

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 14.10.2020

Judgment Delivered on : 03-11-2020

Coram

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MR. JUSTICE C. SARAVANAN

Original Side Appeal No. 183 of 2020
and
C.M.P. No. 9466 of 2020

M/s. Prime Sports Academy
represented by S. Raja Raajan
Honorary Secretary
No.8/39, Second Street
B.K.N. Colony, Kaladipet
Tiruvottiyur, Chennai - 600 019 ... Appellant

Versus

1. The Member Secretary (Interim Administrator)
Pachaiyappas Trust (Pachaiyappas Trust Board)
Pachaiyappas College Campus
Chennai - 600 030
2. The Principal
Pachaiyappas College Higher Secondary School
Chennai - 600 031 ... Respondents

Original Side Appeal filed under Order XXXVI Rule 11 of the
Original Side Rules of this Court read with Clause 15 of the
Letters Patent against the Order and Decretal Order dated
28.02.2020 passed in Application No. 834 of 2020 in Application
No. 604 of 2020 in O.A. No. 92 of 2020.

For Appellant : Mr. G. Saravana Kumar

For Respondents: Mr. J. Srinivasa Mohan
for M/s. TVJ Associates for R1

R-2 - Notice sent, returned with
endorsement "Door Locked".

JUDGMENT

R. SUBBIAH, J

This intra-court appeal is filed by the appellant questioning the correctness and/or validity of the order dated 28.02.2020 passed by the learned Single Judge in Application No. 834 of 2020 in Application No. 604 of 2020 in O.A. No. 92 of 2020.

2. It is stated that the appellant - M/s. Prime Sports Academy was established in the year 1999 and registered under the Societies Registration Act. The object with which the appellant/Academy was established is to impart training to sportsmen in the field of athlete and other allied sports activities, for promotion and/or upliftment of sports activities and to enable individuals to participate in sports activities within the Country and abroad.

3. According to the appellant, for the purpose of achieving the objects of the academy, with the permission of the respondents, they have been using the play-ground within the premises of the second respondent-School from the year 2004. While so, the first respondent called upon the appellant to enter into an agreement as a condition precedent for continuance of the licence issued to the appellant. Accordingly, on 06.06.2017 an agreement was entered into between the appellant and the first respondent by which the appellant was permitted to use the play-ground for a period of three years from 01.10.2016 to 30.09.2019 for their athletic activities between 6.00 am and 8.00 am in the morning and from 5.00 pm to 7.00 pm without causing any disturbance or detrimental to the functioning of the second respondent school.

4. When the licence issued to the appellant was to expire, the appellant wrote a letter dated 30.09.2019 to the first respondent seeking renewal. When the appellant was anticipating to get the licence extended and/or renewed in their favour, the first respondent, by a letter dated 29.11.2019, called upon the appellant to vacate and handover the vacant possession of the play-ground by stating that the respondents have taken a policy decision to the effect that the play-grounds of any of the colleges coming within the administrative fold of the first respondent, shall not be leased/licensed for any other purpose, especially for commercial purpose. It was also reasoned that the maintenance charge offered by the appellant is very meagre while considering the locational advantage of the play-ground. Aggrieved by such refusal on the part of the first respondent to renew the licence in favour of the appellant, O.A.No.92 of 2020

was filed before this Court praying to grant an order of injunction restraining the respondents from evicting the appellant from the play-ground of Pachaiyappas College Higher Secondary School, pending disposal of the Original Application. The appellant also filed Application No.604 of 2020 praying to direct the respondents to permit the appellant to use the play-ground with liberty to renew the licence/lease for a further period of three years from 01.10.2019.

5. The learned Single Judge, after hearing the counsel for both sides, had taken note of the fact that the appellant is using the play-ground since 2003 and that they are also willing to pay Rs.1 lakh per month as licence fee, and by order dated 14.02.2020, the learned Single Judge granted an interim injunction restraining the respondents from evicting the appellant from the play-ground until 28.02.2020, subject to the condition the appellant pays a sum of Rs.1 lakh per month for the period subsequent to 30.09.2019.

6. On notice, the first respondent has filed Application No.832 of 2020 in O.A.No.92 of 2020 in Application No.604 of 2020 praying to vacate the interim injunction granted by the learned single Judge. According to the first respondent, the land--play-ground, which is the subject matter of licence in favour of the appellant was converted into a parking stand for parking 4 number of buses that belonged to the appellant or his sponsors in the premises, which is contrary to the terms and conditions of the agreement. It was also stated that the land in question is classified as a Government poramboke in the Revenue Records and the Government is the paramount title holder of such lands. Further, the Government permitted that the land in question shall be used by the first respondent Trust for conducting athletic sports or playing games by the colleges and schools. Keeping in mind the above, the first respondent/Trust had taken a policy decision not to extend the licence in favour of the appellant. Further, the licence issued to the appellant had expired even on 30.09.2019 itself, while so, the appellant has no vested right to seek for renewal. Even as per the terms and conditions of the agreement dated 06.06.2017, the licence can be renewed, subject to mutual consent of both the parties. When the first respondent is not willing to extend the period of licence, the appellant cannot compel the first respondent to extend the licence in his favour. Therefore, the first respondent prayed for vacating the interim injunction granted by this Court on 14.02.2020.

7. The learned Single Judge, by the order dated 28.02.2020, vacated the interim injunction granted on 14.02.2020 and allowed Application No.830 of 2020 filed by the first respondent herein.

The relevant portion of the order dated 28.02.2020 reads as follows:-

"15. Consequently, the contention of the learned counsel for the first respondent is that no injunction should be granted to prevent the breach of a contract, the performance of which would not be specifically enforced. Section 41 of The Specific Relief Act specifies the circumstances in which injunctive relief should be refused and clause (3) thereof covers breach of a contract, which is not specifically enforceable. In this case, the admitted position is that the licence period expired on 30.09.2019. Therefore, it cannot be said that there is a breach of licence. Instead, the fact situation herein is that the applicant made a request by letter dated 30.09.2019 for extension of licence and, in response, the same was rejected by reply dated 29.11.2019. In a statutory context wherein an injunction cannot be granted even when there is a breach of a contract which is not specifically enforceable, a fortiori, an injunction certainly cannot be granted in respect of an expired license. As per Section 63 of the Easements Act, even where a license is revoked, the licensee is only entitled to a reasonable time to leave the property by removing any goods which she has been allowed to place on such property.

16. Therefore, I am of the view that the applicant has failed to make out a prima facie case for extension of the order of ad-interim injunction. The balance of convenience is also not in favour of the applicant especially in the light of the fact that the lands in question are admittedly Government lands and the Government already initiated action to resume the said lands. Nevertheless, it is always open to the applicant to request the first respondent to grant a reasonable time to make alternative arrangements."

8. The learned counsel for the appellant vehemently contended that the appellant has been in possession of the land--play-ground since 2003. Further, as per the agreement dated 06.06.2017, the appellant had paid a sum of Rs.7 lakhs as licence fee. The appellant also expressed their readiness and willingness to pay 10% escalation of the sum of Rs.7 lakhs as a condition precedent for renewing the licence in their favour. While so, the first respondent had issued the letter dated 29.11.2019, refusing to extend and/or renew the licence in favour of the appellant for a further period, without taking

note of the fact that the appellant has been imparting training to potential young sports personnel for a period of 16 years and has not committed any violation of the terms and conditions of the licence. It is the vehement contention of the learned counsel for the appellant that the order of rejection dated 29.11.2019 had been passed without hearing the appellant. The appellant had spent huge amount for developing the land in question to suit the sports activities with the legitimate expectation that they would be permitted to use the land for a further period. The appellant is in physical possession of the land by virtue of the order of injunction granted by the learned Single Judge. Further, in Para No.10 of the counter affidavit, the first respondent has falsely stated that physical possession has been handed over to the Tahsildar, Purasawalkam, Chennai. Even according to a notice affixed in the land on 15.10.2020, only a show cause notice was issued by the Government calling upon the first respondent to entrust the possession of the land in question within 15 days, which would only indicate that possession of the land has not been entrusted to the Government by the first respondent.

9. Notwithstanding the above contentions, the learned counsel for the appellant contended that when the appellant was anticipating to get the licence renewed, the first respondent has called upon the appellant to forthwith vacate and handover the possession of the land without giving sufficient time to the appellant. Therefore, it is the contention of the learned counsel for the appellant that, in the event of confirmation of the order passed by the learned Single Judge, sufficient time may be granted to the appellant atleast till 31.07.2021, so as to enable the appellant to look for alternative land, failing which, the appellant will be highly prejudiced.

10. Per contra, the learned counsel appearing for the first respondent vehemently contended that the licence in favour of the appellant expired even on 30.09.2019 and therefore, the appellant has no vested right to seek for protection of his alleged possession of the land. Even as per the terms and conditions of the agreement, renewal can be made subject to mutual consent to be given by both the parties. When the first respondent is not inclined to extend the licence in favour of the appellant any further, the appellant cannot approach this Court and compel the first respondent to extend the licence period. Even otherwise, the Government is the paramount title holder of the land in question and the Government is also taking steps to get possession of the land. While so, the first respondent cannot extend the period of licence in favour of the appellant. The learned Single Judge, on appreciation of the above facts, has rightly vacated the order of interim injunction and it calls for no interference by this Court. The learned

counsel for the first respondent therefore prayed for dismissal of the appeal.

11. By way of reply, the learned counsel for the appellant contended that he may be permitted to file necessary application to implead the Tahsildar, Purasawalkam Taluk, Chennai for complete adjudication of the present appeal, inasmuch as it is claimed that the Government, through the Tahsildar, Purasawalkam, Chennai is taking steps to take possession of the land in question.

12. We have heard the counsel for both sides and perused the materials placed on record. It is an admitted fact that the period of licence in favour of the appellant expired on 30.09.2019. The first respondent has refused to extend the period of licence by stating that a policy decision had been taken not to extend any lease or licence in respect of the play-grounds coming within the administrative fold of the first respondent. It is also stated that the land in question belongs to the Government and a notice dated 15.10.2020 has also been issued by the Tahsildar, Purasawalkam, Chennai claiming possession of the land in question.

13. Be that as it may. The right of the appellant to get the licence extended in their favour flows from the agreement dated 06.06.2017. As per the agreement dated 06.06.2017, the appellant had entered into with the first respondent, the period of licence will be three years ending with 30.09.2019. Admittedly, the appellant's possession during the subsistence of the period of agreement, has not been disturbed. However, when the appellant sought for extension of the licence period for a further term, the first respondent refused to do so by citing a policy decision taken by the Trust Board. Even though it is stated that the land vests with the Government and steps are being taken to reclaim possession of the land from the first respondent, we are not inclined to go into those controversies. In a contractual dispute between the appellant and the first respondent, in our opinion, the Government is not a necessary party. As mentioned above, the right of the appellant to get the period of licence extended in their favour, vest with the first respondent. Such an extension is subject to the mutual consent to be given by the appellant as well as the first respondent. When the first respondent is not inclined to extend the licence period, the appellant cannot expect this Court to compel the first respondent to accept his plea for extension of the licence period. One of the terms and conditions contained in the agreement dated 06.06.2017 is that renewal of the period will be subject to mutual consent of both sides. However, the first respondent categorically expressed their unwillingness to extend the licence period. While so, the appellant cannot, as a

matter of right, seek for extension of the licence period and consequently no direction can be issued to the first respondent to either accept or reject the plea of the appellant for extension of the period of licence. In such circumstances, we find no merits in the contentions urged on behalf of the appellant.

14. For all the above reasons recorded, we confirm the Order dated 28.02.2020 passed in Application No.834 of 2020 in Application No.604 of 2020 in O.A.No.92 of 2020 by the learned Single Judge. The Original Side Appeal therefore fails and it is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

This matter is Mentioned after delivering the Judgment on 03/11/2020 and made herein in the presence of the aforesaid Counsel, on the eitherside, the Court made the following order;

After delivering the judgment, the learned counsel appearing for the appellant sought time atleast 31.07.2021 to vacate the premises in question. The time sought for by the appellant-Prime Sports Academy to vacate the premises in question till 31.06.2021 cannot be countenanced. However, having regard to the facts and circumstances of the case, the appellant-Prime Sports Academy is directed to deliver the vacant possession of the premises in question to the respondents, on or before 30.11.2020.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

The Sub-Assistant Registrar,
Original Side Section,
High Court, Madras.

+lcc to M/s.TVJ Associates, Advocate Sr.35407

OSA No.183 of 2020

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srg 10/11/2020