

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.01.2019

CORAM :

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.27097 of 2005
and
W.P.MP.No.29534 of 2005

M/s.Bharath Transport,
Rep by its Managing Partner,
Mr.A.M.Navaz,
1, Thatha Muthiappan Street,
Chennai - 600 001. Petitioner

vs.

1. The Deputy Salt Commissioner,
Chennai.
2. The Collector,
Fort-Tondiarpet,
Chennai - 3. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a writ of Certiorari calling for records pertaining to the order A5/19716/05 dated July 2005 on the file of 2nd respondent.

For Petitioner : Mr. V.Bhiman
for M/s.S.Sampath Kumar & Associates

For Respondents: Mr.K.Raju, CGSC for R1.
Mrs.R.Janaki AGP for R2

O R D E R

The order dated July 2005 issued by the respondent directing the writ petitioner to pay the arrears of enhanced rent of Rs.1,98,641/- is under challenge in the present writ petition.

2. The learned counsel appearing on behalf of the writ petitioner states that, the writ petitioner firm got a lease of a salt shed at Tondiarpet, belonging to the first respondent. The terms of lease were fixed as per the letter of acceptance dated 24.02.2000. The monthly rent fixed for the shed leased out was Rs.3500/- or the rent to be fixed by CPWD whichever is

higher. The rental period was one year only from the date of receipt of a letter dated 29.03.2000.

3. The other amenity charges were also to be paid by the writ petitioner firm. The lease period was extended from time to time and the writ petitioner was paying the monthly rent to the first respondent promptly. There was no arrears of rent. While so, the first respondent issued a demand notice on 05.05.2003 for the first time, claiming the amount of Rs.1,33,808/- purported to be a differential rent for the period from 01.04.2000 to 31.03.2003 as if the monthly rent was fixed as Rs.7,328/-.

4. The writ petitioner submitted a reply stating that the agreed monthly rent was Rs.3,500/- and therefore, the unilateral enhancement of rent by the respondents as Rs.7,328/- is untenable. The fixation done by the respondents were not in consonance with the terms and conditions of the lease and the unilateral decision taken is impermissible under the provisions of the law.

5. The learned counsel for the writ petitioner is of an opinion that, the fixation of rent or enhancement must be done with the consent of the parties concerned. There was no consent on the part of the writ petitioner, thus, the Suo moto fixation deserves no consideration and accordingly, the writ petitioner is not liable to pay the arrears of enhanced rent as claimed by the respondent in the impugned notice. There is no provisions under the Act for fixation of higher rent. In the absence of any such provision, the Authorities Competent cannot enhance the rent. More specifically, suo moto and without obtaining any consent from the lessee.

6. In support of the said contention, the learned counsel for the writ petitioner cited the judgment of the Apex Court of India in the case of Banatwala and Company Vs. L.I.C of India & Other reported in AIR 2011 SC 3619. The learned counsel referred paragraph 63 of the judgment which reads as under:-

"On ouster of the jurisdiction of the civil courts

63. We may next deal with the contention of the respondents that the exclusionary clauses are to be read strictly. In Church of North India [(2005) 10 SCC 760] , relied upon by the respondents, this Court was concerned with a suit for declaration as to the succession to a particular trust governed under the Bombay Public Trusts Act. Such a suit was squarely covered under that Act and, therefore, it was held that the civil court will not have the jurisdiction to entertain the suit. The seven principles laid down by

the Constitution Bench in Dhulabhai v. State of M.P. [AIR 1969 SC 78] were relied upon in that case. It is sufficient to refer to the first two principles therefrom which are as follows: (AIR p. 89, para 32)

"(1) Where the statute gives a finality to the orders of the special tribunals the civil court's jurisdiction must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

(2) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court."

If we apply these two tests and examine the scheme of the Public Premises Act, it will be seen that Section 10 of the Act does give a finality to the orders passed by the Estate Officers or the Appellate Officers, and states that the same

"shall not be called in question in any original suit, application or execution proceeding and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act".

Section 15 of the Act specifically states that no court shall have jurisdiction to entertain any suit or proceeding in respect of the subjects, amongst others concerning, "(a) the eviction of any person who is in unauthorised occupation of any public premises, "and" (d) the arrears of rent payable under sub-section (1) of Section 7 or damages payable under sub-section (2), or interest payable under sub-section (2-A), of that section". Therefore, to that extent the jurisdiction of the civil court is ousted. The actions which are covered under the Public Premises Act are concerning eviction of unauthorised occupants and recovery of arrears of rent. The Act however does not claim to speak anything about the fixation of standard rent or maintenance of essential services. For these purposes no remedy is provided under the Public Premises Act. Therefore, the jurisdiction of the civil court for these remedies cannot be held to be ousted."

7. The learned counsel appearing on behalf of the respondent disputed the entire contention raised on behalf of the writ petitioner by stating that the terms and conditions of the lease are unambiguous and there is an admission on part of the writ petitioner that the rent fixed by the Authorities subsequently will be accepted by the writ petitioner. In fact, the monthly rent of Rs.3,500/- was fixed as a provisional rent and the final rent was fixed as Rs.7328/-. Relying on the said provisional fixation of rent, fixed at the initial at the time of entering in to an agreement cannot be considered as a final fixation as the writ petitioner himself consented for the final fixation of monthly rent in the agreement signed by the writ petitioner.

8. To substantiate the said contention, the learned counsel for the respondent solicited the attention of this Court with reference to the agreement signed by the writ petitioner which is enclosed in page number 9 of the typeset of papers filed by the Additional Central Government Standing Counsel / first respondent. The said agreement reads as under:-

"We hereby agree for the following conditions for taking possession of the Salt Department shed at Tondiarpet for a period of one year from 01.04.2000.

1. We agree to pay a sum of Rs.3,500/- as rent by way of Demand Draft every month or the rent to be fixed by the CPWD whichever is higher on or before 5th of every month.

2. Two months rent of Rs.7,000/- will be paid as Security Deposit for faithful performance of tendency contract.

3. Electricity charges will be borne by us.

4. The shed can be taken maintained properly and safely by us and any damages will be rectified by us.

5. The shed can be taken over possession for government use by giving us 15 days notice.

6. We agree to abide by the rules and regulation of the department.

7. No addition or alteration will be carried out by us except with the prior concurrence of salt commissioner, Jaipur.

8. The functioning of the lab in the shed will not be hampered by us.

9. Watch and ward personal for the shed will be posted by us.

10. Only packed products will be stored and no loose materials permitted to be stored.

11. No damage will be caused to the existing structures/buildings of salt department and damage if any occurred to be made good by the tenant at their cost.

12. Any theft occurred during the rental period, the tenant will pay the cost of materials and salt department will not be responsible for any theft."

9. Clause 1 of the said agreement signed by the writ petitioner categorically enumerates that "We agree to pay a sum of Rs.3,500/- as rent by way of Demand Draft every month or the rent to be fixed by the CPWD whichever is higher on or before 5th of every month". Admittedly, the agreement provides a fixation of higher rent by the Competent Authorities of the CPWD Department. Further, it is contended that, the Assistant Salt Commissioner passed an order in proceedings dated 25.04.2003 fixing the final rent and the said order states that "I am directed to refer to your letter No.W-12017/2/W1/94/10468 dated 05.07.2001 on the subject mentioned above and to convey the approval of the Salt Commissioner for fixation of standard rent of the Departmental shed at Tondiarpet @ Rs.7,328/- P.M. under FFR-45B w.e.f 1.4.2000 to 31.03.2003."

10. The said proceedings were communicated to the writ petitioner. However, the fixation of rent communicated to the writ petitioner is not under challenge and the writ petitioner has not taken any efforts to dispute the final fixation of rent issued by the Assistant Salt Commissioner in proceeding dated 25.04.2003. The provisions of F.R.45-B is extracted as under:-

"(4) Recovery of pooled licence fee when FR 45-B applied.-It has been decided that in respect of P&T quarters for which the pooled standard licence fee has been fixed under FR 45-A, the pooled standard licence fee or the standard licence fee under FR 45-B, whichever is higher, should be recovered from the occupants in cases in which standard licence fee under FR 45-B is usually recoverable from them."

11. The F.R.45-B also clarifies that the pooled standard license fee or the standard license fee under F.R.45-B whichever is higher should be recovered from the occupants in cases in which standard license fee under F.R.45-B is usually recoverable from them. Thus, this Court is of an opinion that the clause stipulated in the lease agreement signed by the writ petitioner is in consonance with the provisions of F.R.45-B and the writ petitioner also agreed to pay the higher rent if any fixed by the Competent Authorities of the CPWD.

12. It is brought to the notice of the Court that, the writ petitioner was under the occupation of the premises till 17.04.2004 and vacated the premises and handed over to the Competent Authorities of the respondent. Thus, the arrears of rent claimed was for the period of 2000 to 2004 and therefore, this Court is of an opinion that the claim made by the writ petitioner is not supported with the clause and the terms and

conditions.

13. This apart, the Hon'ble Supreme Court judgment cited by the learned counsel for the writ petitioner may not have any application with reference to the facts and circumstances of the case. In the present case on hand, the writ petitioner had signed the agreement and accepted the terms and conditions stipulated in the lease agreement. As per the lease agreement, the writ petitioner had agreed to pay the higher rent if any fixed by the Competent Authorities of the CPWD.

14. This apart, the initial fixation of rent was provisional one and the final fixation of rent was issued subsequently by the Competent Authorities. However, there was an a delay in issuing the final fixation and such a delay cannot be held to the advantage of the writ petitioner as the payment of rent in the present case is the State Revenue. It is relevant to place on record that, the final fixation of rent of Rs.7,328/- was not challenged by the writ petitioner. The proceedings issued in this regard by the Assistant Salt Commissioner remains unchallenged.

15. This apart, the provisions of the Public Premises Act which is a general Act cannot be applied with reference to the facts and circumstances of the case as the case on hand is governed under provisions of F.R.45-B which is a special provision in respect of the premises belongs to the respondent / Government of India. The settled legal principles in this regard is that whenever there is a special law or provision applicable to an institution or a State, the general laws cannot be applied and the special provision will prevail over all such general provisions of law. In the present case on hand the agreement itself was entered in to between the parties under the provisions of F.R.45-B and the said clause had been incorporated in the lease agreement which was accepted and signed by the writ petitioner.

16. This being the factum, now after vacating the premises, the writ petitioner cannot claim that he is not liable to pay the enhanced rent as per the fixation done by the Competent Authorities of the CPW department. This being the factum of the case, this Court has no hesitation in holding that the claim of the writ petitioner deserved no merit consideration. Accordingly, the writ petition stands dismissed. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

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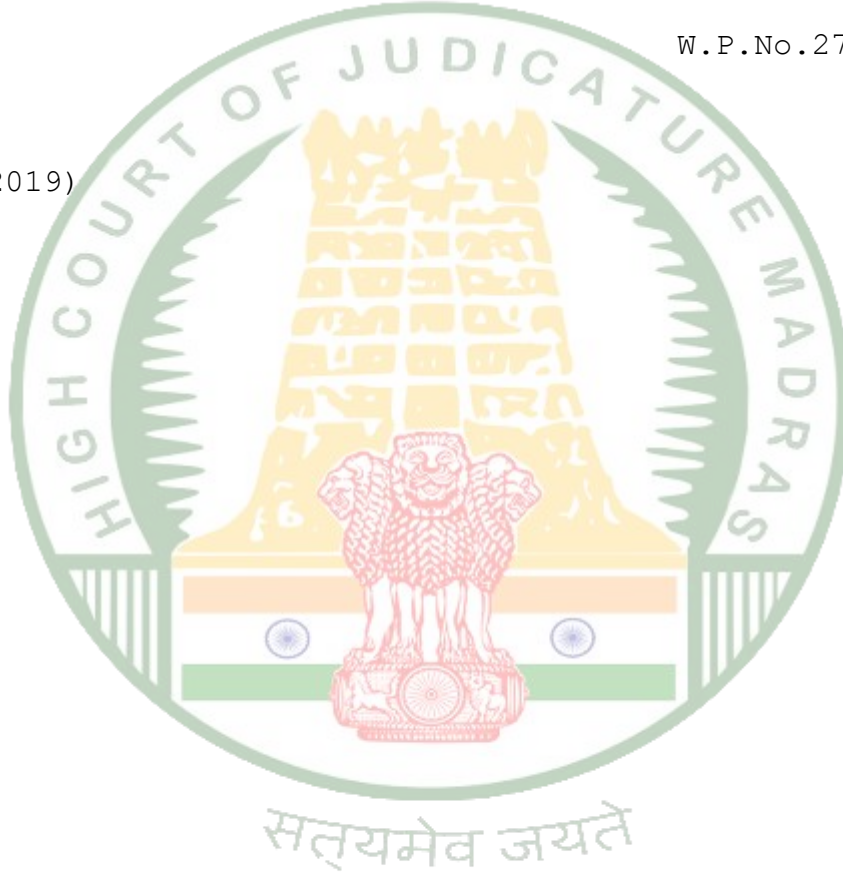
To

1. The Deputy Salt Commissioner,
Chennai.
2. The Collector,
Fort-Tondiarpet,
Chennai - 3.

+lcc to Mr.Sampath Kumar & Associates, Advocate, S.R.No. 4361
+lcc to Mr.K.Raju (CGSC), Advocate, S.R.No. 4404

W.P.No.27097 of 2005

KK (CO)
GN (08/02/2019)



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