



W.P.Nos.29644 to 29646 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.03.2023

PRONOUNCED ON : 29.03.2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.29644 to 29646 of 2017

and

W.M.P.Nos.31934 to 31942 of 2017

Madras Race Club
Rep by its Secretary, Dr.S.M.Karthikeyan
Guindy,
Chennai – 600 032.

...Petitioner
(in all 3 W.Ps)

Vs.

- 1.The Government of Tamil Nadu,
Rep.by its Secretary,
Revenue Department,
Fort St.George, Chennai – 600 009.
- 2.The District Collector of Chennai,
Singaravelar Maligai,
Rajaji Salai, Chennai – 600 001.
- 3.The Tashildar, Guindy Taluk,
No.370, Richardson Park,
Saidapet, Chennai – 600 015.
- 4.The Tahsildar, Velachery Taluk,
No.113, V.V.Koil Street,
Tharamani, Chennai – 600 015.



W.P.Nos.29644 to 29646 of 2017

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5. The Special Commissioner and
Commissioner of Land Administration
Ezhilagam, Chepauk,
Chennai – 600 005.

..Respondents
(in all 3 W.Ps)

Prayer in W.P.No.29644 of 2017 : Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records comprised in the Order bearing number A2/27480/1989 dated 08.6.2016 passed by the 4th respondent as well as the consequential demand notice issued by 4th Respondent in order bearing No.A2/27480/97 dated 31.8.2017 and quash the same and consequently forbear the 4th Respondent from in any manner interfering with the petitioner's right to carry on its legitimate business activity in the subject premises.

Prayer in W.P.No.29645 of 2017 : Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records comprised in the Order bearing number A2/27480/1989 dated 06.6.2016 passed by the 3rd respondent and quash the same and consequently forbear the 3rd respondent from in any manner interfering with the petitioner's right to carry on its legitimate business activity in the subject premises.

Prayer in W.P.No.29646 of 2017 : Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records comprised in the Order bearing order of the 2nd



W.P.Nos.29644 to 29646 of 2017

respondent bearing Proc.No.J6/4414/1991 dated .11.2017 signed on 09.11.2017 and dated 14.11.2017 and quash the same and consequently forbear the 2nd respondent from in any manner taking any coercive steps in pursuance of the demand notice issued by the 4th respondent dated 31.08.2017.

For Petitioner : Mr.R.Parthasarathy
Senior Counsel
For Mr.Raghul Balaji

For Respondents : Mr.R.Shunmugasundaram
Advocate General
Assisted by Mr.Yogesh Kannadasan
Special Government Pleader and
Ms.A.G.Shakeenaa

COMMON ORDER

The Writ Petition in W.P.No.29644 of 2017 has been instituted, to issue a Writ of Certiorarified Mandamus, calling for the records comprised in the Order bearing number A2/27480/1989 dated 08.6.2016 passed by the 4th respondent as well as the consequential demand notice issued by 4th Respondent in order bearing No.A2/27480/97 dated 31.8.2017 and quash the same and consequently forbear the 4th Respondent from in any manner interfering with the petitioner's right to carry on its legitimate business activity in the subject premises.



W.P.Nos.29644 to 29646 of 2017

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1.1 The Writ Petition in W.P.No.29645 of 2017 has been instituted, to issue a Writ of Certiorarified Mandamus, calling for the records comprised in the Order bearing number A2/27480/1989 dated 06.6.2016 passed by the 3rd respondent and quash the same and consequently forbear the 3rd respondent from in any manner interfering with the petitioner's right to carry on its legitimate business activity in the subject premises.

1.2 The Writ Petition in W.P.No.29646 of 2017 has been instituted, to issue a Writ of Certiorarified Mandamus, calling for the records comprised in the Order of the 2nd respondent bearing Proc.No.J6/4414/1991 dated .11.2017 signed on 09.11.2017 and dated 14.11.2017 and quash the same and consequently forbear the 2nd respondent from in any manner taking any coercive steps in pursuance of the demand notice issued by the 4th respondent dated 31.08.2017.

2. The impugned order dated 31.08.2017, wherein it has been ordered that the petitioner to remit the revised least rent arrears of Rs.730,86,81,297/- (Rupees Seven Hundred and Thirty Crores Eighty Six Lakhs Eighty One Thousand Two Hundred and Ninety Seven only) for the



W.P.Nos.29644 to 29646 of 2017

leased out property to an extent of 160.68 acres for a long term tenure of 99 years from 01.04.1945 to 31.03.2044.

CONTENTIONS OF THE PETITIONER:

3. The petitioner states that it is a non-profitable Recreation Club established under the Indian Companies Act, 1913 and has been in active operation for several decades. The petitioner club is one amongst the five Turf Authorities of India. The club was established for the purpose of fostering recreational activities, Games and Sports especially Horse Racing, which is recognised as a Game of Skill by the Hon'ble Supreme Court of India.

4. The petitioner had entered into a registered lease deed with the Government of Tamil Nadu on 01.04.1946, in respect of the land admeasuring 160.86 acres for a period of 99 years with a yearly rent of Rs.614.13/-. The lease was registered vide Document No.1439/1946 on the file of the Sub-Registrar, Saidapet. The Club was taken over by the Government of Tamil Nadu by virtue of the Madras Race Club (acquisition, transfer and undertaking Act, 1986) and the Government was administering



W.P.Nos.29644 to 29646 of 2017

the lands from 1986 to 1996. The Government of Tamil Nadu had leased the premises to the petitioner to develop recreational and Sports activities establishing Horse Racing. Keeping in fact the expenditures involved in conducting the Horse Racing, the premises was leased out for 99 years and also provided the petitioner the option to renew the lease deed upon expiry of its current term in 2044.

5. The petitioner had made an advance amount towards the entire lease amount for 99 years. No right was given to either party to revisit the rent determined in the Lease Deed dated 01.04.1946.

6. The Tahsildar, Mambalam-Guindy Taluk called upon the petitioner to pay a sum of Rs.310,70,55,925/- as revised rent retrospectively for the period from 01.07.1974 to 30.06.2004 by a demand notice dated 25.06.2004. The demand notice was challenged by the petitioner in W.P.Nos.18833 and 18834 of 2004. The High Court of Madras passed an order on 18.10.2004, setting aside the demand notice with an observation that *“if the respondents want to pass orders by demanding higher rate of rent from the petitioner, it is open to them to do that exercise in accordance*



W.P.Nos.29644 to 29646 of 2017

with law. This order will not preclude the respondents from initiating any action by issuing notice in accordance with law". The demand notice was set aside by this Court on the ground that no show cause notice was issued to the writ petitioner, which is in violation of the principles of natural justice.

7. The Tahsildar, Mambalam-Guindy Taluk called upon the petitioner to pay a sum of Rs.730,86,81,297/- (Rupees Seven Hundred and Thirty Crores Eighty Six Lakhs Eighty One Thousand Two Hundred and Ninety Seven only) as arrears of lease rent retrospectively for the period from 18.12.1970 to 30.06.2004. The petitioner again filed Writ Petition in W.P.No.19716 of 2007 and the Hon'ble High Court once again passed an order on 11.07.2007, setting aside the demand notice and allowed the writ petition. The State preferred Writ Appeal in W.A.No.867/2009 and the Hon'ble Division Bench of this Court passed an order on 04.03.2011 and the same reads as under:

"Since the impugned order of demand has been passed by the appellants in total derogation of the principles of natural justice, in spite of a direction issued by a learned single Judge of this Court in the earlier round of litigation, the impugned order



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W.P.Nos.29644 to 29646 of 2017

has to be, necessarily, set aside and the matter is remanded back to the third appellant to pass orders afresh, after hearing the respondent within a period of sixteen weeks from the date of receipt of a copy of this order. We make it clear that we have not gone into the merits of the case and we give liberty to the respondent to urge all aspects of the matter including the points that were urged before the learned single Judge and before us in this writ appeal. Since the matter has been remitted back to the third appellant for consideration, in accordance with law, the impugned judgment dated 11.07.2007 made in W.P.No.19716 of 2007 by the learned Single Judge is set aside.”

8. The respondents issued further notice dated 27.02.2013 based on G.O.Ms.No.3947, Revenue Department of the year 1970, which states that “The board of Revenue has stated that the rates fixed in Appendix-XXII to B.S.O, Vol-I, long ago for the purpose of fixation of ground rent, are outmoded and cannot be adopted now as the rates are very low and hence require revision. The government agree with the Board of revenue and direct that the lease rent in Madras City be fixed at 7% with reference to the market value of the land which is determined on well defined principals instead of with reference to the instruction sin Appendix-XXII to BSO Volume I in the case of rich persons, the lease rent should be collected at



W.P.Nos.29644 to 29646 of 2017

double the market value. The collector of Madras is requested to follow the revised orders in Para 2 above in the matter of lease of government lands in madras city with reference to the market value of the lands”.

9. The Tahsildar, Mambalam-Guindy Taluk relying on the above Government order, issued notice, proposing to re-fix the lease rent for the petitioners with effect from 18.12.1970 and asked the petitioner to furnish their response to the proposed enhancement of lease rent at the rate of 14% from 18.12.1970. The petitioner had submitted their detailed defence on 21.03.2013.

10. The Erstwhile Mambalam-Guindy Taluk was trifurcated into three taluks viz., Velachery, Guindy and Mambalam Taluk and thereafter, part of the property measuring 76.41 acres fell under the Guindy taluk and the remaining portion of the land fell under the Velachery Taluk. The third respondent issued notice on 13.07.2015 to the petitioner to make its representation before the Tahsildar to implement the orders passed by the Hon'ble Division Bench in W.A.No.867 of 2009 and to conduct an enquiry. The petitioner submitted a reply on 22.07.2015. The third respondent passed



W.P.Nos.29644 to 29646 of 2017

an order on 06.06.2016, rejecting the submissions of the petitioner and asked the petitioner to pay the enhanced lease rent at 14% of the market value of the land from 18.12.1970. The petitioner further submitted their response on 23.08.2017, reiterating the objections earlier raised that the enhanced lease rent is exorbitant. However, the respondents 3 and 4 rejected the defense submitted by the writ petitioner and reiterated that the demand made for enhancements of lease rent at 14% of the market value of the land from 18.12.1970 should not be revised and the same should be collected as per the rate already fixed. Thereafter, the provisional demand notice dated 31.08.2017 was issued, asking the petitioner to pay the enhanced rent within a period of 15 days from the date of receipt of the demand notice, failing which, action will be initiated under the Tamil Nadu Revenue Recovery Act to realize the amount.

ARGUMENTS ON BEHALF OF THE PETITIONER:

11. The learned Senior counsel appearing on behalf of the writ petitioner mainly raised the ground that the Horse Race is a Game of Skill as confirmed by the Hon'ble Supreme Court of India and therefore, there is no reason whatsoever to enhance the rent over and above the agreed rent on



W.P.Nos.29644 to 29646 of 2017

the date of entering into the lease agreement on 01.04.1946. The entire lease rent for a period of 99 years has been paid by the petitioner Club in advance and there is no clause / covenants in the lease deed for enhancement of rent. Thus, the unilateral enhancement by the respondents is in violation of the lease agreement dated 01.04.1946 and bad in law. The authorities have failed to consider, whether the scope of enhancement or modification of rent in the existing lease deed is available or not. The lease is a registered document and under Section 107 of the Transfer of Property Act, modification cannot be done unilaterally by any one of the party.

12. The learned Senior counsel appearing on behalf of the petitioner contended that the petitioner Club is running a Recreation Club and more specifically, conducting the sport of Horse Race. Thus, the petitioner has not violated any of the conditions in the lease deed and therefore, the impugned orders are liable to be set aside.

13. In support of the above contentions, the petitioner relied on the following judgments:

(a) In the case of *Style (Dress Land) Vs. Union Territory*,



W.P.Nos.29644 to 29646 of 2017

Chandigarh and another, reported in (1999) 7 SCC 89, wherein the Apex

Court made the following observations:

“17. In CA No. ... of 1999 [@ SLPs (C) Nos. 17894-95) filed by M/s New Rajan Watch Company it was admitted that the lease in their case was executed on 9-4-1990 on a monthly rent of Rs 1090 to be paid in advance by the 10th day of every month for which it fell due. One of the terms of the lease deed was:

“The lease shall be for period of three years from the date of the grant of the lease and shall be terminable at any time by the lessor by giving one month's advance notice in writing to the lessee and it shall be terminable immediately without notice by the lessor under clause 9 hereof. The lease hereby granted shall be renewable once for another term of three years on the rent as determined by the Government.”

The appellants in these appeals have urged that the respondents had no jurisdiction to enhance the rent during the subsistence of the lease deed for a period of three years from the date of its execution. There appears to be substance in the submission which has not been taken note of by the High Court. These appellants, however, are not justified in urging that even for the period of the next three years they were entitled to the renewal of lease deed on the same rent or the rent enhanced at the rate of 20% at the most. Condition 4 reproduced hereinabove clearly and unambiguously authorised the respondent authority to renew the lease for another term of three years on the rent as may be determined by the Government. It is, therefore, evident that for the first period of



W.P.Nos.29644 to 29646 of 2017

three years commencing from 9-4-1990 the respondent authority was not justified in enhancing the rent of the shop leased out to M/s New Rajan Watch Company. The enhancement of rent shall, however, be deemed to be legal, proper and valid with effect from 9-4-1993."

(b) In the case of **M/s.Dwarkadas Marfatia and sons Vs. Board of Trustees of the Port of Bombay, reported in (1989) 3 SCC 293**, wherein the Apex Court held that any authority covered under Article 12 of the Constitution of India cannot act arbitrarily even in contractual matters and must act only to further public interest.

14. The learned Senior appearing on behalf of the petitioner states that the petitioner Recreation club is registered under the Companies Act and is not a profit making company. The petitioner is developing Horse Racing and other Sports Recreational Activities and Horse Racing is purely a Game of Skill as per the judgment of the Hon'ble Supreme Court of India in the case of **Dr.K.R.Lakshmanan vs. State of Tamil Nadu and another, reported in AIR 1996 SC 1153**.

15. The rent was fixed at Rs.614.13/- per year for 99 years and the petitioner Club paid the entire rent in advance. The Government had clearly



W.P.Nos.29644 to 29646 of 2017

understood and acknowledged that the developing facilities of the premises was time consuming and expensive. Thus, the unilateral decision of the Government, imposing enhanced rent at the market value of the land is untenable. There is no consensus in the matter of such enhancement and in the absence of any fraud, misrepresentation, collusion or otherwise, the respondents are not empowered to unilaterally enhance the lease rent, which is not contemplated or agreed upon between the parties in the lease deed executed on 01.04.1946.

REPLY BY THE RESPONDENTS:

16. The counter affidavit filed by the 2nd respondent states that the Government Order in G.O.Ms.No.1934, Revenue Department dated 25.10.1945 have leased out a total of 160.86 acres as detailed below to the petitioner / Madras Race Club for the purpose of fostering, recreation, games and sports of every kind of activities being racing.

<i>Village</i>	<i>Field Number</i>	<i>Extent (Acres)</i>
Venkatapuram	1	0.94
Venkatapuram	2	0.57
Venkatapuram	3	0.23



W.P.Nos.29644 to 29646 of 2017

<i>Village</i>	<i>Field Number</i>	<i>Extent (Acres)</i>
Venkatapuram	4	1.37
Venkatapuram	5	1.76
Venkatapuram	6	1.10
Venkatapuram	7	0.92
Venkatapuram	8	1.15
Venkatapuram	15	0.75
Adyar	9	0.79
Adyar	10	1.46
Adyar	11	2.45
Adyar	12	45.21
Adyar	13	17.71
Velachery	82	83.17

17. The respondents denied that it is a non-profitable recreation club established under the Indian Companies Act, 1913 and stated that it has been inactive for several decades. Out of the lands leased out to Madras Race Club, huge multiples of amount is generated through Madras Race Club Marriage Hall, a stand or a galary by name M.A.M.Ramaswamy having a five storey super structure with an extent of 25,000 Sq.ft. being let out for rent apart form using as Race Viewing Galary, a space let out for Kotak Mahindra Bank, ICICI Bank ATM and also two liquor bars are being run by the Madras Race Club inside the lease land.



W.P.Nos.29644 to 29646 of 2017

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19. The lease granted for 99 years in G.O.Ms.No.1934, Revenue Department, dated 25.10.1945 was executed in terms of lease deed between the petitioner and the Government and registered on 08.03.1946 in Document No.1439 of 1946 on the file of the Sub-Registrar, Saidapet. The lease rent was fixed at Rs.614.13 annas exclusive of all rates, taxes, cesses, charges and outgoings whatsoever for the whole area payable on or before the 15th day of January of each year and pay interest at 6% per annum from their respective due dates on all sums payable, which shall not have been



W.P.Nos.29644 to 29646 of 2017

paid at such due date and the same shall be recoverable as arrears of land revenue. The lease was granted to Madras Race Club to develop world class facility in Tamil Nadu for sports especially Horse Racing. However, the fact is lucid in the open domain that the sport of Horse Racing has been entertained for earning huge money as a “Game of Gambling” by the Madras Race Club.

20. The petitioner, no doubt, has paid the entire amount of lease rent for 99 years and the amount has been received and remitted in the Treasury. The contention of the petitioner that no right was given to the lessor to revisit the rent determined in the lease deed dated 08.03.1946 is not correct. The term rent is a variable factor and not a constant one. The rent is to compensate for use of another's land and therefore, the fixation of rent depends upon the prevailing market situations every now and then. Therefore, the respondents have an inherent right to raise the rent as prevalent from time to time. When there is an amendment in RSO 24 A, the lessee is liable to abide with the conditions referred with. Therefore, as per G.O.Ms.No.3947, Revenue Department dated 18.12.1970, the lessee is liable for revision of lease rent at 14% market value of the land.



W.P.Nos.29644 to 29646 of 2017

21. The petitioner is well aware of the Government order in G.O.Ms.No.3947, Revenue Department dated 18.12.1970 that the lease rent is to be paid at the rate of 14% of market value and therefore, the Tahsildar, erstwhile Mambalam – Guindy Taluk issued demand notice through order dated 30.05.2007, to the petitioner to pay a sum of Rs.310,70,55,925/-. The petitioner filed Writ Petitions in W.P.Nos.18833 and 18834 of 2004 and the matter was remanded by the High Court. After issuing a notice and providing an opportunity, again an order was issued based on the Government Order by the Tahsildar in proceedings dated 31.08.2017, demanding to pay a sum of Rs.730,86,81,297/-. Again the petitioner filed W.P.No.19716 of 2007 and the demand notice was set aside by the High Court in order dated 11.07.2007. The 'State' preferred Writ Appeal in W.A.No.867 of 2009 and the Hon'ble Division Bench remanded the matter again for reconsideration.

22. In the Government order in G.O.Ms.No.3947, Revenue Department dated 18.12.1970, it has been ordered that the lease rent in Madras City be fixed as 7% with reference to the “market value” of the land, which is determined on well defined principles instead of with



W.P.Nos.29644 to 29646 of 2017

reference to the instructions in Appendix XXII of B.S.O. Volume I and in the case of rich persons, the lease rent should be collected at double the market value of the land, which is 14%. The Government also directed the 2nd respondent herein to follow the above order in the matter of lease of Government lands in Madras City. Thus, the comparison made by the petitioner with reference to the land at Nilgiris District has no relevance.

23. The Government have trifurcated Mambalam-Guindy Taluk into three Taluks namely Mambalam, Guindy and Velachery vide G.O.Ms.No.476 Revenue Department dated 27.11.2013. Several notices were issued to the petitioner to represent the case and offer remarks on the demand raised by the Tahsildar, Velachery Taluk and Tahsildar, Guindy Taluk. However, the petitioner did not appear in person to represent the case or offer remarks but evaded for flimsy reasons by asking further time for offering remarks. Finally, the order was passed, demanding a sum of Rs.730,86,81,297/- towards arrears of rent as per the Government orders, which would be applicable to all the Government lands, which all are leased out in the Chennai City. The detailed order was passed by the respective Tahsildars of Guindy and Velachery Taluks.



W.P.Nos.29644 to 29646 of 2017

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24. In the name of developing Horse Racing, the Club is earning huge money from the bookmakers and punters, inter-venue betting, telecast rights, but when the lease rent is raised in terms of the prevalent value, the petitioner is making hue and cry. In other Racing venues for the above purposes, fee is being collected. Besides this, the Guindy Lodge operated by the Madras Race Club is also a source of income to the Club by letting rooms. So also a marriage hall is run by the Club in the lease land, collecting about Rs.5 lakhs per event. Apart from that, 4.5 acres out of the lease land has been sub let to Golf Club for rent. Kotak Mahindra Bank, ICICI ATM are occupying a part of the lease land for rent.

ARGUMENTS ON BEHALF OF THE RESPONDENTS:

25. The learned Advocate General appearing on behalf of the respondents objected the contentions raised by the petitioners that the petitioner / Club is a profit making club and earning huge money from and out of various activities being carried on in the premises leased out by the Government. No doubt, as per the Lease Deed, use of the premises is for the purpose of Horse Racing and such other recreation, games and sports and



W.P.Nos.29644 to 29646 of 2017

for no other purpose. However, in violation of the said condition, the petitioner / Madras Race Club is conducting various other profit making activities including leasing out the halls for marriage, portion of the property has been sublet to Banks and lodging purposes etc. Thus, the Madras Race Club has not only violated the conditions of the lease but also defaulted in paying the enhanced rent as per the Government order passed, which would be applicable for the entire Madras City in respect of the lands leased out by the Government. The petitioners cannot take any exception since they have involved in profit making activities by utilising the vast extent of Government land in the heart of the city.

26. The lease conditions further stipulates not to assign underlet or part with the possession of the demised premises or any part thereof except for the purpose of grazing without the previous permission in writing of the Secretary to Government in the Revenue Department. However, the petitioner / Club has violated the said conditions by putting up constructions and by developing various other activities other than the sport related activities. There is a condition not to erect any buildings or other erections on the land without previous written permission from the Secretary to



W.P.Nos.29644 to 29646 of 2017

Government in the Revenue Department. However, the petitioners have not produced any such order of permission obtained from the Secretary to Government in the Revenue Department.

27. Importantly, if the Government require the lands for any public purposes on payment of compensation by the Government for any building erected on the demised premises or any portion thereof by the Lessees, then the Government is empowered to take the property. The said condition confers power upon the Government to cancel the lease in respect of the portion of the land or in full, if the land is required for public purposes. Therefore, the petitioner cannot claim that the lease is not revocable. The petitioner agreed for revocation of lease in respect of part of the land or in full, if the Government needs the property for public purposes. That apart, the Government can without payment, temporarily at any time, use the demised premises for any public or State purpose. The decision of the Government is to be final as to what is a public or State purpose within the meaning of this clause.



W.P.Nos.29644 to 29646 of 2017

28. Thus, the lease conditions are unambiguous with reference to the right of the Government to take over the lease property for public purpose either temporarily or permanently and the decision of the Government in this regard is to be final as to what is the public or State purposes within the meaning of the lease clause.

29. The Lessor covenants with the Lessee that in the event of demised premises or any part thereof being required permanently by the Government for any purpose and handed over to the Collector of Chengalpattu District in accordance with clause (vi) of the Lessee covenants to pay compensation, is provided in the said clause for all buildings on the subject premises. Clause (vii) of the Lessor's covenants with the Lessee is to be read along with Clause (iv) of the Lessee's covenants with the Lessor.

30. The reading of the clauses in the lease deed would reveal that the Government is empowered to take over the leased land either permanently or temporarily for public purposes and the decision of the Government to be final as to what is the public or State purpose. Thus, it is not an absolute right, which is given for 99 years in favour of the Lessees.



W.P.Nos.29644 to 29646 of 2017

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31. The petitioners earlier filed writ petitions, challenging the first demand notice and thereafter, the order passed by the Tahsildar concerned. On both occasions, this Court remanded the matter and the Hon'ble Division Bench finally passed an order again remanding the matter back to the authorities to pass orders afresh after hearing the respondents. However, in the first set of writ petitions filed in Writ Petition Nos.18833 and 18834 of 2004, this Court passed an order on 18.10.2004, clearly made an observation that *“if the respondents want to pass orders by demanding higher rate of rent from the petitioner, it is open to them to do that exercise in accordance with law”*. Therefore, the Government order issued in respect of all the Government leased out premises in Chennai City and across the State of Tamil Nadu would be applicable to the case of the petitioner also. The Government order, which is applied to all cases of Government lands was adopted for the purpose of enhancing the rent on par with the market value. The authority of the Government for enhancement of rent has been approved by this Court. The rent of Rs.614.13/- per year originally fixed in the year 1945 cannot be valid for 99 years in view of sky-rocketing increase of land costs and other factors during subsequent years. The petitioner Club



W.P.Nos.29644 to 29646 of 2017

is in occupation of 160.86 acres situated in the heart of the Chennai City and therefore, the petitioner cannot seek any exemption from payment of enhanced rent and the non-payment would result in huge monetary loss to the State. The land belongs to the Government and the Government cannot lease out such a valuable property in favour of the petitioner Club for the annual rent of Rs.614.13/- and hence considering various factors, the Government issued an order for enhancement of rent, which was calculated and accordingly, the petitioner was directed to pay the arrears of rent and the future rent.

LEGAL POSITION:

Concept of Public interest in the matter of public policy:

32. 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 discretion.

(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 to 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 an unprincipled manner; it has to be exercised for the public good. Every



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W.P.Nos.29644 to 29646 of 2017

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:

33. (i) “The concept of reasonableness in fact pervades the entire constitutional scheme. The interaction of Articles 14, 19 and 21 analyzed by this Court in the case of **Maneka Gandhi v. Union of India**, clearly demonstrated that the requirement of reasonableness runs like a golden thread through the entire fabric of fundamental rights and, as several decisions of this 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.



W.P.Nos.29644 to 29646 of 2017

(ii) It has been laid down by the Apex Court in the case of **E.P.**

Royappa v. State of Tamil Nadu, 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



W.P.Nos.29644 to 29646 of 2017

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:

34. “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.



W.P.Nos.29644 to 29646 of 2017

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.

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 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



W.P.Nos.29644 to 29646 of 2017

deserving it or that the person who has offered a higher consideration is not otherwise fit to be given the contract or the property.

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.



W.P.Nos.29644 to 29646 of 2017

The Court cannot lightly assume that the action taken by the Government is unreasonable or without public interest because, as we 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 '**

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.

35. 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.** (supra) 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



W.P.Nos.29644 to 29646 of 2017

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.

36. 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



W.P.Nos.29644 to 29646 of 2017

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.

37. 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 beneficent 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***



WEB COPY



W.P.Nos.29644 to 29646 of 2017

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.

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



W.P.Nos.29644 to 29646 of 2017

the Court observed:

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"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



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W.P.Nos.29644 to 29646 of 2017

*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).*

39. In the case of **Netai Bag and ors vs State of West Bengal and ors**, 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 recipient 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*



W.P.Nos.29644 to 29646 of 2017

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)

40. 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.**

41. 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



W.P.Nos.29644 to 29646 of 2017

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.

42. 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.

43. In the case of **M/S Style (dress land) vs. Union Territory Chandigarh and another**, the Hon'ble Supreme Court of India reiterated the observations of Mathew, J., in **Punнан 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



W.P.Nos.29644 to 29646 of 2017

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 this 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 contractual 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**



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W.P.Nos.29644 to 29646 of 2017

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,**



W.P.Nos.29644 to 29646 of 2017

if it finds the reasons assigned were irrelevant and extraneous.

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44. It is not in dispute that the then Madras Government executed the lease for 99 years. However, it is a pre-independence lease deed executed prior to the commencement of the Constitution of India and thus, the Constitutional Principles are to be considered to satisfy the requirements of “Public Interest”. The Horse Race sport in those days were popular and off late the sport of Horse Race was being discouraged as many people lost their lives and property and the entire family of those persons were thrown on streets. The adverse consequences of the sport of Horse racing were largely realised by the Society at large. That apart, it was considered as a richman's sport, since negligible number of rich persons participated in the Horse Racing. Such negligible persons are being benefited from and out of the large extent of Government land situated in the heart of Chennai city. The larger interest of the public and the public welfare under the Constitution at no circumstances be compromised or neutralised. Thus, there is absolutely no public interest by leasing out such a large extent of the land in the heart of the City for Horse Racing, which is now being utilised by a small group of persons for their own recreation purposes, which is certainly unacceptable. The recreation activities going on in the petitioner /



W.P.Nos.29644 to 29646 of 2017

Madras Race Club is no way beneficial to the public at large. It is not catering to the needs of the common man in the society. It is in the hands of few rich people and they are utilising the Government property for their own recreation purposes including running of Liquor Bars, Restaurants, Horse Racing etc.,

45. The Government cannot afford in the present day circumstances to part with such a larger extent of land of 160.86 acres in the heart of Chennai city at Adayar, Velachery, Guindy and in the event of taking possession of the property, the same can be utilised for many larger public purposes and for the benefit of Crores of citizen residing in the city and across the State of Tamil Nadu. Thus, the larger public interest in such matters plays pivotal role and is of paramount importance.

46. 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.



47. **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.

48. The concept of “Public Policy” and “Public Interest” as defined is that, the practical implications concerning strategies for protecting human rights and promoting democracy and the rule of law. “Public Interest” means “People” thereafter, “which is best for the society as a whole”. General welfare of the public that warrants, recognition and protection and something in which the public as a whole has a stake.

49. **The true measure of whether someone is acting in the public interest lies in the confidence of those affected, not those making the pronouncements.** The way a public action is determined, and seen to be determined, and the public interest appropriateness of the solution, will influence the acceptance of the measure. Justification in influences, the amount of trust endangered in the relevant public. The purpose of seeking to invoke the public interest is also to be looked into. Whether the matter is really intended to be for the benefit of the society and public interest theory



W.P.Nos.29644 to 29646 of 2017

is a part of welfare economics. It is the outcome attained, when the Government discharged its obligations for long run survival and well being of the society. Serving the public is the Fundamental Mission of the Government. **Unfortunately, individualism dominates today's public life at the expense of common benefit. A policy is purposive or goal oriented action. The policy consists of courses of action rather than mere decisions. The public confidence rest on the fairness and impartiality.**

INDIAN CONTRACT ACT:

50. Section 23 of the Indian Contract Act, 1872, provides an agreement is unlawful, if it is “opposed to public policy or if the Court regards it to be immoral”. The term public policy in this context is based on the Latin Legal Maxim, “Ex Turpi Causa Non Oritur Actio”, which means “no action can arise from any dis-honourable cause.”

51. The interpretation of the public policy is upon the discretion of the Court. The terms of contract cannot be enforced even it has been agreed by the both the parties, if the same is in violation of “Public Policy”. **Public**



W.P.Nos.29644 to 29646 of 2017

policy refers to the policies of the Government made for the welfare of the society. It can also be said that if any agreement contravenes any developed interest of the society or morals of time, it can be said to be against public policy and the agreement turns to be “Void”.

52. It has been held that **an agreement cannot be enforced if it is against public good**. In the case of *P.Rathinam Vs. Union of India*, reported in *AIR 1994 SC 1844*, the Apex Court held that the term “Public Policy” is open for modification and expansion. Thus, under Section 23 of the Indian Contract Act, 1872, if the Courts regards an agreement / public policy as immoral, or opposed to public interest, undoubtedly it is open for modification.

53. Leasing out the Government property for 99 years and the Lease Deed being executed in pre-independence Era without even incorporating a Clause for enhancement or revision of rent for 99 years, undoubtedly is against the public policy and would affect larger the interest of the public and more specifically, it infringes the Constitutional right of “We, the People of India.”



W.P.Nos.29644 to 29646 of 2017

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54. In any normal lease agreement, periodical enhancement of lease rent will be provided by the Government and must be provided in the interest of public. The lease clause in the present Lease Deed speaks about “Public Interest”, which must include power to enhance rent or rescind the contract in the public interest. The word “Public Interest” in the Lease Deed dated 01.04.1946 denotes “We, the People of India” after commencement of the Constitution. The subject property vests with the State of Tamil Nadu in view of Articles 294 and 295. Thus, the manner in which the larger extent of public property has been dealt with to be taken into consideration, after the commencement of the Constitution of India.

55. Under Section 25, Explanation 2 of the Contract Act, inadequacy of the consideration may be taken into account by the Courts in determining the question, whether the consent of the promisor was freely given. The fact that 99 years Lease Deed was executed without even a clause for enhancement or revision of rent raises a serious doubt as to whether the consent was given freely and even presuming the consent was freely given during the pre-independence Era, after commencement of the



W.P.Nos.29644 to 29646 of 2017

Indian Constitution, the Government has to revisit the validity of the Lease Deed under the Constitution, so as to protect the interest of public.

Inadequacy of the consideration fixed was taken into consideration by the Government of Tamil Nadu in many cases of Government leases and the policy implemented for all the Government properties in Chennai City was implemented in respect of the Lease Deed entered into between the then Government of Madras and the petitioner / Madras Race Club. When a policy decision was taken by the Government to revise the rent to all the Government properties leased out in Madras city and such enhancement of 14% for rich people was prescribed, it is to be construed as in the interest of public and it is the policy of the Government of Tamil Nadu. Thus, the enhancement of rent made by the Government of Tamil Nadu cannot be said to be improper or illegal, but to protect the public interest, which is to be construed as inherent.



W.P.Nos.29644 to 29646 of 2017

ANALYSIS:-

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56. The lease agreement dated 01.04.1946 is the basis for the relief sought for in the present writ petition. Thus, the covenants in the Lease Deed are required to be considered by this Court. It is not in dispute that it is a pre-independence Lease Deed executed by his Excellency the Governor of Madras. The Chennai District Collector signed on behalf of the then Government of Madras.

57. It is the lessee, who submitted an application to the then Government of Madras and the Government had agreed to grant them the lease of pieces and parcels of land demised in the Lease Deed for the purpose of fostering recreation, games and sports of every kind and the chief sport being Horse Racing. The Subject land in 1946 was the outskirts of Madras City and presently heart of Chennai City. It is based on the application, the then Government of Madras leased out the land for conducting sport of Horse Racing. The lease was granted for 99 years from 01.04.1945. however, the Lease Deed was signed by the Collector of Madras on 01.04.1946 and thus, a retrospective Lease Deed was executed in favour of the Lessee / Madras Race Club.



WEB COPY 58. Certain clauses, wherein the Lessee's covenant with the Lessor are as follows:

(i) To pay annually a rent of Rs.614-13-0 exclusive of all rates, taxes, charges and outgoings whatsoever for the whole area included in this demise on or before the 15th day of January of each year and to pay interest at 6% per annum from their respective due dates on all sums payable under these presents which shall not have been paid at such due dates and the same shall be recoverable as arrears of land revenue.

(ii) To pay all rates, taxes, cesses, charges and outgoings whatsoever for the time being payable either by the Lessor or the Lessees in respect of the demised premises or any buildings for the time being standing thereon or on any part thereof, which at present amount to Rs.115-4-0 every year.

(iii) To use the premises hereby demised for the purpose of Horse Racing and such other recreation, games and sports and for no other purpose.

(iv) Not to assign underlet or part with the possession of the demised premises or any part thereof except for the



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W.P.Nos.29644 to 29646 of 2017

purpose of grazing, without the previous permission in writing of the Secretary to the Government in the Revenue Department.

(v) Not to erect any buildings or other erections on the land without the previous written permission of the Secretary to the Government in the Revenue Department which shall not be withheld except on the ground that they are not required for the purpose for which the premises were let.

(vi) To relinquish and hand over to the Collector of the Chinglepet District on behalf of the Lessor the demised premises or any part thereof if the Government require them for any public purpose on payment by the Government of compensation for any buildings erected on the demised premises or any portion thereof by the Lessees such compensation not be exceed the initial cost of the said buildings or the valuation thereof at the time of resumption or relinquishment whichever shall be the less, provided always that no compensation shall be payable for any building erected or in the course of erection on the demised premises subsequent to the date of this demise without the written permission of the Secretary to the Government in the Revenue Department contrary to the clause (V) of the Lessees' covenants.



(vii) To permit the Government or the Collector of the Chingleput District acting on their behalf to requisition the use of the demised premises and any building situated thereon without payment temporarily at any time for any public or State purpose, the decision of the Government to be final as to what is a public or State purpose within the meaning of this clause.”

59. Relevant clauses, wherein the Lessor covenants with the Lessee are as under:

(i) To permit the lessees on their paying the rent hereby reserved and observed and performing the several covenants and stipulations on their part herein contained peaceable and quietly to hold and enjoy and demised premises during the term hereby created without any interruptions by the Lessor or any person rightfully claiming under or in trust for him.

(ii).....

(iii).....

(iv).....

(v).....

(vi).....

(vii) In the event of the demised premises or any part thereof being required permanently by the Government for any public purpose and being relinquished and handed over



W.P.Nos.29644 to 29646 of 2017

to the Collector of Chingleput District in accordance with clause (VI) of the lessees' covenants to pay compensation as provided in the said clause for all buildings on the said premises or part thereof except such buildings as may have been erected subsequent to the date of this demise without the written permission of the Secretary to the Government in the Revenue Department contrary to the stipulated contained in clause (v) of the Lessees' covenants.

60. During the subsistence of the lease deed, the Government granted permission to construct a Swimming pool for Horses, a plant room and a store room-cum-observation box inside the Race Course with permission granted by the Government, subject to the condition that the Race Club will not claim any compensation. A new stand was allowed to be constructed by the petitioner. Further, a Betting Ring and a Ticket Sorting Room was also permitted to be constructed.

61. Question arises, whether the lease deed executed on 01.04.1946 by the Then Government of Madras (Pre-Independence Era) in favour of the Madras Race Club with retrospective effect from 01.04.1945 and the covenants agreed between the parties, satisfy the principles of “public interest” under the Constitution in independent



W.P.Nos.29644 to 29646 of 2017

India? Another important question that arises is, whether the Government of Tamil Nadu after enforcement of the Constitution of India is empowered to revise the lease rent based on the subsequent Government Policy framed in the interest of public and as a public policy? Whether the present lease agreement can be construed as a reasonable document in the absence of any clause for enhancement of rent for 99 years more specifically after the commencement of Indian Constitution?

62. The Registered lease deed is not in dispute. However, the covenants in the lease deed are to be considered in the touchstone of the public interest, so as to protect the Constitutional rights of the citizen of India, since the subject property belongs to Government. **The Then Madras Government based on the application submitted by the Madras Race Club entered into the lease agreement. “We, the People of India”, solemnly resolved to constitute India on 26.01.1950 to secure all its citizens Justice, Social, Economic and Political. Thus, any pre-independence lease agreement entered into by the Then Madras Government, must satisfy the constitutional requirements on post**



W.P.Nos.29644 to 29646 of 2017

independence and if any violations are identified or infringement of rights are established or opposed to public policy or against the public interest, then the Government of the day is duty bound to set-right the documents in consonance with the Principles, mandates, Philosophies and Ethos of the Constitution of India. Unconstitutionality can never be allowed to continue after the commencement of Indian Constitution.

63. The public interest prevail over the private interest and thus, the Government is obligated to ensure that the Government properties are dealt with in the interest of public and for the welfare of our great Nation.

64. Let us now consider the covenants agreed between the Lessor and the Lessee. As per the Lessee's covenants with the Lessor, the Lessee used the Government land demised for the purpose of Horse Racing and such other recreation, Games and Sports and for no other purpose. No doubt, the Hon'ble Supreme Court of India, in the case of the petitioner, held that Horse Racing is a Game of Skill and not Gambling. However, the ill-effects of horse race cannot be brushed aside.



W.P.Nos.29644 to 29646 of 2017

65. That apart, 160.86 acres of vast extent of land in the heart of

Chennai Metro City has been leased out for 99 years. The then Government of Madras would not have thought of the developments, which occurred during subsequent years and the sky rocketing developments happening in recent years in major cities across the country. The Then Madras Government in the year 1946 would not have considered the likelihood of escalation of cost of the land, market value etc., Yet another inference is possible to be drawn i.e., collusion, undue influence, Favouritism and Nepotism by the pre-independence Madras Government in favour of Madras Race Club, under the behest of few British men. Those days, Horse Racing was broadly celebrated by the British people, which was adopted in the Indian society. Under those circumstances, the vast extent of Government land was leased out without considering the adverse consequences of such long lease and ironically without even incorporating any clause for enhancement of rent and revision of rent based on the market value of the land. Therefore, the very purpose and object for which the larger extent of land in the heart of Chennai City was leased out for 99 years is whether in the “public interest” or not is to be looked into.



W.P.Nos.29644 to 29646 of 2017

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66. The Lessee/Madras Race Club agreed to relinquish and handover to the Collector of the Chengalpattu District on behalf of the Lessor the demised premises or any part thereof if the Government require them for any public purpose. Thus, it is unambiguous that the Madras Race Club/Lessee agreed to handover the subject land to the Government, if it is required for public purpose. Question arises, as to why the Government has not initiated any action to invoke the said clause and take possession of the property and utilize the same for public purposes. The Government is aware of the fact that Horse Racing is not conducted throughout the year. Horse Race is conducted only during seasons. The Madras Race Club is conducting other recreation activities. They are running Liquor Bars and other Games, which all are not beneficial to the public at large. Contrarily, very few rich individual members in the society are utilizing the Madras Race Club and participating in the Horse Race Sport by spending huge amount. The petitioner / Madras Race Club is making lot of money. In the present day circumstances, the Government is in need of lands in Chennai city for developmental activities for the welfare of the citizen of our great Nation. While so, the Government has not taken any action even in recent



W.P.Nos.29644 to 29646 of 2017

years to invoke the said clause and take away the property and utilize the same for public purposes.

67. Clause (vii) of the lease deed, wherein, Lessee's covenant with the Lessor provides permission to the Government or the Collector of Chengalpattu District, acting on their behalf to requisition the use of the demised premises and any building situated thereon without payment temporarily at any time for any public or State purpose.

68. Clause (vii) of the lease agreement, wherein the Lessor covenants with the Lessee provides that in the event of the demised premises or any part thereof being required permanently by the Government for any public purpose and being relinquished and handed over to the Collector of Chengalpattu District is in accordance with clause (vi) of the Lessees covenants. The Lessor covenants with the Lessee that if the leased out property is required permanently for the public purpose, the Government is empowered to take over the property. Thus, there is a definite agreement between the parties that in the interest of public, the land can be taken over by the Government at any point of time either temporarily or permanently.



W.P.Nos.29644 to 29646 of 2017

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69. The agreement is silent about the enhancement or revision of rent for 99 years. It is not in dispute that, the Lessee / Madras Race Club paid the entire rent for 99 years in advance. The lease was granted with retrospective effect from 01.04.1945. The rent for 99 years was paid in lump sum and for the past about 78 years, the petitioner / Madras Race Club is not paying any rent to the Government. The rent agreed in the year 1946 was Rs.614.13/-. The very fact in this regard is shocking to the conscience of this Court, since the land being popularly known as Madras Race Club in Madras City and its activities are in public domain. Thus, the public interest involved is of paramount importance and the constitutional mandates and perspectives are to be considered, since the Government has revised the rent from the year 1970 and unable to recover even the arrears of revised rent on account of the continuous litigations initiated by the petitioner / Madras Race Club one way or other and got it remanded on technical grounds and thereby prolonged the issue for several years. **Delay defeats justice. In the present case, justice has been denied to the public at large. Therefore, the question to be considered is, whether the revised lease rent demanded by the respondent Government is valid or not.**



W.P.Nos.29644 to 29646 of 2017

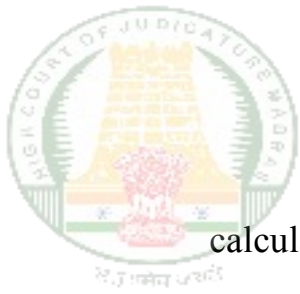
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70. The Government issued G.O.Ms.No.3947, Revenue Department dated 18.12.1970. The said Government order reads as follows:

*“The Board of Revenue has stated that the rates fixed in Appendix – XXII to Board Standing Order (B.S.O), Volume – I long ago for the purpose of fixation of ground rent are outmoded and cannot be adopted now, as the rates are very low and hence require revision. The Government agreed with the Board of Revenue and direct that the lease rent in Madras City be fixed at 7% with refernece to the market value of the land, which is determined on well defined principals instead of with reference to the instructions in Appendix – XXII to B.S.O, Volume – I. **In the case of rich persons, the lease rent should be collected at double the market value of the land.**”*

The Collector of Madras is requested to follow the revised orders in para 2 above in the matter of lease of Government lands in Madras City with reference to the market value of the lands”

71. Notice was issued by the Tahsildar, Mambalam-Guindy Taluk to the petitioner on 25.06.2004. In the said notice, the Government's policy decision to enhance the lease rent to all the leased out Government properties in Chennai City was referred and accordingly, the Tahsilar



W.P.Nos.29644 to 29646 of 2017

calculated the revised lease rent to be paid in the said notice dated 25.06.2004. The demand was acceded by the petitioner / Madras Race Club.

Hence, they filed Writ Petitions in W.P.Nos.18833 and 18834 of 2004 and this Court passed an order on 18.10.2004 with an observation that “*if the respondents want to pass orders by demanding higher rate of rent from the petitioner, it is open to them to do that exercise in accordance with law*”.

Thus, the policy decision was not found fault with by the High Court. Only ground, on which the demand was set aside is that no opportunity was granted to the petitioner. Again, the Tahsildar, Mambalam-Guindy Taluk issued notice on 30.05.2007, wherein, reasons are categorically stated for enhancement of rent based on the Government Policy decision and accordingly, 15 days time was given to the petitioner to remit the lease rent. The petitioner filed another Writ Petition in W.P.No.19716 of 2007 and the said writ petition was allowed in favour of the petitioner / Madras Race Club. The State preferred Writ Appeal in W.A.No.867 of 2009 and the Hon'ble Division Bench of this Court passed an order on 04.03.2011, remanding the matter again back to the Tahsildar to pass orders afresh after hearing the respondents.



W.P.Nos.29644 to 29646 of 2017

WEB COPY

72. Pursuant to the orders of the Hon'ble Division Bench and based on the Policy decision taken by the Government, The Tahsildar, Mambalam-Guindy Taluk issued notice on 27.02.2013 to the petitioner / Madras Race Club, informing the policy decision of the Government to revise the rent and the petitioner being a rich person, 14% enhancement is to be collected. The notice dated 27.02.2013, indicates that it is proposed to enhance the lease rent at 14% of the market value of the land from every 3 years from 18.12.1970 to till date.

73. The notice further provided an opportunity to the writ petitioner / Madras Race Club to furnish their views with due justification and records within a period of 21 days from the date of receipt of the notice. The said notice was issued by the Tahsildar, Mambalam-Guindy Taluk, Chennai. The petitioner / Madras Race Club submitted their views on 21.03.2013.

74. Further notices were issued on account of the trifurcation of Guindy, Mambalam and Velacherry Taluks. The respective Tahsildars having jurisdiction, issued separate notices to the petitioner Madras Race



W.P.Nos.29644 to 29646 of 2017

Club on 13.07.2015 and 15.07.2015. The petitioner submitted a detailed explanation. Not accepting the explanation, a provisional demand notice to pay lease rent arrears was issued by the Tahsildar on 31.08.2017, asking the petitioner Madras Race Club to pay a sum of Rs.730,86,81,297/- towards arrears of lease rent. The petitioner had submitted an explanation on 08.09.2017 and thereafter, the Collector of Chennai passed an order on 09.11.2017, ordering to freeze the Bank Accounts of the Madras Race Club. The Tahsildar addressed a letter to the Chief Manager, Yes Bank, Kilpauk Branch, Chennai – 600 010 for freezing the Bank Accounts of the Madras Race Club. Thereafter, the District Collector, Chennai passed an order on 14.11.2017 to freeze another Bank Account. Thus, the petitioners have challenged the orders dated 06.06.2016 and 08.06.2016 issued by the Tahsildar, revising the lease rent based on the Government Order, which was passed in G.O.Ms.No.3947, Revenue Department dated 18.12.1970.

75. In the present case, the inadequacy in fixation of rent and not incorporating any clause for enhancement of rent for 99 years were taken into consideration by the Government of Tamil Nadu and more so, such decision was not only taken in respect of the land leased out to the petitioner



W.P.Nos.29644 to 29646 of 2017

/ Madras Race Club, but the decision was taken as a policy to implement the same to all the Government properties in Chennai City.

76. The subject lease deed provides clause for taking over possession of the leased out property in the interest of public. **Doctrine of prudence** require that the Government policy must anticipate possible future losses in respect of the Government lands leased out to private persons. Subject property in the present case is to an extent of 160.86 acres, situates in the heart of the city, covering Mambalam, Guindy and Velachery Taluks. The Government is in need of lands for development and is acquiring lands from private persons for implementing the public welfare schemes. Whereas the Government land leased out for the sport of Horse Race in the city is causing huge monetary loss to the State Exchequer. Thus, the inaction of the public authorities in this regard are to be viewed seriously. The arrears of lease rent to be paid by the petitioner / Madras Race Club as of now has been calculated approximately as Rs.12,381,35,24,269/-. (Rupees Twelve Thousand Three Hundred Eighty One Crores Thirty Five Lakhs Twenty Four Thousand Two Hundred and Sixty Nine only) The actual market value of the property is running to several thousand crores and the Government



W.P.Nos.29644 to 29646 of 2017

authorities are not sensitive enough to take over the property by invoking the lease clauses for public purposes in the interest of public and to recover the enhanced lease rent fixed from the year 1970 onwards. The Constitutional Courts are bound to protect the constitutional mandates and its principles in the interest of public at large. When the public rights are infringed and the inaction of the Government results in huge financial loss to the State Exchequer, the Constitutional Courts are bound to step in and rescue 'We, the People of India' in the interest of social justice and for the public good of "Future India". If the Government is allowed to cause such a huge monetary loss to the State Exchequer due to the inaction or slow action of the executives, the Constitutional Courts are bound to go to any extend and protect the public interest.

77. An inevitable question is, whether any bureaucrat of the State, Hon'ble Judges, Hon'ble Ministers, Politicians and any person as a matter of fact will lease out their property owned by them for a meagre annual rent of Rs.614.13/- for 99 years in Chennai city. It is beyond one's imagination. Even if such mistakes are committed by the pre-independence Madras Government at the behest of the British Rule, and under the control of



W.P.Nos.29644 to 29646 of 2017

colonial British Rule, after the commencement of Indian Constitution, the Government of Tamil Nadu ought to have initiated all appropriate steps to protect the Government property. In the present case, only during the year 1970, action was initiated to revise the lease rent through policy decision by enforcing uniform revision for all the leased out Government properties. Unfortunately, the revised rent was not recovered from the Madras Race Club effectively. The arrears have mounted to an extent of Rs.12,381,35,24,269/-. (Rupees Twelve Thousand Three Hundred Eighty One Crores Thirty Five Lakhs Twenty Four Thousand Two Hundred and Sixty Nine only as of now approximately) If the test of prudence is applied, the subject lease deed in the present case is in violation of the 'public interest' and opposed to public policy, resulting in huge financial loss to the State Exchequer, which would affect the developmental activities of our great Nation.

78. In any angle, this Court is of the considered opinion that pre-independence lease entered into between the then Government of Madras and the petitioner / Madras Race Club for 99 years in the present circumstances cannot be considered as the lease executed in Public interest.



W.P.Nos.29644 to 29646 of 2017

Not providing any clause for enhancement of lease for 99 years is undoubtedly is in violation of the principles of public interest and opposed public policy. The Government of Tamil Nadu ought to have taken over the possession of the land in the interest of the public and for developing infrastructure facilities or to utilise the land for the benefit of public at large atleast after the petitioner became a defaulter in paying the revised Lease rent and arrears. Contrarily, the Government of Tamil Nadu revised the rent pursuant to the policy decision taken in respect of all the Government properties in the Madras City. Even such a policy decision taken was not implemented effectively in respect of the petitioner / Madras Race Club. The Government has given a long rope to the Madras Race Club, who in turn, evaded to pay the revised rent as per the Government policy.

79. The slow action of the Government towards the petitioner raises a serious doubt in the mind of this Court, whether there is any collusion, favouritism or extraneous considerations played a role. The users of the Madras Race Club in the Chennai City are not only rich in the society but powerful. The way in which the earlier writ petitions were filed and the slow actions of the Government reveals that the larger public interest and



W.P.Nos.29644 to 29646 of 2017

the mandates and the perspectives of the Indian Constitution were not respected in its real spirit and thrown into wind. Any further delay would result in innumerable loss and great injustice to the society. Thus, this Court is of the considered opinion that the petitioners have prolonged the issue by adopting the tactical method of filing writ petition after writ petition and by citing one or the other reasons, the matter got remanded and successfully they dragged on the matter from the year 2004 onwards without paying the revised lease rent demanded by the Government of Tamil Nadu.

80. The petitioner / Club has lost its credibility and more so, they are the chronic defaulter in payment of revised rent running to several Crores.

81. The Government of Tamil Nadu is facing financial crunch. Thus, the Government is duty bound to revisit all such Government agreements/leases/contracts in respect of the Government lands, properties, etc., across the State of Tamil Nadu and ensure that public interest and the Revenue of the State has been protected.



W.P.Nos.29644 to 29646 of 2017

Conclusion:-

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82. Elaborate discussions made in the aforementioned paragraphs would be sufficient to arrive an inevitable conclusion that the arrears of revised rent raised by the respondents through the demand orders must be paid by the Madras Race Club, failing which, they are liable to vacate the property and hand over the same to the Government of Tamil Nadu. Accordingly, this Court is inclined to pass the following orders:

(1) The relief as such sought for in all the three writ petitions stand rejected.

(2) The writ petitioner / Madras Race Club is directed to pay the arrears of revised rent as claimed under the demand orders dated 31.08.2017 (a sum of Rs.730,86,81,297/- (Rupees Seven Hundred and Thirty Crores Eighty Six Lakhs Eighty One Thousand Two Hundred and Ninety Seven only) within a period of one (1) month from the date of receipt of a copy of this order.

(3) In the event of failure in settling the arrears of revised rent within a period of one month, the respondents are directed to evict the petitioners and take possession of the subject property immediately with the assistance of the Police Department.



W.P.Nos.29644 to 29646 of 2017

(4) The respondents are directed to issue demand notices in respect of the accrued arrears of revised rent for the relevant period from the year 2004 to till date (roughly calculated by the respondents as Rs.12,381,35,24,269/-. (Rupees Twelve Thousand Three Hundred Eighty One Crores Thirty Five Lakhs Twenty Four Thousand Two Hundred and Sixty Nine only)) within a period of one (1) month from the date of receipt of a copy of this order and by granting two (2) months time to the petitioners to settle the said arrears of revised rent.

(5) In the event of not settling any part or the entire arrears of revised rent due to the Government of Tamil Nadu, the respondents are directed to initiate appropriate recovery proceedings against the writ petitioner / Madras Race Club and recover the entire dues by following the procedures as contemplated and by proceeding against all the persons, who all are responsible, liable and accountable for settling all Government dues in the manner known to law.



W.P.Nos.29644 to 29646 of 2017

83. With the above directions, all the three Writ Petitions are disposed of. However, there shall be no order as to costs.

29.03.2023

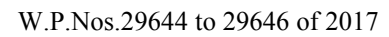
Index : Yes
Speaking order: Yes
Neutral Citation: Yes
Jeni/kak

Note: (1) *For monitoring the implementation of this order, the Registry, High Court of Madras is directed to communicate the copy of this order to the Chief Secretary to Government, Government of Tamil Nadu, Secretariat, Chennai – 600 009.*

(2) *Registry is directed to list the matter before this Court “For Reporting Compliance” on 16.06.2023.*

To

1. The Secretary,
Government of Tamil Nadu,
Revenue Department,
Fort St. George,
Chennai – 600 009.
2. The District Collector of Chennai,
Singaravelar Maligai,
Rajaji Salai,
Chennai – 600 001.
3. The Tashildar, Guindy Taluk,
No.370, Richardson Park,
Saidapet, Chennai – 600 015.



5.The Special Commissioner and
Commissioner of Land Administration
Ezhilagam, Chepauk, Chennai – 600 005.

The Chief Secretary to Government,
Government of Tamil Nadu,
Secretariat,
Chennai – 600 009.



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W.P.Nos.29644 to 29646 of 2017

S.M.SUBRAMANIAM, J.

Jeni/kak

W.P.Nos.29644 to 29646 of 2017

29.03.2023