



W.P(MD)No.7441 of 2012

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **05.07.2022**

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THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

W.P(MD)No.7441 of 2012

and

M.P(MD)No.1 of 2012

The Headmistress,
Scared Heart Girt's Hr.Sec.School,
Srivilliputtur Town,
Virudhunagar District.

... Petitioner

Vs.

1.The Government of Tamil Nadu
Represented by it's Secretary,
Revenue Department,
Fort St.George, Chennai.

2.The Special Commissioner and
Commissioner of Land Administration,
Chepauk, Chennai-5.

3.The District Collector,
Virudhunagar District,
Virudhunagar.

4.The Tahsildar,
Taluk Office,
Srivilliputtur Town,
Virudhunagar District.

... Respondents



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PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order in Na.Ka.No.A1/9823/03, dated 23-09-2010 on the file of the fourth respondent herein is ultra vires and unconstitutional and quash the same and consequently direct the respondents herein to assign the land in T.S.No.165/1b measuring an extent of 0.37 cent in Srivilliputtur Town in favour of the Petitioner's School to use the said land as play ground for the Petitioner's School.

For Petitioner : Mr.M.Thirunavukkarasu

For Respondents : Mr.D.Sasi Kumar
Additional Government Pleader

ORDER

The present writ petition has been filed by an aided school, challenging an order passed by the fourth respondent herein, wherein the lease amount for the vacant site belonging to the Government, which is used by this school has been enhanced based upon the G.O.Ms.No.460, dated 04.06.1998.



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2. The learned counsel for the petitioner submitted that the school was started 75 years back and the land adjoining to the school was a Government poramboke, which was leased to the school for the purpose of play ground in G.O.No.2459, dated 10.12.1990. As per the said Government Order, a nominal rent of Rs.1000/- (Rupees One Thousand only) was fixed for every year. The said nominal rent was reduced to Rs.100/-(Rupees One Hundred only) per year by way of G.O.No.867, dated 07.06.1991. Thereafter, on 26.06.2002, an order was passed by the fourth respondent herein, wherein it was decided to increase the annual lease amount at the rate of 12% per year. However, the present impugned order has been passed on 23.09.2010, in which the fourth respondent has referred to objection raised by the audit party on the ground that G.O.No. 460, dated 04.06.1998 is governing the field with regard to leasing of Government Poramboke lands. Though the said Government Order is applicable, the rent has not been fixed as per the said Government Order. Hence, the impugned order was passed, directing the petitioner school to pay a sum of Rs.16,45,679/- (Rupees Sixteen Lakhs Forty Five Thousand Six Hundred and Seventy Nine only). This order is under challenge in the writ petition.



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3. The learned counsel for the petitioner had contended that even though G.O.No.460, dated 04.06.1998 was said to be in force, as far as the petitioner school is concerned, the said Government Order was not invoked. The petitioner school is governed by different Government Orders, namely, G.O.No.2459, dated 10.12.1990 and G.O.No.867, dated 07.06.1991. According to the learned counsel for the petitioner, G.O.No. 460, dated 04.06.1998 is applicable for the leasing out of Government Poramboke lands. However, the petitioner school has been treated as a special category and the annual lease amount fixed as Rs.1000/- (Rupees One Thousand only) in the year 1990 has been reduced to Rs.100/- (Rupees One Hundred only) in the year 1991. Hence, the fourth respondent is not empowered to invoke G.O.No.460, dated 04.06.1998 in respect of the petitioner school.

4. The learned counsel for the petitioner has further contended that G.O.No.468 is dated 04.06.1998, however, as per the impugned order, the enhanced rent is being sought to be collected from 01.01.1994 i.e., four years prior to the passing of the Government Order. The learned counsel for the petitioner had contended that a copy of the audit



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objection was not furnished to the writ petitioner and the petitioner was not afforded any opportunity to explain G.O.No.460, dated 04.06.1998 is not applicable to the petitioner school.

5. Per contra, the learned counsel appearing for the official respondents had contended that G.O.No.460, dated 04.06.1998 is applicable in all cases, where Government Poramboke lands are being leased out to private parties. The rate of rent differs based upon the fact, whether it is being used for commercial purposes or non-commercial purposes. In the present case, the school is utilizing the said land for non-commercial purposes as a playground and hence, as per G.O.No.460, dated 04.06.1998, 7% of the value of the land has been rightly fixed as the annual rental value. Though the said Government Order was passed in the year 1998, it has not been implemented in respect of the petitioner school. The said non-implementation of the Government Order was pointed out by the audit parties and hence, in view of the audit objection, the present impugned order has been passed to recover the entire rental arrears from 01.01.1994. Hence, he prayed for sustaining the impugned order.



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6. I have carefully considered the submissions made on either side.

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7. The impugned order, dated 23.09.2010 has been passed without affording any opportunity to the writ petitioner, especially in the light of two earlier Government Orders, dated 10.12.1990 and 07.06.1991, wherein the petitioner school was treated as a special category. That apart, the G.O.No.460 is dated 04.06.1998, but the impugned order attempts to collect the enhanced rent from 01.01.1994 onwards.

8. Hence, in view of the above said reasons, the impugned order is set aside. The matter is remitted back to the file of the fourth respondent for passing appropriate order in accordance with law, after affording an opportunity to the writ petitioner.

9. With the above said observations, this Writ Petition is allowed.
No costs. Consequently, connected Miscellaneous Petition is closed.

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Index : Yes / No
Internet : Yes / No

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To



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R.VIJAYAKUMAR ,J.

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Order made in
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