IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on : 20.01.2021

Order pronounced on : 23-02-2021

Coram :

THE HONOURABLE MR. JUSTICE R. SUBBIAH

Application No. 3093 of 2020
in
OP No. 109 of 1942
--

T.N.K. Govindaraju Chetty and Company Pvt Ltd
rep. by its Executive Director
Thiru. P. Natarajan
No.48, Anna Salai
Chennai - 600 002 .. Applicant

Versus

Administrator General of Madras and
Official Trustee of Tamil Nadu
Office of AG & OT
1st Floor, City Civil Court Additional Building
High Court Campus
Chennai - 600 104 .. Respondent

Judges summons filed under Order XIV Rule 8 of O.S. Rules read with Section 151 of the Code of Civil Procedure praying to direct the respondent to renew the lease deed dated 01.03.2017 and registered as document No. 283 of 2017, for the balance period of five years as per the order dated 23.12.2005 passed by this Court in Application No. 5467 of 2005.

For Applicant : Mr. D. Balaraman

For Respondent : Mr. P. Murugan
Administrator General and Official Trustee

ORDER

The applicant has come forward with this application praying to issue appropriate direction to the respondent to renew the lease deed dated 01.03.2017, registered as document No. 283 of 2017 for the balance period of five years as per the order dated 23.12.2005 passed by this Court in Application No. 5467 of 2005.

2. In the affidavit filed in support of the Judges Summon, it is stated by the applicant that the respondent - Administrative General and Official Trustee (in short AG & OT) has invited tender in the year 1972 intending to lease out the property in R.S. No. 93/2 (part) in Municipal Division No.32 situated at No.3, Anna Samy Naicken Street, Triplicane, Chennai measuring 4 grounds and 1535.5 square feet. In response to the tender invitation, M/s. Indian Metal & Metallurgical Corporation submitted their application and they were declared as the highest bidder by the AG & OT. M/s. Indian Metal & Metallurgical Corporation had intended to use the property on lease to be used as a car parking facility for their cinema hall which is being run by M/s. Indian Metal & Metallurgical Corporation in the name and style of Devi Theaters at Anna Salai, Chennai.

3. For the purpose of leasing out the land to the applicant, an application in A. No. 2725 of 1972 was filed by AG & OT before this Court and this Court granted permission to grant lease to M/s. Indian Metal & Metallurgical Corporation for a period of five years with option for renewing it for another five years. Accordingly, a lease deed dated 07.12.1972 was executed in favour of M/s. Indian Metal & Metallurgical Corporation by the AG & OT in which the lease amount was fixed at Rs.1,001/-. However, it is stated that the physical possession of the property was not given to M/s. Indian Metal & Metallurgical Corporation in view of the litigation pending at the instance of the erstwhile tenant, who refused to vacate

the property and handover possession. In the meantime, M/s. Indian Metal & Metallurgical Corporation was taken over by the applicant namely M/s. T.N.K. Govindaraju Chetty and Company Private Limited and all the assets of M/s. Indian Metal & Metallurgical Corporation was taken over by M/s. T.N.K. Govindarajulu Chetty and Company Private Limited. Thereafter, the applicant filed Writ Petition No. 2037 of 1990 before this Court against which Writ Appeal No. 245 of 1990 was also filed.

4. According to the applicant, after a prolonged litigation, only on 07.11.2005, the respondent could take physical possession of the property in question. Therefore, on 16.11.2005, the applicant submitted an application requesting to hand over the physical possession of the property. The applicant also filed A. No. 5467 of 2005 before this Court. By order dated 01.01.2006, this Court fixed the monthly rent payable at Rs.80,000/- for ten years with an option of two renewals for 5 years each. Based on the order dated 01.01.2006 passed by this Court, the applicant was directed to deposit refundable advance of Rs.2,40,000/- without interest. On such deposit, a lease agreement dated 27.02.2006 was executed with certain terms and conditions.

5. It is stated that before expiry of the lease period of ten years, the applicant filed A. No. 8349 of 2015 for renewal of the lease for another period of five years from 01.01.2016 at the rate of Rs.1,20,000/- per month with 5% enhancement every year. Based on the order passed by this Court in Application No. 8349 of 2015, the applicant has been paying the renewed rent of Rs.1,20,000/-

from 2016 which was also enhanced by 5% from 2017. During the currency of lease, the respondent issued a letter dated 20.08.2019 and called upon the applicant to pay Goods and Service Tax (GST) and it was also paid by the applicant and accepted by the respondent.

6. At this stage, the applicant noticed that in clause (2) of the lease deed dated 01.03.2017 registered as document No. 283 of 2017, a mistake had crept in the calculation of the annual rents, which according to the applicant, is required to be modified. The applicant therefore sent a draft and/or modified lease rent to the respondent and it was also approved by the respondent with some corrections on 23.03.2020. Thereafter, a rectification deed was presented for registration with the Sub-Registrar, Triplicane but it was returned by citing that there is no provision under the Registration Act for registration of rectification deed with variation in rent. At this stage, as the period of lease comes to an end, the applicant sought for extending the lease for another five years. While so, the respondent has issued the notice dated 23.09.2020 calling upon the applicant to surrender the vacant possession of the property on or before 01.01.2021 and expressed his intention to bring the property in auction for leasing it out to prospective bidders. On receipt of the notice, the applicant sent a letter dated 09.11.2020 requesting to extend the period of lease in their favour, but it was rejected by the respondent on 24.11.2020. Therefore, the applicant has come forward with this application.

7. Mr. D. Balaraman, learned counsel for the applicant would contend that due to the nation wide lock down imposed to arrest the spread of Covid-19

Pandemic, the applicant could not utilise the property in question inasmuch as the Cinema hall itself was closed from 23rd March and it has not resumed operations till date. In such circumstances, if the respondent evicts the applicant from the property in question which is being used for parking of the vehicles of the audience, the cinema business of the applicant will be adversely affected. As per the lease agreement dated 01.01.2016, the lease is in force till 31.12.2020. However, during the year 2020, the leased out property could not be used from 23.03.2020. It is also stated that the applicant had promptly remitted the lease amount at the rate of Rs.1,20,000/- per month from 01.01.2016 and the enhanced lease amount is being paid from 01.01.2017. While so, if the lease is ordered to be extended in favour of the applicant for a further period of five years without resorting to auction, no prejudice will be caused to the respondent. On the other hand, if the lease is not extended in favour of the applicant, the applicant will be put to irreparable loss and hardship. In such circumstances, the learned counsel for the applicant prayed this Court to issue appropriate direction to the respondent for extension of lease in favour of the applicant for a further period of five years.

8. Mr. Murugan, learned Administrative General and Official Trustee submitted a report dated 18.12.2020 and opposed the prayer sought for in the application. He would contend that even in the year 2005, while leasing out the property in question to the applicant, an Engineer report was obtained. As per the report, the lease rent can be fixed at Rs.80,000/- per month. Based on the report of the Engineer, this Court fixed the lease rent at Rs.80,000/- per month. It is further stated that the leased property is a vacant land measuring 4 grounds and

1535.50 square feet, altogether 11,135.50 square feet, situated in the heart of the City of Chennai. According to the learned Administrative General and Official Trustee, the applicant is utilising this property for commercial purpose. The learned Administrative General and Official Trustee also submitted that the guideline value of the land in question is Rs.4,020/- per square feet and the guideline value for the leased land works out to Rs.4,47,647/- per month. However, the market value of the leased out land will be higher than the guideline value. In such circumstances, if a public auction is conducted, higher amount could be fetched than the guideline value. Further, the period of lease in favour of the applicant expired and the applicant is seeking renewal as per the conditions in the agreement of lease dated 01.03.2017 with enhanced lease rent. In such event, the applicant may be directed to pay the lease amount at the rate of Rs.4,47,647/- from 01.01.2021. If the applicant is not willing to pay such amount, they may be directed to hand over the vacant possession of the land to the Administrative General and Official Trustee to enable him to go for public auction to fetch more amount, which in turn could be utilised for charity.

9. By way of reply, the learned counsel for the applicant submits that the amount of Rs.4,47,647/- assessed by the respondent-AG & OT as lease rent payable from 01.01.2021 is not only exorbitant but without any basis. As on 01.01.2020, the applicant is paying the monthly lease rent of Rs.1,45,861/-. While so, fixing a sum of Rs.4,47,647/- towards lease rent from 01.01.2021 is arbitrary. The learned counsel for the applicant therefore submitted that the lease rent payable by the applicant from 01.01.2021 may be fixed with enhancement of 10%

over and above the existing lease rent of Rs.1,45,861/-, which will be fair and reasonable.

10. Heard Mr. D. Balaraman, learned counsel appearing for the applicant and Mr. Murugan, learned Administrative General and Official Trustee for the respondent. Admittedly, the lease in respect of the property in question was confirmed in favour of the applicant in the year 1972, however, possession of the lease hold property was entrusted to the applicant only in the year 2006 after the litigation thereof was concluded. In the year 2006, the applicant paid a sum of Rs.80,000/- per month as lease rent, which was renewed from time to time. As on 01.01.2020, the applicant is paying a sum of Rs.1,45,861/- per month. This according to the respondent is very low when compared to the locational advantage the property in question possess.

11. It is an admitted fact that the applicant was prompt in paying the lease rent as also the enhanced rent from time to time without any default from 2006. Further, the applicant is utilising the property in question for the purpose of parking of cars of the audience who visits the cinema hall owned by the applicant. The property leased out to the applicant measures 4 grounds and 1535.5 square feet and it is situated in a bustling commercial locality in Anna Salai, Chennai. Having regard to the above, this Court feels that instead of fixing Rs.4,47,647/- as assessed by the respondent, a sum of Rs.3 lakhs shall be fixed as lease rent from 01.01.2021.

12. Subject to the above observation, this application is ordered as prayed for. The applicant is directed to pay a sum of Rs.3 lakhs as lease rent from 01.01.2021 with 5% escalation in such lease rent every year. The respondent is directed to execute necessary lease deed in favour of the applicant for a period of five years from 01.01.2021.

23-02-2021

rsh

R. SUBBIAH, J

rsh

Application No. 3093 of 2020
in
OP No. 109 of 1942

23-02-2021