



W.P.(MD)No.14209 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 22.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P.(MD)No.14209 of 2013
and
M.P.(MD)Nos.1 and 2 of 2013

A.Peer Mohammed

... Petitioner

versus

1. The State of Tamil Nadu,
Rep. by its Secretary to Government,
Revenue Department,
St. George Fort,
Chennai – 9.

2. The District Collector,
Pudukkottai District,
Pudukkottai.

3. The Tahsildar,
Aranthangi,
Pudukkottai District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India,
seeking for the issuance of Writ of Certiorari, to call for the records



W.P.(MD)No.14209 of 2013

from the 3rd respondent's proceedings in Na.Ka.No.3149/13/Aa.1 dated 10.07.2013 and quash the same with a consequential direction to fix the lease amount as per G.O.Ms.No.506, dated 16.11.2001 read with G.O.Ms.No.223 dated 07.07.20009 after hearing the petitioner.

For Petitioner : Mr.N.Balakrishnan

For Respondents : Mr.A.Baskaran,
Additional Government Pleader

ORDER

This writ petition is filed challenging the demand notice made by the third respondents dated 10.07.2013, in and by which, the petitioner was directed to remit a sum of Rs.44,18,059/- as arrears of lease amount for the land in Survey No.18/1 in Rathnakottai Village, Aranthangi Taluk.

2. The petitioner is a Dealer in Indian Oil Corporation and is running a Petrol bunk at Aranthangi Municipal Town in Survey No.18/1, in Rethinakkottai Revenue Village, which comes within the jurisdiction of Aranthangi Municipality. The said land is classified as



W.P.(MD)No.14209 of 2013

tank poramboke and by order of the then District Collector, Thanjavur, the land to an extent of 0.17 cents in Survey No.18/1 at Rathinakkottai Village, Aranthangi, was leased out to one Mohammed Ibrahim for the purpose of running a petrol bunk for the period from 01.07.1972 to 30.06.1989. Thereafter, the original lessee, namely, Mohammed Ibrahim, transferred his right in favour of one Peer Mohammed, who is the petitioner herein and one R.K.A.Kalanthar Mohideen on 02.02.1994. The present lessees have applied for extension of lease from 01.07.1989 to 30.06.2001 and the same was considered by the Secretary to the Government, vide G.O.Ms.No.506 dated 16.11.2001 and extended the lease period by G.O.Ms.No.460 dated 04.06.1998. The Tahsildar, Aranthangi, Pudukkottai District, by the order impugned in this writ petition, made a demand to the writ petitioner, to remit a sum of Rs.44,18,059/- as arrears of lease amount for the land in Survey No.18/1 in Rathnakottai Village, Aranthangi Taluk, which is under challenge in this writ petition.



W.P.(MD)No.14209 of 2013

3. The learned counsel appearing for the petitioner submits that the first respondent alone is competent to fix the rent and this demand notice issued by the third respondent on behalf of the second respondent is not legally sustainable. The leasehold land is situated at Rathnakottai Village coming within the jurisdiction of Aranthangi Municipality. The levy of local cess and local cess surcharge is made by invoking Sections 167 and 168 of the Tamil Nadu Panchayat Act 1994. But, Section 1 of the Tamil Nadu Panchayat Act 1994 clearly mandates that the provisions of the Tamil Nadu Panchayat Act, 1994 do not extend and apply to municipalities. Therefore, the levy of cess and local cess surcharge on the lease amount of 2% of land value in pursuance of G.O.Ms.No.460 dated 04.06.1998 is without jurisdiction, since the property is situated within Ranthangiri Municipality Limited. As per G.O.Ms.No.223 dated 07.07.2009, the Government of Tamilnadu has abolished the collection of local cess and local cess surcharge even in non-municipality areas. Therefore, the respondents are not legally entitled to collect the surcharge and the lease amount.



W.P.(MD)No.14209 of 2013

WEB COPY

4. The learned counsel appearing for the petitioner further submits that the demand of Rs.55,98,165/- by the third respondent as total lease arrears payable by the petitioner from 01.07.2001 to 31.06.2013 is vitiated as there were no particulars, data or basis provided by the third respondent for arriving at Rs.55,98,165/-. He further submits that the 3rd respondent has committed grave irregularity in taking 14% of land value of the leased site to fix the lease amount based on G.O.Ms.No.460 dated 04.06.1998, ignoring the latest G.O.Ms.No.223 dated 07.07.2009 abolishing 2% local cess and 10% local cess surcharge as referred to in G.O.Ms.No.460, dated 04.06.1998. Therefore, the demand notice issued by the third respondent is *per se* illegal and unsustainable in law.

5. The learned Government Pleader appearing for the respondents submits that the then District Collector, Thanjavur, granted a lease of 0.17 cents in S.No.18/1 of Rathinakkottai Village, Aranthangi in favour



W.P.(MD)No.14209 of 2013

of one Mohammed Ibrahim for the period from 01.07.1972 to 30.06.1989 for the purpose of running the Petrol Bunk. Thereafter, the said lease was not extended. In the mean time, on 02.02.1994 the original lessee by name Mohammed Ibrahim transferred his right in favour of one Peer Mohammed and R.K.A.Kalanthar Mohaideen. The Special Commissioner cum Commissioner of Land Administration, in his letter, stated that the lease granted can be extended in favour of successor of lessee, since the entire arrears of lease amount was collected from the original lessee, after fixing the yearly lease amount. Accordingly, as per the Revenue Standing Order No.24A, the lease for 0.17 cents and 0.4 cents (encroached area) was extended from 02.02.1994 to 30.06.2001.

6. The learned Government Pleader further submits that the land in S.No.18/1 of Rathinakkottai Village, which comes under the Aranthangi Municipality limit, is classified as Tank Poramboke in the revenue records. Further, the tank is only the source for increasing the



W.P.(MD)No.14209 of 2013

ground water level as well as other purpose of bathing in the municipality. Therefore, it is not correct to state that the said tank is not used for irrigation and also not used for drinking and bathing purposes.

7. The learned Government Pleader further submits that the petitioner is enjoying the Government Land under the lease for the commercial purpose and earning much more money by running the Petrol Bunk, however, he defaulted in payment of lease amount. Since the arrears of lease amount has become huge, the third respondent issued a demand notice dated 11.08.2011 requesting to pay the arrears within the period stipulated thereon. Challenging the said demand notice, the petitioner filed a writ petition in W.P.(MD)No.9278 of 2011 before this Court. After considering the case on either side, this Court, by order dated 29.03.2012, remitted the matter to the 3rd respondent to pass fresh orders giving monthly-wise rent payable by the petitioner within a period of 8 weeks from the date of receipt of a copy of the



W.P.(MD)No.14209 of 2013

order. He further submits that the petitioner was under wrong impression that G.O.(Ms)No.223, Revenue Department, dated 07.07.2009 would be applicable to his case. But, the said G.O. is not applicable to the petitioner's case and G.O.(Ms)No.460, Revenue Department, dated 04.06.1998 alone is applicable to the petitioner's case and based on the said G.O. the lease amount was fixed. Therefore, there is no infirmity in fixing the lease amount.

8. The learned Government Pleader further submits that from the conjoint reading of the G.O.(Ms)No.460, Revenue Department, dated 04.06.1998 and G.O.(Ms)No.506, Revenue Department, dated 16.11.2001, it is made clear that 14% of the current land value of the leased area will be fixed as an annual lease amount and on that basis, the lease amount was fixed for the subject land in S.No.18/1 of Rathinakkottai Village, Aranthangi to an extent of 24 cents.



W.P.(MD)No.14209 of 2013

9. This Court considered the rival submissions made and perused the materials available on record.

10. The third respondent, namely, the Tahsildar, Aranthangi has issued the impugned notice dated 10.07.2013, demanding a sum of Rs.44,18,059/- as arrears of lease amount for the property in Survey No.18/1 to an extent of 0.24 cents, till 30.07.2013. The lease was originally granted to one Mohammed Ibrahim for the purpose of running a petrol bunk for the period from 01.07.1972 to 30.06.1989. Thereafter, the said lease was not extended. The original lessee, namely, Mohammed Ibrahim by way of a deed has transferred his right in favour of the petitioner and one R.K.A.Kalanthar Mohaideen on 02.02.1994. Based on the representation of the petitioner, a proposal was made by the Revenue Divisional Officer, Pudukkottai on 09.01.1999 and 01.12.2000, based on which, a further proposal was made by the Commissioner of Land (Administration) in his letters dated 06.04.1999 and 21.03.2001. The Government, after considering



W.P.(MD)No.14209 of 2013

the said proposals, has extended the lease from 01.07.1989 to 30.06.2001 and by following G.O.Ms.No.460, dated 04.06.1998, fixed the lease amount as 2% of the land value of Rs.3,86,988/- with an additional surcharge of 13%. Thereafter, a demand notice was issued on 10.04.2007, which was challenged by the petitioner in W.P. (MD)No.2138 of 2001. This Court, by order dated 08.01.2010, allowed the writ petition by setting aside the demand notice dated 10.04.2007 with liberty to the respondents to issue a fresh demand notice for local cess and local cess surcharge as per law by giving full particulars and based on the demand. Accordingly, the impugned notice has been issued with the details of arrears of lease amount.

11. Admittedly, the petitioner was not an original lessee, by which, the land was allotted for lease. The petitioner's vendor has obtained the lease of 17 cents in Survey No.18/1 of Rathanakottai village and occupied some more land and now, they are in possession of 241cents. The lease was originally granted upto the year 1989 and



W.P.(MD)No.14209 of 2013

thereafter, it was not extended. While so, the petitioner purchased the lease right in the year 1994 when the lease was not in existence.

However, as per G.O.Ms.No.506, Revenue Department, Dated 16.11.2001, the lease was extended from 01.07.1989 to 30.06.2001 and the lease rent was also fixed based on the existing rent as per G.O.Ms.No.460, Revenue Department dated 04.06.1998, by fixing 2% of the land value and 13% surcharge for the same. Thereafter, a demand notice was issued in Na.Ka.No.9005/01.AA1 dated 10.04.2007. The said demand notice was challenged by the petitioner in W.P.(MD)No.2138 of 2009. This Court, by order dated 08.01.2010, allowed the writ petition by setting aside the demand notice dated 10.04.2007 with liberty to the respondents to issue a fresh demand notice for local cess and local cess surcharge as per law by giving full particulars and based on the demand. Only thereafter, the impugned demand notice was issued claiming Rs.44,18,059/- as arrears of lease rent till 30.07.2013. However, the third respondent has not furnished the details as to how the amount has been arrived at. The details



W.P.(MD)No.14209 of 2013

furnished reveal that 14% was calculated as lease rent. But, the lease was extended vide G.O.Ms.No.506, Revenue Department, dated 10.11.2001, by fixing the lease rent as 2% of the land value plus 13% of surcharge for the same. It is not known as to how the lease amount has been fixed at 14%. It appears that the respondents are also facilitating the petitioner by providing reasons for filing this writ petition and taking advantage of the same, the writ petitioner is also in occupation of the property, without extending the lease period and without paying the lease rent from the year 2001. Further, the petitioner claims that he is liable to pay Rs.3,80,368/- as the rent, till 30.06.2013. However, he has not paid even that amount also. On this ground, the writ petition is liable to be dismissed.

12. Accordingly, the writ petition is dismissed. The petitioner is directed to pay the admitted lease amount of Rs.3,80,368/- till 30.06.2013 and also to pay the admitted arrears amount till date. On such payment, the competent authority shall fix the lease amount



W.P.(MD)No.14209 of 2013

month wise, with the details as to how it has been calculated. The authority shall also decide with regard to the extension of lease within a period of four months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

22.04.2022

ogy

Index : Yes / No.

Internet: Yes / No.

To

1. The Secretary to Government,
Revenue Department,
St. George Fort,
Chennai – 9.
2. The District Collector,
Pudukkottai District,
Pudukkottai.
3. The Tahsildar,
Aranthangi,
Pudukkottai District.



WEB COPY



W.P.(MD)No.14209 of 2013

B.PUGALENDHI, J.

ogy

W.P.(MD)No.14209 of 2013

22.04.2022