



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P. (MD) No.23264 of 2021

and

W.M.P. (MD) Nos.19680, 19681, 19683 & 19685 of 2021

Hotel Temple Tower (P) Ltd.,
No.20/1A, S.M.Road,
Thanjavur Town,
Rep., by its Managing Director,
Mr.M.Venkatachalam.

.. Petitioner

-vs-

1.The Secretary,
Revenue (LD6(1)) Department,
Government of Tamil Nadu,
Secretariat, Fort St. George,
Chennai-9.

2.The District Collector,
Thanjavur District,
Thanjavur.

3.The Revenue Divisional Officer,
Thanjavur.

4.The Tahsildar,
Taluk Office,
Thanjavur Town.

.. Respondent

Prayer :- Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records relating to the impugned order in Na.Ka.A1/75697/2006 dated 23.12.2021 and the consequential notice in Na.Ka.A2/75697/2006 dated 23.12.2021 issued by the 2nd respondent and quash the same.

For Petitioner : Mr.M.Vallinayagam,
Senior Counsel
for Mr.D.Nallathambi

For Respondents : Mr.Veerakathiravan,
Additional Advocate General,
assisted by Mr.S.P.Maharajan,
Special Government Pleader



ORDER

Heard the learned Senior Counsel on behalf of the petitioner and the learned Additional Advocate General on behalf of the respondents.

2.The Writ Petition has been filed in the nature of Certiorari seeking interference with an order dated 23.12.2021 passed by the 2nd respondent/District Collector, Thanjavur District in Thanjavur, and also a consequential notice, also dated 23.12.2021 also passed by the 2nd respondent and to set aside the order/notice.

3.The Writ Petition has been filed by Hotel Temple Tower (P) Ltd., and by its nomenclature, we can safely assume it as a Private Limited Company at Thanjavur, and is represented by its Managing Director, M.Venkatachalam. The deponent of the affidavit filed in support of the Writ Petition is the said Managing Director, M.Venkatachalam.

4.Even before proceeding, it must be stated that both the order/notice now impugned have questioned the locus of the said individual M.Venkatachalam to represent the petitioner Hotel Temple Tower (P) Ltd. To examine the entire issues, a small deviation is required to examine the original lease granted in favour of one individual P.Selvaraj. For some reason, he had been the beneficiary of a lease dated 19.04.2002 granted by the Government.

5.It is stated by the learned Senior Counsel that the lease of land was for the purpose of putting up construction of a hotel for the benefit of the delegates, who were to attend the 8th Word Tamil Conference, which was at that point of time scheduled to be held at Thanjavur. For construction of a hotel, naturally, loan is required. P.Selvaraj, therefore, approached the Tamil Nadu Industrial Investment Corporation (TNIIC) seeking loan. It is stated that TNIIC claimed that loan cannot be advanced to a single individual and it can be advanced only to a company. P.Selvaraj approached the Government to grant the lease in favour of a company. It is, under these circumstances, that Hotel Temple Tower (P) Ltd., came to be incorporated.

6.It is stressed by learned Senior Counsel appearing on behalf of the petitioner that this fact had also been recognised and acknowledged by the Government, which also passed G.O.Ms.No.883, dated 09.12.1994 whereby, the lease, which was originally granted in the name of P.Selvaraj, was then granted in favour of Hotel Temple Tower (P) Ltd. It is therefore, insisted by the learned Senior Counsel that there is no irregularity in the incorporation of the said company, which is a juridical entity having its own identity and with a right to sue and be sued, as recognised by the Companies



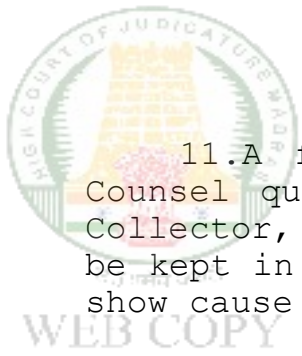
Act. It was also similarly recognised in correspondences by the Government as the actual lessee of the land/hotel.

7. But, unfortunately, there were further events which took place within the constitution of the company. P.Selvaraj, his wife Mrs. Prema Selvaraj and another individual P.Sreenivasan all resigned and in their place, M.Venkatachalam, deponent of the affidavit came to be appointed as the Managing Director. Though it may be seen that the taking over is only for the administration of the hotel alone, in truth, it is the actual taking over of a company by an entirely third party stranger to the lease agreement, who now had the right to control the interest of the hotel. This was in direct violation of the lease. The lease could have been granted to the company, but re-construction in the management of the company, should have been informed to the Government.

8. It is stated by the learned Senior Counsel that pursuant to the changes in the Management, Form No.32 as envisaged in the Companies Act, 1956 was also submitted to the Registrar of Companies. However, again that will not save the fact that P.Selvaraj, after projecting himself as the lessee, and thereafter replaced the Private Limited Company as the lessee had walked away from the management letting third party strangers to enjoy the benefits of the lease of the land over which a hotel had been constructed.

9. The learned Additional Advocate General submitted that as on date, the arrear lease amount is nearly Rs.12 Crores. He stated that the arrears of lease amount as on date, has crystallised at Rs.12 Crores and there was consistent arrears for at least 10 or more years and during that particular period, necessity had arisen for the authorities to issue notices to the petitioner herein. In all the notices, the respondents have been very consistently stating that the Management has changed hands without due notice to the Government.

10. Though a company can, by a General Body Meeting or by any other lawful manner, with the consent of the shareholders of the company, bring about changes with respect to the administration or management of a company, still in this particular case, where it revolves around a particular individual and later that particular individual had put up in front, a private limited company, an obligation was cast on that particular individual, if at all there is a change in the management to inform that to the Government and obtain their prior consent. In this case, it was incumbent on the part of P.Selvaraj, to have put on notice the Government as to why he moved away from the management of the company and handed the management over to the deponent of the affidavit M.Venkatachalam. Therefore, the contention of the respondents that M.Venkatachalam is not in lawful control of the company, when viewed from the eyes of the Government, is proper and correct.



11.A further aspect had been taken up by the learned Senior Counsel questioning the authority or jurisdiction of the District Collector, Thanjavur, to issue the impugned order/notice. It must be kept in mind that prior to issuing the order/notice now impugned, show cause notice was also issued to the petitioner herein.

12.Reliance is placed on the counter affidavit filed on behalf of the respondents in a connected W.P.(MD) No.5485 of 2016, which was also filed by the present petitioner herein questioning the quantum of lease fixed by the respondents. Reference had been drawn by the learned Senior Counsel on behalf of the petitioner to a particular statement at paragraph 6, which was filed on behalf of the respondents by the Deputy Secretary to Government, Revenue Department, Secretariat, Chennai-600009, wherein the said deponent/aforesaid Deputy Secretary to Government has stated that neither the District Collector nor the Commissioner of Land Administration had authority to fix the lease rent or to renew or to cancel the lease. This statement is held out by the learned Senior Counsel as providing an estoppel on the Government prohibiting the Government from granting any power or authority to the District Collector to initiate any action with respect to the lease particularly with respect to fixing the lease amount or renewing the lease or even to cancelling the lease.

13.The petitioner has been the recipient of all such notices relating fixing the lease amount and cancellation of the lease. Therefore, the authority of the District Collector to pass the impugned order is also seriously assailed by the learned Senior Counsel.

14.However, during the course of arguments, I had the pleasure of reading the counter further. I find that questioning various orders of the Government, the petitioner herein had also filed W.P.No.3734 of 1998, which was dismissed and thereafter, quite significantly, the petitioner herein filed O.S.No.123 of 2007 before the Principal Sub Court, Thanjavur. In the suit, the maintainability of the suit, as is the maintainability of the present writ petition, was questioned. That issue need not be examined in detail at this juncture. But it must be noted that a judicial order was passed in the said suit by the learned Principal Sub Judge, stating as follows:-

"The second defendant (i.e) the District Collector is directed to refix the lease amount to the plaintiff hotel by considering the G.O.(Ms) No.460, Revenue [LD2(1)] Department, dated 04.06.1998 as well as the clarification issued by the Government as per Ex.B11 and send the recommendation to the Government".

15.Thus, the District Collector has been granted the power by a



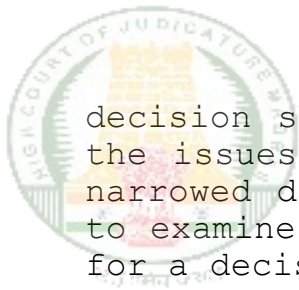
judicial order to refix the lease amount. Thus, even though in the particular part referred supra of the counter affidavit, the Deputy Secretary to the Government has stated that the District Collector had no authority to refix or enter into any discussion about the lease with respect to the hotel or the land, still a judicial order has been passed directing the District Collector to refix the lease amount. Thus, the authority of the District Collector had been upheld and recognised.

16.It is also seen that in accordance with the said order of the Principal Sub Judge, Thanjavur, the District Collector had forwarded another recommendation on 15.06.2012 to the Principal Secretary and Commissioner of Land Administration and the Government had initially stated that there was no need to refix the lease amount. Thereafter G.O.(Ms).No.115 dated 01.03.2016 had been issued. It is also seen that following the order of the Principal Sub Court, Thanjavur, in G.O.Ms.No.460 dated 04.06.1998, orders had been passed fixing the lease amount at 98% of land cost for commercial purpose and 49% of land cost for non-commercial purpose. Various other conditions had been stipulated. In fact, the Government, through the District Collector always held the reins insofar as the authority to fix or re-fix the lease amount.

17.Now, let me consider the issue of maintainability of the writ petition in the background of the aforesaid facts. The lease agreement had been presented before this Court, practically at the end of the arguments, and after it was complained by the learned Additional Advocate General that the said agreement had not been produced before the Court. It is dated 19.04.2002. The lessee of the land was the Managing Director, P.Selvaraj, Hotel Temple Tower (P) Ltd. The lease was for temporary occupation for a period of 30 years commencing from 07.06.1994. Various conditions had been given with respect to the obligations of both the lessor and the lessee. Thereafter, it had also been stated as follows:-

"25.If any dispute of difference shall at any time hereafter arise between the Government of their officers on the one part and the grantee as to the rights duties or liabilities of either party in respect of any matter or thing relating to or arising out of the grant of the loan structure or the meaning of all or any of the provisions herein contained and said dispute or difference shall be referred for settlement to arbitration of the Collector for the time being of the District and his decision shall be final."

18.It is clear that the parties, who had entered into the lease agreement, had taken a conscious decision, if there any dispute arises based on the lease, then the dispute or difference shall be referred for settlement to arbitration of the Collector and his



decision shall be final. This naturally means that examination of the issues by a Court of law, even exercising Writ jurisdiction is narrowed down and opportunity will have to be given to the parties to examine the issues by referring them to the Arbitratral Tribunal for a decision being rendered by the said Tribunal.

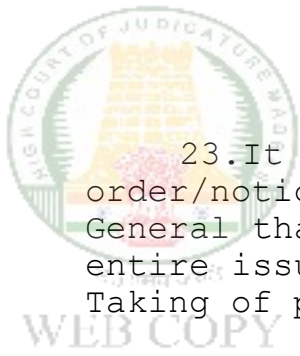
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19.Be that as it may, the learned Senior Counsel for the petitioner relied on a judgment of the Hon'ble Supreme Court reported in **AIR 1998 SC 997 [State of U.P. And others vs. Maharaja Dharmander Prasad Sing etc. and Lucknow Development Authority and others vs. Maharani Rajlaxmi Kumari Devi and others etc.]**. That judgment also related to a lease of the lands termed as 'Nazool land' and subsequent forfeiture and cancellation by the State Government. The Hon'ble Supreme Court stated that such issues cannot be allowed to be agitated under Article 226 of the Constitution of India. Quite apart from preliminary assertion of point of law by the Hon'ble Supreme Court, it was also stated that the scope of judicial review under Article 226 is narrow and judicial review or the Court examining a particular order under judicial review cannot be converted into an appellate Court. It can only be directed against the process through which the decision was taken, but not against the decision itself.

20.In the instant case, the process complained is that the Collector had no jurisdiction, and that the company, being a private limited company, had every right to change its Managing Director in accordance with the resolutions passed in a General Body Meeting convened for that purpose by the said company and therefore, the impugned notices by the 2nd respondent have to be interfered by this Court.

21.With respect to the authority of the District Collector, as it was pointed out, there has been a flow of orders and one among them is by the Principal Sub Court at Thanjavur wherein a specific power and authority was given by the District Collector to refix the lease amount and that thereafter, he should recommend the refixed amount to the Government and then the Government should pass necessary orders. Therefore, the authority of the Collector, at this point of time, cannot be questioned by the petitioner.

22.With respect to the status of the deponent of the affidavit, his position is clouded with suspicion. It is not known as to why, how and in what manner the particular individual M.Venkatachalam is projected the Managing Director of the petitioner. He was not recognised as the lessee of the land. Nor was the land leased to him. When the original lease was granted, he was not on the Board of the company. Thereafter, subsequently, he appears to have wormed his way into company. I would, therefore, not recognise him as someone who has right or authority to file the present writ petition at all.



23.It is also seen that subsequent to the impugned order/notice, it is stated by the learned Additional Advocate General that possession of the hotel had been taken. Therefore, the entire issue has become redundant, as the act had already been done. Taking of possession is a fait accompli.

24.There is also the issue of arrears of Rs.12 Crores which is the lease amount due and payable by the petitioner. The respondents are at liberty to proceed with recovery of the dues in manner known to law and can also take advantage of the Revenue Recovery Act to recover arrears of lease amount.

25.I am not inclined to interfere with the impugned order/notice.

26.The Writ Petition stands dismissed with the above observations and directions. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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Note:-In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate / litigant concerned.

To

- 1.The Secretary,
Revenue (LD6(1)) Department,
Government of Tamil Nadu,
Secretariat, Fort St. George, Chennai-9.
- 2.The District Collector,
Thanjavur District, Thanjavur.
- 3.The Revenue Divisional Officer,
Thanjavur.



4.The Tahsildar,
Taluk Office, Thanjavur Town.

+1 CC to M/s.D.NALLATHAMBI, Advocate (SR-40561[F] dated
31/12/2021)

+1 CC to M/s.SPL GP (SR-40546[F] dated 31/12/2021)

W.P.(MD) No.23264 of 2021

Dated: 29.12.2021

RD(10.01.2022) 8P 7C