IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON 14-09-2023

ORDERS PRONOUNCED ON 21-09-2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

WP Nos.28387 of 2003 and 31927 of 2019
And
WMP No.34686 of 2003

M/s.Mohan Breweries and Distilleries Ltd.,
Represented by its Vice President
Mr.Krishnamurthy,
having Office at
Rayala Towers, II Floor,
No.158, Anna Salai,
Chennai-2. ... Petitioner in both WPs

Vs.

1.The Government of Tamil Nadu Represented by
its Secretary to Government,
Revenue Department,
Fort St. George,
Chennai-9.

2.The Principal Commissioner and Commissioner
of Land Administration,

Chepauk,
Chennai-5.

3.The District Collector,
Tiruvallur District,
Tiruvallur.

4.The District Revenue Officer,
Tiruvallur.

5.The Tahsildar,
Ambattur ... Respondents in WP 28387/2003

1.The Government of Revenue and Disaster Management
Department Land Disposal Wing,
LD1(1) Section, Represented by its
Additional Chief Secretary,
Government of Tamil Nadu,
Revenue Department,
Fort St. George,
Chennai-600 009.

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

3.The District Collector,
Master Plan Complex,
Chennai Tirutani Highway,
Tiruvallur-602 001,
Tiruvallur District.

4.The District Revenue Officer,
Master Plan Complex,
Chennai Tirutani Highway,
Tiruvallur-602 001,
Tiruvallur District.

5.The Commissioner,
Corporation of Chennai,
Ripon Buildings,
Chennai-600 001.

6.The Tahsildar,
Chennai Tiruvallur High Road,
Gandhi Nagar,
Ambattur,
Chennai-600 053. ... Respondents in WP 31927/2019

WP No.28387 of 2003 is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records of the first respondent dated 23.04.2003 in G.O.Ms.No.179, Revenue and the consequent order of the fourth and fifth respondents dated 12.08.2003 and 29.08.2003 under ref.Na.Ka.1916/97/A1 and 5198/93/C2 respectively and quash the same and further direct the respondents to assign the land in S.No.169/1 of Valasaravakkam Village measuring 21 cents permanently to the petitioner.

WP No.31927 of 2019 is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records of the first respondent dated 02.07.2019 in

G.O.Ms.No.207 and quash the same further direct the respondents to consider the request of exchange of equal extent of land measuring 21 cents in Survey No.208/1A1A1A with the land of the Government in Survey No.169/1 of Valasaravakkam Village, Maduravoyal Taluk, Chennai District under Order 26-A of the Revenue Standing Orders.

For Petitioner in both WPs : Mr.V.Ramesh

For Respondents-1 to 5 in
WP 28387/2003 and
R-1 to R-4 and R-6 in
WP 31927/2019 : Mr.R.Ramanlaal,
Additional Advocate General-IV,
Assisted by Mr.T.Arunkumar,
Additional Government Pleader.

For R-5 in WP 31927/2019: No Appearance

COMMON ORDER

WP No.28387 of 2003 was filed challenging the Government Order issued in G.O.Ms.No.179, Revenue Department dated 23.04.2003 and the demand notices issued by the respondents 4 and 5 in proceedings dated 12.08.2003 and 29.08.2003. Further direction is sought for to assign the land in Survey No.169/1 of Valasaravakkam Village, measuring 21 cents permanently in favour of the petitioner.

2. WP No.31927 of 2019 has been instituted challenging the validity of the rejection order passed by the Government in G.O.Ms.No.207, Revenue and Disastrous Management Department Land Disposal Wing dated 02.07.2019 and for a direction to consider the request for exchange of equal extent of land measuring 21 cents in Survey No.208/1A1A1A with the land of the Government in Survey No.169/1 of Valasaravakkam Village, Maduravoyal Taluk, Chennai District under Section 26A of the Revenue Standing Order.

FACTS OF THE CASE:

3. The writ petitioner is M/s.Mohan Breweries and Distilleries Limited. The petitioner initially encroached upon the Government land in Survey No.169/1 to an extent of 21 cents in Valasaravakkam Village falling within the Chennai Metro City. The Government land was classified as 'Rudra Boomi'. The petitioner is owning patta lands nearby Government Poramboke lands. The petitioner submitted an application on 18.03.1982 to the District Collector, Chengalpattu to assign the land in their favour.

4. Considering the fact that the petitioner encroached upon the Government land, classified as 'Ruda Boomi', a proposal was submitted and the Government issued G.O.Ms.No.896, Revenue Department, dated 12.12.1994 granting lease of the property for a period of six years from 01.07.1987 to 30.06.1993 on calculation of annual lease rent at the rate of 14% of the market value of the land in 1987 i.e., Rs.19,504/- per year for a period from July 1987 to June 1993 and at the rate of 14% of the market value as in 1999 at Rs.25,954/- per year for the period from July 1990 to June 1993 subject to the usual conditions stipulated in RSO 24-A.

5. The petitioner was a defaulter in payment of lease rent. Subsequently, the petitioner became a chronic defaulter and the enhanced lease rent has not been paid by the petitioner. The petitioner was submitting representations to the District Collector, seeking assignment of land in favour of the petitioner-Company. But the Government has not considered the same for grant of assignment, more-so, the Government land is within the City of Chennai and a high value property, which cannot be assigned, since there was a ban.

6. However, the Government considered the request of the petitioner and issued another order in G.O.Ms.No.179, Revenue Department dated 23.04.2003, extending the lease upto 30.06.1999. Based on the lease rent fixed, the District Revenue Officer issued demand notices from 01.07.1993 to 30.06.1999. The arrears of lease rent was calculated at Rs.43,30,899/-, which was not paid by the petitioner-Company and they remained as defaulter in payment of lease rent and filed WP No.28387 of 2003, challenging the Government Order and also the demand notice issued by the District Revenue Officer. An order of interim stay was granted in WP No.28387 of 2003 and by virtue of the order of interim stay, the petitioner has not paid the lease rent as fixed by the Government in its order.

7. The first writ petition i.e., WP No.28387 of 2003 is pending for about 20 years and the petitioner was sending representation to the Government for exchange of lands. The representation submitted by the writ petitioner was considered by the Authorities and during field inspection, they found that the land sought to be exchanged by the petitioner-Company

does not belong to them, as the subject land stands in the name of one Mr.Annamalai Naicker and three others. The petitioner-Company came with the proposal to offer an extent of 21 cents of land from and out of 17.36 ares of land in Survey No.208/1A1A1A of Valasaravakkam Village. The said portion of the land stands registered in the names of one Mr.Annamalai Naicker and three others and not registered in the name of the petitioner-Company.

8. The Authorities found that the lands owned by the petitioner-Company in Survey Nos.208/1A1A1B and 208/1A1A1C of Valasaravakkam Village stand registered in the name of the petitioner-Company and the Authorities found that the petitioner-Company offered for an exchange of a portion of land, which do not belong to the petitioner-Company. The land offered by the petitioner in Survey No.208/1A1A1A of Valasaravakkam Village is used as Road as of now and registered in the name of one Mr.Annamalai Naikcker and three others and as of now, it is in public usage. Thus the Government rejected the claim of the writ petitioner in G.O.Ms.No.207, Revenue and Disastrous Management Department Land

Disposal Wing, dated 02.07.2019, which is challenged in the second writ petition viz., WP No.31927 of 2019.

SUBMISSIONS ON BEHALF OF THE PETITIONER:

9. The learned counsel appearing on behalf of the petitioner mainly contended that representations were submitted seeking assignment of Government land to an extent of 21 cents, since the petitioner-Company was in need of the land to run their Company. The Government instead of assigning, granted lease of the Government land and the petitioner was paying the lease rent. The enhancement of lease rent was made exorbitantly, by not providing any opportunity to the petitioner and therefore, the petitioner has challenged the Government Order issued in G.O.Ms.No.179, Revenue Department, dated 23.04.2003. Fixation of lease rent by the Government, while granting extension of land is improper and the consequential demand notice issued by the District Revenue Officer and the Tahsildar are also invalid.

10. The petitioner continuously submitted representation to

accept the alternate land provided by them in exchange of the Government land in their possession and the petitioner's offer was not accepted, but rejected without any valid reason. The petitioner is owning lands adjacent to the Government Poramboke land and a portion of the land belonging to the petitioner is being used as public road. Therefore, the petitioner's offered for exchange of land in lieu of the Government land under their possession. When the land belonging to the petitioner is being used as Public Road and amenities are provided for the benefit of the public in the said road, there is no reason whatsoever to reject the proposal submitted by the petitioner for exchange of land. The petitioner-Company has staged that they are the owners of the portion of the land offered for exchange and therefore, the contention of the respondents that the land stands in the name of one Mr.Annamalai Naicker and three others, is incorrect.

11. The petitioner has paid a sum of Rs.5 lakhs towards arrears of lease rent pursuant to the interim order granted by this Court and thereafter, the writ petition is pending and thus the petitioner has not paid the lease rent as demanded by the respondents.

12. The learned counsel for the petitioner reiterated that exchange of the Government Poramboke land in lieu of petitioner's patta land do not cause any monetary loss to the State Exchequer. When the petitioner has proposed to exchange the private land owned by them, there is no reason to issue the order of rejection. As per the Revenue Standing Order 26-A, exchange of Government lands with the private persons, are permissible and therefore, the order impugned rejecting the representation of the petitioner for exchange of land, is not in consonance with the provisions of Revenue Standing Order.

13. The petitioner states that the land measuring about 21 cents in Survey No.208/1A1A1A is being used as public road to gain access to the neighbouring colonies and the said land is offered towards exchange of Government land under the possession of the petitioner-Company.

14. The learned counsel for the petitioner relied on the recent

Government Order issued in G.O.Ms.No.201, Revenue and Disastrous Management Department Disposal Wing dated 10.08.2022, wherein the Government approved fresh guidelines on the replacement of Revenue Standing Order 26-A for land exchange if not involving water course so far. Therefore, even based on the recent Government Order, the Government may reconsider the case of the petitioner for exchange of the said land.

ARGUMENTS OF THE LEARNED ADDITIONAL ADVOCATE GENERAL:

15. The learned Additional Advocate General emphasised that the petitioner-Company has encroached upon the Government land in Survey No.169/1 of Valasaravakkam Village along with its surrounding private lands. Thus the Government granted lease of the portion of Government land on 12.12.1994. Petitioner was a chronic defaulter in payment of lease rent as fixed by the Government. Notice was issued to pay the arrears of lease rent. The petitioner filed WP No.28387 of 2003, challenging the Government Order granting extension of lease and the

consequential demand notice issued by the District Revenue Officer and Tahsildar. An order of interim stay was granted in the writ petition. The writ petition is being kept pending for about 20 years. The Government suffered huge monetary loss. There was an audit objection by the Accountant General of Tamil Nadu. By virtue of an interim order, the petitioner has paid only a sum of Rs.5 lakhs. The arrears of lease rent as on 30.06.2019 was a sum of Rs.4,33,29,934//-. Even at the time of filing of the second writ petition, viz., WP No.31927 of 2019, the petitioner has failed to pay the arrears of lease rent.

16. The second writ petition of the year 2019 is relating to the request made by the petitioner for exchange of Government land. The petitioner-Company submitted a petition on 02.07.2018 to the Government for exchange of their patta land comprised in Survey No.169/1 of Valasaravakkam Village. The Authorities conducted inspection and verified the revenue records and found that the said Survey No.208/1A1A1A of Valasaravakkam Village was subdivided subsequently and registered as follows:-

Survey Number / Sub Division No.	Classification	Extent involved in Ares	Registered Holder
208/1A1A1A		17.36	1.Annamalai Naicker 2.Damodhara Naicker 3.Subramania Naicker 4.Govindaraj
208/1A1A1B		44.5	M/s.Mohan Breweries and Distilleries Limited
208/1A1A1C		14.0	M/s.Mohan Breweries and Distilleries Limited
TOTAL		75.86	

17. The Competent Authorities found that the petitioner-Company has offered land not standing in their name. The offered patta land stands in the name of one Mr.Annamalai Naicker and three others, which is now being used as Public Road. Therefore, the petition submitted by the petitioner itself is untenable and they have made an attempt to grab the Government land by providing alternate patta land, which do not belong to the petitioner-Company.

18. The Village Administrative Officer of Valasaravakkam Village and the Revenue Inspector of Maduravoyal Firka inspected the lands and had reiterated in their report dated 17.10.2018 that the land in

Survey No.169/1 of Valasaravakkam Village is encroached by M/s.Mohan Breweries and Distilleries Limited.

19. Since the petitioner-Company submitted representation for assignment of land, the Government granted lease of the Government land measuring 8.5 ares comprised in Survey No.169/1 of Valasaravakkam Village. The lease was granted on conditions to remit the lease rent and monthly tax as demanded by the Government, but the petitioner-Company failed to remit the lease rent as demanded by the Government and became a chronic defaulter.

20. Pertinently, the petitioner-Company came forward with the proposal offered an extent of 21 cents of land from and out of 17.36 ares of land in Survey No.208/1A1A1A of Valasaravakkam Village, a portion of the land stands registered in the name of one Mr.Annamalai Naicker and three others and not registered in the name of the petitioner-Company. Therefore, the Government rejected the request of the petitioner for exchange of land in G.O.Ms.N.207, Revenue and Disastrous Management

Department of Land Disposal Wing dated 02.07.2019.

DISCUSSIONS:

21. The petitioner-Company has encroached upon the Government land measuring an extent of 8.5 ares (21 cents) in Valasaravakkam Village, which is falling within the City limits of Greater Chennai. Since the land was encroached upon by the petitioner for their usage, the representation submitted by the petitioner was considered by the Government and the lease was granted on payment of lease rent initially for a period of six years and it was extended subsequently upto the year 2003. The Government Order unambiguously stipulates conditions of lease and the petitioner accepted the conditions and was in possession of the Government land classified as 'Rudra Boomi'. Having accepted the lease conditions, the petitioner failed to pay the lease rent and became a chronic defaulter. The demand notice issued by the Competent Authorities are under challenge in WP No.28387 of 2003 and by virtue of the interim order, the petitioner subsequently has not paid the lease rent as demanded by the Government based on the lease conditions. Curiously, the writ petition is

pending for the past about 20 years, despite the fact that it is about the lease of Government land and the demand notice is under challenge.

22. This Court has been frequently witnessing pendency of such writ petitions for several years in the High Court and an interim order granted by the High Court are in force. Such practice, at no circumstances, be encouraged and such nature of cases involving public money or financial implications to the State Exchequer, are to be listed periodically for the purpose of considering the issues.

23. The arrears of lease rent as on 30.06.2019 was Rs.4,33,29,934/-. The said arrears of lease rent has not been paid by the petitioner-Company, despite the fact that they continue to be in possession of the Government land and thereby causing huge financial loss to the State Exchequer. The Accountant General of Tamil Nadu raised an objection for the monetary loss caused to the public accounts.

24. Exchange of land cannot be claimed as an absolute right by any person. It is a policy decision to be taken by the Government in the interest of public. Exchange of lands cannot be granted detrimental to the public interest or against the settled legal principles in the mater of grant of Government largesses. Thus the offer made by the petitioner is to be considered only if the offer is not opposed to public policy or not detrimental to the interest of public at large. The Government, at their whims and fancies, cannot grant Government largesses. It is not a discretion of the Government to grant Government largesses the way Government likes. The principles for grant of Government largesses must be in consonance with the constitutional principles as settled by the Constitutional Courts.

LEGAL PRINCIPLES:

Concept of Public Interest in the matter of Public Policy:

25. The Hon'ble Apex Court in the case of **Kasturi Lal Lakshmi Reddy vs State Of Jammu And Kashmir & another on 9 May, 1980, 1980 SCR (3) 1338, made a detailed discussion on** Government contracts, Limitations on the Government to grant contracts, Test of

reasonableness, **concept of public interest** and Articles 14 & 19 of the Constitution and held :

"*While others have been given legal protection not only by forging procedural safeguards but also by confining, structuring and checking Government discretion in the matter of grant of such largess. The discretion of the government has been held to be not unlimited in that the Government cannot give largess in its arbitrary discretion or as its sweet will or on such terms as it chooses in its absolute discreti*on.

(i) **There are two limitations imposed by law which structure and control the discretion of the Government in this behalf. The first is in regard to the terms on which largess may be granted and the other. In regard to the persons who may be recipients of such largess.**

(ii) So far as the **first limitation** is concerned, it flows directly from the thesis that, unlike a private individual, the State cannot act as it pleases in the matter of giving largess. Though ordinarily a private individual would be guided by economic considerations of self-gain in any action taken by him, it is always open to him under the law to act contrary to his self-interest or to oblige another in entering into a contract or. dealing with his property. But the Government is not free lo act as it likes in granting largess such as awarding a contract or selling or leasing out its property. Whatever be its activity, the Government is still the Government and is, subject to restraints inherent in its position in a democratic society. The constitutional power conferred on the Government cannot be exercised by it arbitrarily or capriciously or in and unprincipled manner; it has to be exercised for the public good. Every activity of the Government has a public element in it and it must therefore, be informed with reason and guided by public interest. Every action taken by the Government must be in public interest; the Government cannot act arbitrarily and without reason and if it does, its action would be liable to be invalidated. **If the Government awards a contract or leases out or otherwise deals with its property or grants any other largess, it would be Liable to be tested for its validity on the touch-stone of reasonableness and public interest and if it fails to satisfy either best, it would be unconstitutional and invalid."**

Concept of Reasonableness:

26. (i) The concept of reasonableness in fact pervades the entire constitutional scheme. The interaction of Articles 14, 19 and 21 analysed by the Supreme Court in the case of **Maneka Gandhi v. Union of India**

reported in (1978) 1 SCC 248, clearly demonstrated that the requirement of reasonableness runs like a golden thread through the entire fabric of fundamental rights and, as several decisions of the Apex Court show, this concept of reasonableness finds its positive manifestation and expression in the lofty ideal of social and economic justice, which inspires and animates the Directive Principles.

(ii) It has been laid down by the Apex Court in the case of **E.P. Royappa v. State of Tamil Nadu reported in (1974) 4 SCC 3, and Maneka Gandhi's case** (*supra*) that Article 14 strikes at arbitrariness in State action and since the, principle of reasonableness and rationality, which is legally as well as philosophically an essential element of equality or non-arbitrariness, is protected by this article, it must characterize every governmental action, whether it be under the authority of law or in exercise of executive power without making of law. So also the concept of reasonableness runs through the totality of Article 19 and requires that restrictions on the freedoms of the citizen, in order to be permissible, must at the best be reasonable.

(iii) Similarly Article 21 in the full plenitude of its activist magnitude as discovered by ***Maneka Gandhi's case***, insists that no one shall be deprived of his life or personal liberty except in accordance with procedure established by law and such procedure must be reasonable, fair and just. **The Directive Principles concretise and give shape to the concept of reasonableness envisaged in Articles 14, 19 and 21 and other articles enumerating the fundamental rights.** By defining the national aims and the constitutional goals, they set forth the standards or norms of reasonableness, which must guide and animate governmental action. Any action taken by the Government with a view to give effect to any one or more of the Directive Principles would ordinarily, subject to any constitutional or legal inhibitions or other over-riding considerations, qualify for being regarded as reasonable, while an action, which is inconsistent with or runs counter to a Directive Principle would incur the reproach of being unreasonable."

Concept of Public Interest:

27. "Concept of public interest must as far as possible receive its orientation from the Directive Principles.

What according to the founding fathers constitutes the plainest requirement of public interest is set out in the Directive Principles and they embody par excellence the constitutional concept of public interest.

If, therefore, any governmental action is calculated to implement or give effect to a Directive Principle, it would ordinarily, subject to any other overriding considerations, be informed with public interest.

Where any governmental action fails to satisfy the test of reasonableness and public interest discussed above and is found to be wanting in the quality of reasonableness or lacking in the element of public interest, it would be liable to be struck down as invalid.

It must follow as a necessary corollary from this proposition that the Government cannot act in a manner which would benefit a private party at the cost of the State; such an action would be both unreasonable and contrary to public interest.

<u>The Government, therefore, cannot, for example, give a contract or sell or lease out its property for a consideration less than the highest that can be obtained for it, unless of course there are other</u>

<u>considerations which render it reasonable and in public interest to do so. Such considerations may be that some Directive Principle is sought to be advanced or implemented or that the contract or the property is given not with a view to earning revenue but for the purpose of carrying out a welfare scheme for the benefit of a particular group or section of people deserving it or that the person who has offered a higher consideration is not otherwise fit to be given the contract or the property.</u>

Illustratively, there may be an infinite variety of considerations which may have to be taken into account by the Government in formulating its policies and it is on a total evaluation of various considerations which have weighed with the Government in taking a particular action, that **the Court would have to decide whether the action of the Government is reasonable and in public interest.**

But one basic principle which must guide the Court in arriving at its determination on this question is that there is always a presumption that the Governmental action is reasonable and in public interest and it is for the party challenging its validity to show that it is wanting in reasonableness or is not informed with public interest. This burden is a heavy one and it has to be discharged to the satisfaction of the Court by proper and adequate material.

The Court cannot lightly assume that the action taken by the Government is unreasonable or without public interest because, as said above, there are a large number of policy considerations which must necessarily weigh with the Government in taking action **and therefore the Court would not strike down governmental action as invalid on this ground, unless it is clearly satisfied that the action is unreasonable or not in public interest. But where it is so satisfied, it would be the plainest duty of the Court under the Constitution to invalidate the governmental action. This is one of the most important functions of the Court and also one of the most essential for preservation of the rule of law.**

<u>**The second limitation on the discretion of the Government in grant of largess is in regard to the persons to whom such largess may be granted.**</u>

28. It is now well settled as a result of the decision of this Court in the case of ***Ramana D. Shetty v. International Airport Authority of India & Ors reported in (1979) 3 SCC 489,*** that the Government is not free like an ordinary individual, in selecting the recipients for its largess and it cannot choose to deal with any person it pleases in its absolute and unfettered discretion. The law is now well established that the Government need not deal with anyone. but if it does so, it must do so fairly without discrimination and without unfair procedure. Where the Government is dealing with the public, whether by way of giving jobs or entering into contracts or granting other forms of largess. the Government cannot act arbitrarily at its, sweet will and, like a private individual, deal with any person it pleases, but its action must be in conformity with some standard or norm which is not arbitrary, irrational or irrelevant. The governmental action must not be arbitrary or capricious, but must be based on some principle which meets the test of reason and relevance. This rule was enunciated by the Court as a rule of administrative law and it was also validated by the Court as an emanation flowing directly from the doctrine of

equality embodied in Article 14.

29. The Court referred to the activist **magnitude of Article 14 as evolved in E. P. Royappa v. State of Tamil Nadu (supra) and Maneka Gandhi's case** (supra) and observed that it must follow "as a necessary corollary from the principle of equality enshrined in Article 14 that though the State is entitled to refuse to enter into relationship with anyone, yet if it does so, it cannot arbitrarily choose any person it likes for entering into such relationship and discriminate between persons similarly circumstanced, but it must act in conformity with some standard or principle which meets the test of reasonableness and non-discrimination and any departure from such standard or principle would be invalid unless it can be supported or justified on some rational and non-discriminatory ground." This decision has reaffirmed the principle of reasonableness and non-arbitrariness in governmental action which lies at the core of our entire constitutional scheme and structure.

30. The Hon'ble Supreme Court in the case of ***Ram and Shyam***

company vs State of Haryana and ors, **dealt with the aspect of disposal of the public property and held that :**

> *"...disposal of public property partakes the character of a trust in that in its disposal there should be nothing hanky panky and that it must be done at the best price so that larger revenue coming into the coffers of the State administration would serve public purpose viz. the welfare State may be able to expand its beneficient activities by the availability of larger funds.* ***This is subject to one important limitation*** *that socialist property may be disposed at a price lower than the market price or even for a token price to achieve some defined constitutionally recognised public purpose, one such being to achieve the goals set out in Part IV of the Constitution.* ***But where disposal is for augmentation of revenue and nothing else, the State is under an obligation to secure the best market price available in a market economy****.*
>
> *An owner of private property need not auction it nor is he bound to dispose it of at a current market price. Factors such as personal attachment, or affinity kinship, empathy, religious sentiment or limiting the choice to whom he may be willing to sell, may permit him to sell the property at a song and without demur.*

A welfare State as the owner of the public property has no such freedom while disposing of the public property. A welfare State exists for the largest good of the largest number more so when it proclaims to be a socialist State dedicated to eradication of poverty. All its attempt must be to obtain the best available price while disposing of its property because the greater the revenue, the welfare activities will get a fillip and shot in the arm. Financial constraint may weaken the tempo of activities. Such an approach serves the larger public purpose of expanding welfare activities primarily for which the Constitution envisages.

31. In the case of ***Ramana Dayaram Shetty v. The International Airport Authority of India and Ors*** **in which Bhagwati, J.** speaking for the Court observed:

"It must, therefore. be taken to be the law that where the Government is dealing with the public, whether by E way of giving jobs or entering into contracts or issuing quotas or licences or granting other forms of largesse, the Government cannot act arbitrarily at its sweet will and, like a private individual, deal with any person it pleases, but its action must be in conformity with

standard or norms which is not arbitrary, irrational or irrelevant. The power or discretion of the Government in the matter of grant of largesse including award to jobs, contracts, quotas, licences etc., must be confined and structured by rational, relevant and non-discriminatory standard or norm and if the Government departs from such standard or norm in any particular case or cases, the action of the Government would be liable to be struck down, unless it can be shown by the Government that the departure was not arbitrary, but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory. At another place it was observed that the Government must act in public interest, it cannot act arbitrarily or without reason and if it does so, its action would be liable to be invalidated. It was further observed that the object of holding the auction is generally to raise the highest revenue. The Government is entitled to reject the highest bid if it thought that the price offered was inadequate. But after rejecting the offer, it is obligatory upon the Government to act fairly and at any rate it cannot act arbitrarily. Following this line of thought, in ***Kasturi Lal Lakshmi Reddy v. State of Jammu & Kashmir and Anr****. (page 10, 11).*

32. In the case of ***Netai Bag and ors vs State of West Bengal and ors reported in (2000) 8 SCC 262,*** the Hon'ble Apex Court has held :

> *"It has been consistently held by this Court that in a democracy governed by the rule of law, the Executive Government or any of its officers cannot be allowed to possess arbitrary powers over the interests of the individual. Every action of the Executive Government must be in conformity with reason and should be free from arbitrariness. The Government cannot be equated with an individual in the matter of selection of the recepient for its largesse.(page 7)*
>
> *Though the State cannot escape its liability to show its actions to be fair, reasonable and in accordance with law, yet wherever challenge is thrown to any of such action initial burden of showing the prima facie existence of violation of the mandate of the Constitution lies upon the person approaching the Court. In State of M.P. & Ors. vs. Nandlal Jaiswal & Ors. [1986 (4) SCC 566] it was held that the policy decision can be interfered with by the court only if such decision is shown to be patently arbitrary, discriminatory or malafide.(page 8)*

33. In the case of ***Sachidanand Pandey & Anotherr. vs. State***

of West Bengal & Ors. [1987 (2) SCC 295], it was held that as regards the question of propriety of private negotiation with an individual or corporation, it should be borne in mind that **State owned or public owned property is not to be dealt with at the absolute discretion of the executive. Certain precepts and principles have to be observed, public interest being the paramount consideration**.

34. In the case of ***Ramana Dayaram Shetty's case (supra),*** it was held: "It is imperative in a democracy governed by the rule of law that governmental action must be kept within the limits of law and if there is any transgression, the Court must be ready to condemn it. It is a matter of historical experience that there is a tendency in every government to assume more and more powers and since it is not an uncommon phenomenon in some countries that the legislative check is getting diluted, it is left to the Court as the only other reviewing authority under the Constitution to be increasingly vigilant to ensure observance with the rule of law and in this task, the court must not flinch or falter. It may be pointed out that this ground of invalidity, namely, that the governmental action is unreasonable

or lacking in the quality of public interest, is different from that of mala fides though it may, in a given case, furnish evidence of mala fides.

35. In the case of ***M.P. Oil Extraction & Another. vs. State of M.P. & others [1997 (7) SCC 592],*** it was held that principle of reasonableness and non- arbitrariness in governmental action is the core of our entire Constitutional scheme and structure. On the facts of that case, the action of the State Government in granting a contract by way of negotiation was held not arbitrary or irrational.

36. In the case of ***M/S Style (dress land) vs. Union Territory Chandigarh and another reported in (1999) 7 SCC 89,*** the Hon'ble Supreme Court of India reiterated the observations of Mathew, J., in ***Punnan Thomas v. State of Kerala AIR 1969 Ker 81 (FB)*** that:

> "The Government, is not and should not be as free as an individual in selecting the recipients for its largess. Whatever its activity, the Government is still the Government and will be subject to restraints, inherent in its position in a democratic society. A democratic Government cannot lay down arbitrary

and capricious standards for the choice of persons with whom alone it will deal" **The same point was made by the Supreme Court in Erusian Equipment and Chemicals Ltd. Vs. State of West bengal (1975) 2 SCR 674; (AIR 1975 SC 266)** where the question was whether black-listing of a person without giving him an opportunity to be heard was bad? It was argued for the Government that no person has a right to enter into contractal relationship with the Government and the Government, like any other private individual, has the absolute right to enter into contract with any one it pleases. **But the court, speaking through the learned Chief Justice, responded that the Government is not like a private individual who can pick and choose the person with whom it will deal, but the Government is still a Government when it enters into contract or when it is administering largess and it cannot, without adequate reason, exclude any person from dealing with it or take away largess arbitrarily. The learned Chief Justice said that when the Government is trading with the public, "the democratic form of Government demands equality and absence of arbitrariness....The activities of the Government have a public element and, therefore, there should be fairness and equality. The State need not enter into any contract with anyone, but if it does so, it must do so fairly without**

discrimination and without unfair procedure." This proposition would hold good in all cases of dealing by the Government with the public, where the interest sought to be protected is a privilege. It must, therefore, be taken to be the law that where the Government is dealing with the public, whether by way of giving jobs or entering into contracts or issuing quotas or licences or granting other forms of largess, the Government cannot act arbitrarily at its sweet will and, like a private individual, deal with any person it pleases, but its action must be in conformity with standard or norm which is not arbitrary, irrational or irrelevant. The power or discretion of the Government in the matter of grant of largess including award of jobs, contracts quotas, licences etc., must be confined and structured by rational, relevant and non- discriminatory standard or norm and if the government departs from such standard or norm in any particular case or cases, the action of the Government would be liable to be struck down, unless it can be shown by the Government that the departure was not arbitrary, but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory."

While exercising the powers of judicial review the Court can look into the reasons given by the Government in support of its action but cannot substitute its own reasons. **The Court can strike down an executive order, if it finds the reasons assigned were irrelevant and extraneous.**

37. The Constitution of India invokes the term "Public Interest" at nine places in its Article 22, 31A(b) and 31A(c) of Fundamental Rights of the Citizen, 263, 302, Entries 52, 54, 56 of the Union List and Entry 33 of the Concurrent List.

38. **<u>In the absence of the specific interpretation (do's and don'ts) of the term "Public Interest" by the Courts in India, these Articles are being misused by the Law makers to usurp the Constitutional Powers</u>**.

<u>FINDINGS:</u>

39. In the present case, admittedly, the lease was granted in favour of the writ petitioner in G.O.Ms.No.896, Revenue Department dated 12.12.1994 for a period of six years from 01.07.1987 to 30.06.1993, the lease rent of Rs.19,504/- per year for the period from July 1987 to June 1990 was fixed and a sum of Rs.25,954/- per year for the period from July

1992 to June 1993 was fixed. The lease was extended for another period of six years from 01.07.1993 to 30.06.1999, on conditions and by fixing the lease rent. The petitioner has failed to pay the lease rent and became chronic defaulter in payment of lease rent. When the lease payment in the year 2003 was for a sum of Rs.43,30,899/-, the petitioner has paid a sum of Rs.5 lakhs, pursuant to the interim order granted in the writ petition of the year 2003. Even thereafter, the petitioner has not paid any lease rent and in order to avoid payment of the lease rent, the petitioner was going on sending representation for exchange of land. Exchange of lands offered by the petitioner was not registered in the name of the petitioner. In order to consider the claim of the writ petitioner for exchange of land, the Revenue Authorities conducted field inspection and found that the land offered by the petitioner in Survey No.208/1A1A1A of Valasaravakkam Village was sub-divided subsequently and the portion of the land offered by the writ petitioner in Survey No.208/1A1A1A was registered in the name of one Mr.Annamalai Naicker and three others. The sub-divided Survey Nos.208/1A1A1B and 208/1A1A1C were registered in the name of the petitioner. However, the petitioner offered the land, which was not registered in their name. Thus the petitioner has approached the Government with ulterior motive to grab the Government land by merely exchanging the land, which was not registered in the name of the petitioner. The misrepresentation made by the petitioner-Company would be sufficient to reject their claim. However, the Government Authorities have conducted field inspection and identified that the petitioner-Company has not offered the land registered in their name, but offered the land, which was not registered in their name. Therefore, the very attempt made by the petitioner for exchange of land was found to be mischievous and the petitioner has not approached the Government with clean hands. The conduct of the petitioner encroaching upon the Government land even before the year 1982, would be sufficient to reject their subsequent claims. The encroached Government land was leased out by the Government, which itself was the leniency shown by the Government. If the Company is an encroacher of Government land, the Government ought not to have granted even the lease of the Government land to the said Company. However, considering the fact that the petitioner-Company needed the Government land, the Government granted lease and the lease rent fixed by the Government was not paid by the petitioner-Company for several years. The petitioner is a chronic defaulter. The arrears of lease rent as on 30.06.2019 was Rs.4,33,29,934/-. Therefore, the petitioner is not entitled for any relief either from the hands of the Government or from this Court.

40. The Government cannot assign the land disadvantageous to the public interest. The Government Authorities are duty bound to recover the lease rent punctually and the T.N.Financial Code also enumerates non-recovery of dues of the Government is the serious misconduct warranting actions. However, in the present case, the Authorities have not taken action on account of the interim stay in force for about 20 years in the present writ petition. On account of the pendency of WP No.28387 of 2003 for about 20 years, the petitioner has taken undue advantage and has not paid the lease rent as fixed by the Government. As per the Government Order, even the lease rent fixed by the Government is not in commensuration with the actual market rent prevailing in the said locality in Chennai City. The lease rent was fixed per year. Thus the minimum lease rent fixed by the Government itself has not been paid by the petitioner-Company.

41. In view of the facts and circumstances, this Court is inclined to pass the following orders:-

(1) The reliefs as such sought for in WP Nos.28387 of 2003 and 31927 of 2019 are rejected.

(2) Since the lease expired in the year 2003, the respondents are directed to evict the petitioner from Government Poramboke land and take possession of the Government land within a period of two weeks from the date of receipt of a copy of this order and utilise the land for public purposes.

(3) The petitioner is directed to pay the arrears of lease rent of Rs.4,33,29,934/- calculated upto 30.06.2019 within a period of two weeks from the date of receipt of a copy of this order.

(4) The respondents are directed to calculate the balance arrears of lease rent till the date of taking possession and communicate the same to the writ petitioner, within a period of four weeks from the date of receipt of a copy of this order. On receipt of the demand notice from the Authorities, the petitioner is directed to settle the balance arrears of lease rent, within a

period of two weeks thereafter, failing which the respondents shall recover the entire arrears of lease rent from the petitioner by following the procedures as contemplated under law.

42. With the above directions, the writ petitions stand disposed of. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is also dismissed.

21-09-2023

Index : Yes/No
Internet: Yes/No
Speaking order/Non-Speaking order
Neutral Citation : Yes/No
Svn

To

1.The Secretary to Government,
Government of Tamil Nadu,
Revenue Department,
Fort St. George,
Chennai-9.

2. The Additional Chief Secretary,
Government of Revenue and Disaster Management
Department Land Disposal Wing,
LD1(1) Section,
Government of Tamil Nadu,
Revenue Department,
Fort St. George,
Chennai-600 009.

3.The Principal Commissioner and Commissioner
of Land Administration,
Chepauk,
Chennai-5.

4.The District Collector,
Tiruvallur District,
Tiruvallur.

5.The District Revenue Officer,
Tiruvallur.

6.The Commissioner,
Corporation of Chennai,
Ripon Buildings,
Chennai-600 001.

7.The Tahsildar,
Chennai Tiruvallur High Road,
Gandhi Nagar,
Ambattur,
Chennai-600 053.

S.M.SUBRAMANIAM, J.

Svn

WPs 28387 of 2003 and 31927 of 2019

21-09-2023