

Reserved on : 30.09.2020

Delivered on : 30.11.2020

O.A.Nos.26 of 2019 & 11 of 2020

in
C.S.No.31 of 2019
&
W.M.P.No.6967 of 2020
in
W.P.No.5947 of 2020

P.T.ASHA, J.,

The following interlocutory applications in the suit and the Writ Petition have been argued at length before this Court:

(i)***O.A.No.11 of 2020***: This application has been filed for an interim injunction restraining the respondent, their men, agents or any one claiming under them from in any way pursuing their application for planning permit and building permit with the Chennai Metropolitan Authority with respect to the construction of the club house or any other development on the joint lease hold land golf course of the plaintiff and the defendant described in

the schedule to the plaint.

(ii)**O.A.No.26 of 2019:** This application has been filed to grant an order of interim injunction restraining the respondent / defendant their men agents or any one claiming under them from in any way proceeding with the construction work of the club house or any other development on the suit schedule property.

(iii)**W.M.P.No.6967 of 2020:** This petition is filed for an order of stay of the impugned planning permission issued by the 3rd respondent in letter No.PP/NHRB/INST(B2)/1168/2019 dated 29.01.2020 pending disposal of the Writ Petition.

Contents of the Applications:

2. The facts pertaining to all these applications being analogous a comprehensive order is being pronounced by this Court, more particularly since the learned Judge, who has passed an order in W.M.P.No.6967 of

2020 in W.P.No.5947 of 2020 dated 09.03.2020 has posted the same to be heard along with the application as the final orders passed in O.A.No.11 of 2020 will have a direct bearing on the issue raised in the Writ petition. A brief resume of the circumstances which has ultimately culminated in the filing of the suit C.S.No.31 of 2019 followed by the filing of the Writ Petition in W.P.No.5947 of 2020 is herein below narrated as the same is necessary for deciding the lis. Parties are referred to as in their array in the suit. The respondents in the Writ Petition are referred to by their official names.

3. The suit schedule property which houses the golf course and a club house is the subject matter of the dispute. The parties are referred to in the same array as in the suit. The plaintiff in the year 1933 had approached the Government of Madras State with a request to allot the lands comprised in the suit survey number. Initially, the Government had acceded to the request and granted licence in respect of to an extent of 65.09 acres in the year 1933 itself. Thereafter, the plaintiff company was incorporated on

23.04.1934 under the provision of Indian Companies Act, 1913. Thereafter, in the year 1935 the Government had granted licence in respect of the additional extent of 12.61 acres, as a result of which the plaintiff was granted licence in respect of total extent of 77.70 acres.

4. After the licence was granted, the plaintiff had spent extensively and had developed the barren lands into a golf course. This golf course was developed as per the requirements and the standards of a golf course.

5. By an order dated 26.12.1956, the Government of Tamil Nadu in G.O.Ms.No.4696, Revenue Department had converted the licence into a lease and the lease was extended till 30.06.1966. Thereafter, by G.O.Ms.3189, Revenue Department dated 09.11.1966, the lease was renewed for a further period of 30 years commencing from 01.07.1966. The plaintiff was maintaining this golf course together with a club house situate therein by paying periodically the lease rental which was a sum of Rs.5,800/- per year.

6. When the lease was to end on 30.06.1996, the plaintiff had applied for the renewal of the lease of the suit land to develop it further to be in sync with international standards. At this juncture, the defendant made a representation to the Government to grant the lease to them contending that the golf course was not being maintained properly by the plaintiff. Initially, the Government refused to renew the lease which resulted in filing of the Writ Petitions and Writ Appeals and thereafter the plaintiff and the defendant had entered into a memorandum of understanding dated 11.01.2001 and the supplemental memorandum of understanding dated 22.12.2001 in and by which they had jointly applied to the Government for grant of lease.

7. The Government by considering the memorandum of understanding and supplemental memorandum of understanding had passed order in G.O.Ms.No.138, Revenue Department dated 24.03.2001, granting a joint lease in favour of the plaintiff and the defendant for a period of 30

years commencing from 01.07.1996. However, the order envisaged the appointment of a Governing body to administer, maintain and manage the golf course. The Governing body was to consist of 5 members of the plaintiff's club, 5 members of the defendant's club and 5 members on the side of the Government. It was only the day to day administration that was left to the defendant and all other major decisions had to be taken by the Governing body.

8. Despite this extension, all of a sudden on 28.06.2002, the Government had cancelled the lease of the property in G.O.Ms.No.282, Revenue Department. G.O.Ms.283, Revenue Department of the same date was passed handing over the entire property to the Sports Development Authority of Tamilnadu. This order was challenged by both the plaintiff and the defendant by filing Writ Petition Nos.23657 & 23932 of 2002 respectively. They had obtained interim orders of stay. While so, the Tasildhar, Mambalam-Guindy Taluk issued demand notice dated 29.01.2004 calling upon the plaintiff to pay an arrears of rent totalling a

sum of Rs.119,78,58,312/- being the revised rent for the period 01.07.1971 to 30.06.1996. The plaintiff challenged this notice by filing W.P.No.5231 of 2004 and an interim stay of the order was obtained.

9. Meanwhile, the defendant had permitted the members of the plaintiff club to play golf which was challenged by the plaintiff in C.S.No.211 of 2008. Simultaneously the defendants were proceeding to unilaterally construct a club house in the golf course. Challenging this move the plaintiff had filed C.S.No.339 of 2008. The plaintiff had also obtained interims orders of stay in the above matter. The plaintiff and the defendant had thereafter jointly requested the Government of Tamil Nadu to withdraw their order of cancellation of lease made in G.O.Ms.No.282, Revenue Department dated 28.06.2002. Thereafter, the Government of Tamil Nadu by their order dated 23.01.2009 in G.O.Ms.No.33, Revenue Department cancelled the earlier orders made in G.O.Ms.No.282 and 283, Revenue Department dated 28.06.2002. The order further restored the lease jointly in favour of the plaintiff club and the defendant for a period of 30

years commencing from 01.07.1996. Several conditions had been imposed which ran contrary to the concept of joint lease and provided more powers and responsibilities to the defendant.

10. This order was challenged by the plaintiff in W.P.No.4255 of 2009, which was dismissed by order dated 28.04.2009, as against which an appeal in W.A.No.625 of 2009 has been filed by the plaintiff and the Division Bench had ordered an interim stay on condition that the plaintiff pay a 1/3rd of the lease amount payable between 01.07.1996 and 23.03.2009. This order was also complied with. However, the Writ Appeal came to be dismissed by order dated 23.02.2011. Against this order, SLP (C) Nos.23773 & 23774 of 2011 was filed. The plaintiff had also paid a sum of Rs.1,14,94,502/- during the year 2011 – 2012, toward the lease rentals.

11. The plaintiff and the defendant decided to settle their inter se dispute and thereafter an agreement dated 21.06.2012 was entered into

between the two. The plaintiff further submits that while entering into this agreement the parties had agreed on the importance of improving the golf course and maintaining the Travancore Pavilion, the Club house of the plaintiff. It was also resolved that the plaintiff would withdraw the suits and SLP filed by them, which was also done.

12. After the suits and the SLP were withdrawn, the Government of Tamil Nadu issued yet another show cause notice dated 26.09.2012 for cancellation of the lease to both the plaintiff and the defendant. This show cause notice was jointly challenged by the plaintiff and the defendant in W.P.Nos.27167 & 27168 of 2012 respectively. Meanwhile, the Government had also called both parties for a joint discussion on 28.11.2018. However, the meeting could not go through and stood postponed without assigning any reason or date. Thereafter, the plaintiff came to learn that the defendant in the third week of December 2018 unilaterally without the consent and the knowledge of the plaintiff had commenced preparation for laying the foundation for the club house in a

portion of the golf course that too when there was already a club house in existence i.e., Travancore Pavilion.

13. The plaintiff would submit that the existing club house would cater to the needs of the members of both the plaintiff as well as the defendant and if the defendant proceeds to establish a new club house it would not only be an aberration to the concept of joint lease but would also adversely affect the interest and financial condition of the plaintiff's existing club. The construction in the golf course would also cause damage to the course itself. The plaintiff would further submit that clause 20 of the agreement dated 21.06.2012 permitting the defendant to create their own facilities including their own club house at the *"COSMO-TNGF golf course in future and use the same"* does not in any way dilute the right of the joint lessee, namely, the plaintiff. The terms and conditions contained in the agreement dated 21.06.2012 does not alter or waive the right of the plaintiff as a joint lessee.

14. The plaintiff would submit that even if the defendant could act on the basis of the above recital, however, the same can be exercised only if the following requirements are satisfied:

- (a) Execution of lease deed as per Revenue Standing Order No.24 A.*
- (b) The application should be made by the joint lessee to the concerned bipartite Land Management Committee for its consent.*
- (c) Joint application under RSO 24A by both the plaintiff and the defendant to get a written consent for establishing a club house on the lease hold land. and*
- (d) Joint application to the corporation of Chennai / CMDA for planning permit and building permit.*

15. In short the plaintiff would submit that all the applications for putting up the club house should only be made jointly and without the same the application deserves to be dismissed. It is also the case of the plaintiff that to date the Government of Tamil Nadu has not granted a joint lease to

the plaintiff and the defendant and neither has a joint application been made. The meeting proposed by the Additional Commissioner of the Land Administration Department dated 28.11.2018 has not taken place to date after the same was adjourned. The plaintiff, in short would submit that without following the due process of law and in total disregard to the terms of the agreement dated 21.06.2012, the defendant is unilaterally proceeding to put up the club house and therefore they should be enjoined from doing so. The interim applications have been filed as an interim measures till the disposal of the suit for the reliefs which are already stated in paragraph nos.(i), (ii) and (iii) supra.

Counter of the defendant:

16. The written statement of the defendant and the counter affidavit filed by them are more or less on the same lines and considering the fact that this Court is called upon to decide the interlocutory applications the contents of the counter affidavit of the respondent / defendant is extracted briefly herein below.

17. The defendant which is a society registered under the Tamil Nadu Societies Registration Act, 1975 had as its main object, the promotion of the game of golf in the state of Tamil Nadu. The defendant would submit that as the game of golf grew popular and the members flocking the golf course had increased a need was felt to improve the infrastructures in keeping with the international standards. This desire was not being fulfilled / attended to by the plaintiff club. The day to day administration of the golf activities had also fallen into disarray and the day to day management of the plaintiff Club also suffered. In this background around 200 golfing members got together and formed the defendant federation in the year 1996. The defendant is also duly registered with the Registrar of Societies.

18. The defendant would further submit that majority of the golfers had made serious complaints on the running of the golf annexe by the plaintiff. Therefore, the Government had decided to take a progressive and pro active stand and wanted to make the golf course one of the best in keeping with the international standards.

19. With this objective in mind, the Government had invited the Secretary of the Service Control Board, one Mr.Randhawa to inspect the golf course and the facilities offered therein. He had reported that the club did not even offer basic facilities and on account of its poor maintenance, the golf course had deteriorated. On the basis of this report, notice dated 03.04.1997 was issued to the plaintiff to show cause as to why a tripartite committee consisting of the plaintiff, defendant and the Government should not be formed to administer the golf course. This show cause notice was challenged by the plaintiff in W.A.No.1943 of 1997. Thereafter, the proposal to form a tripartite committee was dropped. However, this Court had given liberty to the Government to extend the lease, subject to any condition.

20. By order dated 04.06.1999 in G.O.Ms.No.278, Revenue, the Government turned down the plaintiff's request for renewal and directed the restitution of the land to the Government. This order was challenged in

W.P.No.9636 of 1999 by the plaintiff and the Writ Petition was dismissed by order dated 13.10.1999, observing that the Government could take a decision taking into account the opinion of the members and their welfare. This order was challenged by the plaintiff in W.A.No.2101 of 1999. It was later dismissed as withdrawn on 24.01.2001, since in the meanwhile the parties had entered into a memorandum of understanding dated 11.01.2001.

21. Thereafter, the memorandum of understanding was placed before the Government with a joint request for renewal. It was informed that the defendant would bring in funds in order to develop the golf course to international standards. The Government by its order dated 24.03.2001 in G.O.Ms.No.138, Revenue Department was pleased to extend the lease for a period of 30 years commencing from 01.07.1996 subject to other conditions. Once again the Government had cancelled the lease in G.O.Ms.No.282, Revenue Department dated 28.06.2002 and after Writ Petitions were filed ultimately the defendant was able to persuade the Government to withdraw its decision to cancel the base. Thereafter, by

G.O.Ms.No.33, Revenue Department dated 23.01.2009, the lease was restored subject to renewed and additional terms. One of which was the formation of the Bipartite Land Management Committee.

22. The defendant would refute the contention of the plaintiff that the defendant had to consult the plaintiff before putting up its own club house in view of the terms and conditions of the G.O.Ms.No.33 dated 23.01.2009 which has been upheld by the learned single Judge of this Court as well as the Division Bench in Writ Appeal. The agreement dated 21.06.2012 has also clearly recognised the right of the defendant to construct its own club house. The Government of Tamil Nadu has also recognised and approved this need and requirement. As per G.O.Ms.No.33 dated 23.01.2009, the Bipartite Land Management Committee of the defendant had its first meeting on 04.07.2019. The presentation was made by the defendant with regard to the club house facility that they intend to provide and the proposal to build such a facility from out of the defendant's resources was also considered. Thereafter, the permission was granted for constructing a single

storied building measuring an extent of 15,000 Sq.ft which was to be used as club house.

23. Pursuant to the approval of the Government, the defendant had applied for the planning permission before the Chennai Metropolitan Development Authority (CMDA) on 12.12.2019 and planning permission was also granted on 29.01.2020 for putting up the club house measuring 1385.16 Sq.mts. Therefore O.A.No.11 of 2020 becomes infructuous.

24. The defendant would further submit that the two bipartite Land Management Committees were independent of each other and there was no necessity for calling the members of the other committee for a meeting conducted by one.

25. The defendant would submit that the plaintiff was only attempting to thwart the attempts of the defendant to put up its club house which the plaintiff had agreed to originally under the MOU dated 11.01.2001 and later

under the agreement dated 26.01.2012. Therefore, the defendant would seek to have the applications dismissed.

Contentions of the plaintiff in W.M.P.No.6967 of 2020:

26. W.P.No.5947 of 2020 has been filed by the plaintiff for a Writ of Certiorari to call for the record of the CMDA relating to the planning permission issued by the CMDA to the defendant and quash the same as being arbitrary, illegal and unsustainable. The plaintiff has moved interlocutory applications for stay of this planning permission in W.M.P.No.6967 of 2020.

27. After narrating the facts as contained in the plaint, the plaintiff in the Writ Petition would contend that after giving an undertaking to this Court in O.A.No.26 of 2019 that no construction either permanent or temporary would be undertaken by the defendant without getting any order or permission or consent from the Government authorities, the defendant had breached the said undertaking. The defendant had filed an application

for obtaining planning permission to the CMDA and had also obtained it. The plaintiff would state that the entire subscription collected from the golf playing members of the plaintiff Club was transferred to the defendant and the defendant was only paying a sum of Rs.65,00,000/- towards its share of the lease rental and the remaining amounts are utilised by the defendant. Therefore, the plaintiff would submit that the contention of the defendant that they are paying rentals is absolutely false.

28. Yet another accusation that the plaintiff would make against the defendant, is that, the defendant was pouching the golf playing members of the plaintiff club and as against 1,000 golf playing members in the year 2001, the membership has been reduced to a mere 500 members. Therefore, by reducing the membership of the plaintiff Club, the defendant was attempting to make it unviable for the plaintiff to continue with the lease.

29. The plaintiff would challenge the resolution dated 04.07.2019 passed by the Bipartite Land Management Committee of the defendant as

arbitrary, illegal and unsustainable. The plaintiff would submit that the statements made in this meeting was totally false and the decision taken therein without including the Bipartite Land Management Committee of the plaintiff club is illegal. Further, the allegation that the Travancore Pavilion does not possess the facilities and needs are totally without any iota of truth. They would ultimately contend that the planning permission which has been issued by the CMDA is totally illegal and unsustainable for the following reasons:

(a) No joint request has been made by the plaintiff and the defendant though they are the joint lessees.

(b) The CMDA has totally overlooked the interlocutory orders passed in O.A.No.26 of 2019 and 11 of 2020 in C.S.No.31 of 2019.

(c) The planning permission appears to have been given hastily.

(d) The planning permission for the club house is against the special condition 11 (i) of the Government grant in G.O.Ms.33, Revenue Department dated 23.01.2009. The lease being governed by RSO 24 A, the rights of one lessee to get planning permission in the absence of the other

has been overlooked by the CMDA.

(e)A reading of the order would clearly indicate the non-application of mind as well as non-consideration of the material facts.

Counter of the Government, the 1st respondent in the Writ:

30.The 1st respondent, namely, the Government represented by its Secretary to the Revenue Department has filed a detailed counter to the Writ Petition, wherein they have elaborated upon the joint lease which was granted to an extent of 80.40 acres of the Government land under G.O.Ms.33, Revenue [LD 2 (1)] Department dated 23.01.2000 containing several conditions and also the special conditions that had been included in the said GO.

31. They would contended that both the parties had nominated their members to form separate Bipartite Land Management Committee and on the basis of this nomination, the Government has issued G.O.Ms.No.174. Revenue and Disaster Management Department dated 19.06.2019 for the

formation of the Bipartite Land Management Committees which comprised of senior officers from the government as well as senior office bearers of the plaintiff and defendant respectively. According to the deponent, as per the special conditions imposed in G.O.Ms.33, the first meeting of the Bipartite Land Management Committee of the defendant was convened on 04.07.2019 and it was Chaired by the Additional Chief Secretary to Government, Revenue and Disaster Management Department. In the meeting it was made clear that it was only the Bipartite Land Management Committees of the respective party which could approve any construction to be put up on the lease land. In the meeting the 5th respondent, namely, the defendant herein had articulated the necessity for constructing the club house as the facilities now available is not sufficient and there is no facility for even lady members to change at the golf course.

32. The committee had also taken note of the fact that the members of the defendant federation were permitted to use the Travancore Pavilion till such time as the defendant had put up its own club house. Taking into

account the above, the Bipartite Land Management Committee of the defendant had given its consent for putting up the construction. The cost of the construction was to be borne entirely by the defendant and in pursuance of this decision the application has been made to the CMDA for planning permission to put up the club house. The deponent would further contend that despite the fact that a Bipartite Land Management Committee had been formed for the plaintiff / writ petitioner, the plaintiff had not come forward to convene the meeting and discuss issues relating to the lease from their perspective. The present petition suffers from malafides and seeks to interfere with the right vested on the respective Bipartite Land Management Committees.

Counter of CMDA, the 3rd respondent in the Writ Petition:

33. The 3rd respondent CMDA had filed a counter inter alia contending that the order of this Court dated 09.01.2020 had recorded the scope of the earlier order dated 10.01.2019 made in O.A.No.11 of 2020 in C.S.No.31 of 2019, wherein it had been clarified that the order passed on

the basis of the undertaking did not restrain the defendant / 5th respondent from filing or prosecuting applications for planning or building permission. The CMDA would leave open the necessity for a concurrence to the decision of this Court. The respondent would therefore submit that they were not under any restraint order from processing the application made by the defendant / 5th respondent. They would further submit that the planning permission granted was not final and was only on the basis of the order of this Court.

Counter of the defendant:

34. The defendant / 5th respondent had filed a detailed counter affidavit refuting the allegations made by the Writ Petitioner / plaintiff and reiterating the contentions in their counter to the applications in O.A.No.11 of 2020 and 26 of 2019. The defendant would submit that there was no necessity for the Bipartite Land Management Committee of the defendant to hear the view of the plaintiff and it was well open to them to approach their committee to put up any new construction if they so require. The defendant

would submit that the functioning of the plaintiff's facility has not been in any manner affected by the impugned order. Therefore, they sought for the dismissal of the Writ Petition.

35. When the WMP was listed before this Court on 09.03.2020, this Court after hearing the stake holders had passed the following order:

(i) In the meantime, the proceedings of the 3rd respondent shall be kept in abeyance pending the final orders in O.A.No.11 of 2020.

(ii) Post this case along with O.A.No.11 of 2020, before the same Court after getting appropriate orders from the Honourable Chief Justice since the final orders passed in O.A.No.11 of 2020, will have a direct bearing on the issue raised in the Writ Petition.

The matter was thereafter posted before this Court on various dates and arguments were advanced on either side.

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Submission:

36. Mr.T.R.Rajagopalan, learned Senior Counsel appearing on behalf of Mr.V.P.Sengottuvel, learned counsel for the plaintiff / writ petitioner would commence the arguments by contending that the lease in question is joint lease. He would refer to the prayer in the suit C.S.No.31 of 2019. He would draw the attention of the Court to the affidavit filed in support of O.A.No.26 of 2019, wherein the plaintiff has given details about the joint meeting that was called for by the Additional Chief Secretary / Commissioner of Land administration Department on 28.11.2018 and that this meeting had not been held although the Honorary Secretary to the plaintiff had reached the said venue. The learned senior counsel would therefore contend that after calling for a joint meeting, it is rather surprising that the permission for construction had been given by the Bipartite Land Management Committee of the defendant without the consent and knowledge of the plaintiff who is the joint lessee in respect of the property. From the submissions of the learned senior counsel, the following factors as

to why the suit and the Writ Petition has been moved by the plaintiff would emerge:

(a)The plaintiff and the defendant are joint lessees and any action taken in respect of the property in question has to be with concurrence of each other.

(b)No unilateral decision could be taken in respect of the land in question.

(c)Both the members of the plaintiff as well as the defendant are enjoying the facilities at the Travancore Pavilion which has now been refurbished with the modern facilities. There is no necessity for a separate golf house.

(d)The parties are yet to have the lease deed executed and without the lease deed the planning permission granted by the CMDA is without any basis and is illegal and liable to be set aside.

(e).The grant of planning permission is contrary to the condition imposed in RSO 24 A and is violative of the conditions.

f)The planning permission has been granted after the undertaking

has been given by the counsel for the defendant.

(g)The Land Management Committee has been formed pending the suit and it is only in the meeting dated 04.07.2019 that the committee had given its consent for putting up the club house of the defendant.

37. The reliance on clause 20 of the agreement dated 21.06.2012 is misplaced since the consent given by the plaintiff to the defendant to put up their own Club house does not do away with need for a joint consultation. The learned senior counsel would also highlight the fact that from a perusal of the draft minutes of the first meeting of the Bipartite Land Management Committee of the defendant which has been forwarded by the defendant, it is evident that the Additional Chief Secretary, Revenue and Disaster Management and Principal Secretary to the Government, Finance Department had both left the meeting midway and therefore any decision taken in this joint meeting is not a decision taken by the Government after applying their mind.

38. The planning permission granted by the CMDA on 29.01.2020 is without application of mind. In paragraph no.7 of the said order the CMDA have themselves stated that planning permission is granted on the basis of copies of documents being furnished like, sale deed, patta, lease deed, gift deed etc, which in the instant case has not been produced since admittedly no lease deed has been entered into between the plaintiff, defendant and the Government. The order further stipulates that no construction activity can be commenced without the building approval. The learned senior counsel would rely upon the following Judgements:

(i) **(2013) 9 SCC 221** – Mohd. Mehtab Khan and others Vs. Khushnuma Ibrahim and others.

(ii) **AIR 1999 Del 325** – Kimti Las Vs. Indru Kundra

39. The above arguments are countenanced by Mr.P.R.Raman, learned senior counsel appearing on behalf of Mr.C.Seethapathy, learned counsel for the defendant. The learned senior counsel would first contend

that the plaintiff and the defendant had entered into memorandum of understanding on 11.01.2001 in which originally the golf course was to be managed by a governing body consisting of 11 members, 5 from the plaintiff's side, 5 members from the defendant's side and one person to be nominated by the Government of Tamil Nadu / appropriate authority. The Chairman of the Governing body was to initially be from the defendant Federation who was to hold office for a period of 5 years. Thereafter, by rotation the Chairman would be the President of the Club / Federation alternatively, each holding office for a period of 1 year. However, the administration was to be in the hands of the defendant. He would also draw the attention of the Court to clause 4 (v) of the MOU dated 11.01.2001, wherein it was agreed that the defendant would have the right to create the facilities such as club house, rest house etc in the golf course for the use of its members. The main club members who play golf were also permitted to use this facilities on terms to be mutually agreed upon by the plaintiff and the defendant. They had further acknowledge the fact that the Travancore Pavilion adjacent to the golf course would be the exclusive property of the

club.

40. The learned senior counsel would further submit that in the earlier suit in C.S.No.339 of 2008 filed by the plaintiff the very same objections as raised in the instant suit had been raised. The decision of the defendant to put up a club house of its own was the subject matter of challenge in these proceedings where the plaintiff had taken a stand that before any decision affecting the golf course is taken, the defendant should at least consult, discuss and obtain the consent of the plaintiff who is the joint lessee.

41. Thereafter, the Government has passed G.O.Ms.33 dated 23.01.2009. The plaintiff has challenged even this Government Order which was dismissed and the Writ Appeal filed against this also dismissed as against which SLP was moved. The suit C.S.No.339 of 2008 was dismissed by Judgement and Decree dated 27.06.2012 since the parties had compromised amongst themselves. Considering the fact that the suit has been withdrawn the provision of Order XXIII Rule 1 one would operate and

the instant suit cannot be filed as it amounts to re-litigation.

42. He would submit that to the show cause notice that has been issued appropriate replies have been sent and he would submit that on account of the non-payment of the lease rentals by the plaintiff the lease deed is yet to be executed and this cannot stand in the way of the defendant putting up its Club house especially when the defendant has been prompt in the payment of lease rentals post 01.07.1996. He would also draw strength from the counter filed by the 1st respondent in W.P.No.5949 of 2020, wherein the Government has taken a stand that the permission has been granted by the Bipartite Land Management Committee of the defendant for constructing the club house and has also stated that the proposal to construct the club house has been taken only after due deliberations. The Government having convened a meeting of the Bipartite Land Management Committee of the defendant have granted permission only on consideration of the documents provided by the defendant. On the basis of this permission the defendant had applied for planning permission. He would

therefore submit that there is no merits in the claim of the plaintiff and no prima facie for grant of injunction or stay of the planning permission has been made out.

43. Mr.T.R.Rajagopalan, learned senior counsel in reply would submit that the earlier suit was based on G.O.Ms.No.138 whereas the present suit is based on G.O.Ms.No.33, which gives rise to a separate and independent cause of action. G.O.Ms.No.138 has been cancelled and thereafter the fresh Government Order in G.O.Ms.No.33 was issued. Therefore, the plaintiff cannot be non-suited on the ground of res judicata / re-litigation.

44. The learned senior counsel reiterated the earlier stand which has been taken by the plaintiff that they had not given their permission to put up the club house. After permitting them to jointly run the golf course, the defendant is attempting to totally usurp the grounds. The learned senior counsel would submit that there is no lease agreement permitting the

defendant to put up a club house. He would submit that the entire events leading to the issue of planning permission has been done in an hurried manner. It is clearly evident that the rule of law has not been followed. He would once again reiterate the prayer for injunction.

45. Mrs.Narmadha Sampath, learned Additional Advocate General appearing on behalf of the 1st respondent in Writ Petition would contend that the permission to put up the construction is on condition that at the end of lease period any construction put up should be returned in its as is where is condition to the Government. She would submit that the planning permission if any granted is subject to further conditions which the defendants are bound to fulfil.

Discussion:

46. Heard the learned senior counsels, Additional Advocate General and perused the papers.

47. The entire issue in the suit and the Writ Petition revolves around a single issue, namely, whether the defendant could put up a club house for a benefit of their members without the consent and approval of the plaintiff. In order to arrive at an answer to the above it is essential to extract two relevant clauses, clause 4 (v) and 4 (vii) from the Memorandum of Understanding dated 11.01.2001 and clause 20 of the Agreement dated 21.06.2012 entered into between the plaintiff and the defendant which contains the essence of the agreement between the two.

48. Clause 4 of the MOU dated 11.01.2001 deals with the understanding between the parties regarding the management of the Golf course, which includes the improvement made and existing thereon and the facilities on the lands not covered by the Golf Course. Therefore, clause 4 makes it clear that the terms of this clause relates not only to the Golf course but also to those portions not covered by the Golf course. Sub-clause (v) therein would read as follows:

"Tamil Nadu Golf Federation shall have the right to create the facilities such as Club House, Rest House etc, in the Golf course for the use of its members. Main Club members playing golf will also be allowed to use these facilities on the terms to be mutually agreed between the Federation and the Club."

Sub-clause (vii) would read as follows:

"The Travancore Pavilion adjacent to the Golf course shall be the exclusive property of the Club".

Therefore, a conjoint reading of the two would indicate that the Travancore Pavilion which is the exclusive property of the plaintiff Club is not on the Golf course but adjacent to it and a right is given to the defendant to put up their facilities like Club House, Rest House etc in the Golf course.

49. Coming to the agreement dated 21.06.2012, the same has been entered into with a view to provide large scale improvements in the Golf course for the benefit of their respective members. This was after the plaintiff had unsuccessfully challenged G.O.Ms.No33. The agreement

spells out the obligations of the plaintiff and the defendant individually and the mutual obligations as well as the cumulative rights. The obligation of the plaintiff was to withdraw the proceedings challenging the validity of G.O.Ms.33 and the withdrawal of C.S.No.210 and 339 of 2008 filed by the plaintiff against the defendant. The plaintiff had also acknowledged that out of the 5 members the plaintiff club who were to constitute the Bipartite Land Management Committee of the plaintiff along with 5 members of the Government would have two members who would be nominated by the defendant.

Clause 20 would read as follows:

"TNGF can create their own facilities including their own Club House at the COSMO - TNGF Golf course".

50. The plaintiff had contended that this clause does not give the defendant a carte blanche (free rein) to put up the construction without the consent of the plaintiff. At first blush this argument appears attractive, however, the same has to be examined from some of the conditions of

G.O.Ms.No33 particularly condition no.11 which contains the special conditions. Condition No.11 (iii) & (iv) reads as follows:

" (iii)குத்தகை நிலத்தில் கட்டுமானப் பணிகளோ, கோல்ப் விளையாட்டினை ஊக்குவிக்கும் பொருட்டு இதர விரிவாக்கப் பணிகளோ கோல்ப் விளையாட்டிற்கு தேவைப்படின், கோல்ப் பெடரேசனுக்கான இருதரப்பக் குழுவின் முன் அனுமதியின்றி ஏதம் மேற்பொள்ளக் கூடாது

(iv)குத்தகை நிலத்தின் பயன்பாட்டை பொறுத்தவரை சம்பந்தப்பட்ட நிலநிர்வாக குழு முடிவெடுக்கும் அதிகாரம் உள்ள தலைமை அமைப்பாகும் (Land Management Committee is the supreme body)"

51. This condition clearly stipulates that in order to put up any construction or expanding facilities for the purpose of improving the game of golf the permission of the Bipartite Land Management Committee of the defendant is required [11 (iii)]. It further stipulates that the usage to which the base land is to be put shall be decided by the respective Bipartite Land

Management Committee.

52. Incidentally, the plaintiff had challenged this GO on some of the conditions which included conditions 11 (v). The plaintiff has not consciously challenged clauses 11 (iii), 11 (iv) of the said GO.

53. Therefore the clause which had imposed a condition that the defendant could not undertake any construction or development activity without the consent of their Bipartite Land Management Committee was not challenged. This clearly implies that the plaintiff have recognised the fact that the construction / development to be done by the defendant was independent of the plaintiff. The plaintiff is therefore estopped from questioning the right of the defendant to put up construction without reference to the plaintiff.

54. Thereafter, the plaintiff and the defendant have entered into the agreement dated 21.06.2012 wherein again it has been reiterated in clause

20 that the defendant could create its own facilities at the golf course. After having categorically agreed to the defendant putting up its own club house the plaintiff has now taken a “U” turn. The plaintiff has questioned the planning permission as well as the right of the defendant to put up the club house on the ground that no lease deed has been entered into between them and the Government. The lease deed has not been entered into only on account of the fact that the plaintiff has not paid the arrears of rent. The plaintiff cannot seek to take advantage of their omission to contend that without the lease deed the planning permission cannot be granted.

55. The Bipartite Land Management Committee of the defendant has examined the entire project and thereafter accorded its permission in the meeting held on 04.07.2019. The meeting is questioned by the plaintiff on the ground that two of the main members representing the Government had left the meeting midway. However, a reading of the minutes of this meeting would clearly show that both the members were present when the discussion regarding the construction and the presentation by the defendant's architect

was being made. Therefore, the consent is not one made mechanically but has been done only after examining the feasibility and legality of the same.

56. In G.O.Ms.No.33, it is made clear that there shall be a separate Bipartite Land Management Committee for both the plaintiff and the defendant and decisions had to be taken by the respective Bipartite Land Management Committee with reference to either the plaintiff or the defendant. The order does not state that any decision has to be done by consultation. If the intent of the Government was that the decision had to be taken unanimously they would not have contemplated having two Bipartite Land Management Committees more particularly when they had initially under G.O.Ms.138 contemplated a single Land Management Committee.

57. The plaintiff who has not questioned clause 11 (iii) and 11 (iv) of the G.O.Ms.33 and who has signed on the dotted lines both in memorandum of understanding dated 11.01.2001 as well as the agreement dated

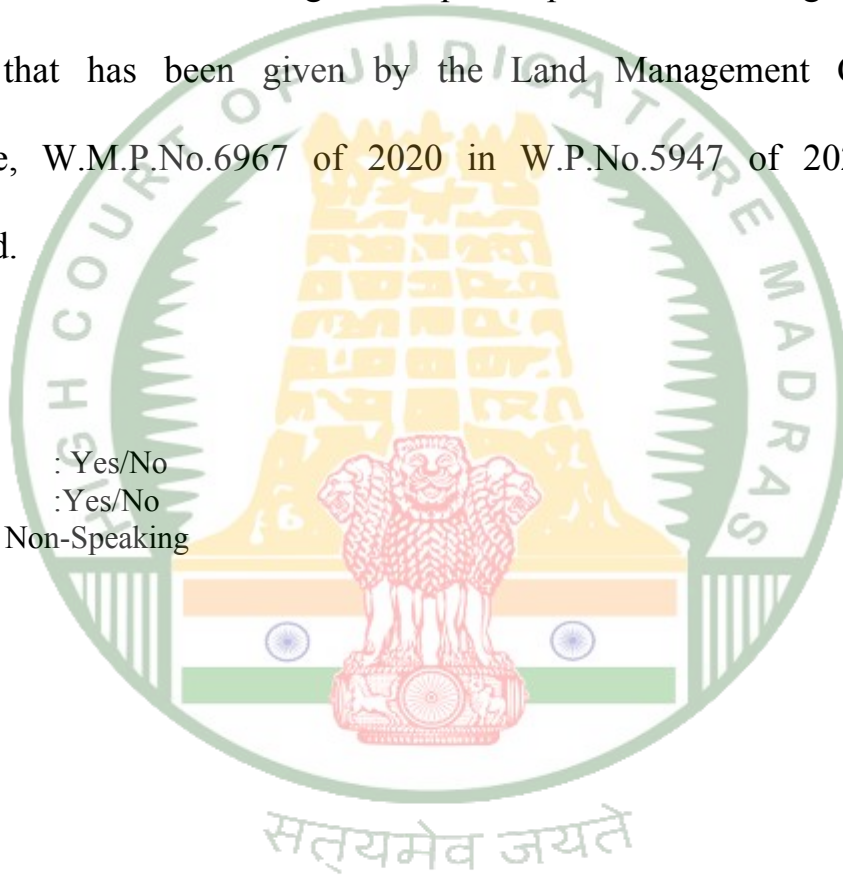
26.01.2012 recognising the right of the defendant to put up club house cannot now adopt a dog in the manger attitude. The plaintiff had chosen to retain the defendant in order to ensure that the lease in respect to the golf course was not terminated. After taking advantage of the investment made by the defendant the plaintiff is now renegeing on the agreement. The plaintiff has not made out a prima facie case for grant of an order of injunction and neither is balance of convenience in their favour. Consequently, the applications are dismissed. It is made clear that the above findings are purely prima facie and not an expression on the merits of the case.

58. As regards the stay of the planning permission, the undertaking given in O.A.No.11 of 2020 by the learned counsel for the defendant was that they would not put up a golf course without the planning permission and it was this undertaking that has been recorded and has been clarified by order dated 10.01.2019. Therefore, the application being made for the planning permission by the defendant cannot be called in question. A

perusal of the planning permission would clearly show that there are still permission that the defendant had to obtain before putting up the club house. The Government has also taken a stand that the defendant can put up its club house after obtaining the requisite permission taking note of the consent that has been given by the Land Management Committee. Therefore, W.M.P.No.6967 of 2020 in W.P.No.5947 of 2020 is also dismissed.

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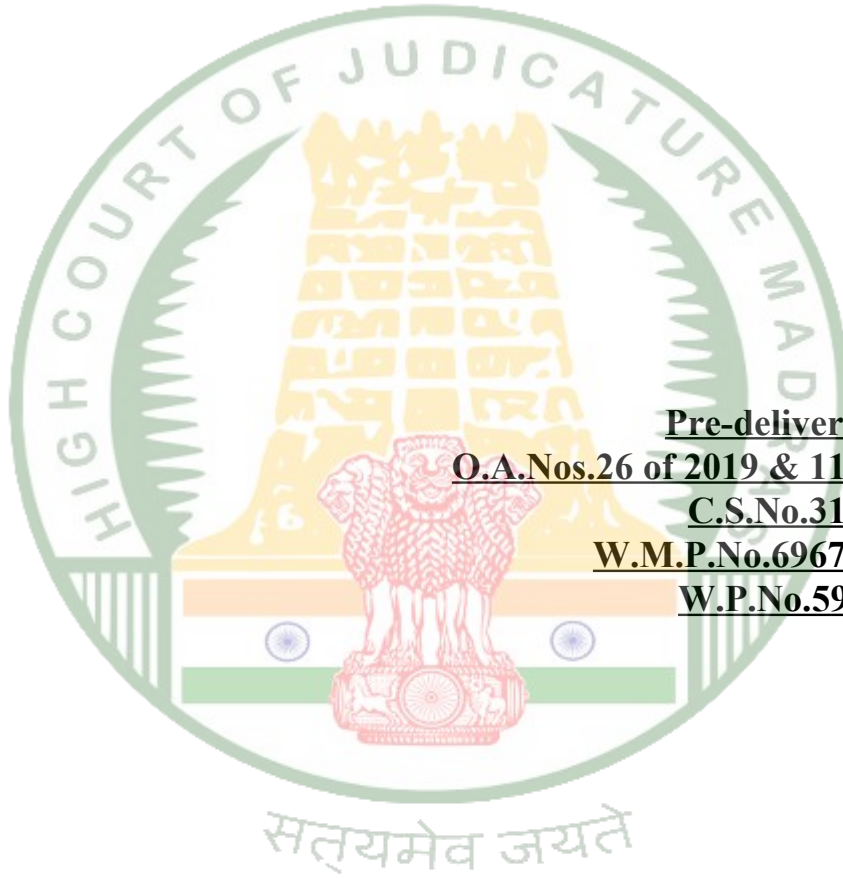
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P.T.ASHA, J.,

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Pre-delivery Order in
O.A.Nos.26 of 2019 & 11 of 2020 in
C.S.No.31 of 2019 &
W.M.P.No.6967 of 2020 in
W.P.No.5947 of 2020

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