

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2019

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THE HONOURABLE Mr.JUSTICE V.BHARATHIDASAN

W.P.No.8174 of 2004
and
W.M.P.No.9640 of 2004

The District Club Palayamkottai
High Ground Road,
Palayamkottai
Tirunelveli District
represented by Honorary Secretary
M.R.Subramaniam

... Petitioner

Vs

1. The Secretary to Government,
Government of Tamil Nadu,
Revenue Department,
Fort St. George
Chennai-9.

2. The Special Commissioner
and Commissioner,
Land Administration,
Chepauk, Chennai-5.

Kancheepuram District.
3. The District Collector,
Tirunelveli District
Tirunelveli-9.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records comprised in G.O.Ms.15 Revenue Ni.Mu.6 (1) Department, on the file of the Secretary to Government, Revenue Department, Fort St. George, Chennai-1st respondent and quash the same and consequently direct the 1st respondent to renew the lease to the petitioner club.

For Petitioner : Mr.V.Ayyadurai, Senior Counsel
For M/s.R.Karthikeyan and
R.Bharanidharan
For Respondents : Mrs.Narmada Sampath
Additional Advocate General
Assisted by Mr. I.Satish,
Additional Government Pleader
for R1 to R3

O R D E R

This writ petition has been filed challenging the order passed by the first respondent cancelling the lease granted to the petitioner herein.

2. According to the petitioner, it is a registered society, formed in the year 1934, and duly registered with the District Registrar, Palayamkottai. Earlier, on an application filed by the petitioner, the Collector, Tirunelveli District granted lease in respect of 1.50 acres in T.S.No.1665/4 and 1665/5 of Ward III, Block 20 of Palayamkottai, for the purpose of recreation sports and entertainments, and the petitioner was also permitted to put up construction for the above said purpose. Subsequently, the petitioner had developed 4 tennis courts, a billiards room and also a common hall for the purpose of conducting intellectual programmes and the lease was also extended by the first respondent from time to time.

3. In the year 1995, the lease amount was fixed at the rate of Rs.10,000/- per annum. Earlier, in the year 1997, the first respondent has issued a show cause notice on 03.07.1997, alleging that the petitioner Club Committee committed various irregularities, for which the petitioner sent a reply on 22.09.1997. After considering the reply submitted by the petitioner, the Government had dropped further action in the above matter. Subsequently, in respect of very same charges, without any notice or any enquiry whatsoever, the first respondent passed an order in G.O.Ms.No.15 Revenue Ni.Mu.6(1) Department dated 14.1.2004, cancelling the lease granted in favour of the petitioner, based on the recommendation made by the second respondent / Commissioner of Land Administration, and further directed the District Collector to take possession of the land and building. That apart, the second respondent was also directed to collect Rs.2,32,799/- as lease amount per annum from 01.02.1994. Challenging the above order, the present writ petition has been filed.

4. The respondents have filed a counter affidavit stating that, originally, the lease was granted to the petitioner for a

period of 33 years with effect from 01.02.1941 and the lease has been renewed upto 1994 and the lease amount has been revised periodically. Thereafter, no further renewal was granted to the petitioner for various reasons. Even though the lease amount was enhanced in the year 1997 at the rate of Rs.10,000/- per year, the petitioner did not pay the lease amount. That apart, in violation of the lease agreement, the petitioner is using the eastern side of the lease hold land for commercial purpose. One local Rotary Club as well as a private company are using the premises without the permission of the Collector. In view of the various violations committed by the petitioner, based on the recommendation of the second respondent, the first respondent passed an order cancelling the lease and there is no irregularity in it. The counter affidavit also elaborately discussed about the arrears of lease amount payable by the petitioner.

5. The learned Senior Counsel appearing for the petitioner contended that alleging violation of terms and conditions of the lease agreement, earlier, a show cause notice was issued to the petitioner, for which the petitioner has sent a detailed representation. After considering the representation submitted by the petitioner, the first respondent in its proceedings No.15197/NM/ii(ii)/98-1, dated 08.05.1998, dropped the entire proceedings and also recommended for extension of lease after obtaining necessary report from the District Collector. Thereafter, without any show cause notice and without any enquiry, based on the recommendation made by the second respondent / Commissioner of Land Administration, dated 03.05.2003, the first respondent has passed an impugned order cancelling the lease, as if the petitioner has committed default in payment of lease amount and thereby, violated the conditions of the lease agreement. According to learned Senior Counsel appearing for the petitioner, if at all any violation subsequently, the Government ought to have issue a separate show cause notice and conduct an enquiry, then only, the order can be passed cancelling the lease.

6. Per contra, the learned Additional Advocate General assisted by Mr.I.Satish, appearing for the respondents submitted that originally, the lease was granted for a period of 33 years. Subsequently, it was renewed up to the year 1994. Thereafter, no renewal was granted, and the respondent has periodically revised the lease amount, but the petitioner failed to pay the lease amount, there is huge arrears of rent payable by the petitioner. That apart, the petitioner has also violated the terms and conditions of the lease agreement. In the above circumstances, based on the recommendation made by the second respondent, the first respondent has rightly come to a conclusion that the lease is liable to be cancelled. Further,

the learned Additional Advocate General would submit that now the second respondent / Commissioner of Land Administration also passed an order revising the lease amount from the year 1994 and as on today more than Rs.11 Crores has to be paid by the petitioner.

7. I have heard the learned Senior Counsel appearing for the petitioner and learned Additional Advocate General for the respondent and perused the records.

8. As rightly pointed out by the learned Senior Counsel appearing for the petitioner, the first respondent has issued a show cause notice dated 03.07.1997, alleging violation of lease agreement, for which the petitioner has sent a reply, and after considering the said reply, by an order dated 08.05.1998, the first respondent had dropped all further proceedings, further, the Commissioner of Land Administration was also directed to consider the petitioner's request for renewal of lease after obtaining a report from the District Collector, pursuant to the same, no further action was taken by the respondents. Now, after 5 years, the impugned order came to be passed based on a recommendation of the Commissioner of Land Administration on 03.05.2003, alleging that the petitioner has violated the lease agreement and committed default in paying rent. Once the earlier show cause notice has been dropped by the Government, if at all any violation of lease condition subsequently, the Government has to issue a fresh show cause notice sought for explanation from the petitioner and to pass order after giving an opportunity. Admittedly, no show cause notice was issued and no enquiry was conducted, and the impugned order passed by the first respondent is utter violation of principles of natural justice, and on that score alone, the said order is liable to be set aside.

9. In the above circumstances, the impugned order passed by the first respondent is set aside, and the matter is remanded back to the first respondent. The first respondent is directed to issue a show cause notice to the petitioner and conduct an enquiry after giving opportunity to the petitioner, and pass orders in accordance with law.

10. However, so far as the revising of lease amount is concerned, the Government is entitled to revise the lease amount. It is open to the second respondent/Commissioner of Land Administration, to issue a proper notice to the petitioner after conducting enquiry revise the lease amount as per Government orders. After revising the lease amount, is always open to the second respondent to recover the same from the petitioner.

11. In the result, the Writ Petition is allowed with the above direction. No costs. Consequently, connected Miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-)

// True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
Government of Tamil Nadu,
Revenue Department,
Fort St. George
Chennai-9.
2. The Special Commissioner
and Commissioner,
Land Administration,
Chepauk, Chennai-5.
Kancheepuram District.
3. The District Collector,
Tirunelveli District
Tirunelveli-9.

+1cc to Mr.R.Karthikeyan, Advocate, SR.No.96772.
+1cc to Mr.Suendran , Advocate, SR.No.97763.

W.P.No.8174 of 2004

and
WMP No.9640 of 2004

CNR (CO)
CSR(10/12/2019)