



WEB COPY



W.P. No.35048 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.09.2024

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P. No.35048 of 2015

and

M.P. Nos.1 to 3 of 2015

Kids Zone Nursery & Primary School,

Rep. by its Correspondent

J.A. Azeez

... Petitioner

Vs

1. The State of Tamil Nadu,
Rep. by its Principal Secretary to Govt.,
Backward Classes,
Most Backward Classes
& Minorities Welfare Department,
Fort St. George,
Chennai – 600 009.

2. The Chairman,
Tamil Nadu Wakf Board,
No.1, Jaffar Sirang Road,
Vallal Seethakathi Nagar,
Chennai – 600 001.

3. The Chief Executive Officer,
Tamil Nadu Wakf Board,
No.1, Jaffar Sirang Road,
Vallal Seethakathi Nagar,
Chennai – 600 001.



W.P. No.35048 of 2015

4. Nawab Chanda Mian Pallivasal
Rep. By its Muthawalli,
Mathaalankulam Street,
Thiruvannamalai Town,
Thiruvannamalai – 606 601.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records pertaining to G.O. (D) No.45 Backward Classes, Most Backward Classes and Minorities Welfare (T2) Department, dated 06.10.2015 on the file of the 1st respondent as communicated by the 3rd respondent in Na.Ka. No.13535/09/Aa/7/T. Malai, dated 08.10.2015 and quashing the same, and further directing the respondents 2 to 4 to grant lease in S. No.4/3 in Inam Velakandel Village in favour of the petitioner as per the Board Resolution Item No.158/12 bearing Na.Ka. No.13535/09/Aa 7 / T. Malai, dated 26.08.2014 passed by the 2nd respondent.

For petitioner	: Mr.S.Parthasarathy Senior Counsel for Mr.A.S. Vijayaragavan
For respondents	: Mr. L.S.M. Hasan Fizal Addl. Govt. Pleader for R1 Mr.Mohd. Fayaz Ali for R2 & R3 Mr.Y. Kaja Navas for R4



W.P. No.35048 of 2015

ORDER

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This writ petition has been filed to call for the records pertaining to G.O. (D) No.45 Backward Classes, Most Backward Classes and Minorities Welfare (T2) Department, dated 06.10.2015 on the file of the 1st respondent as communicated by the 3rd respondent in Na.Ka. No.13535/09/Aa/7/T. Malai, dated 08.10.2015 and quashing the same, and further directing the respondents 2 to 4 to grant lease in S. No.4/3 in Inam Velakandel Village in favour of the petitioner as per the Board Resolution Item No.158/12 bearing Na.Ka. No.13535/09/Aa 7 / T. Malai, dated 26.08.2014 passed by the 2nd respondent.

2. A short facts leading to filing of this writ petition are as follows :-

i) Originally, the land in the aforesaid survey number belonging to the 4th respondent was treated as Waste land as the same did not yield any income to the Wakf. Later, the petitioner school approached the 2nd respondent Wakf Board for grant of lease of the aforesaid land. Thereafter, the aforesaid request made by the petitioner School was considered by the 2nd respondent Board and lease was initially granted for a period of three



W.P. No.35048 of 2015

years on a monthly rent of Rs.10,000/- with an advance of Rs.1,00,000/-, during the year 2010. The said lease was also registered on the file of SRO, Thiruvannamalai on 11.10.2010 in document No.9937 of 2010. It is stated that as per Clause 4 of the said lease deed, the petitioner, who was a lessee was permitted to construct a building for the establishment of school for the purpose of higher education, development of education in the society, students hostel, etc. Subsequently, the petitioner school was granted temporary recognition and the said recognition was also renewed periodically. The petitioner School also paid the rent without any default to the 4th respondent and the same was acknowledged by way of receipts. When things stood thus, there arose difficulties in obtaining recognition for Matriculation and CBSE stream from the Education Department in the absence of minimum of 33 years lease or alternatively with a provision for extension of period of lease for every three years and, therefore, the petitioner submitted a representation before the 2nd and 3rd respondents on 12.10.2012 seeking for modification of the lease conditions. At this juncture, it is pertinent to note that after availing a loan, the petitioner commenced construction of school building at the subject land and the



approximate amount spent by the petitioner works out to Rs.70 lakhs.

Consequent to issuance of notice by the 3rd respondent, whereby it was stated that without obtaining permission from the Wakf Board, the petitioner commenced construction in the subject land and as per the directions therein, the construction activity was temporarily stopped. In this scenario, fate played against the petitioner's School in the form of Wakf Act 1995 which was amended, thereby new procedures were introduced for grant of lease in the existing provisions. In this situation, since the notification of the Rules was under process, the 3rd respondent deferred the consideration of the request made by the petitioner for extension of lease.

ii) Further, the petitioner has approached various authorities including the 3rd respondent in respect of the above issue and also expressed his predicament situation. Subsequently, the 2nd respondent had, vide its Board Resolution, decided to grant lease for 30 years with effect from the date of resolution on an enhanced monthly rent of Rs.15,000/- together with increased Security Deposit of Rs.3,60,000/-, subject to certain conditions. In such circumstances, the balance construction work was carried out. On the other hand, pursuant to amendment to the Wakf Act, the 2nd respondent



W.P. No.35048 of 2015

sent the aforesaid proposal of lease to the 1st respondent for approval. Later, on coming to the knowledge, the petitioner obtained a copy of the order passed by the 2nd respondent Board, dated 27.01.2015 issued by the 3rd respondent. That being so, after a lapse of more than a year, the petitioner was served a letter, dated 08.10.2015 issued by the 3rd respondent enclosing the order passed by the 1st respondent issued in G.O. (D) No.45, dated 06.10.2015, whereby the sanction of lease for 30 years was rejected stating that there is lack of provision either under the Act or the rules for regulating the period of lease for the period from 11.10.2013 to 26.08.2014. Aggrieved over the said G.O., dated 06.10.2015 issued by the 1st respondent as well as consequential letter issued by the 3rd respondent, dated 08.10.2015, this writ petition has been filed.

3. Learned Senior Counsel appearing for the petitioner submitted that originally the lease was granted by the 2nd respondent in favour of the petitioner, initially for a period of three years from 11.10.2010 after following the procedures contemplated under Section 56 of the Wakf Act, which is prior to amendment of Wakf Act as well as prior to introduction of leasing rules. Further, he vehemently argued that before the expiry of the



W.P. No.35048 of 2015

lease period, the petitioner had applied for extension / renewal of lease as the same was a pre-requisite condition one imposed by the Education Department for grant of recognition for establishing the school. He also submitted that despite the expiry of lease period on 11.10.2013, the petitioner continued to pay the rent and the 4th respondent also acknowledged the same. He further stated that the Act came into force from 2014, whereas the petitioner submitted the application for renewal before the 2nd and 3rd respondents Board in the year 2013 itself and the same was sent for approval to the 1st respondent and thereafter alone the 1st respondent issued the impugned G.O.

4. He further pointed out that the 1st respondent having failed to grant permission within three months from the date of intimation of the sanction, which was made by the 3rd respondent on 23.12.2014, after lapse of an year, the impugned G.O. was issued by the 1st respondent, which is arbitrary and unsustainable. As per Rule 17(1) of the Wakf Properties Lease Rules 2014, if the permission is not granted by the State Government, within the specific period, i.e., 3 months, then it can be treated that the permission is deemed to have been granted.



5. He further submitted that the petitioner has also invested a huge sum of Rs.70 lakhs in the construction of building which is meant for school and furthermore, nearly 500 students are now studying in the said school. Further, it is submitted that the 1st respondent has traversed beyond the power conferred for approval and the limited scope under the Act and therefore, the impugned G.O. issued by the 1st respondent is liable to be quashed. Hence, he prays for allowing of this writ petition.

6. Mr.L.S.M. Hasan Fizal, learned Additional Government appearing for the 1st respondent submitted that as per Sub-rule (3) of Rule 4, Rule 5 and Rule 18 of the Wakf Properties Lease Rules, 2014, the petitioner School is not entitled for lease as the lease was not accorded by the Board properly. Further, pointing out the said rules, he submitted that only after issuance of notification in appropriate newspapers with regard to invitation of bids, the 2nd and 3rd respondents Board can execute the lease of the subject property, but the same has not been done and therefore, the order of the 1st respondent rejecting the aforesaid proposal of lease out of the Wakf property for a period of 30 years, is perfectly in order and interference by this Court with the said G.O., which is impugned herein is unwarranted. Further, he



W.P. No.35048 of 2015

submitted that there is no provision either in the Act or Rules regulating the period of lease from 11.10.2013 to 26.08.2014.

7. Reiterating the counter affidavit, more particularly paragraph No.7, he submitted that the proposal for lease was received by the 1st respondent only on 09.01.2015 that too bereft of certain particulars and therefore, the same was returned to the 3rd respondent. He further submitted that the revised proposal was received from the 3rd respondent only on 10.07.2015 and subsequently after examination, the 1st respondent rejected the proposal sent by the 3rd respondent Board with regard to grant of lease to the petitioner, which was not in conformity with Rule 18(1) of the Wakf Act. Hence, he vehemently argued that the petitioner's alleged claim of the leasing of Wakf property is against the Wakf Act, 1995 and the Wakf Property Lease Rules, 2014. In spite of knowing that the lease is for a short period, the petitioner has constructed the building on the subject land. He further submitted that the automatic renewal is not permitted and rules with regard to the same was challenged and upheld by the Hon'ble Apex Court. By way of conclusion, he submitted that as per the rules in force, the petitioner has to participate in the auction bid and if the petitioner school



W.P. No.35048 of 2015

matches the highest bid, they are entitled for renewal of lease of the subject land as per the procedures contemplated under the said Act, otherwise the petitioner will be treated as an encroacher. On the aforesaid score, he prays for dismissal of this writ petition.

8. Learned counsel for the respondents 2 and 3 submitted that initially lease of the subject land was granted for three years to the petitioner. However, subsequent to amendment of Wakf Act, the renewal of lease for a period of 30 years is only subject to approval from the 1st respondent. As far as the occupation of the said land is concerned, the 4th respondent received rent from the petitioner. Further, they have forwarded the proposal of lease to the 1st respondent and due to want of certain particulars, the said proposal was returned by the 1st respondent and after compliance, the said proposal once again forwarded to the 1st respondent. Hence, this Court may issue necessary directions in the above regard.

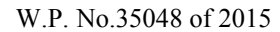
9. Heard the submissions made by the learned counsel on either side and perused the materials placed before this Court.



W.P. No.35048 of 2015

10. It is not in dispute that the lease of the subject land was initially granted by the 2nd and 3rd respondents to the petitioner. Also it is an admitted fact that the petitioner paid the accepted rent as well as advance to the 4th respondent as the land belongs to the 4th respondent, which was administered by the 2nd respondent Board. It is also not disputed that based on the said lease, the petitioner school was granted affiliation. It is also an admitted fact that the petitioner constructed building in the subject land and is running a school. From the submissions made by the learned counsel for the petitioner, it is evident that as per the relevant clause in the lease agreement, which permitted the petitioner to construct a building in the said land, the petitioner has to be obtain necessary permissions from the competent authority. Now it has to be ascertained whether any competent authority has accorded permission, if so, whether it is for temporary or permanent construction.

11. It is not in dispute that the petitioner has spent huge sum of money for construction of school building and large number of students are studying in the said school. It is further seen that the application for



12. Be that as it may. From the aforesaid submissions, it is seen that on the assurance given by the 2nd respondent Board that lease will be granted, though not in writing, the petitioner has proceeded with the construction. It is to be noted that the respondents would not have been in a position to object to the petitioner's construction of the land for the purpose of putting up a building.



W.P. No.35048 of 2015

school and that construction had also been put up since long. Further, it is also to be pointed out that while the application for extension of lease was submitted it was not disputed that there was no building which has been put up. All along, the case of the petitioner is that for the purpose of seeking recognition, the extended lease was necessary, which goes without saying that a superstructure was in place, without which the State, which is the recognition granting authority would not have thought about giving recognition to the said school. Therefore, of necessity, a building on the leased land is a must for running a school, which has been put up by the petitioner to which the respondents also have neither objected nor have made any claim that they were not aware of such construction.

13. Though it is the stand of the respondents that the provisions of the amendment have since been upheld by the Apex Court and, therefore, this Court shall not interfere with the impugned order, however, notwithstanding the said fact, it is to be noted that any State action should keep in mind the interests of the public. In the present case, what is of paramount consideration is not only the huge investment made by the petitioner in the



W.P. No.35048 of 2015

said school, but the plight of the students studying in the said school. The students are the pillars of the future and the inaction of the respondents in forwarding the recommendation/proposal belatedly cannot be put against the petitioner, which otherwise would have a detrimental effect on the studies of the students in the said school.

14. On a careful perusal of the impugned order, it is evident that there is no discussion made by the respondent with regard to the plight of students studying in the said school. Though there may be certain defalcations in the procedure, which may not have been followed, however, the future of the students should have been taken into consideration by the respondents before passing the impugned order.

15. Law is the bridesmaid of logic and when the logical thing for any State action is the interest of the public, the students being a segment of the public, necessarily, their future ought to have been kept in mind before passing the impugned order. It is not always that laws are to be followed rigidly, as law is a flexible tool, so long as it is not misused. In the present



W.P. No.35048 of 2015

case, the future of the students, numbering more than 500, who are studying in the petitioner school should have been the paramount consideration of the respondents while considering the application of the petitioner. Monetary consideration in the form of auction should not always be pushed to the forefront when the future of the students is at stake due to any governmental action. This is one such case, where the governmental action is likely to drive the students down the hill, thereby having a detrimental effect on their education.

16. In such a backdrop, this Court is of the considered view that the claim of the petitioner for a continued lease ought to have been considered in the light of the facts, which have been highlighted above, which alone would meet the ends of justice. In such view of the matter, the G.O., dated 06.10.2015 issued by the 1st respondent and the Communication, dated 08.10.2015 issued by the 3rd respondent, impugned herein are liable to be set aside.



W.P. No.35048 of 2015

17. Accordingly, for the reasons aforesaid, the G.O., dated 06.10.2015 issued by the 1st respondent and the Communication, dated 08.10.2015 issued by the 3rd respondent are hereby set aside and the writ petition stands allowed. The 1st respondent is directed to consider the application for renewal of lease in the light of the aforesaid materials pointed out by this Court and pass appropriate orders in accordance with law as expeditiously as possible. No costs. Consequently, connected miscellaneous petitions are closed.

10.09.2024

Index: Yes/ No
Speaking order / Non speaking order
Neutral citation : Yes / No
vsi2

To
1. The Principal Secretary to Govt.,
The State of Tamil Nadu,
Backward Classes,
Most Backward Classes
& Minorities Welfare Department,
Fort St. George,
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W.P. No.35048 of 2015

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W.P. No.35048 of 2015

M.DHANDAPANI, J.

vsi2

W.P. No.35048 of 2015

10.09.2024