



W.A.No.2669 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.10.2023

CORAM

THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.A.No.2669 of 2023

Don Bosco Higher Secondary School
Rep. by its Correspondent
No.130, Madhavaram High Road
Perambur, Chennai 600 011.

.. Appellant

Vs.

1. The Secretary
Ministry of Home Affairs
Government of India
North Block, Central Secretariat
New Delhi 110 001.
2. The Joint Secretary (FFR Division)
Ministry of Home Affairs
Government of India
NDCC-I, Palika Kendra
Jai Singh Road, New Delhi 110 001.
3. The Custodian
O/o. The Custodian of Enemy Property for India
Kaiser-I-Hind Building
Ballard Estate, Currimbhoy Road
P.B.No.689, Mumbai 400 038.



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4. The Secretary to Government
Revenue Department
Government of Tamil Nadu
Secretariat, Chennai 600 009.
 5. The Commissioner for Land Administration
Chepauk
Chennai 600 005.
 6. The District Collector
O/o. The District Collector
Rajaji Salai, Chennai 600 001.
 7. The Tahsildar
Purasawalkam-Perumbur Taluk
Perambur, Chennai 600 011.
- .. Respondents

Prayer: Appeal filed under Clause 15 of the Letters Patent against the order of the learned Single Judge dated 07.09.2023 made in W.P.No.28448 of 2021.

For the Appellant : Mr.R.Prabhakaran

For the Respondents : Mr.K.Srinivasamurthy
Senior Panel Counsel
for Respondents 1 to 3

Mr.Ramanlal
Additional Advocate General
Assisted by
Mrs.R.Anitha
Special Government Pleader
for Respondents 4 to 7



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JUDGMENT
(Delivered by the Hon'ble Chief Justice)

We have heard Mr.R.Prabhakaran, learned counsel for the appellant, Mr.K.Srinivasamurthy, learned Senior Panel Counsel for the respondents 1 to 3 and Mr.Ramanlal, learned Additional Advocate General, assisted by Mrs.R.Anitha, learned Special Government Pleader for the respondents 4 to 7.

2. The appellant has filed the writ petition seeking directions against the third respondent to accept the lease amount of Rs.96,583/- (Rupees ninety six thousand five hundred and eighty three only) and to renew the lease from 01.08.2022 in favour of the appellant School.

3. According to learned counsel for the appellant, lease was executed in favour of the appellant in respect of the subject writ land way back in the year 1984 and the occupation charges were directed to be paid with effect from July 1985. The property in



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question is an enemy property. The lease in favour of the appellant has come to an end in July 2021.

4. The property in question is used as a playground for the children and also for the residents of the locality. The playground is to be preserved as such and the respondents cannot use the property for commercial purpose. According to learned counsel, learned Single Judge failed to consider the said aspect in its correct perspective.

5. Learned counsel submits that the appellant is not an unauthorised occupant. It is occupying it under a valid lease. The respondents ought to have accepted the lease amount. The lease amount was increased from time to time. Initially, it was Rs.20,000/- (Rupees twenty thousand only) per annum. Subsequently, it was enhanced to Rs.96,583/- (Rupees ninety six thousand five hundred and eighty three only). The respondents ought to have considered the larger interest of the students and the



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people at large. Learned counsel for the appellant submits that the appellant would remit the amount of lease within one week.

6. Learned counsel for the respondents 1 to 3 submits that the period of lease has come to an end on 31.07.2021. The lease is not extended. According to learned counsel, policy decision is taken by the respondents not to renew any lease. Learned counsel submits that the respondents would adhere to the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, while taking action against the appellant.

7. The entry of the appellant on the said land is not unauthorised. It is under lease. The period of lease has come to an end. Upon expiry of the period of lease, the respondents would get a right to repossess the land, of course, in due adherence to the provisions of law. In a writ petition filed by the appellant, the relief is given to the respondents.



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8. As far as the prayer of the appellant to direct the third respondent to renew the lease is concerned, the same would be beyond the terms of the contract. In a writ jurisdiction, the Court would not re-write the terms of the contract. Whether to extend the lease is the choice of the parties to the contract. It is not the case that the lease is a statutory lease. The instant lease is contractual lease. Extension of lease depends upon the *consensus ad idem* between the parties. In the light of the above, in writ jurisdiction, the Court, certainly, cannot grant a relief directing the respondents to execute the lease in favour of the appellant or renew the lease in favour of the appellant.

9. So far as the direction of the learned Single Judge that the respondents shall resume the land is concerned, accepting the statement of learned counsel for the respondents 1 to 3 that they would adhere to the provisions of the Act of 1971, no further orders are necessary. The respondents would certainly adhere to the provisions of the Act of 1971, as contended, while taking steps to



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10. If, in a development plan, the property is meant for a playground and/or for any public purpose, the same has to be utilised for the purpose for which it is reserved. The development has to be in accordance with the development plan.

11. With the aforesaid observations, the writ appeal is disposed of. There will be no order as to costs. Consequently, C.M.P.Nos.22438 and 22440 of 2023 are closed.

(S.V.G., CJ.) (D.B.C., J.)
03.10.2023

Index : Yes/No
Neutral Citation : Yes/No

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