HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETIITION No.1220 of 2019

ORDER:

This is a case where the petitioner challenged the demand notice dated 24.12.2018 issued by the third respondent on behalf of the Agricultural Market Committee, Bowenpally, Secunderabad.

2. The facts, which are not in dispute, are that vide G.O.Ms.No.169 Agriculture and Cooperation (MKTG.II-2) Department dated 02.06.2005, the first respondent Government accorded permission to the market committee for allotment of 150 x 150 sq. feet of site at Market Yard, Bowenpally, Hyderabad on lease basis for a period of 25 years to the petitioner for establishment of a retail petroleum outlet. The lease rent was to be fixed on the basis of prevailing market value by revising it at 10% of the current value of the land per annum i.e. the value obtaining as on the date of the issuance of the G.O. The original recommendation of the Commissioner and Director of Marketing was for grant of lease for a period of 33 years. Thereafter, at the request of the petitioner, a memo bearing No.14171/AM.II(2)/12-3 dated 08.08.2013 came to be issued whereunder the lease period was enhanced to 30 years in the place of 25 years and lease rent was also enhanced at 10% on bi-yearly basis i.e. every two years on existing rent, in partial modification of the conditions laid down in G.O.Ms.No.169 dated 02.06.2005. There is no dispute that the petitioner is in occupation of the allotted site and carrying on business from the said premises.

3. The impugned notice was issued demanding a total amount of Rs.56,77,264/- as due and payable to the market committee, within 15 days from the date of receipt of the demand notice, failing which, the petitioner was threatened with action of seizing the petroleum bunk apart from recovery of the demanded amount without any further notice.

4. Learned senior counsel for the petitioner submits that no notice whatsoever was issued to the petitioner prior to the impugned notice and at any rate, the allegation of the respondent in the notice that the petitioner is due and payable a huge sum of Rs.56.77 lakhs is untenable and the demand is unjustified. It is the specific contention of the learned senior counsel that on account of the memo dated 08.08.2013 issued by the respondent – State, modifying the conditions of lease, the term of lease stands extended to 30 years and the lease rentals to be calculated with enhancement at 10% for every two years. In other words, it is the clear contention of the learned senior counsel that paragraph 3 of G.O.Ms.No.169 dated 02.06.2005 stands substituted by paragraph 3 of the memo dated 08.08.2013. Learned senior counsel would also dispute the calculation memo submitted by the respondent – market committee and would further assert that as per the calculation of the petitioner, there are no arrears and as a matter of fact, there is excess money, which has been paid by the petitioner to the market committee. Learned senior counsel would further assert that if only a notice had been given to the petitioner, he would have set things right and would have given all the details with respect to payment of rent.

5. On the other hand, Smt. G. Neeraja Reddy, learned standing counsel for the market committee, along with the counter, had placed before this Court a detailed statement of the amounts due and the amounts received from the petitioner. Relying on the said statement, the learned standing counsel would submit that the total amount due from the petitioner is as demanded in the impugned notice. She would also further assert that the petitioner was never regular in tendering the rent and that it has been dodging the payment on one pretext or the other. She would further assert that, as a matter of fact, the amounts due from the petitioner were calculated by giving effect to the G.O. along with the memo and due credit has been given to the amounts paid by it. She would further assert that the memo, at best, is prospective in nature and further effect of the memo is that so far as the lease rental is concerned, the same is required to be calculated on the existing rent with effect from the date of the memo and not from the date of the G.O. The enhancement is also required to be calculated bi-yearly in the place of every year revision originally contemplated in G.O.Ms.No.169 dated 02.06.2005. However, the memo being prospective in nature, the same would only be with effect from the date of the memo and not for the prior periods. She would further assert that applying the above principle, the amounts due from the petitioner have been calculated and the demand is in order.

6. At the outset, it may be made clear that this Court is not inclined to get into the calculations, as provided by both the parties with respect to the amounts alleged to be due or actually due, as it is

also not necessary for the purpose of deciding the main controversy as raised and argued before this Court.

7. Having regard to the respective submissions, the only issue that is required to be considered in the present writ petition is with respect to the meaning that is required to be given to paragraph 3 of the memo dated 08.08.2013.

8. By G.O.Ms.No.169 dated 02.06.2005, while approving the proposal of the Commissioner and Director, Marketing, permission was granted to lease out 150x 150 sq. feet of site of at market yard to the petitioner for 25 years and the lease rental was fixed on the basis of prevailing market value of the land i.e. the market value of the land as on 02.06.2005, to be revised/escalated every year at 10% of the current value of the land per annum. If the G.O has to be given effect, the lease rental enhancement has to be at 10% of the current value of the land per annum i.e. land value on year-to-year basis. Complaining that the market committee has interpreted the escalation to be 10% of the base land value of that year and that the same is onerous, the petitioner sought revision. The petitioner also requested to amend the G.O, by revising the rent escalation clause to 10% every two years on the existing rent. This request of the petitioner was considered by the Government and memo dated 08.08.2013 came to be issued, by way of clarification of G.O.Ms.No.169 dated 02.06.2005, modifying the lease period as 30 years in the place of 25 years and so far as the enhancement of rental is concerned, the same has been modified to 10% on bi-yearly basis i.e. every two years on existing rent in partial modification of the conditions laid down in the G.O.

9. If the argument of the learned senior counsel for the petitioner is to be accepted that even rental enhancement clause also stands substituted in the G.O, there being no existing rent as on the date of the issuance of the G.O, the same cannot be given effect to for the reason that there is no basis indicated in the G.O., for arriving at the lease rental payable as on 02.06.2005. To put it in other words, there is no existing rent as on 02.06.2005. If the rental enhancement is to be considered from the date of the memo, it would be meaningful for the simple reason that by the date of the memo, the amount of rent payable was already in place and the same can be given effect to. It may also be noted that in the G.O., the basis for rental enhancement was the market value of the land on year-to-year basis. Both the Government as well as the petitioner understood the same to be in the same fashion as is evident from the representation dated 24.11.2012 of the petitioner, which has been clearly referred to in the first paragraph of the memo dated 08.08.2013. In the memo, the very basis of enhancement has been changed and there is no reason for this Court to come to a conclusion that the substitution has taken effect with effect from the date of the G.O., particularly, considering the fact that there was no existing rent as on the date of the G.O. As a matter of fact, by amending the very basis of rent calculation, a substantial concession has been made in favour of the petitioner, as the rental enhancement has been restricted based on the previous two years rental rather than based on the market value of the land, which is spiralling upwards on year-to-year basis.

10. In the light of the meaning that is to be given to the G.O.Ms.No.169 dated 02.06.2005 read with memo dated 08.08.2013 and the assertion of the respondent that the demand, which has been made is in consonance with G.O.Ms.No.169 dated 02.06.2005 read with the memo dated 08.08.2013, it would be open for the petitioner to raise objection with respect to the calculation, which shall be considered by the respondent authorities and if there is any discrepancy, a revised demand notice shall be issued. The entire exercise may be completed within a period of six (6) weeks from today. The impugned demand is kept in abeyance till the exercise, as directed by this Court, is completed. It is also made clear that the petitioner shall not withhold the current rental payable on the ground that this issue is pending.

Subject to the above, the writ petition is disposed of. As a sequel, the miscellaneous applications, if any pending, shall stand closed. There shall be no order as to costs.

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CHALLA KODANDA RAM, J

April 23, 2019
DSK