

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2017

CORAM :

THE HONOURABLE MR.JUSTICE M.S.RAMESH

Writ Petition Nos.3504 and 3505 of 2013
and

M.P (MD) Nos.1 and 1 of 2013

- 1.Rajaganapathy
- 2.Jothi Gowrishankar
- 3.Padmavathy
- 4.Vijayakumar
- 5.Vijayalakshmi
- 6.Udayashankar
- 7.Kalyana Raman
- 8.Parimala
- 9.Ratnakumar
- 10.Kumaravel
- 11.Krishnakumar
- 12.Thenmozhi
- 13.Kadirvel
- 14.Padmanabhan
- 15.Padmasini
- 16.Gopalakrishnan
- 17.Sugumar
- 18.Rajkumar
- 19.Maya
- 20.Chandra
- 21.Laxmanan
- 22.Shanmugasundaram

... Petitioners in both W.Ps.
Vs.

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

- 2.The Principal Secretary and
Commissioner of Land Administration,
Government of Tamil Nadu,
Chepauk, Chennai 600 005.

- 3.The District Collector,
Thiruvallur District. ... Respondents in both W.Ps.

Prayer in W.P.No.3504 of 2013: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for the records in respect of the first respondent order dated 29.10.2012 made in G.O.Ms.No.385, Revenue Department, (ni.mu.2(1) and quash the same as illegal, arbitrary and against law.

Prayer in W.P.No.3505 of 2013: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records in respect of the proceedings of the third respondent in Na.Ka.No.38061/2006/A2, dated 27.11.2012 and quash the same as illegal, arbitrary and against law and direct the third respondent to renew the lease for further period of 99 years.

For Petitioners : Mr.K.N.Nataraj

For Respondents : Mr.V.S.Sethuraman,
(In both W.Ps.) Additional Advocate General
assisted by Mr.R.Govindasamy,
Special Government Pleader and
Mrs.M.E.Raniselvam,
Additional Government Pleader.

COMMON ORDER

By an order dated 29.10.2012, the first respondent had rejected the petitioner's request for renewal of the lease of land measuring about 9.25.0 hectares in Survey No.416/1 in Minjur Village and 19.58.5 hectares in Survey No.468/4 in Vallur Village, in all 28.83.5 hectares equivalent to 71.22 acres. (hereinafter referred to as 'the subject lands').

2.The Government in their letter No.108 Revenue Department, dated 05.02.1903 had sanctioned the renewal of the subject lands for a period of 99 years. Pursuant to the Government Order, a lease deed was executed between the then Secretary of State for Indian Council and V.Krishnasamy Mudaliar in consideration of a sum of Rs.350/-. The said lease was registered as Document No.1908 of 1905, dated 11.10.1905 for a period of 99 years commencing from 17.06.1905. On 14.06.2004 , the said lease period had expired. By an order dated 12.03.2009, passed in W.P.No.16068 of 2008 filed by the first petitioner and two others, the petitioners were directed to submit a detailed application before the District Collector, Thiruvallur seeking renewal of the lease which was directed to be considered within a period of 12 weeks. On receipt of such application, the third respondent, after perusing the reports of the Revenue Divisional Officer, Ponneri and Tahsildar, Ponneri and after hearing the petitioners in W.P.No.16068 of 2008 had submitted a report to the Government on 12.07.2012 narrating the circumstances which compelled the resumption of the lands granted on lease for a period of 99 years. The second respondent had also recommended the proposals submitted by the third respondent in his letter dated 21.08.2012. Considering the reports of the second and third respondents, the Government had passed the impugned order

dated 29.10.2012 cancelling the lease granted in favour of the V.Krishnasamy Mudaliar and ordered for resumption of the subject lands. The petitioners who are the legal heirs of V.Krishnasamy Mudaliar have challenged the said order in W.P.No.3504 of 2013. Subsequently, the third respondent has passed orders on the representation of the first petitioner and three others negating the request for renewal of lease of the subject lands in R.C.No.38061/2006/B2, dated 27.11.2012. Challenging the same, the petitioners have filed W.P.No.3505 of 2013.

2.Mr.K.N.Nataraj, learned counsel appearing for the petitioners submitted that the impugned order has been passed arbitrarily and it was colorable exercise of power on the part of the first respondent. He would further submit that the first respondent had acted in a mechanical manner in arriving at a conclusion that the lands were not utilised and that the determination of the character of land is not a conclusive proof only on the report of a subordinate officer. Since the petitioners' forefathers had cultivated the said lands for almost 100 years, they have a vested right to have the lease renewed in their favour.

3.Learned Additional Advocate General, on the other hand, submitted that the third respondent had passed orders on the representation of the first petitioner and three others negating their request for renewal of lease since the lease lands were kept vacant and not put to use by the petitioners or their forefathers, resulting in outgrowth of several bushes in the barren lands. Furthermore, the subject lands were required for multipurpose Government public schemes and on resumption of the lands, an extent of 8.5 hectares in Minjur Village, was handed over to Chennai Corporation for the purpose of solid waste management and composite yard. Since the impugned order was passed on the reports of the Revenue Divisional Officer, Ponneri and the Tahsildar, Ponneri wherein it was found that the petitioners and their forefathers have not utilised the lands for cultivation and left it barren and also since the said lands were required for the purpose of Government public schemes, it is neither arbitrary nor a colourable exercise of power.

4.I have carefully considered the submissions made by the learned counsel on either side and perused the documents filed in support of these writ petitions.

5.From a reading of the original lease dated 05.08.1905, it is seen that the subject lands were granted to V.Krishnasamy Mudaliar, the forefather of the petitioners for a period of 99 years. The lease deed specifies the yearly rents to be paid by the lessees and various clauses have been

incorporated empowering the lessor to take resumption of the lands in case of default in payment of rents. There is no renewal clause in the subject lands. While that being so, I am unable to perceive as to how the petitioners would derive a vested right to have Government lands renewed in their favour automatically.

6. In this regard, it would be appropriate to refer to Section 111 of the Transfer of Property Act, 1881. As observed earlier, the lease deed does not mention about the renewal of lease period. In view of Section 111 of the Transfer of Property Act, 1881 which deals with determination of lease, it could be safely concluded that the lease of the subject lands has lapsed on expiry of the time limit specified in the lease agreement. As such, I hold that the lease granted in favour of V. Krishnasamy Mudaliar for the subject lands had expired on 14.06.2004 itself.

7. On the question as to whether the petitioners would have a vested right to have the lease of the subject lands renewed in their favour, the learned Additional Advocate General had relied upon a judgment of the Hon'ble Supreme Court of India in Murlidhar Jalan (Since Deceased) through his Lrs Vs. State of Meghalaya and others made in Appeal (Civil) No. 3690 of 1997, dated 07.05.1997. The relevant portion of the said decision is extracted hereunder:

"The question is : Whether the appellant is entitled to the declaration of his title in respect of the property. Shri Goswami, learned senior counsel for the appellant, contends that initially the appellant had come into possession of the property in his character as a tenant by virtue of perpetual lease for 99 years; after the expiry of the initial period of lease in 1965 though the Government had not renewed the lease, nonetheless, the Government had impliedly renewed the same by accepting the rent. The property was required for a public purpose and that the Government continued to be in possession of the property as a tenant recognising title of the appellant. Therefore, the High Court was clearly in error in rejecting the claim of the appellant and confirming the decree of the appellate Court. In support thereof, he places reliance on Bishan Das & Ors. v. State of Punjab & Ors., AIR (1991) SC 1570. We find no force in the contention. It is an admitted position that renewal was not granted. Thereby, the previous lease stood expired and the relationship as tenant and landlord came to be terminated. He accepted the title of the Government; thus thereafter, he continued to be in possession as a trespasser. It is true that a lower level officer accepted the rent; and

recognition was obviously made on a mistaken impression that the land was required for a public purpose; but on the basis thereof, it cannot be construed that the title of the appellant was confirmed by the conduct of the Government. Accordingly, the declaration of title as land-holder cannot be granted. The High Court, therefore, was right in refusing to grant the relief. It is not a case of taking possession without due process of law. The possession only continues to a facet of the facts. Apart from that there is no other documentary evidence on the basis of which it could be concluded that the title of the Government is defeated by acceptance of the rent or by requisition of the property by mistaken act on the part of the Government."

In the present case, the petitioners had offered to pay rents even after the expiry period which was duly returned by the respondents. Since the lease period had lapsed in the present also, the relationship of landlord-tenant ceased to exist and as such, the petitioners do not derive any vested right to claim renewal.

8. With regard to the question as to whether the State Government can be compelled to renew the lands in favour of the petitioners, learned Additional Advocate General relied upon a judgment of this Court reported in (1997) 2 MLJ 107 (Kalyan Gangathara Jawahar Vs. The Government of Tamil Nadu) had held as follows:-

"21. Further, factually the lands had already been resumed by the Forests Department and possession is also with the Forest Department since 26.3.1996 as sworn to by the respondents. Further the lease period expired on 30.9.1995. The annual rental was just Rs. 56.25. It is a paltry sum. The contentions raised by the learned Counsel for the petitioner are devoid of merits and there is no illegality in the impugned proceedings nor it is vitiated by arbitrariness. The court had taken the view that the petitioner has no right to compel the respondents to renew the lease in his favour. This Court also accepts the plea of the respondents that the lands had already been resumed by the Forest Department and the possession is also with the Forest Department. The plea of estoppel raised by the petitioner is a factual misconception and cannot be but rejected as there is no basis at all for such a contention. Further no materials have been placed before the Court to hold that there has been representation on the part of the respondent based on which the petitioner could sustain the plea of estoppel.

22. The Forest Department resumed the land on

26.3.1996 and the land is now under the control of Forest Department. Further the Government of Tamil Nadu have decided to develop the reserved forest in Tirunelveli and Chidambaranar District into 'Nallai Wild Life Sanctuary' for the protection and conservation of wild Life and Flora. The policy decision taken by the first respondent is well in conformity with the statutory provisions of the Forest (Conservation) Act, 1980. Therefore, no part of reserve forest can be leased out to any individual for his benefit like the writ petitioner. Therefore, the writ petitioner cannot compel the 1st respondent to renew the lease in his favour."

9. By applying the ratio laid down in the aforesaid judgments, I am of the view that the petitioners have no vested right to compel the State Government to renew the lease for a further period, particularly, in the back drop of the facts that neither the petitioners nor their forefathers have put the subject lands for beneficial cultivation over the years as found in the report of the Revenue Division Officer and the Tahsildar of Ponneri. Likewise, the respondents have also decided to hand over the subject lands for beneficial usage of the public and as a matter of fact have already handed over the lands to Chennai Corporation for the purpose of formation of solid waste management and composite yard.

10. Learned counsel appearing for the petitioners, at this juncture, had submitted that the impugned order was a colourable exercise of power since the powers were not exercised reasonably and in good faith. Relying upon a judgment of the Hon'ble Supreme Court reported in AIR 1963 SC 151 (Somawanti and others Vs. State of Punjab), the learned counsel for the petitioners submitted that the impugned order was arbitrary exercise of power. The relevant portion of the order relied upon by the learned counsel for the petitioners is extracted hereunder:-

36. Now whether in a particular case the purpose for which land is needed is a public purpose or not is for the State Government to be satisfied about. If the purpose for which the land is being acquired by the State is within the legislative competence of the State the declaration of the Government will be final subject, however, to one exception. That exception is that if there is a colourable exercise of power the declaration will be open to challenge at the instance of the aggrieved party. The power committed to the Government by the Act is a limited power in the sense that it can be exercised only where there is a public purpose, leaving aside for a moment the purpose of a company. If it appears that what the Government is

satisfied about is not a public purpose but a private purpose or no purpose act all the action of the Government would be colourable as not being relatable to the power conferred upon it by the Act and its declaration will be a nullity. Subject to this exception the declaration of the Government will be final. A number of decisions were cited before us by the learned Advocate-General in support of the contention that the declaration of the Government is final.

11.Learned counsel for the petitioner also relied upon a the decision of the Hon'ble Supreme Court reported in AIR 1975 SC 434 (Raghunandan Panda Vs. State of Orissa and others) on the same aspect and a portion of the judgment reads as follows:-

".....In this case, however, it is difficult to accept the argument put forward on behalf of the appellant that the rules confer any rights on him No person has a vested right to get any lease of the Govt. land; of course, he has got a right to get his application for lease disposed of fairly and not arbitrarily. If, therefore, it could be held in favour of the appellant that his claim for lease of the plot in question was capriciously arbitrarily and unfairly rejected and that the lease granted to respondent No. 3 was arbitrary and unfair a case could be found in his favour."

12.On a reading of the above extract, it is seen that the said judgment is in favour of the respondents also. In the present case, the lands resumed were needed for public purpose and the State Government had taken decision to resume the lands for such public purpose. When there is specific necessity with regard to the requirement of the land and such a necessity was exercised on the ground that the petitioners forefathers have not put to beneficial usage of the subject lands over the years, it cannot be construed to be a colourable exercise of power or an arbitrary action. As such, the petitioner's submission is negatived. In the second order stated above, it has been specifically held that no person has vested right to get any lease of the Government land.

13.For all the forgoing reasons, I am of the considered view that the petitioners have not made out clear case for establishing that they have right in having the lease renewed in their favour. Since there is no arbitrariness nor is it a colourable exercise of power, the impugned order passed by the first respondent is liable to be sustained.

13.In view of the same, the writ petitions stand dismissed.
No costs. Consequently, M.P.Nos.1 and 1 of 2013 are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sms

To

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

2.The Principal Secretary and
Commissioner of Land Administration,
Government of Tamil Nadu,
Chepauk, Chennai 600 005.

3.The District Collector,
Thiruvallur District.

+2cc to Mr.K.N. Nataraj, Advocate, S.R.No.4111 and 4112

nr(CO)
md(16/02/2017)

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