BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **29.01.2018**

CORAM:

THE HONOURABLE MR.JUSTICE **S.M.SUBRAMANIAM**

W.P(MD)No.1660 of 2018
and
WMP(MD)Nos.1759 to 1761 of 2018

South India Bromine and Allied,
Chemical Private Ltd,
Represented by its Director, ... Petitioner

Vs.

1. The State of Tamil nadu.
   Represented by its Secretary,
   Department of Revenue,
   Fort St.George,
   Chennai.

2. The Commissioner of Land Administration,
   Ezhilagam,
   Chepauk,
   Chennai.

3. The District Collector,
   Ramanathapuram District,
   Ramanathapuram.

4. The Tahsildar,
   Kadaladi Taluk,
   Ramanathapuram. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records relating to the impugned proceedings of the 3rd respondent in Na.Ka.No. B2/21111/2013 dated 03.01.2016 and the consequential impugned proceedings of the 4th respondent in Na.Ka.B1-11610-2007 dated 28.12.2017 and quash the same as illegal.

For Petitioner : Mr.Ajmal Khan,
Senior Counsel for
Mr.M.Mahaboob Athiff

For Respondents : Mr.Ayiram K.Selvakumar
Additional Government Pleader

ORDER

The order of the 3rd respondent dated 03.01.2016 and the consequential proceedings of the 4th respondent dated 28.12.2017 are under challenge in this writ petition.

2.The writ petitioner is a lessee and continuing under the lease agreement dated 11.08.2004. The grievances of the petitioner is that exorbitant enhancement of lease amount is fixed by the third respondent District Collector in proceedings dated 03.01.2016. The learned Senior Counsel appearing for the writ petitioner submitted that the 3rd respondent District Collector, is not at all the competent authority by virtue of the clause 20 of the lease agreement. As per the said clause, the District Collector is the authority for settlement of arbitration. Therefore, he being an Arbitrator appointed under clause 20, cannot issue the impugned order in respect of enhancing the lease amount, which is exorbitant. Secondly, the learned Senior Counsel is of an opinion that no opportunity was given to the writ petitioner to agitate the enhancement of the lease amount. The respondents ought to have provided opportunity by issuing notice to the writ petitioner and on submission of explanation if any, there after pass an order. Contrarily, unilateral decision was taken by the authorities, more specifically, the 3rd respondent *suo motu* enhanced the lease amount.

3.The learned Senior counsel in support of his contention cited the paragraphs numbers 16,17,18 and 19 of the judgment of the Hon'ble Supreme Court of India in the case of, **Jamshed Hormusji Wadia Vs. Board of Trustees, Port of Mumbai and another,** reported in **(2004) 3 SCC, 214,** which reads as follows:-

> 16.The position of law is settled that the State and its authorities including instrumentalities of States have to be just, fair and reasonable in all their activities including those in the field of contracts. Even while playing the role of a landlord or a tenant, the State and its authorities remain so and cannot be heard or seen causing displeasure or discomfort to Article 14 of the Constitution of India.
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> 17.It is common knowledge that several rent control legislations exist spread around the country, the emergence whereof was witnessed by the post world war scarcity of accommodation. Often these legislations exempt from their applicability the properties owned by the Government, semi-Government or public bodies, Government-owned corporations, trusts and other instrumentalities of State. What is the purpose? Does

the Legislatures intend to leave such entities absolutely unbridled and uncontrolled as landlords from the operation of the rent control legislation or do they do so with some hope and trust in such institutions? In M/s. Dwarkadas Marfatia And Sons (supra) a few decisions and authorities were cited before this Court. The observations of Chief Justice Chagla (as His Lordship then was) in Rampratap Jaidayal Vs. Dominion of India - 1952 L.R. 54 Bom. 927 were quoted with approval stating that while enacting rent control legislations, the Government seeks to achieve the object of protecting the tenants and preventing the rent from being increased and people from being ejected unreasonably; then it cannot be assumed that that the very Government would itself be indulging into those very activities which it was proposing to prevent by enacting such laws. The underlying assumption behind granting exemption from the operation of the rent control legislations was that the Government would not increase rents and would not eject tenants unless it was necessary to do so in public interest and a particular building was required for the public purpose. It was also pointed out that the Government or local authority or the Board would not be actuated by any profit-making motive so as to unduly enhance the rents or eject the tenants from their respective properties as private landlords are or are likely to do. This Court in Baburao Shantaram More Vs. Bombay Housing Board - 1954 SCR 572 recognised that the basis of differentiation in favour of public authorities-like the Bombay Port Trust - was on the ground that they would not act for their own purpose as private landlords do but would act for public purposes. The Court held in Dwarkadas Marfatia (supra) that the public authorities which enjoy the benefit without being hidebound by the requirements of the Rent Act, must act for public benefit and where they fail to do so they render themselves amenable to adjudication under civil review jurisdiction of the Court. A Division Bench of the Bombay High Court presided over by Mrs. Sujata Manohar, J (as Her Lordship then was) held in Ratti Palonji Kapadia & Anr. Vs. State of Maharashtra & Ors. - 1992 Bom. L.R. 1356 that the exemption from the provisions of the rent control law casts an obligation on the State and its instrumentalities and authorities to comply with the public policy of ensuring a fair return of investments without charging exorbitant rates based on the prevailing market price of the land. Thus, a balance has to be struck between ensuring a fair return on investment and charging exorbitant rates based on the prevalent market prices of land, which would be of utmost relevance to any other landlord. The State

Government in order to justify a steep increase in rent, cannot plead exploitative increases in prices of lands. Reference in this connection may also be made to Kumari Shrilekha Vidyarthi etc.etc., Vs. State of U.P. & Ors. - (1991) 1 SCC 212, wherein this Court held that while acting in the field of contractual rights the personality of the State does not undergo such a radical change as not to require regulation of its conduct by Article 14. It is not as if the requirements of Article 14 and contractual obligations are alien concepts which cannot co-exist. Our Constitution does not envisage or permit unfairness or unreasonableness in State action in any sphere of activities contrary to the professed ideals in the Preamble. Exclusion of Article 14 in contractual matters is not permissible in our constitutional scheme. In P.J. Irani Vs. State of Madras and Anr. - AIR 1961 SC 1731 the Constitution Bench observed that a tenant in a building owned by the State or its instrumentality is not liable to eviction solely because the tenancy has terminated. The existence of rent control legislation, though not applicable to such building, is suggestive of the State's policy of protecting tenants because of the great difficulty of their obtaining alternative accommodation.

18.In our opinion, in the field of contracts the State and its instrumentalities ought to so design their activities as would ensure fair competition and non-discrimination. They can augment their resources but the object should be to serve the public cause and to do public good by resorting to fair and reasonable methods. The State and its instrumentalities, as the landlords, have the liberty of revising the rates of rent so as to compensate themselves against loss caused by inflationary tendencies. They can - and rather must - also save themselves from negative balances caused by the cost of maintenance, and payment of taxes and costs of administration. The State, as landlord, need not necessarily be a benevolent and good charitable Samaritan. The felt need for expanding or stimulating its own activities or other activities in the public interest having once arisen, the State need not hold its hands from seeking eviction of its lessees. However, the State cannot be seen to be indulging in rack-renting, profiteering and indulging in whimsical or unreasonable evictions or bargains.

19.A balance has to be struck between the two extremes. Having been exempted from the operation of rent control legislation the courts cannot hold them tied to the same shackles from which the State and its instrumentalities have been freed by the legislature in their wisdom and thereby requiring them to be ruled indirectly or by analogy by the same law from which they are exempt. Otherwise, it would tantamount to defeating the exemption clause consciously enacted by the Legislature. At the same time the liberty given to the State and its instrumentalities by the statute enacted under the Constitution does not exempt them from honouring the Constitution itself. They continue to be ruled by Article 14. The validity of their actions in the field of landlord-tenant relationship is available to be tested not under the rent control legislation but under the Constitution. The rent control legislations are temporary, if not seasonal; the Constitution is permanent and all time law.

4.In view of all these grounds the writ petition deserves to be considered. The learned Additional Government Pleader appearing on behalf of the respondents opposed the contents by stating that the District Collector is the authority for enhancement of lease amount. Thus, there is no infirmity in respect of the impugned order.

5.Thus, considering the arguments advanced by the learned Senior Counsel and the learned Additional Government Pleader, this Court is of an opinion that the power of the enhancement in respect of lease amount has not been disputed by the parties. The decisions of the State are to be fair and reasonable and there cannot be any unilateralism in the matter of enhancement of the lease amount, which would affect the rights of the lessees, more specifically, in the present case, the writ petitioner. All actions of the State are certainly to be transparent, fair and in a reasonable manner, the Hon'ble Supreme Court of India, time and again reiterated and emphazised, particularly in this regard. Thus, this Court is of an opinion that the authorities competent have to provide opportunity to the parties concerned for submitting their explanations/objections, if any, in relation to the enhancement of the lease amount and on receipt of the same the authorities competent are at liberty to take decision and pass appropriate orders on merits and in accordance with law.

6.The learned Senior Counsel for the petitioner submitted that as per the clause 20 of the lease agreement, the District Collector is an arbitrator and therefore any other authority other than the District Collector may be nominated by the Government for the purpose conducting enquiry by providing opportunity to the writ petitioner and pass orders. If any final order is passed then the writ petitioner would be getting opportunity to negotiate the same, by way of arbitration before the District Collector. The learned Senior Counsel for the writ petitioner undertakes that 50 percent of the enhanced demanded amount as per the impugned order dated 03.01.2016, will be deposited by the writ petitioner within a period of 4 weeks from the date of receipt of a copy of this order and further he is ready and willing to continue the 50 percent of the enhanced rent till passing of the final order in this regard.

7.In view of the undertaking given by the learned Senior Counsel for the writ petitioner, this Court is inclined to consider the writ petition. Accordingly, the impugned order passed by the 3^{rd} respondent in proceedings dated 03.01.2016 and the consequential order passed by the 4^{th} respondent in proceedings dated 28.12.2017 are quashed and the 1^{st} respondent is directed to nominate the 4^{th} respondent, to issue notice to the writ petitioner, receive explanations/objections and conduct enquiry and thereafter take a decision and pass orders on merits and in accordance with law. Such an exercise shall be done by the 1^{st} respondent within a period of four weeks from the date of receipt of a copy of this order. In view of the above orders of remitting back the matter for reconsideration, the premises shall be unlocked on payment of 50 % of the enhanced lease amount.

8.In the result, the writ petition stands allowed. Consequently, WMP(MD)Nos.1759 to 1761 of 2018 are closed. However, there shall be orders as to costs.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary,
   Department of Revenue,
   Fort St.George,
   Chennai.

2. The Commissioner of Land Administration,
   Ezhilagam,
   Chepauk,
   Chennai.

3. The District Collector,
   Ramanathapuram District,
   Ramanathapuram.

4. The Tahsildar,
   Kadaladi Taluk,
   Ramanathapuram.

+ 1 cc TO M/S.Ajmal Associates , Advocate in SR No. 44741
+ 1 cc TO The Special Government Pleader in SR No. 44784

dsk
AE/SV MMS/SAR4/06.02.2018/7P/7C

ORDER MADE IN
W.P(MD)No.1660 of 2018
29.01.2018