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W.P.No.28450 of 2007

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.07.2022

CORAM

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

W.P.No.28450 of 2007
and MP No.2,3,4 of 2007

**1 M/S. RDS PROJECTS LIMITED
T2 JAIN EDEN PARK,
25 JUDGE JAMBULINGAM STREET,
MYLAPORE CHENNAI 4**

..Petitioner

Vs

- 1 THE STATE
REP BY ITS COMMISSIONER AND SECRETARY TO GOVERNMENT
MUNICIPAL ADMINISTRATION AND WATER SUPPLY
DEPARTMENT, FORT ST. GEORGE, CH-9**
- 2 CHENNAI-ENNORE PORT ROAD CO., LTD.
G5 AND 6 SECTOR 10, DWARKA, NEW DELHI- 45**
- 3 NATIONAL HIGHWAYS AUTHORITY OF INDIA,
PROJECT IMPLEMENTATION UNIT
(PORT CONNECTIVITY) 8TH FLOOR,
ANNEXE BUILDING, 88, MOUNT ROAD ,
GUINDY CH-32**
- 4 TAMILNADU ROAD DEVELOPMENT COMPANY LTD.
SINDHUR PANTHEON PLAZA, II FLOOR 346 PANTHEON ROAD
EGMORE CHENNAI 8**
- 5 THE COMMISSIONER
THIRUVOTTIYUR MUNICIPALITY CHENNAI 19**



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.... RESPONDENTS

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PRAYER.: This Writ Petition has been filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records relating to the 2nd respondent in his proceedings no 11011/7/2001-CF dated 22/8/2007 quash the same and consequently direct the 2nd respondent to discharge/release the Bank Guarantee towards the performance security and the retention money.

For Petitioner : Mr.Arivudainambi

For Respondents : Mr.R.Kumaravel
Additional Government Pleader
for R1
Mr.M.Gopikrishnan for R2 and R3
Mr.Sivavarthanana for R4
Mr.M.Ganesan for R5

ORDER

This writ petition has been filed challenging the proceedings of the 2nd respondent dated 22.08.2007 wherein the petitioner was directed to deposit a sum of Rs.85.7 lakhs towards rent for 36 months at the rate of 2,38,000/- per month



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along with interest.

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2. Heard Mr.Arivudainambi, learned counsel for the petitioner and Mr.R.Kumaravel, learned Additional Government Pleader for 1st respondent and Mr.M.Gopikrishnan for respondents 2 and 3 and Mr.Sivavarthanan for 4th respondent and Mr.M.Ganesan for 5th respondent.

3. It is brought to the notice of this Court that the enhancement of rent from Rs.2,38,000/- to 8,38,254/- per month by the 1st respondent through GO Ms.No.260 dated 19.12.2008 was put to challenge in WP No.3191 of 2009. This writ petition was allowed by this Court by an order dated 07.08.2019. For proper appreciation, the relevant portions in the order are extracted hereunder :-

2. This writ petition is filed by M/s. RDS Projects Limited challenging G.O.Ms.No.260, dated 19.12.2008, wherein the monthly rent for an extent of 8.57 Acres of land at T.S.No.27 owned by Thiruvottriyur Municipality was fixed at



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Rs.8,38,254/- for a period of 3 years from 09.07.2003 to 08.07.2006. The place (site) was taken on lease by Tamil Nadu Road Development Company Ltd., (TNRDC) who are the Managing Associates of National Highways Authority of India Project. The TNRDC had handed over the place (site) to M/s. RDS Projects Limited for stocking of boulders in that area in order to avoid keeping them on road thereby to prevent traffic congestion. The TNRDC had handed over the site to the Contractor of National Highways Authority of India (NHAI) viz., M/s. RDS Projects Limited. It is a case of TNRDC, evidenced by the correspondence dated 10.11.2006 in DO Lr. No. D/606/TNRDC/00/DP(V)/06, that there was understanding that only token rent would be charged by the competent Authority.

3. Per contra, Thiruvottriyur Municipality had raised a demand of rent for the lease land calculated the rental value at Rs.2,38,000/- per month. Upon receipt of the demand, they had forwarded the same to M/s. RDS Projects Ltd., RDS had challenged the same in writ petition No.9210 of 2006.

4. This Court by an order dated 03.04.2006, was pleased to dispose of the writ petition with a direction to the respondents to finalize the rate of rent payable for an extent of 8.57 Acres of land, situate at 27, Ennore Expressway, Thiruvottriyur, Chennai - 19 for a period of 3 years from 09.07.2003 ending 08.07.2006. The said determination was to be made within a period of 4 weeks of the production of the copy of the order. The Bank Guarantee given by the writ petitioner / RDS Projects Ltd., was to be kept alive till orders



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determining the rent is passed by the respondents and communicated to the writ petitioner.

5. There after, the Government determined the rent and imposed higher amount against the Thiruvottriyur Municipality to the tune of Rs.8,38,254/-, challenging which, the present writ petition is filed.

6. The learned Senior counsel appearing for the petitioner would submit that the project was carried out by the National Highways Authority of India (NHAI) viz., M/s. RDS Projects Limited for a public purpose and the project is of national importance. However, without considering the same, the Commissioner of Municipal Corporation, Chepauk has fixed the rent on high scale. Therefore, he prays to quash the impugned order dated 19.12.2008.

7. The learned Additional Advocate General appearing for the respondents 1 and 3 produced a letter dated 12.07.2019 and submitted that the authority has itself arrived at a fair conclusion. It is stated that in a project of national importance, the rent ought not be at market rate and should only be on a token value. Further, TIDCO and TNRDC in their communications dated 10.11.2006 and 31.10.2006, have clearly indicated that the project was for public purpose and of national importance and the rent should be at a nominal value. Accordingly, he prays for pass appropriate orders in the present petition.

8. In view of the above submission, this Court perused the letter of TIDCO & TNRDC dated 10.11.2006 & 31.10.2006 respectively. Without considering the above said letters, the



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impugned order was passed mechanically, which cannot be sustainable one. Accordingly, I am inclined to quash the order dated 19.12.2008 in G.O.Ms.No. 260 and remand the matter back to the concerned Authority.

9. The concerned Authority must consider that the project is of national importance and for public purpose. The concerned Authority is directed to pass appropriate orders and fix the nominal rate after taking into consideration of the letter dated 10.11.2006 and the communication dated 31.10.2006, within a period of 6 weeks from the date of receipt of a copy of this order.

4. As against the above order passed in the writ petition, it is brought to the notice of this Court that the Government and the Municipality have filed an appeal in W.A.No.389 of 2021 and the same is pending before the Hon'ble Division Bench.

5. The learned counsel for the petitioner submitted that in view of this subsequent development, nothing may survive for adjudication in the present writ petition. However, the learned counsel further submitted that the bank guarantee that was given by the petitioner to the tune of Rs.20,00,000/-, pursuant



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to the directions issued by this Court in WP No.9210 of 2006 by an order dated 03.04.2006 and a cheque which was issued to the tune of Rs.7,00,000/- in favour of the 2nd respondent, was encashed and thereby, a sum of Rs.27,00,000/- has been encashed by the 2nd respondent. The learned counsel submitted that ultimately when the writ appeal is disposed of by the Division Bench, this amount that was encashed by the 2nd respondent should be accounted while determining the alleged arrears of rent payable by the petitioner.

6. In the considered view of this Court, as rightly contended by the learned counsel for the petitioner, this Court need not go into the merits of the case in view of subsequent developments cited supra. It goes without saying that whatever amount was encashed by the 2nd respondent, can be brought to the notice of the Division Bench at the time of hearing of the Writ appeal for the purpose of giving credit to the same while determining the alleged arrears of rent payable by the petitioner. Except giving this clarity, no further orders can be



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passed in this writ petition. This writ petition is disposed of accordingly. No costs. Consequently, the connected miscellaneous petitions are also closed.

11.07.2022

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