



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.01.2022

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.1052 of 2022

and

W.M.P.Nos.1114, 1116 of 2022

Gopal

...Petitioner

Vs.

1. The District Collector,
Tirupattur,
Tirupattur District.
2. The Joint Director,
District Rural Development,
Vellore.
3. The Assistant Director,
Panchayat,
Tirupattur,
Tirupattur District.
4. The Assistant Director,
Panchayat,
Audit,
Tirupattur,
Tirupattur District.
5. The Block Development Officer / Commissioner,
Solayarpettai Panchayat Union,
Solayarpettai,
Tirupattur District.
6. The President cum Chairman,
Solayarpettai Panchayat Union,
Solayarpettai,
Elagiri,
Tirupattur District.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for records in Na.Ka.No.A2/1885/2020 dated 31.12.2021 on the file of the 5th respondent.



For Petitioner : Mr.R.Rajarajan

For Respondents : Mr.V.Manoharan
Additional Government Pleader

WEB COPY

ORDER

The order impugned dated 31.12.2021 directing the petitioner to remove the giant wheel unauthorizedly installed in the nearby entrance to the public path is under challenge.

2. The petitioner states that the 5th respondent called for public tender to collect entrance fee at Punganur Eari Park, Elagiri for the period from 01.07.2019 to 30.06.2020. The petitioner participated in the tender and was a successful bidder. The petitioner complied with the terms and conditions and paid the lease amount for the period from 01.11.2019 to 31.10.2020. An agreement was executed by the 5th respondent in favour of the writ petitioner.

3. The petitioner states that as per the lease agreement, the lease period is to be extended upon the petitioner giving notice of 90 days in writing to the 5th respondent with 5% enhancement. On that ground, the petitioner seeks extension of lease period. However, the respondent has not so far passed any orders extending the lease period as per the request made by the petitioner. However, the petitioner is continuing as a lessee after the expiry of the lease period of two years as per terms of the agreement.

4. The 5th respondent / Block Development Officer / Commissioner of Panchayat Union issued a notice to the petitioner stating that he has installed a giant wheel and on 15.01.2020, a seven year old boy met with an accident in the said giant wheel and further, it is in dangerous condition. The 5th respondent issued a notice by stating that the petitioner should remove the giant wheel and all other things, whichever not permitted, within a period of seven days, failing which, action will be initiated. However, the petitioner has not removed the giant wheel and other unauthorized installations within a period of seven days. Therefore, the 5th respondent issued the impugned order stating that despite notices issued on several occasions, the petitioner has not removed the unauthorized installations and accordingly, the lease period was canceled.

5. The learned counsel appearing on behalf of the petitioner mainly contended that no opportunity was given to the petitioner and no show cause notice was issued before passing the impugned order canceling the lease. It is contended that the alleged accident to the boy occurred long back on 15.01.2020 and no complaint was lodged. Thus, the said incident cannot be a reason for cancellation of lease. The



learned counsel for the petitioner further states that on account of certain motive, the order impugned has been passed.

6. The learned Additional Government Pleader objected the said contention by stating that beyond the accident, which is admittedly occurred in the year 2020, the giant wheel installed in front of the public path is posing danger to the public, who are all coming to the park and there is no permission granted to run the giant wheel in the park. Unsafe giant wheels would cause danger to the children, who are all using the giant wheel and in the interest of public, several notices were issued to the petitioner to remove the giant wheel and other unauthorized installations and the petitioner has failed to do so and left with no option, the 5th respondent issued the impugned order canceling the lease. Thus, sufficient opportunities were provided to the petitioner to remove the unauthorized installations.

7. This Court is of the considered opinion that in respect of the certain terms and conditions of the lease agreement, parties to the agreement are very much aware of the terms. As per the terms and conditions, the petitioners are not permitted to install any unauthorized giant wheels or other things in the path. Thus, the petitioner himself is aware of the fact that he has installed the giant wheel without permission from the competent authorities. Further, the period of two years of lease expired on 31.10.2020. No doubt, the petitioner made a request for extension of lease. However, the lease was not expressly renewed by the competent authority and therefore, as of now the petitioner is not holding any valid lease.

8. Under these circumstances, it is not as if an enquiry must be conducted in respect of the contractual obligations by issuing a show cause notice. Thus, the very ground raised in this writ petition is unsustainable. However, the 5th respondent has issued several notices to the petitioner providing an opportunity to the petitioner to remove the unauthorized installations in the park. In fact, as per the reference 5th cited in the impugned order, notices were issued on 27.01.2021 and 01.12.2021 and thereafter, the Panchayat Union passed a resolution on 20.12.2021.

9. Therefore, an opportunity was provided to the petitioner to remove the unauthorized installation. Even presuming that the petitioner has not received any such notice, the petitioner is very much aware of the terms and conditions of the lease and every lessee is bound to follow the terms and conditions agreed between the parties scrupulously and in the event of any violation to the lease conditions, the other party is empowered to cancel the lease or initiate appropriate action in the manner known to law. Therefore, there is no question of conducting a regular enquiry in such cases by issuing a show cause notice, as the



terms and conditions have been signed by the parties, more specifically, in this case by the lessee/writ petitioner. This apart, installation of giant wheels in front of the park without permission would certainly cause dangerous situation and therefore, this Court finds that in the interest of public at large, such giant wheels, without permission, can never be allowed to run. Further, in the present case, there was an accident, which occurred in the year 2020. For all these reasons, the petitioner is at liberty to approach the authorities for the purpose of extension of lease or if any fresh notification is issued for tender, then participate in the tender in the manner known to law.

10. But, as of now, he is not holding any valid lease and further, he has violated the lease conditions by installing giant wheels and therefore, this Court do not find any infirmity in respect of the order impugned. Under these circumstances, the writ petitioner is not entitled for any relief. However, he is at liberty to participate if any tender is called for by the competent authorities or he is at liberty file an application for extension of lease period if permissible under law.

11. With these liberty, the Writ petition stands disposed of. No costs. Consequently, the connected Writ Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

Jeni/Rr

To

1. The District Collector,
Tirupattur, Tirupattur District.
2. The Joint Director,
District Rural Development,
Vellore.
3. The Assistant Director,
Panchayat, Tirupattur,
Tirupattur District.
4. The Assistant Director,
Panchayat,
Audit, Tirupattur,
Tirupattur District.



5. The Block Development Officer / Commissioner,
Solayarpettai Panchayat Union,
Solayarpettai,
Tirupattur District.

6. The President cum Chairman,
Solayarpettai Panchayat Union,
Solayarpettai,
Elagiri,
Tirupattur District.

+1cc to Mr.R.Rajarajan, Advocate SR. No.5537
+1cc to Government Pleader SR. No.5620

W.P.No.1052 of 2022

KJ (CO)
PR (10/02/2022)