

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.Nos.13724 and 10005 of 2004
and

W.M.P.Nos.16121 and 11666 of 2004
and

W.V.M.P.No.1275 of 2004

P.S.T.S.Charities,
(now known as P.S.T.S.Foundation),
22, South Raja Street,
Tuticorin,through its Managing
Trustee T.Velshankar

.. Petitioner in both the Writ Petitions

Vs.

1. The District Collector,
Tuticorin District, Tuticorin.
2. The Block Development Officer,
Tuticorin Panchayat Union,
Pudukottai.
3. The Commissioner,
Tuticorin Panchayat Union,
Pudukottai, Tuticorin.
4. The Commissioner,
Thoothukudi Corporation,
Thoothukudi.

(Fourth respondent impleaded as per
order dated 23.01.2018 passed in
W.M.P.Nos.36533 of 2017 in W.P.No.10005 of 2004
and W.M.P.No.36534 of 2017 in W.P.No.13724 of 2004)

.. Respondents in both the Writ Petitions

Writ Petition No.13724 of 2004 filed under Article 226 of
the Constitution of India, praying for issuance of a Writ of
Certiorarified Mandamus to call for the records in A6/336/1996,
dated 06.04.2004 on the file of the third respondent and quash
the same and direct the third respondent to renew the lease as
per Rule 23 of the Tamil Nadu Panchayats (Procedure for
conducting Public Auction and Sales in Panchayat) Rules, 2001.

Writ Petition No.10005 of 2004 filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records in A7/336/96, dated 06.03.2004 on the file of the third respondent and quash the same and direct the third respondent to renew the lease as per Rule 23 of the Tamil Nadu Panchayats (Procedure for conducting Public Auction and Sales in Panchayat) Rules, 2001.

For Petitioner : Mr.J.R.Prabhakaran

For Respondents : Mr.S.N.Parthasarathy,
Govt. Advocate for RR-1 & 2
Mr.P.S.Jayakumar for R-3 & R-4

ORDER

Writ Petition No.13724 of 2004 is filed praying for issuance of a Writ of Certiorarified Mandamus to call for the records in A6/336/1996, dated 06.04.2004 on the file of the third respondent and quash the same and direct the third respondent to renew the lease as per Rule 23 of the Tamil Nadu Panchayats (Procedure for Conducting Public Auction of Leases and Sales in the Panchayats) Rules, 2001.

2. Writ Petition No.10005 of 2004 is filed praying for issuance of a Writ of Certiorarified Mandamus to call for the records in A7/336/96, dated 06.03.2004 on the file of the third respondent and quash the same and direct the third respondent to renew the lease as per Rule 23 of the Tamil Nadu Panchayats (Procedure for conducting Public Auction of Leases and Sales in Panchayats) Rules, 2001.

3. The case of the petitioner-Charities (Foundation) is that they are running educational institutions imparting education to children and that they have been periodically paying the lease/rental amount. There was a lease agreement entered into in 1999 for a period of two years and subsequently renewed, but it has not been extended. It is further submitted that in terms of the lease agreement, the lease period could be extended for a period of three years, which has not been done in the present case. It is further submitted that there are no arrears of lease/rental amount payable to the third respondent and that the entire arrears of rent have been paid. But unfortunately, for the best reasons known to the respondents, they are trying to extort more money from the petitioner by contending that the lease period has not been extended. It is further stated that it is for the State to provide education to the children, more particularly the children aged between 5 and 14 and that since that has not been done by the State, the petitioner-Charities had taken the responsibility of imparting education to the children and that in terms of the Right of Children to Free and Compulsory Education Act, the State

Government is bound to provide free education to minor children who are aged between 5 and 14. It is further stated that by means of the impugned orders, the petitioner has been asked to vacate the premises on the ground that the lease period has already been over and there are arrears payable to the respondents to an extent of Rs.1,53,000/- and that the third respondent relied on G.O.Ms.No.277, Rural Development Department, dated 22.11.2001, and further stated that additional sum of 15% has got to be paid as lease amount over and above the amount being paid and the petitioner was to pay lease rent in a sum of Rs.9,000/- per month and that has not been considered and by the impugned orders, the premises was directed to be vacated, which are challenged in the present Writ Petitions.

4. Per contra, learned Government Advocate appearing for the respondents 1 and 2 and the learned counsel appearing for the third respondent submitted that the lease was entered as early as in 1997 initially for a period of one year and thereafter renewed twice for a period of three years and that as the respondents did not pay the amount as per the lease deed and that the petitioner was asked to pay the arrears of rental amount at the enhanced rate of 15% over and above the amount that is being paid. The petitioner did not comply with the request of the third respondent and hence, a decision has been taken and thereafter the impugned orders dated 06.03.2004 and 06.04.2004 were passed asking the petitioner to vacate the premises as the lease period is already over. It is further submitted that as of 2012, a sum of Rs.14,00,000/- was due and as of today, the due to the respondents from the petitioner is over Rs.20 lakhs. Without paying any amount, pursuant to the interim orders passed in these Writ Petitions, the petitioner is continuing to run the show. It is further submitted that it may be true that the petitioner is Charities/Foundation and they are imparting education to the children, but that cannot be a ground for continuance of the lease when the petitioner is at default. It is further stated that the contention of the petitioner-Charities (Foundation) that they are taking the responsibility and duty of the Government in imparting education to the children and that the Government is not discharging any duty in terms of the said Act, may not be correct. Having not paid the lease amount and also the revised amount, and that the lease period has already come to an end, and under the guise of seeking extension, making the allegation against the respondents may not be correct. It is further submitted that as huge amount is payable to the respondents, had not been paid, inspite of the demand/request by the respondents to the petitioner and as the lease period is already over, the petitioner shall not be entitled to the relief sought for in these Writ Petitions.

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

6. It is not in dispute that the petitioner is

Charities/Foundation running school and imparting education to the children. There was a lease agreement entered in the year 1997, which was extended twice thereafter, which is also not in dispute. The petitioner was paying the lease amount, but when there was a revision and demand for higher amount, which was not paid, the impugned orders were passed asking the petitioner to vacate the premises on the ground that the lease period is already over.

7. The contention of the petitioner is that they are imparting education to the children and that several students have been admitted in the school and that they should be permitted to run the school, de-hors the lease agreement, cannot be accepted. Be it a Charities/Foundation or educational institution, they should continue to pay the rental/lease amount, and they are bound to pay the amount to the lessor. By not paying the amount or revisional amount of lease/rent and seeking extension of time on the ground that they are imparting education to the children, may not be correct. Knowing that there is periodical revision and that the discretion vested with the respondents to extend the lease period, the petitioner has entered into the premises to run the educational institution. Knowing that the earlier lease is going to come to an end and that there may be revision, either the petitioner should have agreed to pay the amount or negotiated for lesser amount, but continuing in the premises after lease period, may not be justified.

8. When the Writ Petitions are heard, it is represented by the learned Government Advocate appearing for the respondents 1 and 2 and the learned counsel for the third respondent that if the petitioner is willing to pay the arrears of lease rent as on date within the time that may be stipulated by this Court, the request of the petitioner will be considered, so that they can continue by paying the revised lease amount, apart from paying the arrears.

9. Though this Court finds that there is no illegality in the impugned orders and that the children are studying, this Court permits the petitioner to occupy the place in question, provided the petitioner pays the lease/rental amount as on date to the respondents so that the request for continuation/extension of lease shall be considered by the respondents.

10. This Court directs the petitioner to pay 50% of the arrears of lease/rental amount on or before 15.06.2018 and the remaining 50% shall be paid on or before 31.01.2019. This Court makes it clear that in case of default in paying the amounts as directed above, the petitioner shall not be permitted to run the school in the premises in question from the academic year 2019-2020 and that no students shall be admitted in the school. This Court further directs that the directions/observations of this Court in these Writ Petitions, shall form part of the Prospectus

of the school, as the parents of the children/students must be aware about the proceedings, as they may have a breathing time to accommodate their children in some other school of their choice, as the education of those children shall not be affected on account of the default committed by the petitioner. The petitioner shall inform in writing to the parents of the students who are studying now, about the directions of this Court, so that no parents can approach the Court at the instance of the petitioner, for the school to continue in the leased premises. The respondents are also directed to give the break-up details of the amount to the petitioner, to enable them to pay the lease amount within the time stipulated supra. Whatever the amount that has already been paid, the same shall be adjusted by the respondents while making the calculation.

11. With the above observations and directions, the Writ Petitions are disposed of. No costs. Consequently, W.P.M.Ps. and W.V.M.P. are closed.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

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To

- 1.The District Collector,
Tuticorin District, Tuticorin.
2. The Block Development Officer,
Tuticorin Panchayat Union, Pudukottai.
3. The Commissioner,
Tuticorin Panchayat Union,
Pudukottai, Tuticorin.
4. The Commissioner,
Thoothukudi Corporation, Thoothukudi.

+2cc to Mr.J.Antony Jesus, Advocate SR.No.5108
+1cc to Government Pleader SR.No.5538

W.P.Nos.13724 and 10005 of 2004

EV(CO)
GN(27/02/2018)