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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P.No. 2141 of 2021

and

W.M.P.Nos. 2420 & 2422 of 2021

S.Selvam

...Petitioner

Vs.

1.The Commissioner,  
Kancheepuram Municipality,  
Kancheepuram.

2.The District Collector,  
Kancheepuram District.

...Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India seeking issuance of writ of certiorarified mandamus, calling for the records on the file of the 1<sup>st</sup> respondent inviting tender in his proceedings, pursuant to the Resolution No.305 dated 31.12.2020 and quash the same in respect of Item Nos.25 & 26 for the period 2021-2022 and consequently directing the 1<sup>st</sup> respondent to grant extension of one year for the period 2021-2022 for parking charges near Kamakshi Amman Temple and near Arulmigu Egambaranathar Temple, Kancheepuram in favour of the petitioner.

For Petitioner : Mr.M.Vijaya Kumar

For Respondents : Mr.P.Srinivas, Standing Counsel for R1

O R D E R

This writ petition is filed by the existing lessee for collecting of the toll charges for parking of vehicles in front of Arulmighu Egambaranathar Temple and Arulmighu Kamakshi Aman Temple and as against the tender notification No. 305 dated 31.12.2020 and for a consequential direction for extention of lease period for another year.



2. The case of the petitioner is that he has taken up a parking area for lease to collecting toll charges, which is in front of Arulmighu Egambaranathar Temple and Arulmighu Kamakshiamman Temple for three year i.e., 2018-2021. In the last year, due to Corona, the temples were in locked down and there was no movement of vehicles in that area so that the petitioner was not having any business during the relevant period. Even for said period, when the petitioner has already paid the lease amount, the respondent ought to have extended the period of lease for the subsequent non-operative period but, without extending the period of lease, fresh tender has been called.

3. Mr.P.Srinivas, learned Standing Counsel for the respondent / Municipality would submit that the petitioner can establish that he has not collected any toll charges for the relevant period and he is entitled for the waiver and refund of the amount for the non-operative period but, on the said ground alone he cannot challenge the impugned auction notice.

4. Treating the lockdown as a force majeure, even the Hon'ble Madurai Bench of Madras High Court in W.P.(MD) No. 19596 of 2020 has dealt with a similar issue and held as follows:-

9. The question is whether notwithstanding the stipulation of absolute performance cast on the licensee, this Court would be justified in treating the "lock down" as a force majeure event which will relieve the licensee from performing his obligation to the corresponding extent.

10. My answer is in the affirmative. Section 51 of the Indian Contract Act, 1872 states that when a contract consists of reciprocal promise to be simultaneously performed, no promisor need perform his promise unless the promisee is ready and willing to perform his reciprocal promise. As per Section 54, performance cannot be claimed till the other has been performed. The local body must keep the bus stand and the shop open and in good repair. The licensee must pay the license fee without default. If the local body had directed the licensee to close down the shop, it cannot demand fee from the licensee for the period when the shop is shut down. Of course, the licensee must be free of any wrong doing. If the licensee is made to suffer for no fault of his by direction to close down the shop, then, the question of payment of fee will not arise.



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11. There is a greater reason too. The petitioner has contracted not with a private party but with Nagercoil Corporation. It is a State instrumentality. Local bodies have been given constitutional status. In the case on hand, their actions have been governed by the directives issued by the Central and State Governments. When one party to the contract is the local body, then this Court would be justified in applying the principles of reasonableness and fairness.

12. The Hon'ble Supreme Court in the decision reported in (2004) 3 SCC 214 (Jamshed Hormusji Wadia vs Board Of Trustees, Port Of Mumbai) held that the State and its authorities including instrumentalities of States have to be just, fair and reasonable in all their activities including those in the field of contracts. Even while playing the role of a landlord or a tenant, the State and its authorities remain so and cannot be heard or seen causing displeasure or discomfort to Article 14 of the Constitution of India. A State cannot be seen to be indulging in rack-renting, profiteering and indulging in whimsical or unreasonable evictions or bargains. The validity of their actions in the field of landlord-tenant relationship is available to be tested not under the rent control legislation but under the Constitution. The rent control legislations are temporary, if not seasonal; the Constitution is permanent and all time law.

13. In Bharat Petroleum Corpn.Ltd vs. Maddula Ratnavalli [(2007) 6 SCC 81], it was held that where an entity is a State within the meaning of Article 12 of the Constitution of India, it is enjoined with a duty to act fairly and reasonably. The State acting whether as a landlord or a tenant is required to act bona fide and not arbitrarily, when the same is likely to affect prejudicially the right of others. A statute must be construed justly. An unjust law is no law at all. A statutory order or discretion exercised by a statutory authority must be tested on the anvil of the constitutional scheme. The action on the part of the State must be reasonable even in contractual matters.

14. Applying the ratio laid down by the Hon'ble Supreme Court in the aforesaid decisions, this Court holds that the terms of the license must be interpreted under the scanner of Article 14 of the Constitution of India. What applies to the landlord-tenant relationship when one party is State or its



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instrumentality, equally applies to the licensee-licensor relationship also. This sermon to the State is absolutely unnecessary. This is because the Government itself had recognized the lockdown as a force majeure event and issued G.O(D)No.298, Municipal Administration and Water Supply (MA.IV) Department, dated 02.09.2020 directing waiver for a period of two months from 01.04.2020 to 31.05.2020. There is absolutely no merit in the contention of the respondents that this G.O has not been challenged. There is no need to challenge the G.O. This is because it confers benefit on the licensees/lessees. The only stand of the licensee is that the extent of conferment is inadequate. It is seen that the said G.O was issued in response to the letter dated 18.06.2020 sent by the Commissioner of Municipal Administration. A letter sent in the month of June 2020 will obviously cover only the preceding months of April and May. No one would have anticipated that the lockdown would continue for several more months. Therefore, when the G.O was issued in September, it straightaway accepted the proposal which was confined only to April and May 2020. That is how bureaucracy functions. The Secretary to Government did not deem it necessary to go beyond the terms of the request made by the Commissioner of Municipal Administration. But a constitutional court cannot have a blinkered vision. It must take into account the position that prevails on the date when the lis is adjudicated.

15. The respondents themselves have chosen to treat the lock down restrictions as a force majeure event. But they have relieved the licensees from the obligation to pay the fees only for two months. The reason for granting waiver for the months of April and May would equally hold good for the entire "total lockdown" period. Vadaseri Bus Stand remained closed from 24.03.2020 to 06.09.2020. The respondents had directed the petitioner not to open the shop till 06.09.2020. Therefore, I hold that the petitioner is entitled to the benefit of complete waiver for the period from 01.06.2020 to 06.09.2020.

16. During early stages of the pandemic, I read an article in Business Line by R.Yashod Vardhan/P.Vinod Kumar. The article concluded as follows :

"The ICA does not profess to be a complete code on the subject of contracts and cannot provide nuanced solutions to deal with the various



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problems caused by Covid-19. If the Central Government does not come out with an Ordinance and bridge the gaps in the law, what are we left with. In an old case, a Judge observed sagaciously: "In administering the law, it is the duty of the Judge to amplify its remedies and without usurping jurisdiction, to apply its rules to the advancement of substantial justice."

G.O (D)No.298, Municipal Administration and Water Supply (MA.IV) Department, dated 02.09.2020, endeavors to fill the gap. However, it is only a baby step, when giant strides are required. It is therefore left to the court to cover the remaining distance.

17. I have no difficulty in coming to the conclusion that the petitioner stands relieved of his obligation to pay the license fee during the period from 24.03.2020 to 31.08.2020, when there was total lockdown. It is pointed out that for two more months thereafter, the licensees were allowed to open their shops only for short duration every day. In other words, lockdown was not lifted completely. The bus stand was not operational fully.

18. Therefore, I am of the view that the petitioner is entitled to call upon the respondents to revisit the quantum of license fee for the period subsequent to the lifting of total lockdown. It may not be open to this Court to enter into the finer details. I permit the petitioner to submit a fresh representation projecting his grievances regarding the period commencing from 01.09.2020 onwards. The fourth respondent will forward the said representation along with their proposal to the respondents 1 and 2 who shall consider the same and pass appropriate orders in accordance with law as expeditiously as possible."

5. The petitioner claims that he has already paid the lease amount for the entire period, due to lock down announced by the Government, he was prevented from collecting any toll charges from the month of April, 2020 to December, 2020. Though this writ petition is filed for extension of lease period for the non-operative period, the learned counsel for the petitioner confined the relief for a direction to the respondent to consider his case in the light of the aforesaid order passed in W.P. (MD) .No.19596 of 2020.



6. Accordingly, this Writ Petition is disposed of with a direction to the petitioner to make a fresh representation for refund of the lease amount which he has already paid for the lock down period also. The first respondent shall consider the same in the light of the order passed by this Court in W.P.No.19596 of 2020 within a period of six weeks from the date of receipt of copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

s/d-

Assistant Registrar (CS VI)

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Sub-Assistant Registrar

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To:-

1. The Commissioner,  
Kancheepuram Municipality,  
Kancheepuram.
2. The District Collector,  
Kancheepuram District.

+1cc to Mr.M.Vijaya Kumar, Advocate, Sr.5731

W.P.No. 2141 of 2021

and

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KKN[co]  
NSK 27/08/2021