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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 25.11.2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.12554 of 2013 and
M.P.No.1 of 2013

M/s.Kalap Ads,
Represented by its Partner,
P.Deva Kalap Maran
S/o Paulraj Tamil Maran,
No.21 4A, East Cross road,
Gandhi Nagar, Katpadi,
Vellore - 632 006.

.. Petitioner

..Vs..

The District Collector/Chairman,
Vellore Tourism Development Promotion Society,
Personal assistant to Panchayat Development Division,
Vellore District Collector office,
Vellore.

.. Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, forbearing the respondent from in any manner calling for the Tender or auction in respect of the contract for maintaining the Vellore Fort Southern side Park for the period commencing from 13.5.2013 or for any subsequent period.

For Petitioner : Mr.P.Srinivas

For Respondent : Mr.C.Selvaraj
Additional Government Pleader

O R D E R

The relief sought for in the present writ petition is to forbear the respondent in any manner from calling for the Tender or auction in respect of the contract for maintaining the Vellore Fort Southern Side Park for the period commencing from 13.05.2013 or for any other subsequent period.

2.The prayer as such sought for cannot be granted in view of the fact that no person including the petitioner can claim any



permanent right of lease in respect of the public properties. Thus, the relief is misconceived and under these circumstances, this Court is bound to consider the facts.

3.The petitioner states that it is a registered partnership firm and earlier filed WP.No.11541 of 2013 seeking for a direction to the respondent to dispose of its application dated 11.03.2013 for renewal of the contract given to the petitioner for maintaining the South Side Park in Vellore Fort by developing the same into a tourist attraction. The respondent has suddenly taken steps to notify the tender for the said contract and also has taken steps to terminate the contract before the date of expiry, which was 12.05.2013. Admittedly, the petitioner firm had entered into a lease agreement on 21.05.2010 for maintaining the Park situated on the Southern Side of Vellore Fort for a period of 3 years. The contract was awarded by the respondent in proceedings dated 13.05.2010. The period of lease was from 13.05.2010 to 12.05.2013. In view of the fact that the respondent has taken action to notifying the tender, the petitioner filed the present writ petition with a prayer forbearing the respondent from calling for Tender or auction in respect of the contract for maintaining the Vellore Fort Southern Side Park.

4.This Court is of the considered opinion that admittedly, the lease period granted to the petitioner was 3 years from 13.05.2010 to 12.05.2013. After flouting tender wherein the petitioner was declared as successful / highest bidder. The petitioner participated in the tender and was a successful bidder and a lease was granted for 3 years. The further lease also must be granted only by following the procedure by notifying the tender and the lease cannot be continued for an indefinite period without conducting any public open auction.

5.Though there is a clause for renewal, it is for the authorities to consider and the period of renewal must be granted on certain circumstances and by way of renewal, no person can be allowed to continue the lease for an indefinite period, which will cause financial loss to the public institutions. Conducting open auction would be more beneficial to the public exchequer and therefore, the renewal on certain circumstances alone is permissible only if it is established that the public auction could not be notified on account of certain acceptable reasons. Thus, renewal can never be claimed as a matter of right by the lessee.

6.The District Collector, Vellore District in letter dated 21.11.2021 addressed to the Government Pleader, Madras High Court, Chennai states that the lease was originally given only for 3 years from 13.05.2010 to 12.05.2013, after flouting



tender, when steps were taken to hold Tender/public auction for further period, the petitioner lessee sought for extension of time and also approached the High Court by way of filing writ petition to renew the lease period. In view of the interim injunction restraining the District Collector/Chairman, Vellore Tourism Development Promotion Society, Vellore from interfering with their right to maintain the Park was granted by the High Court on 29.04.2013 and the said interim order was made absolute on 12.10.2017, the respondent was not in a position to proceed with the fresh tender notification.

7.The District Collector has stated that by virtue of an interim order of injunction granted by this Court, the petitioner is continuing with the lease for about 11 years, which was originally granted in 2010, by paying 20% additional amount per year on the lease amount.

8.It is needless to state that the prevailing market rental value of the property as of now would be far higher than that of the lease amount being collected from the petitioner. Thus, there is a possibility of financial loss to the public institutions. The Collector has further stated that the above situation has been causing inconvenience to the Government as the land belonging to the Government is maintained by a private party and depriving competition tender/public auction should be conducted, without extending the lease in favour of the lessee, who got the lease in 2010.

9.Lastly the lessee paid a sum of Rs.5,67,580/- towards lease amount for the period of 10.05.2021 to 09.05.2022 and the same is in process. The lessee also made payment of Rs.6,81,096/- for the forthcoming period of one more year from 10.05.2022 to 09.05.2023 requesting to extend the period of lease, without even completion of the existing one year. The Collector from the above process found that the individual M/s.Kalap Ads / petitioner is trying to monopolize the maintenance of the above said Park and thus depriving competition. Therefore, it would be appropriate atleast now to take necessary steps to conduct tender/public auction forthwith to fetch more income for the Government, by granting lease to the highest bidder for maintenance of the Park situated in the Southern Side of Vellore Fort.

10.The District Collector has categorically stated that there is no specific order by the District Collector granting extension of lease for forthcoming period and there was only an acknowledgment of the amount, remitted by the existing lessee. Thus, merely by depositing the amount, the lease granted to the petitioner is not extended.



11.The respondent has stated that during the inspection made by the team of officials in the leased park, where sub-tenancy of many places such as snacks shops and ice-cream shop have been made to the persons of the choice of the lessee/petitioner without approval of the District Collector from whom rents are being collected by the lessee themselves. Three trees, standing inside the park, were cut down by the lessee, without the permission of the authority and it amounts to violation of law. Under these circumstances, the respondent District Collector has stated that the interest of the Government Ex-chequer is to be protected and the respondent has decided that no more extension of lease period would be opted in favour of the petitioner and decided to terminate the lease and the petitioner is permitted to continue only by way of the interim order granted and further the lease period has not extended in favour of the petitioner and no order has been passed to that effect.

12.This Court is of the considered opinion that the long pendency of the writ petition undoubtedly caused financial loss to the State Ex-chequer. By virtue of the interim order granted by this Court in the present writ petition, the petitioner has continued to be in possession of the leased out property for about 11 years by paying meagre enhancement of lease amount. The respondent has stated that the petitioner has sublet the properties and making unjust financial gains.

13.Further, the petitioner has cut the trees without the permission of the authorities. Though, the learned counsel for the petitioner states that there is a provision to grant permission to conduct snack shops, ice cream parlours, etc., it was not intimated to the District Collector properly and further the fact remains that the lease was not extended in favour of the petitioner and is continuing only by virtue of the interim order, which cannot be allowed for an indefinite period.

14.The respondent Collector in clear terms stated that there is a financial loss to the Government exchequer and the petitioner is attempting to monopolize the maintenance of the park, which cannot be accepted.

15.This being the facts and circumstances established, this Court is of the considered opinion that the petitioner is not entitled for any relief, and a fresh tender notification is to be issued for the purpose of grant of lease to maintain the park. The petitioner, if otherwise, eligible may participate in the tender notification to be issued by the respondent. Thus, the respondent is directed to issue tender notification within a period of 30 days from the date of receipt of a copy of this order and proceed accordingly by following the processes as contemplated.



16. With these observations, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-
Deputy Registrar (CS)

//True Copy//

Sub Assistant Registrar

vs

To

The District Collector/Chairman,
Vellore Tourism Development Promotion Society,
Personal assistant to Panchayat Development Division,
Vellore District Collector office,
Vellore.

+1cc to Mr.P.Srinivas, Advocate Sr No.61147

W.P.No.12554 of 2013 and
M.P.No.1 of 2013

SSI (CO)
PR (29/11/2021)