



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.01.2022

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P. (MD) .No.15507 of 2021

and

W.M.P. (MD) .Nos.12436 and 17234 of 2021

M.Marimuthu

... Petitioner

Vs.

1.The District Collector,
Collectorate,
Tenkasi District,
Tenkasi.

2.The Assistant Director of Town Panchayats,
Collectorate,
Tenkasi District,
Tenkasi.

3.The Executive Officer,
Ilanchi First Grade Town Panchayat,
Ilanchi Post - 627 805,
Tenkasi District.

... Respondents

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 in pursuant to the impugned auction notice issued by the third respondent in his proceedings Na.Ka.No.283/2021 dated 02.08.2021 and quash the same so far as the petitioner's shop is concerned and consequently direct the respondents to extend the lease period in respect of petitioner's occupied shop.

For Petitioner : Mr.M.Saravanakumar

For R-1 and R-2 : Mr.N.Satheesh Kumar,
Additional Government Pleader.

For R-3 : Mr.A.K.Manikam,
Special Government Pleader.



ORDER

Heard Mr.M.Saravanakumar, learned counsel for the petitioner, Mr.N.Satheesh Kumar, learned Additional Government Pleader who takes notice for the first and second respondents and Mr.A.K.Manikam, learned Special Government Pleader who takes notice for the third respondent.

2. The Writ Petition has been filed in the nature of Certiorarified Mandamus with respect to an auction notice issued by the third respondent / The Executive Officer, Ilanchi First Grade Town Panchayat, Ilanchi Post, Tenkasi District by proceedings in Na.Ka.No.283/2021 dated 02.08.2021 and to quash the same.

3. The petitioner had been the beneficiary of a lease entered into with the third respondent and taking advantage of such lease, the petitioner had been permitted to run a shuttlecock indoor stadium. This was in the year 2009 and such lease was entered into under "Namakku Name Thittam." It is claimed that the petitioner had been in continuous possession and running the said indoor stadium for those who are desired to play shuttlecock and the petitioner was also under an obligation to pay the annual rent and also the maintenance charges towards continuation of the lease. It is the claim of the petitioner that he had been paying the necessary annual rent and also the maintenance charges.

4. The impugned order came to be passed on 02.08.2021. In the said impugned order, it had been stated that for the financial year 2017-2018, the petitioner was due and payable a sum of Rs.6400/- and for the financial year 2018-2019, the petitioner was due and payable a sum of Rs.7140/- and similarly, for the financial year 2019-2020, the petitioner was due and payable a sum of Rs.8260/-. There were further demands for the financial years 2020-2021 and 2021-2022.

5. In the affidavit filed in support of the Writ Petition, it had been stated that the said impugned order had been passed owing to political pressure and that the petitioner is ready to pay the entire arrears amount. That statement, that the petitioner is ready to pay the entire arrears amount itself, is an admission that there are arrears payable by the petitioner towards the lease. It is seen that there are arrears, even if the lockdown period which came into effect from March 2020 is not to be taken into consideration, from the year 2017 till the year 2020 and the financial year normally ends in the last day of March of every succeeding year, there has been continuous arrears in the payment of the lease amount and the maintenance charges. That cannot be stated owing to any political pressure. The petitioner naturally cannot lean back on that particular reason after having taken the shuttlecock indoor stadium on lease and having been permitted to



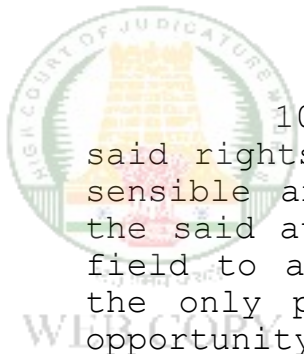
direct contractual obligation to pay the lease amount which was fixed between him and the third respondent and also to pay the maintenance charges. There cannot be excuse for non payment.

6. It is stated that though the amount was tendered, it was refused to be received. Again going back to the political aspect which the petitioner had claimed, it is not known whether those in power before 2021 had refused to receive the amount or those who came to power after 2021 have refused to receive the amount. Either way, that particular reason given by the petitioner has to be rejected and that statement in the affidavit has to be categorized as a false statement and such a statement should not have been sworn in the affidavit before a Court of law. On that one ground, the Court can straight away reject the case of the petitioner. The petitioner has to stand on his own legs. He has not given any explanation as to why he did not pay the maintenance charges between the years 2017 - 2020. No explanation has been given in the affidavit with respect to the same.

7. It is, however, stated by the learned counsel for the petitioner that there was a direction of the Court and according to that direction, the entire arrears had been paid. Such a direction, in my opinion, should not have been granted by the Court at all. The Court is not an arbitrator on the lease agreement between two parties and call upon one of them to satisfy the lease by paying the arrears amount. It is a choice of those who have entered into the lease either to pay the amounts as stipulated in the lease or not to pay the amounts as stipulated in the lease. The Court should not have, in my opinion, brought about this particular situation calling upon the petitioner to pay the amount. Even if the petitioner had paid the amount, it only signifies that there were arrears. There is no explanation for arrears.

8. Learned counsel for the petitioner placed reliance on G.O(Ms).No.92 which had been the subject matter of differing opinions expressed by Courts that there has been arbitrary extension of lease periods. There are also observations made that G.O(Ms).No.92 is not followed and the place leased is brought into auction.

9. In the present case, the one reason of arrears of lease is a compelling factor not to give any extension to the petitioner. That arrears is for the period between, as pointed out in the impugned order, from 2017-2020 when there was no lockdown or COVID pandemic and the petitioner had no reason to withhold the payment of the lease and should have tendered the lease amount. If the respondents had not received it, nothing prevented the petitioner to tender or deposit the amount into a separate account or in some manner or the other, coming forward voluntarily to pay the lease amount. He had not done so. The Court cannot come to the rescue of the petitioner.



10. The respondents had taken a decision to auction the said rights to maintain the shuttlecock indoor stadium. That is a sensible and prudent decision. The petitioner can participate in the said auction. It is a decision taken to give an equal playing field to all the participants. The petitioner cannot claim to be the only person who can run that particular indoor stadium. An opportunity has to be granted to everybody and in an auction, the procedure followed ensures that anybody and everybody can participate in the said auction. Therefore, I am not prepared to interfere with the impugned order. The Writ Petition stands dismissed.

11. Learned counsel for the petitioner stated that the petitioner has also paid the lease amount as directed by this Court up to July 2022. Learned counsel for the third respondent, however, objected to such contention and stated that the petitioner had paid the lease amount only up to July 2021. This is an issue which this Court can never come into any decision and can never also decide. It is for the petitioner and the third respondent to work out their differences in manner known to law whether the petitioner had paid the lease amount up to July 2022 or till July 2021.

12. Accordingly, this Writ Petition is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

Lm

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The District Collector,
Collectorate,
Tenkasi District, Tenkasi.

2.The Assistant Director of Town Panchayats,
Collectorate,
Tenkasi District, Tenkasi.



3.The Executive Officer,
Ilanchi First Grade Town Panchayat,
Ilanchi Post - 627 805, Tenkasi District.

+1 CC to M/s.M.SARAVANA KUMAR, Advocate (SR-112[F] dated 04/01/2022)

WEB COPY

+1 CC to M/s.A.K.MANIKKAM, Advocate (SR-497[F] dated 05/01/2022)

+1 CC to M/s.SPL GP (SR-353[F] dated 05/01/2022)

W.P. (MD) .No.15507 of 2021
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RD(20.01.2022) 5P 7C