# IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED: 24.01.2023**

**CORAM:**

**THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR**

**WP.No.16474 of 2022 &**

**WMP.Nos.15757 & 15759 of 2022**

The Gandhi Nagar Education Society,
Rep. by its Treasurer, Mr.V.Palaniappan
having office at Chettinad Towers,
603, Anna Salai, Chennai – 600 006. ... Petitioner

Vs

1. The Additional Chief Secretary to Government,
   Office of the ministry of Municipal Administration,
   Urband and Water Supply, Government of Tamilnadu,
   Fort St. George, Chennai – 600 001.

2. The Principal Secretary/Commissioner,
   Greater Chennai Corporation, Chennai – 600 003.

3. The Deputy Commissioner [R & F],
   Greater Chennai Corporation, Chennai – 600 003.

4. The Zonal Officer,
   Zone – XIII, Greater Chennai Corporation,
   No.31, Thiruvengadam Street, Baktavatsalam Nagar,
   Adayar, Chennai – 600 020. ... Respondents

Prayer:- Writ Petition is filed, under the Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the proceedings vide L.& LA.Na.Ka.No.LE4/4147/1999, dated 13.01.2022 on the file of the third respondent and subsequent letter communication issued by the second respondent vide L. & LA.Na.Ka.No.LE4/4147/1999, dated 04.06.2022 through the DRO [L&LA], Greater Chennai Corporation and to quash the same and consequently direct the respondents to receive the rents as mutually agreed between the petitioner and respondents under the respective Lease Deeds and quash the same as illegal, arbitrary, ultravires the Constitution of India.

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| For Petitioner | : | Mr.Mr.Vijay Narayan, Senior Counsel<br>for Mr.T.Balaji |
| For Respondents | : | Mr.V.Nanmaran,<br>Addl. Government Pleader – R1<br><br>Mr.P.S.Raman, Senior Counsel<br>for Mrs.P.T.Ramadevi,<br>Standing Counsel for Chennai Corporation<br>- R2 to R4 |

**ORDER**

This Writ Petition has been filed to quash the impugned Order dated 13.01.2022 on the file of the third respondent and subsequent letter communication issued by the second respondent dated 04.06.2022 through the DRO [L&LA], Greater Chennai Corporation as illegal, arbitrary, ultravires the Constitution of India and consequently direct the respondents to receive the rents as mutually agreed between the petitioner and respondents under the respective Lease Deeds.

2. The brief facts leading to filing of the Writ Petition is as follows :

The Writ Petitioner, a registered society, in order to run schools in and around Raja Annamalaipuram and Mandaveli, entered into a lease agreement to the landed property from the Corporation of Madras for an extent of 68 grounds 2361 sq.ft for higher secondary school and 10 grounds for primary school comprised in survey Nos.4247/7, 4251/2, 4253/1 and 3974/2, respectively. On 05.01.1957 and 04.01.1958 lease deeds came to be executed between the parties. The consideration for the said leased was fixed at Rs.110 and Rs.18 respectively to be paid monthly. and the lease is for a period of 33 years. The original lease expired on 04.01.1990 and 03.01.1991 respectively in respect of the subject matter of the land. In the lease deed referred above, subsequent to the expiry of the lease, the respondents have also renewed for a further period of 33 years on enhanced lease amount at the rate of Rs.100/- per ground. It is also agreed that Rs.100/- per ground would payable from 05.01.1990 to 04.01.1995 subsequently, the same shall be revised to Rs.125/- from 05.01.1995 to 04.01.2000. Accordingly, the lease for 68 grounds 2301sq.ft. commenced on 05.01.1990 and is bound to expire on 04.01.2023. The lease for 10 grounds commenced on 04.01.1991 and is bound to expire on 03.01.2024. The leases were originally granted for running school which was aided by the Government. Later, Education society decided to establish fee levying school in an extent of 30.63 grounds and 1500 sq.ft. out of larger extent of 78 grounds 2301 sq.ft. The respondent conceded the request of the petitioner and Government Order has been passed on 02.03.2005 permitting the petitioner to establish fee levying school. In so far as fixation of fees for fees levying school, it was agreed between the parties that the Government may reasonably determine the lease for 30 grounds 1500 sq.ft. to be occupied by the new school. The remaining existing land provided for aided school continued at the same rate as per G.O.No.83 dated 19.03.1991. Whereas the rent for fee levying school was fixed at 1518/- per ground per month for the period commencing from 01.04.2005 to 31.03.2006 by a letter dated 12.04.2006.

3. When the matter stood thus, the respondent corporation has enhanced the rent for the entire area from 2006 to 2010 at the rate of 1746 per ground per month. The same was demanded for non aided and fee levying school without any distinction. The above enhancement has been challenged in W.P.No.19190 of 2011 and this Court by its Order dated 19.08.2011 has directed the petitioner to pay 50% of the enhanced amount. During the pendency of the above mentioned Writ Petition, the Corporation enhanced the lease rent from Rs.2008/- to Rs.2,655/- for the period commencing from 01.04.2015 to 31.03.2018. This Court considering the resolution passed in No. 312 of 2016 dated 31.08.2016 held that the resolution pertaining to the persons in occupation beyond the lease period would not be applicable to the existing lease. Accordingly, quashed the impugned Order dated 09.05.2011 and directed the parties to work its respective rights by arriving at a consensus. Pursuant to the above Order, the petitioner was called for discussion by a letter dated 12.05.2021, 12.07.2021 and 22.07.2021. After detailed enquiry the respondent dropped the enhancement of the lease rent following resolution bearing No.312 dated 31.03.2006 for the period commencing from 2006 to 2018.

Having accepted the same, now the demand has been issued relying on the subsequent resolution G.O.Ms.No.389 the impugned enhancement has been made. According to the petitioner, G.O.389 dated 30.09.2019 is not applicable to the petitioner. Similarly G.O. 35 Municipal Administration & Water Supply [M.C.I.] dated 30.09.2019 has no nexus with regard to the enhancement in so far as the subject matter Is concerned.

4. Counter has been filed by the respondents. According to them, admitting the lease of the larger extent for 33 years and subsequent renewal for another 33 years, it is their contention that as far as the fees levying school is concerned, rent has been enhanced as per G.O.Ms.No.389. The above Government Order is also pursuant to the resolution passed by the Corporation and the same has been communicated to the petitioner on 12.04.2006. Permission to run certificate school, viz., fees levying school was granted subject to the payment of specific rents. Hence, according to the Corporation as on today, the petitioners are liable to pay a sum of Rs.4,75,56,608/- based on the G.O.Ms.No.389.

5. The learned Senior Counsel Mr.Vijay Narayan mainly submitted that while granting permission to convert 30.63 grounds and 1500 sq.ft. for running a private school, viz., fees levying school, it is specifically agreed that rent shall be payable as fixed by the corporation. According to him, the specific rent of Rs.1518/- per ground per month has been fixed, which has been paid all along. During the existence of the lease, suddenly the Corporation relying upon G.O.Ms.389 enhanced the rent based on the resolution said to have been passed by the corporation. According to him, the resolution and the Government Order is not applicable to the existing lease. The resolution which is referred in the Government Order relate to the over staying persons or otherwise unauthorised occupants, who have been squatting over the Corporation properties. It will not apply to the existing lease. It is his contention that once, the parties are governed by the contract and the lease has been fixed in terms of the specific Government Order, there cannot be any unilateral change or enhancement of the lease rent by the lessor. Hence, submitted that the entire demand of Rs.4,75,56,608/- is contrary to the law and cannot be sustained in the eye of law. In support of his contentions, he relied on the following judgments :

**Dwarkadas Marfatia and Sons Vs. Board of Trustees of the Port of Bombay** reported in **AIR 1989 Supreme Court 1642**

**Mahabir Auto Stores and others Vs. Indian Ol Corporation and others** reported in **[1990] 3 SCC 752**

**Kumari Shrilekha Vidyarthi and others Vs. State of U.P. And others** reported in **MANU/SC/0504/1991**

**Hindustan Lever Ltd and another Vs. Board of Trustees, Visakhapatnam and another** reported in **AIR 2003 Andhra Pradesh**

**Jamshed Hormusji Wadia Vs. Board of Trustees, Port of Mumbai and Ors** reported in **MANU/SC0033/2004**

**Bharat Sanchar Nigam Limited Vs. BPL Mobile Ltd.** **r**eported in **[2008] 13 SCC 597**

6. Whereas, Senior Counsel Mr.P.S.Raman submitted that the dispute is only with regard to 30.63 grounds and 1500 sq.ft. of the land.

Originally, 78 grounds of the Corporation lands have been leased in the year 1957 for a period of 33 years. Thereafter, the same has been renewed for a further period of 33 years to run non levying school. However, at the request of the petitioner, permission was granted to run the private school, that too, fees levying school at different rate viz., at Rs.1518/- per ground per month in respect of 30 grounds. Subsequently, based on the resolution passed by the Corporation and followed by the Government Order, the rent has been calculated and enhanced from 01.04.2018. Therefore, it is his contention that once the lease itself is subject to the enhancement and agreed by the petitioner, they cannot challenge the enhancement. Hence, the present Writ Petition is not maintainable.

7. I have perused entire materials. The demand issued by the Corporation dated 13.01.2022 was challenged particularly the demand of a sum of Rs.4,75,56,608/- in respect of 30.63 grounds and 1500 sq.ft. of the land which was leased out to the petitioner to run the private school, viz., fee levying school. It is not in dispute that an extent of 78 ground was originally leased out to the petitioner in the year 1957 and the petitioner was running the aided school till 2004. Thereafter, the petitioner has

requested permission to run fee levying school in the name of Hari Shri Vidyalam in an extent of 13.63 grounds. The request of the petitioner was acceded by the Government and permission was accorded in G.O.Ms.No.35 dated 02.03.2005 to run ISCE school and the Government has accorded permission and directed Corporation of Chennai to fix lease rent in respect of the corporation lands and the Commissioner was requested to fix a reasonable lease rent after proposed construction of the school building is completed. Pursuant to the Government Order, the Commissioner of Corporation has fixed at the rate of Rs.1518/- per ground per month. This Order has been communicated to the petitioner on 12.10.2006 and the nature of the amount demanded is also mentioned in the above proceedings. Subsequent communication dated 12.10.2006, nature of the rent payable per month has been communicated to the petitioner. These facts are not in dispute. The lease in respect of the above area expired on 04.01.2023.

8. It is relevant to note that the parties are governed by the contractual terms. The nature of the rent fixed while permitting fee levying school was only Rs.1518/- per ground per month. There was also

a condition that the same will be 25% enhancement in the rent. As far as non levying fees is concerned, there is no dispute. As admitted by both sides, even during the submissions only dispute is with regard to enhancement of rent retrospectively for fees levying school, namely Hari Shri Vidyalaya. The demand notice has also been issued in respect of the same. Admittedly, at the time of granting permission to convert non aided school, fee levying school, the rent was fixed at Rs.1518/- per ground per month and the lease deed is also executed. As per the terms of the original lease deed, 25% enhancement will be made every five years. It is not disputed by the petitioner that they are bound to pay the enhanced rate of 25% every five years.

9. The only grievance of the petitioner is that sudden hike on the basis of the Government Order No.389 cannot be sustained in the eye of law. According to them, the Government Order has been proceeded as if Corporation has passed a resolution enhancing the rent for existing lease. Whereas, it is contention of the learned Senior Counsel Mr.Vijay Narayan, that the resolution is pertaining only in respect of unauthorized occupants or the persons over staying in the corporation place and not in respect of

existing lease. In this regard, this Court perused the resolution dated 20.08.2018. A perusal of the above resolution indicate that the corporation has infact resolved to increase use and occupation charges as damages over the corporation lands which have been unauthorisedly used by persons even after the expiry of lease granted to the original lessee. The resolution has been passed mainly to collect, use and occupation charges as damages from the persons who are in occupation of the corporation properties even after original lease executed in favour of lessee have already been expired and subsequently persons who are manoeuvred to take control of the building and enjoying the premises. The Corporation has decided to collect the damages only from unauthorised occupants. While passing the resolution, reference is also made that damages for use and occupation could be collected from the schools which are running in the Corporation lands. Entire reading of the resolution, this Court is of the firm view that the resolution has been passed only to collect damages for unauthorized use and occupation of the properties. Therefore the same cannot be pitted against the existing lease holders.

10. It is relevant to note that when the tenants were inducted into possession on certain terms, the terms governing the parties will continue till the period of lease is expired. Admittedly, the lease period in this case expired only on 04.01.2023. Therefore, merely on the basis of the resolution, which is meant to recover the damages for unauthorized use and occupation by the persons who are over staying in the Corporation lands. Therefore, merely policy has been resolved in the subsequent Government Order, the Corporation cannot enhance the rent on the basis of the resolution to the existing lease, that too, retrospectively from 04.01.2018. It is also relevant to note that when the lease period is not over, terms and conditions of the lease deeds are binding both on lessee and lessor. Section 108 of the Transfer of Property Act deals with the obligation of lessor and lessee and subsection c of the above section reads as follows :

> (c) the lessor shall be deemed to contract with the lessee that, if the latter pays the rent reserved by the lease and performs the contracts binding on the lessee, he may hold the property during the time limited by the lease without interruption. The benefit of such contract shall be annexed to and go with the

> lessee's interest as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested.

Therefore, when the lessor has agreed and fixed a specific rent, viz, Rs.1518/- per month per ground and also agreed to receive 25% enhancement on the basis of lease agreement every 5 years, the terms are certainly binding on both the parties. Such being the position, merely on the basis of the resolution, which is primarily meant for unauthorized use and occupation charges as damages, for the persons who are over staying in the corporation properties, such enhancement cannot be made in respect of existing lease, as the existing lease is governed by the specific contract between the parties. It is also relevant to note that any damages for use and occupation of properties can be claimed only when the possession is not legal or unauthorized. Only in such a scenario, damages can be collected for use and occupation of the properties as damages, not from the persons who are lawfully inducted into the possession where jural relationship is very much in existence. In such view of the matter, the Corporation claiming enhancement of rent retrospectively based on the resolution which is primarily meant for collecting damages for unauthorized use and occupation of the corporation building from the existing lease cannot be sustained in the eye of law. In such view of the matter, the demand in respect of Rs.4,75,56,608/- from 01.04.2018 is hereby setaside. However, the petitioner is liable to pay the existing rent with 25% increase as agreed in the Original lease, till the lease is expired. After expiry of the lease period, if the lease is not renewed, Corporation is entitled to collect the enhanced rent as per G.O. referred above.

11. With the above observation, this Writ Petition is allowed. Consequently connected miscellaneous petitions are closed. No costs.

**24.01.2023**

Index:Yes/No

Neutral Citation : Yes/No

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To,

1. The Additional Chief Secretary to Government,
   Office of the ministry of Municipal Administration,
   Urband and Water Supply, Government of Tamilnadu,
   Fort St. George, Chennai – 600 001.

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**N.SATHISH KUMAR, J.**

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