IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : **20.11.2023**
Pronounced on : **08.03.2024**

CORAM:

THE HON'BLE MR. JUSTICE **R.SURESH KUMAR**
AND
THE HON'BLE MR.JUSTICE **G.ARUL MURUGAN**

W.A.No.666 of 2015
and M.P.No.1 of 2015

Cosmopolitan Club
Rep. by its Joint Secretary,
P.B.37, No.63, Mount Road,
Chennai - 600 002. ... Appellant / Petitioner

Vs.

1. The Tahsildar
   Mambalam - Guindy Taluk,
   Chennai - 600 078.

2. The Principal Secretary to Government
   Revenue Department,
   Government of Tamil Nadu,
   Fort St. George,
   Chennai - 600 009.

3. The Commissioner for Land Administration
   Ezhilagam,
   Chepauk,
   Chennai - 600 005.

4. The District Collector

Chennai District,
Chennai - 600 001. ... Respondents / Respondents

Prayer : Writ Appeal filed under Clause 15 of the Letters Patent Act, against the order, dated 09.03.2015 made in Writ Petition No.5231 of 2004 and W.P.M.P.No.6067 of 2004 on the file of this Court.

For Appellant : Mr.A.L.Somayaji, Senior Counsel and Mr.V.P.Sengottuvel, Senior Counsel for Mr.K.Indu Priya and Akshay Kumar

For Respondents : Mr.J.Ravindran, Additional Advocate General assisted by Mr.T.Arunkumar, AGP

J U D G M E N T

R.SURESH KUMAR, J.

This Intra Court Appeal has been directed against the order passed by the writ court dated 09.03.2015 made in W.P.No.5231 of 2014.

2. The Appellant is a Club called "Cosmopolitan Club" (herein after called as "The Club"), located in Chennai. In order to develop a Golf ground in the vicinity of Chennai City, the Club had approached the State Government to take some land under license. Accordingly, the Government on 06.12.1933 granted license to the club to use the land to an extent of

64.76 acres comprised in T.S.No.2, Block 8 situated at Mambalam-Guindy Taluk for the establishment of a Golf Course. Thereafter by further license dated 05.03.1995, the Government granted another 1.77 acres by the proceedings issued by the Collector of Chengalpet in Rev.No.4115/34 in addition to the original license for 64.76 acres.

3. The Club has developed these vacant lands as a Golf Course by spending huge amount, which is first of its kind at Chennai and one of the oldest in the whole of India.

4. Thereafter by further order, dated 27.07.1937, the Government in G.O.Ms.No.1494, Revenue Department, granted license to the club for an extent of 0.33 acres. Thereafter on 06.06.1945, the Government again granted license additionally to another 10.84 acres by the proceedings of the Chengalpet Collector in DDA.No.11447/41-A.

5. Thereafter the Government issued a G.O.Ms.No.4696, Revenue

Department, making the said license into lease of the said lands to the extent of 77.37 acres by fixing the annual rent at the rate of Rs.15/- per acre.

6. Thereafter, i.e., after 10 years of the order, dated 27.12.1956, on 09.11.1966, the State Government issued G.O.Ms.No.3189, Revenue Department, dated 09.11.1966, under which, the lease already been granted in 1956 has been extended for a period of 30 years commencing from 01.07.1966 in favour of the Club by fixing the annual rental amount as Rs.5,800/- for the entire extent of 77.70 acres.

7. Thereafter since the 30 years period of lease commencing from 1966 is over in 1996, the Club had made a request in January 1996 for renewal or extension of the lease.

8. However, the said request in fact was turned down by the Government and they issued a Government Order in G.O.Ms.No.278, Revenue Department, dated 04.06.1999 thereby the Government has stated that, it has examined the issue in great detail, since the period of lease already over, the Government reject the request of renewal of lease beyond

1996 in view of the reason indicated in the order itself. That Government Order further stated that, the Club is therefore requested to hand over the possession of the land to the Government immediately.

9. Challenging the said order in G.O.Ms.No.278, the Club has filed a writ petition in W.P.No.9636 of 1999. The said writ petition was disposed by the writ court on 13.10.1999, wherein, the learned Judge though had dismissed the writ petition filed by the Club, however had given observation stating that, taking note of the public interest that lies in favour of the golfers in the impugned grant of lease, the Court repossess confidence that the Government would take appropriate further decision with due and proper care to protect the interest of the golfers.

10. As against the said order passed by the writ court, dated 13.10.1999 made in W.P.No.9636 of 1999, the Club moved an Intra Court Appeal in W.A.No.2101 of 1999. However, the said Writ Appeal was dismissed as withdrawn by order, dated 24.01.2001 stating that, the appellant submitted that the subject matter is being settled with the Government of Tamil Nadu, therefore the appellant wanted to withdraw the

said Writ Appeal, accordingly, it was dismissed as withdrawn.

11. Thereafter on 24.03.2001, the Government having considered the Memorandum of Understanding entered into between the Cosmopolitan Club and Tamil Nadu Golf Federation and having accepted the same, the land measuring to an extent of 77.70 acres to promote as a Golf Course on par with international standard and to maintain the same and with a special condition that to develop the golf course, the Tamil Nadu Golf Federation and the Cosmopolitan Club are given the land as joint lease.

12. In the said Government Order in G.O.Ms.No.138, even though the land has been leased out to the Club and the Golf Federation jointly, some conditions have been imposed, wherein, the important condition was direction to constitute a Governing Body consisting of 15 members out of whom 5 from Club, 5 from Golf Federation and 5 from the Government. The over all administration in general since has been vested with the said Governing Body, the Club has not acted upon as per the conditions imposed by the Government in G.O.Ms.No.138 by constituting a Governing Body consisting of 15 members from 3 groups.

13. This was considered as a violation by the State Government, therefore they have come forward to cancel the lease, that is join lease given to the Club and the Federation in G.O.Ms.No.138, dated 24.03.2001. Accordingly, the Government passed G.O.Ms.No.282, Revenue Department, dated 28.06.2002, by which, the State Government cancelled the lease and decided to take back the lands to the Government.

14. The said order in G.O.Ms.No.282, dated 28.06.2002 was under challenge in the writ petitions in W.P.Nos.23657 and 23932 of 2002 filed separately by the Club and Tamil Nadu Golf Federation. In the said writ petitions, interim orders were granted by the writ court by order, dated 08.10.2002 granting injunction against the Government and in favour of the Club and the Federation.

15. When the matter stood thus, on 29.01.2004, the Tahsildar, Mambalam-Guindy Taluk, Chennai had issued a notice stating that, the lease rent payable by the Club during the lease period between 1971-1996 for the said land which was leased out to the Club to develop the Golf course since had not been paid or recovered from them, it was calculated by the Tahsildar in every five years, i.e., from 01.07.1971 to 30.06.1976, like that, from 1976

to 1981, from 1981 to 1987, from 1987 to 1990, from 1990 to 1993 and from 1993 to 1996 and after having calculated the lease rent, in this regard, the Tahsildar in the said notice, dated 29.01.2004 directed the Club to pay a sum of Rs.119,78,58,312/-.

16. This notice issued by the Tahsildar, Mambalam-Guindy Taluk triggered the Club to file the writ petition in W.P.No.5231 of 2004, where the said notice dated 29.01.2004 was challenged.

17. The said writ petition was pending consideration before this Court for several years. However in the meanwhile some developments had been taken place, under which, the Government of Tamil Nadu had come forward to grant the lease to the Club and the Tamil Nadu Golf Federation for the land of 80.40 acres including the 77.70 acres, which had already been given lease, with certain conditions. In order to appreciate the conditions under which such a lease was granted by the Government by issuance of G.O.Ms.No.33, Revenue Department, dated 23.01.2009, the relevant portion of the G.O. is extracted hereunder.

" 9. The Government have examined the request of

Tamil Nadu Golf Federation and Cosmopolitan Club carefully. After taking into consideration of that in future Chennai city will be the world class city for Golf games and hence the Foreign Investment will make an aid, investment for rendering assistance and also taking into consideration of diverging views of the Golf Federation and Cosmopolitan Club, the Government interest as the owner of the land as well as the interest of encouraging sport and recreational activity, the Government have decide to grant joint lease to the clubs.

10. The following orders are issued for grant of lease land in modification of the orders issued in G.O.Ms.No.138 Revenue Department, 24.3.2001 for the grant of lease land to the extent of 77.70 Acres in Government Farm Village T.S.No.2, Block No.8, in Mambalam – Guindy Taluk, Chennai District under RSO 24A with usual conditions and the following special conditions:

(i) The orders issued in G.O.Ms.No.283, Revenue Department, dt.28.6.2002 and the orders issued in G.O.Ms.No.282, Revenue Department, dt.28.6.2002 are cancelled. The land to the extent of 80.40 acres was granted to Tamil Nadu Golf Federation and Cosmopolitan Club for joint lease instead of 77.70 Acres ordered in G.O.Ms.No.138, Revenue Department, dt.24.3.2001 under RSO 24A.

(ii) The Lease rent from 1.7.96 to 23.3.2001 shall be payable by the Cosmopolitan Club and Joint Lease rent shall be payable by the Cosmopolitan Club and Tamil Nadu Golf Federation from 24.3.2001 to 30.03.2026.

(iii) The lease land shall be 30 years upto 30.06.2026.

(iv) The lease rent fixed by the Government shall be subject to revision by government.

(v) The annual nominal lease rent may be fixed as Rs.1 Crore / per annum for the period from 1.7.96 to 23.3.2001 payable by the Cosmopolitan Club.

(vi) In respect of joint lease period, from 24.3.2001 onwards annual nominal lease rent may be fixed at 15% of the audited gross total income of both the Tamil Nadu Golf Federation and the Cosmopolitan Club combined together, subject to a minimum annual lease rent of Rs.1.50 Crore/per annum inclusive of local cess surcharge and additional surcharge etc., In respect of the calculation of gross income of Cosmopolitan Club, 15% of Audited actual total revenue of the Trivancore Pavillion alone should be taken into account.

(vii) While the lease amount shall be paid by the cosmopolitan club for the period from 1.7.96 to 23.3.2001, the lease amount after 23.3.2001 shall be shared equally between the cosmopolitan club and Tamil Nadu Golf Federation.

(viii) The extent of land covered by the Lease be fixed as 80.40 acres which is as per the actual enjoyment.

(ix) The lease will be subject to the condition that there shall be two Bi-partite Land measurement committees to monitor the land use in accordance with the lease and take all decisions regarding any development on the lease land i.e. one land management committee in so far as Trivancore Pavillion there shall be one land management committee with regard to Tamil Nadu Golf

Federation.

(x) The Bipartite committee between Tamil Nadu Golf Federation and Government shall consist of four members from Tamil Nadu Golf Federation and three members from the Government, namely, Secretary, Revenue or his representative, Secretary, finance or his representative and one officer to be nominated by the Government. The Bipartite committee between cosmopolitan club and the Government shall consist of four members from cosmopolitan club and three members from the Government, namely Secretary, Revenue or his representative Secretary Finance or his representative and one officer to be nominated by the Government.

(xi) The Bi-Partite Committee will administer the terms and conditions of the land lease as well as safeguard the Government interest vis-a-vis the administration in the development and management of the land and promotion of the golf sport;

(xii) Members of the All India Service and Senior State and Central Government

Officers shall be granted membership of Cosmopolitan Club/ Tamil Nadu Golf Federation on priority and for life."

18. As per the said conditions imposed as stated supra by the State Government while issuing the lease once again to the Club and the Federation by G.O.Ms.No.33, Revenue Department, dated 23.01.2009, the Club as well as the Federation having accepted those conditions had been continuously enjoying the possession of the land by running the golf course where, as per the conditions and the fixation of the rent, the annual rent has been paid including the arrears from 01.07.1996 and with regard to the said fixation of the rent and the payment of the rent after 01.7.1996 is concerned, absolutely there has been no quarrel.

19. However the issue is the notice issued by the Tahsildar, Mambalam-Guindy Taluk dated 29.01.2004 which in fact was challenged by the Club in the said writ petition in W.P.No.5321 of 2004 and it was pending for all these years and ultimately came to be disposed on 09.03.2015. In the said order, dated 09.03.2015, the writ court has passed the following order :

" 42. Considering the facts and circumstances of the case and arguments advanced by the learned counsel on either side and on perusing the typed set of papers including the impugned order, this Court's view as in (i) to (v), the above writ petition with an observation that the petitioner shall pay a sum of Rs.25 Crores, without prejudice on or before 30th May 2015. Thereafter, the respondent is at liberty to issue a show cause notice to the petitioner and conduct a comprehensive enquiry and decide the actual arrears of rent for the relevant period. If the petitioner is not satisfied with the findings of the Court and they are at liberty to file an appeal after complying with this Court order i.e., they have to remit a sum of Rs.25 Crores to the respondent. There is no order as to costs. Consequently, connected miscellaneous petition is closed. Accordingly ordered."

20. Aggrieved over this order passed by the writ court, the present Intra Court Appeal has been directed at the instance of the Club. That is how this Appeal has come up.

21. If we look at the narration of the facts which starts from the year 1933, nearly 80 acres of land in Chennai city, which was dry, bare and vacant land had been given initially by way of license to the Club to develop a golf course and subsequently from the year 1956, it has been converted into lease.

22. While granting the lease by issuance of G.O.Ms.No.4696, Revenue Department, dated 27.12.1956, the Government had fixed annual rent at Rs.15/- per Acre.

23. Thereafter the lease had been further extended from 1966 onwards by issuance of G.O.Ms.No.3189, Revenue Department, dated 09.11.1966, where the Government passed the following order :

> " 2. The Government therefore, sanction the renewal of the lease of an extent of 0.33 Acre in No.1/1H2 D1 of Government Farm Village, Madras sanctioned in G.O.Ms.No.1494 Revenue dt.27.7.1937 and of an extent of 77.37 Acres in S.Nos.1/1F1A, 1/H2 1/1H2 B1/H2B 1/1G2D and JIP of the same village sanctioned in

G.O.Ms.No.4696, Revenue dt.27.12.1956 for the period from date of their expiry till 30.6.1996 in payment of a lease rent of Rs.5,800/- (Rupees Five Thousand and Eight Hundred Only) per annum for the entire extent of and subject to the same terms and conditions before and subject to the additional conditions that further renewal the lease shall be at option of the Government and that the Government reserve to themselves the right to revise the lease rent at the end of every five years.

(BY ORDER OF THE GOVERNOR)

K.S.SIVASUBRAMANIAM

Secretary to Government"

24. By this order, the Government fixed annual lease rent as Rs.5800/-. It has further been stated in the said Government Order that, renewal of the lease shall be at the option of the Government and that the Government reserve to themselves the right to revise the lease rent at the end of every five years.

25. As per this condition of lease by G.O.Ms.No.3189, dated 09.11.1966, the State Government could have fixed a revised rent on

completion of five years, i.e., in 1971.

26. However, whether a revised rent has been fixed at the end of five years, i.e., in the year 1971 or even thereafter is the important question to be answered to delve into the issue raised in this Appeal.

27. In this context, the respondent side filed a typed set of documents where a communication from Tahsildar, Mambalam-Guindy Taluk to the Collector of Madras, dated 06.11.1992 has been annexed where the Tahsildar by taking note of the rental value of the land, has recommended to fix the revised rent per annum from 1971 to 1976, 1976 to 1981, 1981 to 1986, 1986 to 1990 and 1990 to 1993. Under this communication dated 06.11.1992 issued by the Tahsildar to the Collector a recommendation or request had been made by the Tahsildar to the Collector to do the needful by requesting the Government to fix the revised annual rent for the land leased out to the Club.

28. Though such a request had been made by the Tahsildar, no such revised rent seems to have been fixed by the Government as no documents had been filed before this Court to that extent, i.e., either before the writ

court or before this Bench.

29. Subsequently it seems that, there has been an audit query raised, where it was pointed out that, a sum of Rs.119.78 Crores is the loss to the Government because of the arrears of revised annual lease rent payable by the Club for the period between 1971 and 1993. Even thereafter it seems that, no such fixation had been made and nothing has been claimed by the Government.

30. However only in the year 2004, i.e., on 12.01.2004, the Special Commissioner and Commissioner of Land Administration has written a letter to the Collector, Chennai to the following effect :

> " I invite your attention to the reference cited and request to be informed whether the balance lease rental arrears to the tune of Rs.119/- crores as pointed by the Accountant General has since been collected from the lesseee if so the collection details and also what action taken to recover the balance lease rent under Revenue Recovery Act may be furnished, through Tahsildar, Mambalam – Guindy Taluk by 29.1.2004. Besides, a copy of

your letter dated 29.5.2001 may be enclosed."

31. Only in pursuance of the said letter of the Special Commissioner and Commissioner for Land Administration dated 12.01.2004 and referring the same along with some other earlier communications, the Tahsildar had issued a notice dated 29.01.2004 where he had made a demand of Rs.119,78,58,312/- from the Club as a lease rent arrears from 1971 to 1996.

32. In this context, it is the contention of Mr.A.L.Somayaji, learned Senior counsel and Mr.V.P.Sengottuvel, learned Senior counsel appearing for the appellant Club that, even though the option of revising the lease rent in every five years is available with the Government as per G.O.Ms.No.3189, Revenue Department, dated 09.11.1966, such an exercise never had been undertaken by the State Government and no such fixation had been made. Therefore what was the rent that has been fixed under G.OMs.No.3189 had been continuously paid by the Club and once the lease was expired in the year 1996, the Club since had asked for renewal which

was not accepted initially and by G.O.Ms.No.278, dated 04.06.1999, the request of the Club since was rejected for renewal, thereafter on 24.03.2001, the Government had come forward to renew and extend the lease continuously from the expiry date and though subsequently it had been cancelled by G.O.Ms.No.282, Revenue Department, dated 28.06.2002, the Government thereafter come forward to grant the lease by issuance of G.O.Ms.No.33, dated 23.01.2009. Therefore the learned Senior counsel would contend that, from 1966 to 1996, the rent fixed at the rate of Rs.5800/- per annum had been continuously paid and the same has never been revised or enhanced at any point of time by the State Government.

33. The learned Senior counsel would also contend that, ultimately when they issued G.O.Ms.No.33, dated 23.01.2009, a enhanced revised rent had been fixed from 01.07.1996 to 23.03.2001 at the rate of Rs.1 Crore per annum and from 24.03.2001 onwards, the nominal lease rent may be fixed at 15% of the audited total gross income of both the Tamil Nadu Golf Federation and Club combined together subject to a minimum annual rent of Rs.1.50 Crores per annum.

34. Therefore when the Government was diligent in making the enhancement of lease rent from 01.07.1996, it has purposely omitted to fix any enhanced or additional lease rent till 30.06.1996, as the lease period was 30 years from 1966 to 1996. Therefore it is not the Government intention to claim any such exorbitant amount in the name of revised lease rent from the Club or Golf Federation.

35. Therefore the learned Senior counsel would contend that, in view of these developments especially in the context of G.O.Ms.No.33, it has been issued in favour of the Club and Federation by extending the lease, with enhanced lease amount having been fixed by the Government, which was accepted by the Club and has been paying regularly, the notice dated 29.01.2004 issued by the Tahsildar has become otiose or irrelevant apart from being unlawful and without jurisdiction and therefore on those grounds, the impugned notice before the writ court dated 29.01.2004 ought to have been set aside by the learned Judge. However, the learned Judge in the writ court completely has taken a different view without any basis and had directed the appellant Club to pay a sum of Rs.25 Crores which is unquantifiable one through the impugned order, hence, the order impugned

is liable to be interfered with, the learned Senior counsel contended.

36. Per contra, Mr.J.Ravindran, learned Additional Advocate General assisted by Mr.T.Arun Kumar, learned Additional Government Pleader appearing for the respondents has submitted that, at the time of renewal of the lease in the year 1966 by issuance of G.O.Ms.No.3189, the right of revision of the lease rent was vested with the Government and it reserved such right. Therefore in every 5 years such a revision could be made by the Government and on behalf of the Government, based on the communication of the Commissioner of Land Administration, the District Collector has directed the Tahsildar to recover the enhanced or revised rent, that is the reason, the Tahsildar had issued the notice dated 29.01.2004 to demand such a rent to be paid as the same has been arrears for more than 30 years to the tune of Rs.119,78,58,312/-. Therefore such a notice issued by the Tahsildar cannot be said to be illegal or unlawful or without jurisdiction, the learned Additional Advocate General contended.

37. In this context, the learned Additional Advocate General therefore would contend that, merely because by issuance of G.O.Ms.No.33, where the rent has been fixed in respect of the period from 01.07.1996 alone, it

cannot be stated that, up to 30.06.1996, the appellant is not liable to pay the enhanced or revised lease rent as has been fixed by the Government. Therefore the learned Additional Advocate General would contend that, the order impugned passed by the writ court is a very balanced and equitable order, where the entire amount was not directed to be deposited and only a part of the amount to the extent of Rs.25 Crores was directed to be deposited and rehearing was also ordered. Therefore the said order cannot be said to be a infirm one and therefore it is to be sustained, the learned Additional Advocate General would contend.

38. We have given our anxious consideration to the said rival submissions made by the learned counsel appearing for both sides and have perused the materials placed before this Court.

39. The undisputed facts are that, the land in question to the extent of 77 acres as stated supra had been given to the Club right from 1933. Initially it was given by way of license and from 1956 it has been converted in to lease. In the year 1966, when the Government issued G.O.Ms.No.3189, Revenue Department, dated 09.11.1966, the Government sanctioned the

renewal of the lease for the period from the date which expired till 30.06.1996 in payment of lease rent of Rs.5,800/- per annum for the entire extent. Though the right of revision of the lease rent has been reserved by the Government for every five years, whether every five years such a revised rent has been fixed by the Government is the moot question to be answered.

40. In this context, even though on the respondent side, the inter departmental communication, dated 06.11.1992 between the Tahsildar and the Collector and the Special Commissioner's, D.O.Letter, dated 12.01.2004 had been quoted, based on these communications whether the Tahsildar can issue a notice as has been done in the impugned order before the writ court, dated 29.01.2004 demanding a sum of Rs.119,78,58,312/- from the Cosmopolitan Club as a alleged revised lease rent for the period from 1971 to 1996 is the question.

41. In this context, it is to be noted that, a revision of lease rent should have been made only by the State Government unless and until the Government has come forward to fix the rent, neither the Collector nor the

Tahsildar is empowered to fix such rent and independently call for payment of such rent from the lessee.

42. It is further to be noted that, initially when the license was converted into lease by issuance of G.O.Ms.No.4696, dated 27.12.1956, the annual lease rent was fixed only at the rate of Rs.15/- per acre. Thereafter by G.O.Ms.No.3189, dated 09.11.1966 the annual rent has been fixed at Rs.5,800/-. If the rent was fixed by the Government is only Rs.5,800/-, which was prevailing between the 1966 to 1971, from 1971 to 1976, how the rent could be jumped up into Rs.6,25,35,175/-, has not been explained. Like that correspondingly it has been jumped up into Rs.9,38,02,760/-, Rs,15,63,37,938, Rs.31,26,75,873/-, Rs.41,61,68,629/- for the next four five years period till 1996.

43. In this context, it is to be further noted that, this kind of leases or grants are given under Revenue Standing Order 24A, wherein, Clause 9 states that, the lease rent of the lands granted should be fixed as ordered by the Government. Clause 9(b) says that, however in the case of lands granted

for recreation purposes by non-gazetted officers and of play grounds required for educational institutions, nominal rates may be fixed by the Government.

44. Therefore the land is given by way of lease to the Club for developing a golf course, therefore for such purposes, which is a non-commercial purpose, only a nominal rent should be fixed by the Government. That is the reason why they initially fixed Rs.15/- per acre and subsequently fixed Rs.5,800/- per annum..

45. Therefore such a nominal rent fixed by the Government cannot be be unilaterally enhanced by the Revenue officials like Collector or Tahsildar that too exorbitantly to several Crores of rupees, in that case it is undisputedly without any jurisdiction.

46. The additional reason for coming to such a conclusion is available in G.O.Ms.No.33, Revenue Department, dated 23.01.2009 itself, where, the Government in the very opening paragraph of the order has noted down that, the license was given originally in the year 1937, which has subsequently been extended and the Government has noted that, the lease was given on

27.12.1956 by issuance of G.O.Ms.No.4696 with annual rent of Rs.15/- per acre. It has also noted that, in G.O.Ms.No.3189, dated 09.11.1966 the lease was renewed again up to 30.06.1996 and the lease rent was fixed at Rs.5,800/- per annum. Therefore this has been consciously noted by the Government in G.O.Ms.No.33, dated 23.01.2009 whereby the lease had been extended for a further period of 30 years up to 2026.

47. In the said G.O.Ms.No.33 several conditions have been imposed, where paragraph 9 and 10 are relevant which in fact had been extracted herein above.

48. In paragraph 10, Clause (iii), it is stated that the lease land shall be 30 years up to 30.06.2026, Clause (iv) says that, the lease rent fixed by the Government shall be subject to revision by Government. Here it is to be noted that, the lease rent has been fixed only by the Government which is subject to revision only by the Government. Therefore the Government was very conscious that, the fixation of lease rent shall be undertaken only by the Government and if any revision is to be made, that shall also be made only by the Government not by any authority.

49. Therefore neither the Commissioner of Land Administration nor the District Collector or the Tahsildar concerned would have any jurisdiction to fix the lease rent, where the lease was granted by the Government by issuance of Government Order.

50. Clause (v) in paragraph 10 of the G.O.Ms.No.33 have made it clear that, the annual nominal lease rent may be fixed as Rs.1 Crore per annum for the period from 01.07.1996 to 23.03.2001 payable by the Cosmopolitan Club.

51. That means, the Rs.1 Crore nominal lease rent has been fixed only from 01.07.1996. Therefore while fixing such a enhanced nominal rent from 01.07.1996, the Government was conscious of the fact that up to 30.06.1996 for 30 years, i.e., erstwhile lease period, the earlier rent fixed has not been enhanced or revised.

52. It is further to be noted that, in Clause (vi) of para 10 of

G.O.Ms.No.33, the Government has fixed the lease rent from 24.03.2001 at the rate of 15% of the audited gross total income of the lessees. However subject to a minimum annual rent of Rs.1.50 Crores per annum.

53. This enhanced nominal rent from 01.07.1996 till the expiry of lease period, i.e., up to 2026 as has been fixed under G.O.Ms.No.33 having been accepted by the appellant Club and the Golf Federation they seems to have been paying the rent annually without fail, as stated by the learned Senior counsel while they were making submissions before this Court.

54. Therefore, it is not the case of the Government in fact to state that, the lease rent could be enhanced once in five years by the Revenue officials and not by the Government.

55. This has become evidenced in the G.O.Ms.No.33 itself which is a recent G.O., dated 23.01.2009, under which the last lease has been given for 30 years, where several such conditions had been imposed and in those conditions it was made clear that, the lease rent has to be fixed only by the

Government and the revision also shall be made only by the Government.

56. When that being the position, the letter issued by the Land Commissioner or the Collector and the Notice issued by the Tahsildar including the impugned notice are all only inter departmental communications, based on which, the Government could have come forward to make some revision of lease rent after five years period from 1966.

57. However, the Government for reasons best known to them did not come forward to make any such revision of annual lease rent till 1996 and this position has been made very clear under Sub-Clause (v) of Clause 10 of G.O.Ms.No.33, where the revised rent has been fixed only from 1996 and in Clause (iv), it has been made very clear that, the lease rent fixed by the Government shall be subject to revision by the Government. Therefore the fixation or revision of the lease rent is the job of the Government and it is the jurisdiction of the Government. Therefore it cannot be encroached upon by any authority much less the officials of the revenue department like Commissioner of Land Administration and District Collector or Tahsildar.

58. Therefore the contention raised by the learned Additional Advocate General in support of the order impugned passed by the writ court cannot be countenanced and the argument advanced by the learned Senior counsel for the appellant is to be accepted.

59. Those aspects have not been considered in proper perspective by the learned Judge while disposing the said writ petition through the impugned order.

60. On what basis the learned Judge has come to a conclusion to give a direction to the Cosmopolitan Club, the appellant herein, to pay a sum of Rs.25 Crores as a condition precedent, even for issuance of a fresh show cause notice to the writ petitioner / appellant to conduct a comprehensive enquiry and decide the actual arrears of rent for the relevant period, is not known.

61. Even though at the time of disposal of the writ petition in the year 2015 the learned Judge has given such a finding in the order impugned, the same cannot be countenanced in view of the stand taken by the Government by issuance of G.O.Ms.No.33, where everything has been made clear that,

the lease rent has to be fixed only by the Government and if any revision has to be made, that also has to be undertaken only by the Government and not by any authority. Therefore the question of further enquiry to be conducted by any other authority as directed by the learned Judge, that too on condition of payment of Rs.25 Crores by the appellant Club, does not arise.

62. Therefore looking from any angle, the said direction given by the learned Judge while disposing the said writ petition filed by the appellant through the impugned order cannot be sustained because of the erroneous approach made by the writ court, hence, we are in considered view that, the order impugned is liable to be interfered.

63. Resultantly, the impugned order passed by the writ court is set side. As a sequel, the notice issued by the first respondent, Tahsildar, Mambalam-Guindy Taluk, Chennai, dated 29.01.2004 also is set aside. Accordingly, this writ appeal is allowed. However, there is no order as to costs. Consequently, connected miscellaneous petition is closed.

(R.S.K., J.) (G.A.M., J.)
08.03.2024

Index : Yes

Speaking Order : Yes

Neutral Citation : Yes

tsvn

To

1. The Tahsildar
   Mambalam - Guindy Taluk,
   Chennai - 600 078.

2. The Principal Secretary to Government
   Revenue Department,
   Government of Tamil Nadu,
   Fort St. George,
   Chennai - 600 009.

3. The Commissioner for Land Administration
   Ezhilagam,
   Chepauk,
   Chennai - 600 005.

4. The District Collector
   Chennai District,
   Chennai - 600 001.

R.SURESH KUMAR, J.
and
G.ARUL MURUGAN, J

tsvn

Judgment in
W.A.No.666 of 2015

08.03.2024

W.A.No.666 of 2015

R.SURESH KUMAR, J.
and
G.ARUL MURUGAN, J.

(Order of the Court was made by **R.SURESH KUMAR, J.)**

This appeal has been listed today under the caption 'For Being Mentioned' at the request of the learned counsel for the appellant.

2. Mr.A.L.Somayaji, learned Senior Counsel appearing for the appellant submits that, though the writ appeal was allowed by an order dated 08.03.2024, whereby the order passed by the Tahsildar dated 29.01.2004 was set aside, at the time of filing of the appeal, as per the interim order granted by a Division Bench of this Court, the appellant club had deposited a sum of Rs.5 Crores by paying a cheque in favour of Tahsildar, Guindy bearing No.732139 dated 26.12.2015, which amount according to the learned Senior Counsel has been credited in the said account.

3. In view of the same, since the writ appeal has been allowed and the

order / notice issued by the Tahsildar which was impugned before the writ Court has been set aside, the said amount paid by the appellant club, of course pursuant to the interim order passed by the Division Bench, is to be returned back to the appellant Club. Therefore, to that extent a clarification can be made by this Court and that is the purpose for which this matter has been mentioned and is listed today 'for being mentioned', learned Senior Counsel contended.

4. However, A.Selvendran, learned Special Government Pleader appearing for the respondents would submit that whether the said amount of Rs.5 Crores pursuant to the interim order passed by the Division Bench had been deposited or not has to be first ascertained. Moreover, assuming the said amount of Rs.5 Crores had been deposited, whether it could be returned back to the appellant club before exploring the possibility of filing an appeal against the order of this Court dated 08.03.2024 also has to be examined.

5. We have considered the submissions made by both sides. As per the letter of the appellant Club dated 28.12.2015, a cheque for a sum of Rs.5 Crores as stated supra seems to have been paid or annexed which was

acknowledged by the office of the Tahsildar on 30.12.2015. In that view of the matter, we issue the following orders.

- That the respondents are hereby directed to refund the said amount of Rs.5 Crores (Rupees Five Crores Only) paid on 30.12.2015 by way of Cheque No.732139 dated 26.12.2015 to the appellant Club.

- It is made clear that if the said amount has not been paid, a communication to that effect shall be made to the appellant club.

- The needful as indicated above shall be undertaken by the respondents within a period of four weeks from the date of receipt of a copy of this order.

6. Registry is directed to issue fresh order incorporating today's order also to the parties.

(R.S.K.,J.) (G.A.M.,J.)
27.03.2024

KST

R.SURESH KUMAR, J.
and
G. ARUL MURUGAN, J.

KST

W.A.No.666 of 2015

27.03.2024