



WEB COPY



W.P. No. 27478 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.10.2022

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

**W.P. No. 27478 of 2022
and
W.M.P. No. 26698 of 2022**

1. New Kenilworth Hotel Private Limited
Represented by its Compliance Officer
No. 1 & 2, Little Russel Street
Kolkata 700 071.

2. New Kenilworth Hotel (Coimbatore) Private Limited
Represented by its Compliance Officer
No. 1 & 2, Little Russel Street
Kolkata 700 071.

... Petitioners

-VS-

1. State of Tamil Nadu
Rep. by its Additional Chief Secretary to Government
Rural Development and Panchayat Raj Development
Fort St. George
Chennai – 600 009.

2. Tamil Nadu Corporation for Development of Women Ltd.
Rep. by its Managing Director
Annai Teresa Mahavir Valagam
I Floor, Valluvarkottam High Road
Nungambakkam, Chennai – 600 034.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1958, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the Second Respondent pertaining to Proceedings bearing Roc. No. 106/B3/2011 dated 07.03.2022 and quash the same and consequently direct the



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Second Respondent to transfer the lease of the land admeasuring 5 acres comprised in S.No. 451/1 (part) and 452, Vilankurichi Village, Coimbatore District deed from the First Petitioner to the Second Petitioner by executing a fresh lease deed in favour of the Second Petitioner herein with the same conditions as found in the existing lease deed dated 05.10.1994.

For Petitioners : Mr. P.Wilson
Senior Counsel
for M/s. Wilson Associates

For Respondents : Mr. P.Balathandayutham
Special Government Pleader

ORDER

Heard Mr. P.Wilson, Learned Senior Counsel appearing for the Petitioners and Mr. P.Balathandayutham, Learned Special Government Pleader appearing for the Respondents and perused the materials placed on records, apart from the pleadings of the parties.

2. It is the case of the Petitioners that the Government of Tamil Nadu by G.O. Ms. No. 254, Social Welfare and Nutritious Meal Programme (SW-V) Department dated 22.09.1994 had allotted 5 acres of land on lease to the First Petitioner for a period of 33 years for the lease amount of Rs. 7.63 lakh per annum and a lease deed dated 05.10.1994 was executed by the First Petitioner



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with the Second Respondent in that regard. Later, a letter dated 26.02.2018 was sent by the First Petitioner to the Second Respondent stating that a 'Special Purpose Vehicle company' under the name and style of 'New Kenilworth Hotel (Coimbatore) Private Limited', which is the Second Petitioner, was set up as a standalone project and it was requested to grant in-principle approval for effecting transfer of that project from the First Petitioner to the Second Petitioner with 'no objection' to such proposal for demerger. In furtherance to the order dated 30.04.2019 in W.P. No. 11260 of 2019 passed by this Court, the Second Respondent by proceedings in Roc. No. 106/B3/2011 dated 07.03.2022 passed orders on the said representation made by the Petitioners stating as follows:-

“ Special Purpose Vehicle by nature is registered as a legal entity by itself. Accordingly, the proposed Special Purpose Vehicle, M/s. New Kenilworth Hotel Pvt. Ltd. And M/s. New Kenilworth Hotel Pvt. Ltd. And M/s. New Kenilworth Hotel (Coimbatore) Pvt. Ltd. are distinct from each other as having distinct and separate legal entities.

As per the clause 14 of the lease deed executed between the TNCDW and M/s. New Kenilworth Hotel Pvt. Ltd., “the



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Lessee shall not assign, under-let or sub-let the hotel project". Also, there is no enabling provision in the deed for transfer of the project from one legal entity to another legal entity.

In the circumstances stated above, it is hereby informed that as per the provisions of the lease deed and statutory provisions, the request for "in-principle" approval for effecting transfer of the Project from the company viz. New Kenilworth Hotel (Coimbatore) Private Limited and also to issue "No Objection" to their proposal for demerger, is not possible and your representation for issuing approval, is rejected."

The rejection of the request for approval for demerger is challenged in this Writ Petition.

3. Learned Senior Counsel appearing for the Petitioners vehemently contended that the First Respondent by Order No. 20044/CGS.3/2013 dated 07.04.2021 had directed that necessary action may be taken for effecting transfer of the existing project from M/s. New Kenilworth Hotel Private Limited



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to the Special Purpose Vehicle, viz., M/s. New Kenilworth Hotel (Coimbatore)

Private Limited, subject to the condition that the existing lease-deed

may be cancelled/modified in consultation with the Petitioners and a fresh lease deed may be entered with the Second Petitioner with the same conditions as already laid down in the existing lease-deed with validity upto 26.09.2027, but the impugned order has been passed without even referring to it. That apart, it is highlighted that the National Company Law Tribunal, Kolkata by order dated 16.08.2021 in C.P. (CAA) No. 589/KB/2018 connected with C.A. (CAA) No. 569/KB/2017 had passed an order for transfer of assets and liabilities of the First Petitioner to the Second Petitioner, meaning thereby that the request for name transfer was based upon legal proceedings, which has to be taken into consideration for continuance of the project as otherwise it would not be possible for the First Petitioner to proceed further in the matter. It is also brought to notice that the First Petitioner had made a representation dated 12.04.2022 to the First Respondent to re-consider the impugned order passed by the Second Respondent and the First Respondent has on 09.05.2022 forwarded the said letter to the Second Respondent for taking necessary action in that regard. It is informed that another representation dated 20.10.2022 has been made by the Petitioners to the Second Respondent to re-consider the matter taking into account the aforesaid germane facets of the matter for the



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effective implementation of the project.

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4. It is evident from the materials borne out of the record that inasmuch as the impugned order has been passed without reference to the Government Letter No. 20044/CGS.3/2013 dated 07.04.2021 and order dated 16.08.2021 in C.P. (CAA) No. 589/KB/2018 connected with C.A. (CAA) No. 569/ KB/2017 passed by the NCLT, Kolkata, it cannot be sustained and has to be set aside, and the matter has to be remitted to the Second Respondent for fresh consideration in the light of the recommendations made by the First Respondent in the said order and taking into account the representation dated 20.10.2022 made by the Petitioners in that regard.

5. In such circumstances, the following order is passed:-

- (i) the impugned Order in Roc. No. 106/B3/2011 dated 07.03.2022 passed by the Second Respondent is set aside and the matter is remitted to be considered afresh having due regard to the aforesaid observations made; and
- (ii) if it is found that any other details or supporting documents are necessary, the same shall be informed in writing to the Petitioners



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requiring it to be furnished within a time frame of not less than 15 clear working days in that regard, and in the event of not being satisfied with the requirements even thereafter, an enquiry shall be conducted affording full opportunity of personal hearing to the Petitioners to explain their position in that regard and a reasoned order shall be passed dealing with each of the contentions raised on merits and in accordance with law and the decision taken communicated by 28.02.2023 under written acknowledgment.

6. In the result, the Writ Petition is disposed on the aforesaid terms. Consequently, the connected Miscellaneous Petition is closed. No costs.

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Index: Yes/No

Note: Issue order copy by 28.12.2022.

To

1. Additional Chief Secretary to Government of Tamil Nadu
Rural Development and Panchayat Raj Development
Fort St. George,
Chennai – 600 009.
2. The Managing Director
Tamil Nadu Corporation for Development of Women Ltd.



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P.D. AUDIKESAVALU, J.

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