010 made in M.P.No.1 of 2010 in W.A.Sr.No.25774 of 2010]

Writ Appeal Preferred under clause 15 of the letters patent against order of this court dated 03.02.2010 in W.P.No.839 of 2005. Petition presented under Article 226 of the Constitution of India to issue a Writ of certiorari, calling for the records of the 2nd respondent herein pursuant to the communications G.2 1411/89 dated 21.10.2004 and 6.12.2004 issued by the 2nd respondent and quash the same.

For Appellant : Mr.K.M.Balajee

For Respondents : Mr.T.M.Pappiah
Spl. Government Pleader

JUDGMENT

(Order of the Court was made by M.GOVINDARAJ, J.)

The above Writ Appeal has been preferred against the order passed in W.P.No.839 of 2005 dated 03.02.2010, for the following relief:

2. The case of the writ petitioner is that the writ petitioner is a club registered under the Societies Registration Act XXI of 1860 on 27.08.1936 in the name and style of 'The Town

Club'. The 1st respondent, District Collector, in his proceedings dated 30.09.1938, alongwith the copy of Revenue Board's proceedings sanctioned the grant of licence to the petitioner club to use an extent of 2.40 acres of land in Survey No.3/2/A2 of village of Arani for the purpose of Tennis & Badminton courts, reading room and for recreation. The licence was granted subject to conditions stipulated therein.

3. The District Collector, Arcot District in his proceedings dated 30.09.1938, had fixed licence fee at Rs.15/- per annum. The club was carrying on business, scrupulously following the conditions stipulated for the grant of licence. In the year 1973, the 1st respondent in his proceedings dated 26.11.1973, had issued a show cause notice as to why the licence should not be cancelled for violation of certain conditions. Thereafter, District Revenue Officer, had communicated the petitioner that land belonging to the club was required for government purposes as it has not been put to use for the purpose for which licence was granted. Thereafter, an extent of 1.10 acres of land was resumed by Government for construction of residential quarters for revenue authorities. The petitioner club did not object to the same and surrendered 1.10 acres to the Government.

4. The petitioner club had once again registered itself under the Societies Registration Act XVII of 1975 on 16.10.1998. Thereafter a communication dated 28.06.2004 was received from the 2nd respondent directing the petitioner to appear for an enquiry with regard to a complaint of one Mr.Srinivasan. The petitioner club had submitted its explanation and the 2nd respondent in his communication dated 21.10.2014 directed the petitioner club to pay a sum of Rs.29,00,810/-, towards arrears of rent from 1994 to 1997 to the Government. The rent was originally Rs.15/- fixed by the Government at the time of grant of licence dated 30.09.1938, which has been paid without any default. The sudden increase to the tune of Rs.29,00,810/- is exorbitant and the writ petitioner had preferred the present writ petition that the increase in the licence fee is exorbitant and without giving an opportunity to them and as such, it is violative of principles of natural justice.

5. The stand was objected by the respondents that the petitioner club was given ample opportunity and following a formula in fixing the licence fee, the 2nd respondent has fixed the lease rent per year and arrived at a sum of Rs.9,66,770/- and the lease rent for three years aggregate to Rs.29,00,310/- which according to the respondents is correctly fixed and the demand does not suffer from any legal infirmity.

6. Learned Single Judge in W.P.No.839 of 2005, had dismissed

the writ petition by order dated 03.02.2010, stating that lease rent was fixed taking into account the actual land cost prevailed at that time, apart from various minute details and it was fixed on the formula adopted for the said purpose. Therefore, the fixing of lease rent cannot be said to be unreasonable and the petitioner who had been paying Rs.15/- per annum from 1938 cannot be expected to say that there is a violation of principles of natural justice. It is also observed by the learned Single Judge that in violation of the licence conditions, the petitioner club had put up a permanent structure without approval from the authorities concerned and also sublet the same to third parties, which is totally against the conditions of licence. It was further observed that the respondents have not taken any steps for removal of such encroachments or resumption of land, but in a fair manner has demanded only enhanced lease amount, which cannot be said arbitrary. Challenging the order of the learned Single Judge, the appellant/writ petitioner has come up with the above writ appeal.

7. The learned counsel for the appellant would submit that the order passed by the 2nd respondent, is violative of principles of natural justice and the respondents have not sought for any resumption of land and therefore, demand of licence fee at this rate is not justified. According to the appellant / petitioner club is a non profitable organization and the land is utilized only for social and philanthropic activities and therefore, exorbitant amount should not be charged as licence fee. The lease rent shall not be calculated at 7% of the land value and the imposition of Local Cess was also excessive, which was not at all considered and therefore, the order of the learned Single Judge is liable to be set aside.

8. Per contra, Mr.T.M.Pappiah, learned Special Government Pleader appearing for the Government would submit that the terms and conditions of licence had been violated and petitioner club, without permission has put up permanent structures, whereas licence was granted to use the land only for the purpose of having Tennis & Badminton courts and Reading Room. The permanent constructions which were put up breaking the terms and conditions, were sublet to run petrol bunks, bunk shops and other purposes, in further violation of the terms and conditions of the licence. The licence is liable to be cancelled for violation of conditions. The licensee has no legal right and cannot allege violation of principles of natural justice. In spite of the said fact, the 2nd respondent had given ample opportunity and conducted an enquiry and thereafter only the lease rent was raised.

9. We have considered the rival submissions.

10. The contentions of the learned counsel appearing for the appellant that the lease rent fixed at Rs.15/- in the year 1938 shall be increased reasonably, in our view, at this distance of time, is without any scientific rationale and is not based on any sound reasons to accept the same. The 2nd respondent Tahsildar, had given the break up details in fixation of lease rent following the formula. The land cost was taken as the base rate and 7% of the land cost was fixed as lease per annum, to which Local Cess at the rate of 100% and Local Cess Surcharge at the rate of 500% were added to arrive at a sum of Rs.9,66,770/- for lease rent per annum and demanded the arrears for three years from 1994-97. Even though, the appellant alleges that the rate fixed is excess, neither find fault with the method adopted by the 2nd respondent nor dispute the land cost prevailed at that point of time. Therefore, the contention of the appellant club is, in our view, unsustainable.

11. The income and expenditure account for the year ended 30.06.2004 furnished by the petitioner club also reveals the commercial activities carried out by them and as observed by the learned Single Judge, the Government has acted very fairly instead of resuming the land for violation of terms and conditions of licence had only enhanced the licence fee. The decision of learned Single Judge came to be passed after considering all the factual and legal aspects and it does not require any interference.

12. In our considered opinion, fixing of licence fee, does not suffer from any illegality and the manner in which it is fixed after enquiry by the 2nd respondent, appears to be reasonable and therefore, there are no merits in the appeal. Accordingly, the writ appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

ars

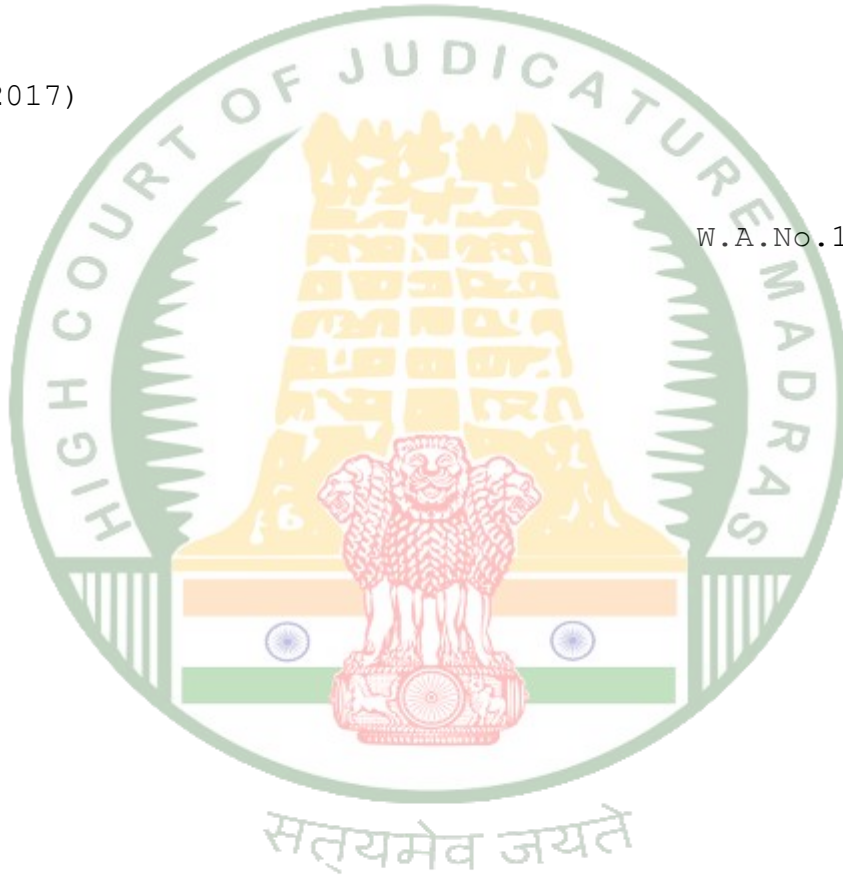
To

1. The District Collector,
Tiruvannamalai District,
Tiruvannamalai - 606 604.

2. The Tahsildar,
Office of the Tahsildar,
Arni - 632 301

GR(CO)
RS(08/02/2017)

W.A.No.1992 of 2010



WEB COPY