IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2022

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA
AND
THE HONOURABLE MR.JUSTICE S.SOUNTHAR

O.S.A.No.68 of 2022

K.Lalitha .. Appellant/Third party

-vs-

The Official Trustee of Tamil Nadu
High Court Campus
Chennai 600 104 .. Respondent /Respondent

Memorandum of Grounds of Original Side Appeal filed under Order XXXVI, Rule 1 of the Original Side Rules read with Clause 15 of the Letters Patent, against the order dated 03.12.2021 passed in Application No.3607 of 2021 in Application No.1866 of 2021 in C.S.No.177 of 1939 on the file of the Original Side of this Court.

Application No.3607 of 2021: Application filed and Judge's summon issed under Order XIV Rule 8 of the Original Side Rules read with Section 151 of the Code of Civil Procedure to modify the annual license fee a sum of Rs.1,00,00,000/- excluding 18% GST fixed by this Court in A.No.1866 of 2021 dated 30/04/2021 as per above calculation for the licence period May 2021 to April 2022 by considering the prevailing pandamic situation & restriction.

For Appellant :: Mr.V.Lakshminarayanan

For Respondent :: Mr.M.R.Jothimanian

JUDGMENT

(Judgment of the Court was made by T.RAJA, J.)

The appellant, challenging the impugned order dated 03.12.2021 passed in Application No.3607 of 2021 in Application No.1866 of 2021 in C.S.No.177 of 1939 calling upon her to pay the balance licence fee of Rs.43,45,693/-, has filed this original side appeal.

2. Learned counsel appearing for the appellant submitted that the Bodyguard Muneeswarar Temple was established in the

platform of Pallavan Salai, Chennai facing east, which is one of the established Charities of the Madras Ordnance Pensioned Lascars registered under the Act 21 of 1860. This temple is administered by the scheme decree dated 01.08.1941 passed in C.S.No.177 of 1939 and it is now under the control of the Official Trustee of Tamil Nadu, High Court, Madras, the respondent herein. When the temple is having an extent of 64 feet of land in the platform with the hundi box maintained in the premises, after the appellant's grandfather and father were managing the temple, her mother obtained licence from the respondent following the direction of this Court and this is how the appellant has been managing the temple from the year 2012 on the basis of the licence obtained from the respondent. When the licence was earlier granted for a period of three years making provisions for payment of amount by instalments, considering the pathetic condition of the appellant's ancestors, this Court, by order dated 02.07.1998 in Application No.1187 of 1998, permitted the appellant's late father Loganathan to obtain licence for a period of three years from 01.01.1998 to 31.12.2000. However, for the period from 01.05.2019 to 30.04.2020, when the appellant became the highest bidder for Rs.76.20 lakhs, adding Rs.4,000/- over and above Rs.76.20 lakhs, she was permitted to pay the amount of Rs.76.24 lakhs by way of instalments on 10.05.2019, 10.08.2019, 10.11.2019 and 10.02.2020. The aforesaid amount of Rs.76.24 lakhs was also paid by the appellant upto 20.02.2020, in addition to Rs.13.73 lakhs paid towards GST. It is also stated that due to Covid-19 lockdown period, the said temple was closed down. Besides, the appellant also employed 32 individuals, namely, 4 poojaris, 3 security men, 10 persons for cleaning and regulating the parking of vehicles and 15 persons to conduct poojas in respect of the vehicles coming to the temple. Although the temple was kept locked, the poojaris were paid in full and for others, half pay was made, because 30 families are depending upon the income of the temple. However, from 22.03.2020, there was no pooja activities, as a result, the hundi collections were also kept locked. But the licence fee had been paid upto 30.04.2020. Finally this Court, by order dated 18.12.2020 in Application No.2084 of 2020, extending the licence to the appellant for a period of one year from 01.05.2020 to 30.04.2021 on payment of Rs.85 lakhs being the annual licence fee with 18% GST for performing poojas and maintaining the hundial collections of the Bodyguard Muneeswarar Temple, also further directed the appellant to pay the aforesaid amount in four equal instalments. Aggrieved thereby, the appellant took out Application No.597 of 2020 seeking modification of the order dated 18.12.2020 and this Court, after hearing the parties, by order dated 12.03.2021, directed the appellant to pay a sum of Rs.56,66,667/- as licence fee for the period from 01.09.2020 to 30.04.2021, for the reason that the Administrator General and Official Trustee objected to modify the licence period from 01.09.2020 to 31.08.2021, on the premise that when the licence period was to expire on 30.04.2021, a public auction may be conducted by fixing the minimum upset licence fee of Rs.1,10,00,000/- for one year from 01.05.2021 to 30.04.2022. When the respondent has been periodically collecting the licence fee from the year 2011-12, as detailed below,

Sl. No.	Year	Amount of licence fee	% of increase per year in relation to previous year
1	2011-12	Rs.42,75,000/-	-
2	2012-13	Rs.49,00,000/-	14%
3	2013-14	Rs.54,00,000/-	10%
4	2014-15	Rs.58,10,000/-	7%
5	2015-16	Rs.62,20,000/-	7%
6	2016-17	Rs.64,80,000/-	4%
7	2017-18	Rs.70,00,000/-	8%
8	2018-19	Rs.76,20,000/-	8.8%
9	2019-20	Rs.76,24,000/-	0.05%
10	2020-21	Rs.85,00,000/- (proportionate sum of Rs.56,66,667/- was paid)	11%
11	2021-22	Rs.1,00,00,000/-	17%

only for the previous year, the respondent cannot project a wrong picture before this Court, because the percentage of enhancement during the Covid pandemic period between 2020 and 2021 should be reasonable considering the loss suffered by all people. Moreover, the Government also issued various Government Orders directing the closure of all the religious institutions including the temple managed by the appellant as a licence holder. In fact, G.O.(Ms) No.504, Revenue and Disaster Management (DM-IV) Department dated 07.08.2021 indicated that in order to avoid public gathering, all the religious places and places of worship shall remain closed on Friday, Saturday and Sunday. The said restrictions were also subsequently extended by issuing another G.O.(Ms) No.522, Revenue and Disaster Management (DM-IV) Department dated 21.08.2021. Therefore, from the date of issuance of the aforementioned Government Orders, if the Friday, Saturday and Sunday are taken into consideration, the temple in question remained closed for a total period of 78 days. Hence, out of the licence fee amount of Rs.1,18,00,000/- including 18%

GST, when the appellant had already paid a sum of Rs.65,21,729/- on various dates, the appellant is liable to pay only a sum of Rs.27,56,609/-, as the temple remained closed for a total period of 78 days, for which a sum of Rs.25,21,662/- (Rs.32,329/- x 78 = Rs.25,21,662/-) has to be deducted.

3. We have heard the learned counsel appearing for the respondent also.

4. It is not in dispute that the lockdown was imposed by the State Government through various Government Orders to avoid the spread of Covid-19 pandemic. However, in G.O.(Ms) No.504, Revenue and Disaster Management (DM-IV) Department dated 07.08.2021, while extending the lockdown from 09.08.2021 to 06.00 AM on 23.08.2021, among other restrictions, the following restriction was imposed, which reads thus:-

> "A) In order to avoid public gathering at the same place and at the same time, all the religious places and places of worship shall remain closed on Friday, Saturday and Sunday."

These restrictions were subsequently ordered to be extended by issuing another G.O.(Ms) No.522, Revenue and Disaster Management (DM-IV) Department dated 21.08.2021, observing as follows:-

> "2) Now, Hon'ble Chief Minister has conducted a review meeting to evaluate the Corona prevention activities and the necessity of providing vaccination to everybody and actions needed to be taken in this regard. Based on the above review meeting, the Government hereby order, under Disaster Management Act, 2005 to extend the restrictions from 23.8.2021 to 06.00 A.M., on 06.09.2021...."

5. When the aforementioned two Government Orders have been issued by the State Government specifically directing the places of worship to be closed on every Friday, Saturday and Sunday apart from the complete lockdown imposed earlier, from the submissions made by the learned counsel appearing for the appellant, it appears that the temple in question remained closed for a total period of 78 days during the licence period, i.e., for 24 days in the months of August and September 2021 and for 54 days between May and July, 2021, which period has not been excluded by the respondent and the learned single Judge. Therefore, while deducting the sum of Rs.25,21,662/- for a period of 78 days @ Rs.32,329/- per day, we hereby direct the appellant to pay the balance amount of Rs.27,56,609/- to the respondent on or before 30.04.2022 as agreed to by the learned counsel appearing for the appellant before us. With this

modification in the impugned order, the original side appeal stands disposed of. Consequently, C.M.P.No.5364 of 2022 is closed. However, there is no order as to costs.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Sub Assistant Registrar (O.S.)
    High Court, Madras.

+1cc to Mr.V.Raghavachari, Advocate, S.R.No. 28483
+1cc to Mr.M.R.Jothimanian, Advocate, S.R.No. 28532

O.S.A.No.68 of 2022

VG II(CO)
GN(04/07/2022)