

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Delivered on
25.04.2018	28.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

AND

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.A.Nos.699, 700 and 728 of 2018

and

C.M.P.Nos.6712 to 6718, 6960, 6961 and 6959 of 2018

W.A.Nos.699 and 700 of 2018:

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.

versus

1.Government of Puduchery,
Rep. by its Joint Secretary,
Revenue Department, Puduchery.

2.The Deputy Collector (Revenue)
Puduchery.

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

... Appellant

... Respondents

W.A.No.728 of 2018:

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.

... Appellant

versus

1.Koppadi Prem Kumar (minor)
Represented by his father
and natural guardian
Koppadi Asirvadam

2.The Regional Administrator- cum- Deputy Collector,
Yanam.

3.The Commissioner,
Yanam Municipality,
Yanam.

... Respondents

PRAYER:

W.A.No.699 of 2018: Appeal filed Under Clause 15 of Latter
Patent against the order passed by this Court dated 19.12.2017
passed in W.P.No.9382 of 2017.

W.A.No.700 of 2018: Appeal filed Under Clause 15 of Latter
Patent against the order passed by this Court dated 19.12.2017
passed in W.P.No.14891 of 2017.

W.A.No.728 of 2018: Appeal filed Under Clause 15 of Latter
Patent against the order passed by this Court dated 19.12.2017
passed in W.P.No.32686 of 2017.

PRAYER W.P.No.9382 of 2017.

Writ Petition filed Under Article 226 of the Constitution
of India praying for issuance of a writ of Certiorarified
Mandamus to call for the quash the order of the 3rd respondent
dated 13.04.2017 under reference No.B1/41/DCRY/2001-02 pursuant
to the G.O. No.5, dated 12.04.2017 passed by the 1st 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 Land situate at T.S.No.B/7/2 in
Yaman revenue village for exchange of the land dated 19.09.2003.

PRAYER W.P.No.14891 of 2017.

Writ Petition 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 dt 12.4.2017 passed by the 1st respondent and quash the same as illegal, invalid and non-est in the eyes of law and consequently forbear the respondents from interfering with the petitioners possession and enjoyment of the lands situate at T.S. No. B/7/2 in Yanam Revenue Village till the disposal of the above writ petition.

PRAYER W.P.No.32686 of 2017.

Writ Petition 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 center.

For Appellant : Mr.R.Thiagarajan in all WAs

For Respondents : Ms.V.Usha,
Additional Government Pleader [Puducherry]
in all WAs

J U D G M E N T

(Order of the Court made by R.SUBRAMANIAN, J.)

The challenge in this intra-Court appeal is to the common judgment of the learned Single Judge dated 19.12.2017 in any by which, the Writ Petitions viz., W.P.Nos.9832 and 14891 of 2017 filed by the appellant were dismissed while W.P.No.32686 of 2017 filed by the 1st respondent in W.A.No.728 of 2018 came to be closed.

The facts leading to the filing of the above Writ Petitions are as follows:-

2. The appellant had, while putting up construction of its factory premises in Mettakur village of Yanam Region had encroached upon the Government lands measuring about 24 ares and 30 centiares in S.No.B/7/2 of Mettakur Village, Yanam. By a letter dated 04.02.1996, the appellant had offered an extent of 26 ares and 40 centiares in R.S.No.25/3, T.S.No.C/1/22/7 of Kanakalapeta Village, Yanam in lieu of the land encroached by it in S.No.B/7/2 of Mettakur Village. This was followed by a consent letter issued by the Rejency Educational Society dated 28.02.1996 which was the owner of the land in R.S.No.25/3 of Kanakalapeta Village.

3. While this proposal was pending, the Deputy Collector (Revenue), Government of Puducherry by his letter dated 05.01.2000 offered to allow the appellant to use the Government poramboke land encroached by it measuring an extent of 24 ares and 30 centiares in T.S.No.B/7/2 and an extent of 2 ares and 66 centiares in T.S.No.B/7/4 part [total extent of 26 ares 96 centiares] on payment of license fee of Rs.1,38,510/- per annum for a period of 19 years subject to review after every 5 years. The said proposal for licensing of the land in favour of the appellant was sanctioned by the Lieutenant Governor of Puducherry on 04.02.2000 vide G.O.Ms.No.14/2000. The extent of land covered by the said G.O was restricted to 24 ares and 30 centiares in T.S.No.B/7/2. The said G.O was communicated to the appellant under a cover of the letter dated 10.02.2000 by the Deputy Collector (Revenue), Government of Puducherry. The said letter dated 10.02.2000 also appended certain conditions viz., (a) No permanent structures should be constructed in the licensed land (b) the licensee should vacate the land as and when required by the Government for any public purpose.

4. Pursuant thereto, a license agreement came to be executed between the Deputy Collector (Revenue), Yanam representing the Government of Puducherry and the appellant. As per the said license agreement the term of license was for a period of 19 years from 28.03.2000 to 27.03.2019. The license fee was fixed at Rs.1,38,510/- per annum payable on or before 28th March of every year. Clause 3 of the license agreement empowered the Government to revoke the license wholly or in part if the annual license fee, other cessess, rates and assessments are not paid by the licensee. The said license agreement also reserved the right to the Government to enhance the license fee and also to terminate the license, if the Government required the land for any public purposes. There was also an arbitration clause in the said license agreement.

5. In the mean time the Government of Puducherry by its letter dated 9th March 2004, addressed to the Joint Secretary to the Government, Ministry of Home Affairs, Government of India, New Delhi sought approval of the Central Government for the proposal to exchange the land in S.No.B/7/2 with the land offered by the appellant in Kanakalapeta Village. A reminder was also sent by the Government of Puducherry to the Central Government on 22.06.2004.

6. By a letter dated 05.02.2007 addressed to the Chief Secretary, Government of Puducherry, Government of India sought for certain clarifications from the Government of Puducherry regarding the exchange proposals. The said letter also indicated that the Government of Puducherry may explore as to whether the

matter could be sorted out without resorting to transfer of Government land. On 05.07.2007, the Government of India sent a reminder to the Chief Secretary to the Government of Puducherry regarding the exchange proposals.

7. While things stood thus, by a letter dated 12.12.2013 the Deputy Collector (Revenue), Government of Puducherry wrote to the appellant seeking its response to certain clarifications sought for by the Department of Revenue and Disaster Management, Puducherry. The said letter also required the appellant to signify its willingness to continue as a licensee for balance period upto 2019 with enhanced license fee proposed to be fixed as per the guideline register of the year 2010-11 or get the license canceled after payment of dues from 2010-11. By its reply dated 22.12.2013 the appellant conveyed its willingness to continue as a licensee by paying the enhanced license fee. In the said letter the appellant also requested the Government to consider the exchange proposal that was pending.

8. The Government of Puducherry issued a notice on 07.12.2014 requiring the appellant to show cause as to why the license agreement dated 28.03.2000 should not be terminated, in view of the non-payment of the license fee after 2011-12. The appellant submitted its explanation by its letter dated 11.12.2014. In the said explanation it is claimed by the appellant that the appellant Company is undergoing severe financial crisis and a lockout was declared due to the volatile situation that prevailed during January 2012. It was also claimed that on 27.01.2012 the agitating workers set fire to the total Plant and Machinery and the then head of Plant operations Mr.K.C.Chandra sekhar was also killed during the said agitation. In view of the said unfortunate incident, the appellant was forced to declare a lockout from 01.02.2012 and the same was in vogue till the date of the said letter dated 11.12.2014. However, the appellant also claimed that it is taking various measures to restore operations once the insurance claims are settled. A request was also made by the appellant to drop the proceedings for termination of license with an assurance that the arrears of the license fee will be paid very shortly. The appellant also wrote to the Hon'ble Chief Minister of Puducherry on 03.07.2015 seeking his intervention in this regard.

9. Not satisfied with the explanation offered by the appellant the Government of Puducherry cancelled the license agreement by an order dated 12.04.2017. Pursuant to the same the Deputy Tahsildar, Yanam issued a notice to the appellant requiring the appellant to remove the temporary structures and surrender possession on 13.04.2017.

10. Aggrieved by the said termination of license, the appellant filed a Writ Petition in W.P.No.14891 of 2017 challenging the order of termination dated 12.04.2017. The consequential order dated 13.04.2017, was challenged in W.P.No.9382 of 2017. During the pendency of the said Writ Petitions, the 1st respondent in W.A.No.728 of 2018 filed a Writ Petition in W.P.No.32686 of 2017 seeking a Writ of Mandamus to direct the respondents to transfer possession of the Government land bearing T.S.No.B/7/2 to the sports Authority of India for the purposes of establishing sports training center. All the three Writ Petitions were heard together and disposed of by a common judgment dated 19.12.2017.

11. By the said common judgment the Writ Petitions filed by the appellant in W.P.Nos.9382 and 14891 of 2017 were dismissed and the appellant was given 40 days time to vacate and handover possession. The W.P.No.32686 of 2017 was closed in view of the disposal of the Writ Petitions filed by the appellant.

12. We have heard Mr.R.Thiagarajan, learned counsel for the appellant in all the three appeals and Ms.V.Usha, learned Additional Government Pleader, Puducherry for the respondents in W.A.No.699 and 700 of 2018 and respondents 2 and 3 in W.A.No.728 of 2018.

13. The main contention of the appellant in the Writ Petitions filed by it is that the Government should have considered its proposal for exchange of land. pointing out that the value of the land offered by the appellant is much more than the value of the Government land which is in occupation of the appellant it was also contended that the Government should have considered the proposals for exchange which were pending from the year 2000. It was also pointed out that, apart from engaging itself in industrial activity of production of ceramic tiles, the appellant was also running Educational Institutions through Regency Educational Trust and doing social activities which are to the benefit of the general public, the termination of the license would cripple the social activities of the appellant also. The unrest and riots that took place in the factory premises during January 2012 and the killing of the head of operations by the agitating employees on 27.01.2012 was also made a ground for the non-payment of the license fee.

14. The said Writ Petitions were resisted by the respondents viz., the Government of Puducherry contending that the exchange proposal were not approved by the Central Government and as such, the Government of Puducherry could not proceed with the exchange proposal. It was also pointed out that Clause 3 of the licensing agreement dated 28.03.2000 enables the Government to terminate the license on the happening of certain events which included non-payment of the license fee. The fact

that the appellant is in arrears of license fee was not disputed by the appellant. Citing the same, the respondents would contend that they were well within their powers to terminate the license agreement and resume possession of the land. It was also contended that the land that is now offered by the appellant was acquired by the Government for certain other public purpose. Therefore, the question of exchange does not arise.

15. The counter affidavit would also disclose that the land in question which has been encroached by the appellant is required by the Government for a public purpose viz., to develop a sports facility in Yanam Town. Therefore, according to the respondents, the Writ Petitions are devoid of merits and hence, they have sought for dismissal of the Writ Petitions.

16. Mr.R.Thiagarajan, learned counsel appearing for the appellant would vehemently contend that the respondents ought not to have terminated the license on the ground of non-payment of license fee. While conceding the power of the respondents to terminate the license, in view of Clause 3 of the license agreement dated 28.03.2000, Mr.R.Thiagarajan, learned counsel would, however, contend that the respondents should have taken note of the unprecedented situation which led to the said non-payment. He would contend that the labour unrest in the factory of the appellant coupled with a murder of its Principle Officer by the agitating employees should have been taken note of by the respondents and the respondents should have adopted a much more sympathetic approach. The non-consideration of the exchange proposal is also projected, by Mr.R.Thiagarajan as a ground for continuation of the license agreement. He would also offer to pay the entire arrears of license fee at any time.

17. Per contra Ms.V.Usha, learned Additional Government Pleader, Puducherry would contend that the land in question was actually encroached upon by the appellant and a license agreement was entered into as a special gesture by the Government of Puducherry, inasmuch as the appellant was doing certain social activities for the upliftment of the people of Yanam region of Puducherry. She would point out that Clause 3 of the licensing agreement provides that the Government has the power to terminate the license if any of the conditions of the licensing agreement including payment of license fee are not adhered to by the appellant.

18. On the exchange proposal, the learned Additional Government Pleader would contend that the exchange proposal was not approved by the Union of India and hence, the Government of Puducherry could not go ahead with the said proposal. It is also pointed out by her that the alternate land in Kanakalapeta Village offered by the appellant had been acquired by the

Government for public purpose and the compensation has been deposited into court, hence according to her, there is no feasibility for consideration of the exchange proposal.

19. We have considered the rival submissions. The fact remains that the appellant had originally encroached upon the Government land and thereafter, it had sought for regularization of such encroachment by offering alternate lands in exchange in lieu of the land encroached by the appellant. The Government of Puducherry had not rejected the exchange proposal outright, but it had sought for the approval of the Government of India for the said exchange. Unfortunately for the appellant, the Government of India had not approved the exchange proposal. In fact, in the communication dated 05.02.2007, the Government of India had directed the Government of Puducherry to explore the possibilities of sorting out the matter with the private property without resorting to transfer the Government land. From the above, it is clear that the Government of India was not in favour of granting the exchange proposal. Therefore, the contentions of Mr.R.Thiagarajan, learned counsel on the ground that the Government of Puducherry ought to have considered the exchange proposal before seeking to resume the land by invoking Clause 3 of the license agreement cannot be countenanced.

20. The contention of Mr.R.Thiagarajan, learned counsel that the respondents were not justified in terminating the license agreement for non-payment of the license fee is primarily on the basis that the appellant suffered severe financial crisis, in view of the strike by the employees and the untoward incidents that took place on 27.01.2012, which resulted in torching of the premises of the appellant as well as the death of its Head of Operations Mr.K.C.Chandra Sekhar.

21. May be, they are unfortunate incidents, but, the appellant cannot seek to take shelter under those incidents to evade payment of license fee which it is bound to pay as per the license agreement. It is not in dispute that the appellant has not paid the license fee payable after 2011-12. In fact, the Government of Puducherry has revised the license fee for the period from 2005-2010 to Rs.2,91,600/-. In its response to the show cause notice dated 07.12.2014, the appellant had not denied that it is in arrears of license fee. But the appellant would claim that the license fee could not be paid in view of the financial crisis and the untoward incident that took place on 27.01.2012. Though, even in the year 2014, it is stated that the steps are being taken to pay the entire arrears of license fee. Nothing is brought on record to show that the entire arrears of license fee was offered to be paid before the order of termination of the license dated 12.04.2017. It is also the contention of the learned Additional Government Pleader that the

land in question is required for a public purpose viz., for development of a sports complex. It is also not in dispute that the appellants were given opportunity of being heard before the impugned order of termination of the license was passed as such there is no violation of requirements of the principles of natural justice.

22. In view of the above, the learned Single Judge had concluded that the respondents were perfectly justified in terminating the lease and resuming the land that was granted on license to the appellant. We do not see any legal infirmity in the order of the learned Single Judge. At the time of the hearing of the appeals it was brought to our notice that after the time granted by the learned Single Judge to the appellant to vacate and surrender vacant possession of the land, the Government had in fact taken possession of the land on 19.03.2018 itself.

23. Mr.R.Thiagarajan, learned counsel appearing for the appellant in W.A.No.728 of 2018 would contend that the Writ Petition filed by the 1st respondent in W.A.No.728 of 2018 being in the nature of Public Interest Litigation, the same should not have been heard by the learned Single Judge. We do not find that such an objection was raised before the learned Single Judge when the Writ Petitions were heard and disposed of by him. Even otherwise, the Writ Petitions being connected to each other were consolidated and heard by the learned Single Judge. Therefore, we do not see that as a ground to interfere with the order of the learned Single Judge. That apart, the learned Single Judge had not passed any positive directions in W.P.No.32686 of 2017. All that has been done by the learned Single Judge is to close the W.P.No.32686 of 2017, in view of the orders passed in the Writ Petitions filed by the appellant viz., W.P.Nos.9382 and 14891 of 2017.

24. We do not see any merit in the appeals and hence, all the appeals are dismissed. However, in the circumstances there will be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

dsa

To

1.The Joint Secretary,
Revenue Department, Puduchery.

2.The Deputy Collector (Revenue)
Puduchery.

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

4.The Regional Administrator- cum- Deputy Collector,
Yanam.

5.The Commissioner,
Yanam Municipality, Yanam.

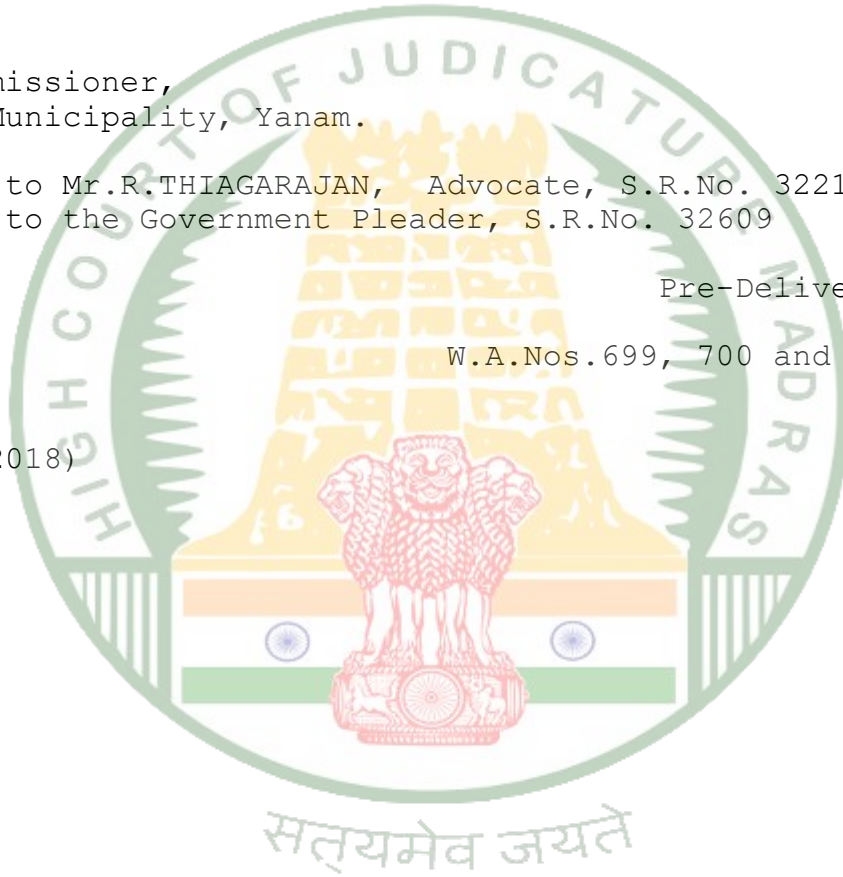
+3cc to Mr.R.THIAGARAJAN, Advocate, S.R.No. 32217

+1cc to the Government Pleader, S.R.No. 32609

Pre-Delivery Judgment
in

W.A.Nos.699, 700 and 728 of 2018

SSV(CO)
TR(18/05/2018)



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