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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 27.08.2024

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH
and
THE HONOURABLE MR. JUSTICE G.ARUL MURUGAN

WA.No.912 of 2021
& CMP.No.5382 of 2021

1.The State of Tamil Nadu,
Represented by the Principal
Secretary to Government,
Department of Commercial
Taxes and Registration (K) Department,
Fort.St.George,
Chennai – 600 009.

2.The Inspector General of Registration,
No:100, Santhome High Road,
Chennai – 600 028.

... Appellants

Vs

T.K.Jagadeesan,
Plot No:11, Maran Nagar,
Poonamallee, Chennai – 600056.

... Respondent

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent to set aside the order dated 19.12.2019 passed in W.P.No.8477 of 2017 and allow the above Writ Appeal.



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For Appellants : Mr.B.Vijay
Additional Government Pleader

For Respondent : Mr.J.Jayamalan

JUDGMENT

(Judgment of the Court was delivered by Dr.ANITA SUMANTH,J.)

The State is in appeal as against order dated 19.12.2019 of the learned single Judge. The writ Petitioner was employed as a Sub-Registrar on 21.04.2010. While so, he had been presented with lease deed dated 19.04.2010 for registration. Based on his understanding of the lease deed, the writ Petitioner had presented the same for registration computing the stamp duty for a period of 3 years. In the course of quarterly audit, the audit team was of the view that the lease deed was for a period of 9 years and hence there had been loss of revenue amounting to a sum of Rs.15,60,300/-. A special report was submitted by the District Registrar (Audit) to the Inspector General of Registration on 25.04.2011, in terms of which, proceedings had been initiated for deficiency in stamp duty.

2. Parallely, charge memo had been issued under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules to the writ Petitioner. The charge memo alleges failure and negligence on the part of the Writ Petitioner to collect necessary stamp duty leading to loss of revenue and his negligence was



construed as violation of Rule 20 (1) of the Tamil Nadu Government Servants' Conduct Rules, 1973 (Rules).

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3. The writ Petitioner had attained the age of superannuation as on 30.04.2014. However, on the basis of the pending proceedings, he had not been permitted to retire. The initial period of lease was for 3 years, renewable at the instance of the lessee for 2 terms of 3 years each. Hence, according to the writ Petitioner, the period of renewal, which required concurrence from the lessee, ought not to be taken into account to determine the period of lease and hence collection of stamp duty for the initial period of 3 years was appropriate. The explanation tendered by the petitioner found acceptance with the enquiry officer.

4. The disciplinary authority however was of the view that the emphasis on the word '*renewal*' by the enquiry authority had been disproportionate, and out of context. He noted that there were other clauses in the agreement, such as the provision for a *lock-in period* which ought to have been taken note of by the writ Petitioner and the enquiry officer. According to him, a wholistic reading of the terms of the lease deed would lead to the conclusion that the lease period '*shall*' be 9 years only. He hence concurred with the allegation of audit team, that there had been undervaluation and hence loss of revenue to the State, deviating from the view of the enquiry officer and holding that the charge had been proved.



5. Proceedings dated 04.11.2015 had come to be issued compulsorily retiring the writ Petitioner, as against which W.P.No.8477 of 2017 had been filed.

The petitioner had been successful in the writ Petition, persuading the Court to conclude that the retirement of the Writ Petitioner must be treated as retirement on superannuation with all attendant benefits. In arriving at this conclusion, the Court was of the view that the conclusion of the Writ Petitioner had been as a quasi-judicial authority and the difference in opinion was only of a legal issue that might amount to an error, but nothing more. The State and the Inspector General of Registration are in appeal before us assailing the order of the Writ Court on several grounds.

6. The appellants argue that the conclusions of the Writ Court are contrary to the ratio of a slew of judgments. They first refer to a judgment of the Supreme Court in the case of *Union of India and others V. K.K.Dhawan*¹ followed by a Division Bench of this Court in the case of *D.Shanmugasundram V. The Deputy Inspector General of Registration, Cuddalore and Ors.*².

7. These judgments, according to them, would lead to a conclusion that even if the error committed by the quasi-judicial authority was one in law, that would not, by itself, lead to the conclusion that no disciplinary proceedings would

¹ (1993) 2 SCC 56

² Madras High Court W.A.No.60 of 2023 dated 11.04.2023



follow. In this regard, they draw support from the decision of the three Judges of the Supreme Court in the case of *Union of India and Ors. V. Duli Chand*³ that had differed from the view of the Division Bench of the Supreme Court in the case of *Zunjarrao Bhikaji Nagarkar V. Union of India*⁴. In the latter case, the Supreme Court had held that disciplinary proceedings would not lie against the officer deciding quasi-judicial functions, unless it were established that the officer concerned had obtained undue advantage in connection with the transaction. They concluded that the view in the case of *Nagarkar*⁵, as aforesaid, was opposed to the view held in the case of *K.K.Dhawan*⁶, which had set out certain guidelines which would hold the field in such matters.

8. Learned Additional Government Pleader would take us through the recitals in the lease deed in extenso pointing out that the recitals must be read holistically and not piece meal. He would draw attention to clauses 2.3 and 2.6 to point to the use of the word '*shall*' in stipulating the period of the lease to be nine (9) years.

9. He would also specifically draw attention to clause 4.2, which sets out the calculation of the monthly rentals payable for the 1st to 3rd, 4th to 6th and 7th to

³(2006) 5 SCC 680

⁴ (1999) 7 SCC 409

⁵ Foot Note Supra (4)

⁶ Foot Note Supra (1)



9th year of the lease, emphasizing that the parties had proceeded on the basis of the tenure being not three, but nine years. Hence, there was no infirmity in the conclusion of the authorities, both audit and disciplinary, that the charges were proved as against the writ Petitioner.

10. The writ Petitioner, for his part, would point out that there had been some grey areas in ascertaining the tenure of the lease and different interpretations were possible. Hence the registering authority could not be faulted for coming to one possible view, that the tenure of lease was three years. He would specifically lay emphasis on the clause that stated that further renewal was only at the option of the lessee. Hence, the reference to the rental payments could not be equated to an extension of the lease itself.

11. We have heard both learned counsel and have also studied the relevant material and case law.

12. The recitals in the lease deed assume undue importance, specifically seen in the light of the observations of the Andhra Pradesh High Court in the case of *Syed Jaleel Zane V. P.Venkata Murlidhar and Ors.*⁷, quoted by the Supreme Court in *State of U.P. and Others V. Lalji Tandon (Dead) through Lrs.*⁸. The judgment in the case of *Lalji Tandon*⁹, is in the context of the Land Acquisition

⁷AIR 1981 AP 328

⁸(2004) 1 SCC 1

⁹Foot Note Supra (8)



Act. At paragraph 15 of the judgment in *Syed Jaleel Zane*¹⁰, certain guidelines have been set out as to how the covenants contained in documents must be read, interpreted and understood, and we extract the propositions below:

'15.....We note with approval the following proposition of law laid down therein:-

(i) In India, the law does not prohibit a perpetual lease; clear and unambiguous language would be required to infer such a lease. If the language is ambiguous the Court would opt for an interpretation negating the plea of the perpetual lease;

(ii) To find an answer to the question whether a covenant for renewal contained in the lease deed construed properly and in its real context, entitles the tenant to continue as long as he chooses by exercising the option of renewal at the end of each successive period of 5 years subject to the same terms and conditions depends on the deed of lease being read as a whole and an effort made to ascertain the intention of the parties while entering into the contract. No single clause or term should be read in isolation so as to defeat other clauses. The interpretation must be reasonable, harmonious and be deduced from the language of the document;

(iii) The Court always leans against a perpetual renewal and hence where there is a clause for renewal subject to the same terms and conditions, it would be construed as giving a right to renewal for the same period as the period of the original lease, but not a right to second or third renewal and so on unless, of course, the language is clear and unambiguous.'

¹⁰ Foot Note Supra (7)



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13. The second proposition as above would be useful in the present case and in that context, we have read the recitals in lease deed dated 19.04.2010 carefully to glean the intention of the parties to that contract.

14. The lease deed between Agni Estates and Foundations Pvt. Ltd. and PricewaterhouseCoopers Private Limited is for the lease of a property in Chennai. Clause 2.3 sets out the lease period as being three (3) years from the lease commencement date and states that the lease would be renewed for further 2 terms of 3 years each, at the option of the lessee. It thereafter states that the total period of lease *shall* be 9 years and in case the lessee does not intend to renew the lease after the *lock-in period*, the lessee shall intimate the same to the lessor 6 months in advance.

15. This takes us to clause 2.6, which deals with *lock-in period* and reads thus:

'2.6. Lock-in Period

The first 5 (five) years is a lock in period and the Lessee shall not vacate the Demised Premises. The Parties agree that the Lessee shall not be entitled to terminate this lease for any reason whatsoever, during the initial period of 5 (five) years of the Term from the commencement date except in a case where there is a defect in title. In the event of termination by the Lessee within the lock-in period at its sole discretion, the Lessee shall be liable to pay the unrealized rentals for the balance period of the lock-in period from the date of termination.'



16. A combined reading of both paragraphs in clause 2.3 and clause 2.6 reveals to us the clear intention of the parties as follows:

- i) The parties agree in general that the initial lease shall be for a period of three (3) years.
- ii) They further agree, in principle, that it shall be renewed for two (2) terms of three (3) years each, at the option of the lessee.
- iii) Over and above the aforesaid clauses, they have also agreed that there shall be a lock-in period of 5 years when the lease shall be undisturbed.
- iv) This is made clear from the fact that the option of the lessee to terminate the lease can be exercised only after the lock-in period (see paragraph 2 of clause 2.3) and if at all there is any termination of lease, prior to the lock-in period, the lessee shall be liable to pay the unrealised rentals for the balance period of the lock-in period (see clause 2.6 dealing with lock-in period).

17. Thus on an overall consideration of clauses 2.3 and 2.6 and our understanding of the clauses as adumbrated above, we are of the view that the period of five (5) years is a non-negotiable period, for which time the parties have agreed that there shall be no interruption in lease. The mere fact that there has



been a quantification of the rentals for the entirety of the nine (9) years under clause 4.2 is of no consequence as those rentals would kick-in only if the lease was, in fact, in force.

18. In the present case, the writ Petitioner has computed and remitted stamp duty only for a period of three (3) years which, in our considered view, is erroneous. The termination of lease can be initiated by the lessee only after the lock-in period and 6 months in advance of the intended termination.

19. In this view of the matter, we disagree with the conclusion of the writ Court that the period of lease was only three years and hold that the period of lease would be of the *lock-in period*, which is 5 years. The undervaluation in stamp duty will be computed taking the lease period as nine (9) years while giving effect to the computation of stamp duty in appropriate proceedings.

20. We note that in W.P.No.25694 of 2012, the lessee Agni Estates and Foundations Pvt. Ltd. has challenged the recovery of the stamp duty and the matter has been remanded on 04.03.2022 to the authority concerned. None of the parties before us are in a position to confirm the stage of the proceedings now and we hence direct that the directions as above will be the basis for the recovery of deficit stamp duty in the hands of the lessee.



21. Coming to the appropriateness or otherwise of the disciplinary proceedings, we note the submissions of the respondents to the effect that even if it is an error in law, there is no justification for the imposition of punishment. In this regard, we would usefully extract the illustrations set out in the case of *K.K.Dhawan*¹¹ that provide guidance in the matter of imposition of punishment, at paragraph 28 :

'28. Certainly, therefore, the officer who exercises judicial or quasi-judicial powers acts negligently or recklessly or in order to confer undue favour on a person is not acting as a Judge. Accordingly, the contention of the respondent has to be rejected. It is important to bear in mind that in the present case, we are not concerned with the correctness or legality of the decision of the respondent but the conduct of the respondent in discharge of his duties as an officer. The legality of the orders with reference to the nine assessments may be questioned in appeal or revision under the Act. But we have no doubt in our mind that the Government is not precluded from taking the disciplinary action for violation of the Conduct Rules. Thus, we conclude that the disciplinary action can be taken in the following cases:

(i) Where the officer had acted in a manner as would reflect on his reputation for integrity or good faith or devotion to duty;

(ii) if there is prima facie material to show recklessness or misconduct in the discharge of his duty;

(iii) if he has acted in a manner which is unbecoming of a government servant;

¹¹ Foot Note Supra (1)



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(iv) if he had acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory powers;

(v) if he had acted in order to unduly favour a party-,

(vi) if he had been actuated by corrupt motive however, small the bribe may be because Lord Coke said long ago "though the bribe may be small, yet the fault is great."

22. The above list is not exhaustive but only illustrative. On a careful study of those illustrations, we believe that the actions of the original authority would fall squarely within clause (iv), i.e., where he had acted negligently or had omitted the prescribed conditions which are essential for exercise of statutory powers. In our view there is no confusion that arises from the understanding of the recitals of the lease deed and it is clear as daylight that the period of lease would be circumscribed by clause 2.6, dealing with the *lock-in period*.

23. In light of the detailed discussion as aforesaid, we set aside the order of the writ Court and confirm proceedings under order dated 11.01.2007. This Writ Appeal is allowed. No costs. Connected Miscellaneous Petition is closed.

(A.S.M.,J) (G.A.M.,J)
27.08.2024

Index: Yes
Neutral Citation : Yes
Speaking Order : Yes
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