

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.06.2019

PRONOUNCED ON : 25.06.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Writ Petition No.33945 of 2018 and
W.M.P.Nos.1064 and 39415 of 2018

The Madras Race Club,
Rep. By its Secretary,
Guindy,
Chennai – 600 032.

Petitioner

Vs

1.The Commissioner of Land Administration,
Government of Tamil Nadu,
Chepauk,
Chennai – 600 005.

2.The Collector of Nilgiris,
Nilgiris District,
Udhagamandalam 643 001.

3.The Revenue Divisional Officer,
Udhagamandalam.

4.The Tahsildar,
Taluk Office,
Udhagamandalam.

... Respondents

Prayer :- This Writ Petition is filed under Article 226 of the Constitution of India for a writ of Mandamus, forbearing the respondents from resuming 4

acres or any portion of land out of 52.34 acres leased out to the petitioner, comprised in Survey Nos.1993, 1994, 1996 and 200/3, Udhagamandalam Town, either pursuant to the show cause notice bearing R.C.No.U1/4781/2002 dated 30.11.2018 or otherwise.

For petitioner : Mr.R.Parthasarathy, Senior Counsel

For Respondents : Mr.Vijay Narayan,
Advocate General, Assisted by
Mr.Ravikumar,
Additional Government Pleader

ORDER

Seeking a direction to forbear the respondents from resuming 4 acres or any portion of land out of 52.34 acres leased out to the petitioner, comprised in Survey Nos.1993, 1994, 1996 and 200/3, Udhagamandalam Town, either pursuant to the show cause notice bearing R.C.No.U1/4781/2002 dated 30.11.2018 or otherwise, the petitioner is before this Court with this writ petition.

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2.Heard the learned counsel for the petitioner and the learned Advocate General appearing for the respondents.

3.The short point involved in this writ petition is, 'whether the show

cause notice issued by the Collector of Nilgiris to the Race Club at Ooty calling for their objection why not 4 acres of land out of 52.34 acres leased to them be resumed to tide over the parking crisis in Ooty town' is tainted with malafide or in violation of any law, in force.

4. In the year 1977, the Government of Tamilnadu, sanctioned the lease of 54.74 4/16 acres of land and buildings thereon situated in R.S.Nos.1993,1994,1996 and 2003 of Udhagamandalam taluk and town, Nilgiris District to the Madras Race Club for a period of one year. The annual lease rent for the whole of the extent was Rs.2,737/-. The lease was periodically extended, the rent was also enhanced at intervals. As per the petition averment, the last revision of rent was made in the year 2004 fixing the annual rent of Rs 95,175/-. The last rent paid by the petitioner was in July 2017. (This statement of the petitioner made in his affidavit, is strongly denied by the second respondent in her counter. According to the second respondent, as on 31/12/2018, the writ petitioner is liable to pay the lease arrears amount of Rs.642,93,25,287/-) Beyond these minimum facts, the other disputes between the petitioner and the Government regarding non-renewal of lease and non payment of lease rent are of less relevant for deciding the present writ petition.

5. The purpose of lease was to operate the race club in the said land

and not to exploit the lease land for any other purpose. Admittedly, the horse racing is conducted only for three months in a year, (April to June) and for the rest of the year, there is no racing activity in the club, except inter-venue betting. Presently, the petitioner has made huge improvements to the land at their cost, in the form of construction of stables for horses, office buildings, staff dormitories, weighing room, Equine Hospital etc.

6.Now, the grievance of the petitioner herein is that, the second respondent has issued a show cause notice dated 30/11/2018 calling upon the petitioner to submit their objection, to her intention, to create a parking area in 4 acres carving out from the above said land leased to them. According to the petitioner, on receipt of the show cause notice, submitted an interim reply on 12/12/2018, requesting 15 days time to give detail reply. While so, the 3rd and 4th respondents suddenly descended on the property on 17/12/2018 and started demarcating the 4 acres of land, as indicated in the show cause notice. The said act is challenged by the petitioner, in this writ petition.

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7.The grounds raised in the writ petition are as follows:

- i) without hearing the petitioner; without giving an opportunity to

reply and without taking any decision pursuant to the show-cause notice, the respondents have proceeded to take possession of the 4 acres of land in occupation of the petitioner. This action is arbitrary and illegal.

ii) The respondent collecting lease rent periodically. It is not open to the respondents to take over a portion of property in occupation after collecting rent for entire property. This affects the petitioner's property right as enshrined in Article 300 A of the Constitution of India.

iii) The property was given to lease on a pre-condition that it should be used only for the propose of promoting sports activities and not supposed to use any portion of the land for commercial activities. The action of the respondents in seeking to resume 4 acres of land, for the purpose of parking of various vehicles is against the very purpose of the lease.

iv) The land leased out to the petitioner is classified in the revenue records as "Pure Vegetative Zone". It also includes some reserve forest area. One of the terms of the lease that the petitioner is not permitted to cut any trees in the land which has been leased out to it.

v) The petitioner is not entitled to put up any building in the land

leased out to it, other than for the purpose of aiding horse racing. The land must be kept vacant to maintain ecological equilibrium. It is incomprehensible as to 'how any portion of the land can be converted into an open parking area', which would be major source of pollution.

vi) The land leased out to the petitioner has to be preserved as 'open space' as per master plan for the Udhagamandalam Area. Converting a portion of the race course meant to be preserved as open space as parking area is against master plan.

vii) It will be impossible to conduct race if portion of the leased land is resumed and converted into parking space. The noise, air and water pollution likely to cause by the parking space disable the horses running. Setting up of parking area will ultimately lead to closure of the race course itself.

8. The learned counsel for the petitioner after referring relevant provisions of the Town and Country Planning Act, 1971 and the master plan for the Udhagamandalam, besides, the judgements of the Hon'ble Supreme Court and High Courts would content that, 'open space' earmarked as 'race club' cannot be converted for 'any other purpose'. No deviation from the

approved master plan permissible, without revision of the master plan.

9. In support of his argument, the learned counsel for the petitioner has relied upon the following judgments:-

i) In **R.Chandran –vs- State of Tamilnadu** (2010(4) CTC 737), a Division Bench of this Court in Paragraph Nos.12 and 13, has held as follows:-

12. It has not been disputed by the 2nd respondent-Corporation that the land in question has been used as park and playground for the last several decades. There is a basket ball ground in the said park, which is said to be an historical ground for many aspiring basketball players of the country. Many basketball training sessions and tournaments have been conducted there, and several high dignitaries visited the place and distributed prizes to the winners of such tournaments. Similarly, public at large had been using the park since several decades. Learned counsel for the petitioner drawn our attention to Section 2(34) of the Tamil Nadu Town and Country Planning Act inter alia defines “public open space”, which means any land whether enclosed or not belonging to the Central or any State Government or any local authority or any body corporate, owned or controlled by the Central or any State Government on which there is no building or of which not more than one twentieth part is covered with buildings, and the whole or the remainder of which is used for

purpose of recreation, air or light. Therefore, evidently the playground and the park could not be brought within the definition of public open space. It has also not been disputed that the playground at Venkata Narayana Road, T.Nagar has been listed as the playground both under the Tamil Nadu Parks, Play Fields and Open Spaces (Preservation and Regulation) Act, 1959 and the Development Control Rules. Rule 4(a) of the Development Control Rules provides that where the use of the site or the premises is specifically designated as open space, it shall be used only for that purpose for which it has been so designated.

13. From the Report it appears that T.Nagar has been shown primarily as commercial locality in Chennai. But, it appears that initially T.Nagar was primarily a residential area and only during the past few years there has been development in mushroom growth of commercial establishments. Many illegal constructions have been made for commercial purposes without providing space for car parking, as a result the regular stream of customers visiting these shopping complexes cause traffic congestion. In order to facilitate the customers' visit in those shopping complexes and commercial establishments the respondents have decided to provide underground car parking by changing the character of the land which has been used as playground and park for the last six decades.”

ii) In **M.I.Builders Pvt Ltd -vs- Radhey Shyam Sahu and others**

(1999 (6) Scc 464) the Hon'ble Supreme Court has held as follows:-

“Jhandewala Park, the park in question, has been in existence for a great number of years. It is situated in the heart of Aminabad, a bustling commercial- cum- residential locality in the city of Lucknow. The park is of historical importance. Because of the construction of underground shopping complex and parking it may still have the appearance of a park with grass grown and path laid but it has lost the ingredients of a park inasmuch as no plantation now can be grown. Trees cannot be planted and rather while making underground construction many trees have been cut. Now it is more like a terrace park. Qualitatively it may still be a park but it is certainly a park of different nature. By construction of underground shopping complex irreversible changes have been made. It was submitted that the park was acquired by the State Government in the year 1913 and was given to the Mahapalika for its management. This has not been controverted. Under [Section 114](#) of the Act it is the obligatory duty of the Mahapalika to maintain public places, parks and plant trees. By allowing underground construction Mahapalika has deprived itself of its obligatory duties to maintain the park which cannot be permitted. But then one of the obligatory functions of the Mahapalika under [Section 114](#) is also to construct and maintain parking lots. To that extent some area of the park could be used for the purpose of constructing underground parking lot. But that can only be done after proper study has been made of the locality, including density of the population living in the area, the floating population and other certain relevant considerations. This study was never done. Mahapalika is the trustee for the proper management of the park. When true nature of the park, as it existed, is destroyed it would be violative of the doctrine of public trust as expounded by this Court

in Span Resort Case (1997 (1) SCC ”.

10.The second respondent/District Collector has filed her counter affidavit. The terms of the lease based on which the petitioner presently in occupation of the land is extracted in full. Out of 54.74 acres of land leased, initially, 2.40 acres of land has been resumed by the Government for extension of the Udhagamandalam channel and balance 52.34 acres is in possession of the petitioner. In the said land, the petitioner has put up construction without permission.

11.Udhagamandalam being one of the important international tourist destination, the number of tourists visiting the District is increasing year by year. To Provide parking facility which is one of the basic amenities to the tourists and the local public, the District Administration thought fit to resume 4 acres of the land leased to the Race club and create a car parking area. In furtherance of that object, opportunity was afforded to the petitioner inviting their objections. The petitioner Club does not generate any revenue to the Government in the form of entertainment tax and betting taxes as claimed in its affidavit. Contrarily, it owes a sum of Rs.642,93,25,287/- towards lease rent arrears.

12.The decision to create parking space was based on the need of the general public visiting Ooty. Since, no parking area has been demarcated,

the traffic comes to a standstill in most parts of the Town especially, Charring cross, Ettins Road, Commercial Road, Garden road. Due to lack of sufficient parking, the vehicles are parked on road sides which cause untold difficulties to the common public. Due to parking on the road side for want of proper parking space, frequent traffic jam occurs. The patients who need emergency medical care, miss their golden hour. Patients are forced to wait for Ambulance or for the traffic to clear. Statistic of fatal and non fatal accidents during the past 3 years also provided in the counter to show that the decision to resume 4 acres of land from the petitioner, was on the larger public interest and not out of any malafide.

13. In the counter, the terms and conditions of the indenture dated 28/05/1981 made between the Government and the petitioner representative is extracted to show that, under Clause 19, the power to revoke the grants wholly or partly and to assume control over the part or whole of the land, buildings, etc., is vested with the Government.

14. The learned Advocate General appearing for the respondents would submit that besides the huge rental arrears, as on date, the lease agreement between the petitioner and the respondents has expired long back and not renewed. As far as the impugned show cause notice is concerned, it was

issued to meet out the dire need of the public to regularise the traffic and parking of vehicles who comes to Ooty. Since, the land identified is located at the middle of the Town, the only remedial measure available to the District Administration is to create a parking area by resuming the land leased to the petitioner. By resuming 4 acres of land, out of 52.34 acres of land, the racing activities of the petitioner is, no way going to be curtailed. Referring the sketch of the leased land and the portion sought to be resumed, the learned Advocate General submitted that the piece of land on the Eastern tip of the land is currently used to stable for the horses during the race period which spans for three months and the actual race is only for 12 days a year. The apprehension of the petitioner that, if 4 acres of the land is resumed, the entire racing activity will come to standstill, is fake apprehension, without any basis. The approved master plan will no way get deviated by locating the parking space in the proposed land since, it is already notified as open space and vehicle park is bound to be left open to sky and no structure contrary to master plan is proposed in that land.

15.The Learned Advocate General would submit that the petitioner has no reason to object the proposal of locating parking space in the 4 acres of land out of 52.34 acres of land leased to it. The reasons stated in the writ petition only expose its ulterior motive to retain possession for their personal

activities at the cost of general public interest. It is admitted by the petitioner himself that the land sought to be resumed is barely used by the petitioner Club. Actually, in the entire 52.34 acres of land, only for 12 days active racing takes place. Rest of the days in the year, the Club premises is used only for inter-venue betting. The interest of the general public shall supersede the individual or, class interest, what so ever. When opportunity granted to give objection, the petitioner instead of placing its objection, sought extension of time and rushed to the Court making false allegations and has obtained interim order.

16.The Learned Advocate General further submitted that the respondents will not do anything contrary to law particularly, the Town and Country Planning Act and Master plan. Whatever statute mandates with regard to providing parking space will be scrupulously followed.

17.Regarding the judgments cited by the learned counsel for the petitioner, the Learned Advocate General would submit that, in **M.I.Builders** case (cited supra), the Hon'ble Supreme Court took exception to the conduct of the local body which disposed the municipal property to private builder permitting the Builder to convert the park into air conditioned underground shopping complex contrary to Rule 114 of Uttar Pradesh

Municipal Corporation Act, 1959 as well as against the public trust doctrine.

18. In **R.Chandran** case (cited supra), the Division Bench of this Court has held that, the attempt of the State to convert park and playground designated as open space to facilitate customers of illegal constructed commercial establishment is baid in law.

19. Whereas, the facts of the case under consideration is the resumption of Government land, which is presently held by the private Club. If the principle of 'public trust' to be applied, then, the entire extend of 52.34 acres of land is liable to be resumed from the petitioner, who is holding the public land for the interest of few race goers and betting punters. The nature of the land is noway going to be altered by carving out, a portion of land given to race course, for parking space.

20. This Court, considered the respective submissions of the parties concerned. At the outset, this Court is bound to remind the petitioner that 'he is neither the land owner nor a lessee' in law. He is holding over the property due to intervention of the Court and lackadaisical attitude of the Government allowing the petitioner to hold over the property without renewing the lease or collecting the lease rent. Be that as it may, as far as the impugned show cause notice dated 30/11/2018 issued by the second

respondent, she has expressed the proposal to create parking space for the convenience of the general public visiting Ooty and the intention to resume 4 acres out 52.34 acres of land leased to the petitioner. In a pure and simple language, the show cause notice is issued with reasons. 15 days time was granted to the petitioner to give reply. The petitioner instead of giving reply, on the 13th day, i.e., on 12.12.2018, has sent a letter stating that he needs time to give effective reply and he is in the process of gathering all relevant documents for the purpose of submitting effective reply to the show cause notice. Having failed to avail the opportunity to reply to the show cause notice, the petitioner cannot cry foul that, no opportunity was given by the respondents and the principle of natural justice is violated.

21.The terms and conditions of the indenture dated 28/05/1981 as well the Government Orders of the Revenue Department in G.O.Ms.No.775 Revenue dated 04.04.1977 and G.O.Ms.NO.2509 Revenue Department dated 15/11/1979 which granted lease hold right to the petitioner vest the power to resume the Government land leased with the District Collector. As per the terms and conditions laid down in G.O.Ms 66 Revenue dated 27/03/1976.

22.Regarding the judgments cited by the learned counsel for the petitioner, it is to be placed on record that, neither of the two judgments

cited are relevant to the facts of the case. The text of the judgment has to read in conjunction with the context. As pointed out by the learned Advocate General, in **MI Builders** case (cited supra), the 'public park' maintained by the Local Body was converted into underground commercial complex through private Builder. All laws were flouted. The Municipal authorities who are custodian of the public property failed to protect it. Hence, the Hon'ble Supreme Court has applied 'public trust doctrine' and ordered demolition of the unauthorised building. The facts of the case under consideration is similar to it.

23. The petitioner has misunderstood that the terms and conditions imposed on it regarding the use of the leased land in a particular manner should also apply to the Government, if it resumes it back. The land leased to the petitioner is for using it for race course. On resumption, the

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Government need not use it for the same purpose. The said land can be used for any purpose which is not prohibited under the Town and Country Planning Act and other allied statutes.

24.The learned counsel for the petitioner by reading out Rule 5 (5) of the Tamil Nadu District Municipalities (Hill Stations) Building Rules, 1993 would submit that, no site situated within a distance of 100 metres from the boundaries of Race Course at Uthagamandalam shall be used for construction of any building or change the present character and use it any manner. In the present case, the land sought to be resumed is to be put to use as parking space. It is going to be left as open place for parking vehicles. While so, none of the grounds raised in the writ petition are sustainable.

25.The writ petitioner has deliberately tried to delay the process of providing amenity to the public by giving a bald representation to the show cause notice. He has rushed to the Court to obtain interim order. The allegation attributing motive for issuance of the show cause notice found to be baseless. The grounds raised in the writ petition challenging the show cause notice, are illusionary. The learned Advocate General has dispelled even the little doubt regarding possibility of master plan violation. The

assurance given by the learned Advocate General that the 4 acres of the land to be resumed from the petitioner, will be left as 'open space' as per clause VIII of the Master plan and no structure of permanent nature will be allowed to be put up in the said portion of the land is taken on record.

26. For the reasons stated above, the writ petition is liable to be dismissed. This case cannot end with mere dismissal in view of its strange and peculiar facts. It requires further more discussion.

(i) The writ petitioner was served with show cause notice dated 30/11/2018 inviting his objections within 15 days. The writ petitioner has sent a letter dated 12/12/2018 as interim reply seeking extension of time. He neither waited for the respondents to give time nor the petitioner gave his detailed reply thereafter. The writ petition is filed in the Registry on 18/12/2018 challenging the vires of the show cause notice and interim order granted on 19/12/2018. Thus, the writ petitioner has consciously forfeited his right to respond to the show cause notice issued by the second respondent, in alternate, had opted to agitate all the grounds before this Court and had invited the above order.

(ii) The principle of *audi- alteram-partem* does not envisage perpetual hearing or hearing at the choice or pleasure of the defendant. Fair hearing includes two major components. First is, 'notice' and next is 'adequate opportunity'. In this case, notice was issued on 30/11/2018. Despite opportunity granted by the second respondent, the petitioner had replied on 12/12/2018 seeking extension of time. However, without waiting for the further response from the respondents, writ petition is filed on 18/12/2018, and interim order obtained on 19/12/2018. The petitioner has filed affidavit and also rejoinder to the counter affidavit. The petitioner has engaged an able lawyer and had canvassed the merits of his case. Under the said circumstances, both the limbs of the principle *audi-alteram-partem* namely, notice and fair opportunity to hear are complied.

27. The Courts have time and again had repeatedly declared that, show cause notice cannot be subjected to judicial review unless, it bristles with want of jurisdiction, arbitrariness or malafide. To buttress the said view, this Court wish to refer the judgment of the Hon'ble Supreme Court in **Union of India and ors. vs. Vicco Laboratories** (2007(1) SCC 270) wherein, it has been held as follows:-

“Normally, the writ court should not interfere at the stage of issuance of show cause notice by the authorities. In such a case, the parties get ample opportunity to put forth their contentions

before the concerned authorities and to satisfy the concerned authorities about the absence of case for proceeding against the person against whom the show cause notices have been issued. Abstinence from interference at the stage of issuance of show cause notice in order to relegate the parties to the proceedings before the concerned authorities is the normal rule. However, the said rule is not without exceptions. Where a Show Cause notice is issued either without jurisdiction or in an abuse of process of law, certainly in that case, the writ court would not hesitate to interfere even at the stage of issuance of show cause notice. The interference at the show cause notice stage should be rare and not in a routine manner. Mere assertion by the writ petitioner that notice was without jurisdiction and/or abuse of process of law would not suffice. It should be prima facie established to be so. Where factual adjudication would be necessary, interference is ruled out. ”

28.Despite the settled principle, seasoned litigants. like the petitioner venture to file writ petition challenging show cause notice with the hope that they can get some *exparte* interim relief projecting fake or illusory reasons and later, even if the Court holds against them, they can get an observation from the Court that the authority who issued the show cause notice should continue the process and decide the matter without being influenced by the order of the Court. This tactics to delay the action contemplated under show cause notice, in several cases, causes irreparable loss and prejudice to the respondents who are mostly the State or limbs of the State. If a person is

unsuccessful in challenging the show cause notice, after canvassing the merit of his side, in a higher forum, he deemed to have exhausted his right to re-canvass the same before the authority who caused the notice.

29. In fine, since, a portion of the land with the petitioner is essential for the creation of parking space at Ooty, the respondents herein are permitted to proceed with the proposal without offending the ecology and environment.

30. The petitioner has approached this Court with ulterior motive and unclean hands. Therefore, costs of Rs.50,000/- (Rupees fifty thousand only) is imposed and the petitioner shall pay the same to the second respondent. The second respondent, in turn, shall utilise the said costs amount for providing civic amenities to the public.

31. In the result, the writ petition is dismissed with costs. Consequently, connected miscellaneous petitions are closed.

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Index: Yes

Speaking order/non speaking order

To

1.The Commissioner of Land Administration,
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Chepauk,
Chennai – 600 005.

2.The Collector of Nilgiris,
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Pre delivery Order made in
W.P.No.33945 of 2018

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