IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.08.2024

CORAM

THE HONOURABLE **MR.JUSTICE M.DHANDAPANI**

W.P.No.18610 of 2014
and
MP.No.1 of 2014

Godrej & Boyce Manufacturing Company Ltd.,
A Company incorporated under the Companies Act, 1913,
No.1, SIDCO Industrial Estate,
Ambattur, Chennai – 600 058. ...Petitioner

Vs.

1. The State of Tamil Nadu,
Rep. by its Secretary to Government,
Hindu Religious and Charitable Endowment Department,
Fort St. George, Chennai – 600 009.

2. The Commissioner,
Hindu Religious and Charitable Endowment Department,
Nungambakkam, Chennai – 600 034.

3. The Joint Commissioner,
Hindu Religious and Charitable Endowment Department,
Nungambakkam, Chennai – 600 034.

4. The Deputy Commissioner/Executive Officer,
A/m. Kapaaleshwar Temple,
Mylapore, Chennai – 600 004. ...Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of the impugned letter dated 20.09.2013 bearing reference Na.Ka.No.254/2012/Aa4 issued by the 4th respondent and quash the same and consequently direct the 4th respondent to renew the lease of the premises admeasuring an extent of 2,800 sq.ft., situated at Old No.18, New No.42, Luz Church Road, Mylapore, Chennai – 600 004.

For Petitioner : Ms.Geetha Ara
for M/s.S.Ramasubramaniam

For Respondents : Mr.NRR.Arun Natarajan, Spl.GP, for R1-3

ORDER

This Writ petition has been filed seeking quashment of the letter dated 20.09.2013 bearing reference Na.Ka.No.254/2012/Aa4 issued by the 4th respondent and to consequently direct the 4th respondent to renew the lease of the premises admeasuring an extent of 2,800 sq.ft., situated at Old No.18, New No.42, Luz Church Road, Mylapore, Chennai – 600 004.

2. The case of the petitioner is that the petitioner is in continuous occupation of the premises, which is owned by Sri Kapaleeswarar Koil Devasthanam, which was leased out to the petitioner on long term basis and

based on the said lease, the petitioner had put up superstructure and has been in continuous and uninterrupted occupation for more than three decades. However, out of blue, the present letter had come to be issued calling upon the petitioner to pay donation of 15 times the increased monthly rent as a precondition for being regularised as a direct tenant of the 4th respondent by issuance of the Government order, which is put to challenge in the present writ petition.

3. Learned counsel for the petitioner submitted that, the major grievance of the petitioner pertains to charging donation which is 15 times the monthly fair rent, which is not sustainable and the donation must be voluntary and not by demand. Hence, this Court may permit the petitioner to make appropriate representation before the 1st respondent to reconsider waiver the donation, which is arrived at 15 times the monthly fair rent. Further, challenging the order of the 4th respondent directing the petitioner therein to vacate the premises for failing to pay the donation as per G.O.M.S.No.277 dated 02.12.2005, a Writ petition was filed before this Court in W.P.No.3360 of 2014, and this Court allowed the said petition *to the extent of directing the petitioner to pay the fair rent; 10 times of fair*

rent value as security deposit; and also 10 times of fair rent value as donation to the Temple, directly to the fourth respondent Temple, within a period of two weeks from the date of receipt of a Copy of this order along with any arrears of fair rent till date. On such deposit being made, the fourth Respondent Temple will attorn the tenancy in favour of the petitioner to continue a sub-lessee for a period to be fixed by the respondent. Accordingly, she prayed for appropriate orders.

4. Per Contra, the learned Special Government Pleader appearing on behalf of the respondents 1 to 3 submitted that, already the G.O.277 dated 2.12.05, was challenged before this Court in W.P.No.30740 of 2013 and the same was dismissed on 27.09.2023, confirming the donation fixed in the said G.O. and as no appeal was filed against the said order, the same became final. For better appreciation, the relevant portion of the said order is extracted hereunder:-

> 9. The main question that has to be decided in these present Writ petitions is that Whether the guidelines issued by the 1st respondent directing the Executive Authorities of the temple to insist surrender of the superstructure and payment of 10 months

advance as donation at the time of entering into a fresh lease is reasonable and fair.

10. A perusal of G.O.(Nilai).No.131, Tamil Development Cultural and Endowments Department, dated 18.05.2004 issued by the 1st respondent would suggest that the lessees of the temple properties are not entitled to transfer the leasehold right in favour of the third parties. In case, the lessees of the temple properties, transfer their leasehold right or sublet the same without consent of the temple, the temple is entitled to cancel the lease and bring the property for open auction for fresh lease. The relevant portion of the said order is as under :-

11. This guideline is in consonance with the explanation to Section 78 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, which explains the word -Encroacher- which reads as follows:~

> *78. ... Explanation. ~ For the purpose of this section, the expression -encroacher- shall mean any person who unauthorisedly occupies, any tank, well, spring or water~course or any property and to include~*
>
> *(a) any person who is in occupation of property without the approval of the competent authority (sanctioning lease or mortgage or licence) and*
>
> *(b) any person who continues to remain in the property after the expiry or termination or cancellation of the lease, mortgage or licence granted to him.?*

12. The above said Government Order also reads that if the person inducted into possession of the temple property is a blood relation of the lessee and the period of lease is still subsisting, name transfer can be effected after getting approval from Competent Authority. Therefore, it is clear in respect of legal representatives, who succeeds to the possession of the temple properties during continuation of the lease, name transfer can be effected without any condition like surrender of superstructure/building or payment of donation.

13. If the person, who is in occupation of the property is a third party (not being blood relative) and in cases where the lease period is already over, Executive Authority of the temple has to see whether allowing the said occupant is beneficial to the temple. If the Executive Authority of the temple comes to a conclusion that allowing the said third party occupant to continue to occupy the property is beneficial to the religious institution, he can be considered as a fresh lessee and a fresh lease agreement has to be entered into by fixing fair rent. In cases where the site of the temple alone was let out and a third party had been inducted into possession by the erstwhile tenant without any authorisation by the temple and the lease period is also over, the lessee or the person claiming under him is bound to hand over the vacant site after removal of the superstructure even under Common Law.

14. Even assuming the original lessee himself had put up superstructure in the site let out to him, he is under the obligation to surrender the vacant site by removing the superstructure, after lapse

of lease period, even under Common Law. If the person in possession of the leasehold site wants to continue the occupation of the superstructure, even after expiry of lease period, then as per the guidelines issued in the above said Government Order, he is liable to surrender the superstructure to the owner of the site and enter into fresh lease. This guideline is issued just to protect the superstructure and enable the occupant to continue his possession. If he is not willing to surrender the superstructure to the temple, he can very well remove the superstructure put up by him and surrender the vacant site to the original owner namely the temple.

15. As rightly contended by the learned Additional Government Pleader appearing for the respondents 1 to 3, the guidelines issued by the 1st respondent in the above said Government Order is only binding on the Executive Authority of the temple and it is not binding on third party occupant. If the third party occupant is not agreeable for surrender of the superstructure to the temple and continue the lease, he can very well remove the superstructure and surrender the vacant site to the temple, so that the temple can lease out the vacant site by going for open auction, which will fetch more amount. The guideline issued by the 1st respondent under the above said Government Order insisting surrender of superstructure to the temple in case the Executive Authority decides to renew the lease in favour of the third party occupant is a provision included with object of saving the superstructure which otherwise has to be demolished after determination of lease period. Therefore, the contention raised by

the learned counsel for the petitioners that the condition imposed by impugned G.O.(Nilai).No.131, requiring third parties/erstwhile lessee to surrender the superstructure to the temple to enter into fresh lease arrangement is unreasonable and arbitrary is not acceptable to this Court. In fact, the said condition helps the third party occupant/erstwhile lessee to preserve the superstructure put up by them.

16. In the absence of such an enabling guideline, the third party occupant/erstwhile lessee has to demolish the superstructure and surrender the vacant site of the property to the lessor/temple after expiry of the lease by efflux of time. Therefore, this Court comes to the conclusion that the guideline issued by the 1st respondent in the above said Government Order insisting the Executive Authority of the temple to get surrender of superstructure from the third party occupant/erstwhile lessee before entering into fresh lease of the site is more beneficial to the third party occupant/erstwhile lessee. In the absence of such a guideline, the superstructure has to be removed and vacant site shall be surrendered to the temple and site has to be brought for open auction for fresh lease as per the rules of Religious Institutions (Lease of Immovable Property) Rules, 1963.

17. A perusal of G.O.(Nilai).No.277, Tamil Development Cultural and Endowments Department, dated 02.12.2005 issued by 1st respondent would suggest that in case of name transfer in respect of residential houses for site, the lessees shall pay 10 times of the fair rent as donation to the Religious Institution and in

respect of the commercial leases, the lessee shall pay 15 times of the fair rent as donation to the Religious Institution. The impugned Government Order clearly says that in cases where the name transfer is sought for by the blood relatives while the lease is subsisting the name transfer can be effected by getting orders from Competent Authority. Therefore, the guideline issued by 1st respondent for collection of donation is not applicable to name transfer in respect of blood relations when the lease period is not over.

18. On the other hand, if the party in occupation of the property is a third party, not having any right to succeed to the estate of the deceased and the lease period is also over or name transfer is sought for by a blood relative in possession of the leasehold property after expiry of the lease period, he shall be treated as an encroacher within the meaning of explanation (b) to Section 78 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. Therefore, he is liable to face the eviction proceedings as lease period is already over.

19. If such a person approach the Executive Authority of the temple for name transfer, the impugned Government Order enables the Executive Authority of the temple to enter into a fresh lease arrangement with such person in occupation of the property, if the Executive Authority comes to a conclusion that entering into a fresh lease is beneficial to the religious institution. Only in such cases, the impugned Government Order insists the Executive Authority of the temple to collect donation as mentioned above.

20. In the absence of such an enabling provision, the Executive Authority has to initiate eviction proceedings against the third parties/erstwhile lessee/legal representative of erstwhile lessee for taking possession of the property and thereafter, the fresh lease shall be entered into by bringing the property for open auction as per the Religious Institutions (Lease of Immovable Property) Rules, 1963. The provision in the impugned Government Order enabling the Executive Authority of the temple to collect donation from the third party/erstwhile lessee is beneficial to them or otherwise they have to face eviction proceedings.

21. Further, as rightly contended by the learned Additional Government Pleader for respondents 1 to 3 that the condition regarding payment of donation is not binding on third party/erstwhile lessee. They have no authority to occupy the property after expiry of the lease period in the light of explanation to Section 78 of HR and CE Act. If they are not willing to accept the condition mentioned in the Government Order, they can very well surrender the property and walk away. The question of payment of donation will arise only if they want to enter into fresh lease arrangement with the temple. The Executive Authority of the temple as a contracting party is entitled to put forth its own terms and if the same is not applicable to the third parties/erstwhile lessees, they are not under any compulsion to enter into a fresh lease. Therefore, the condition imposed in the above said Government Order enabling the Executive Authority of the temple to enter into lease arrangement with third party/erstwhile lessee in

occupation of temple property cannot be treated as unreasonable or unfair as contended by the learned counsel for the petitioners. On the contrary, it enables the persons in occupation of the temple property to enter into new lease arrangement without surrendering the property.

22. In view of the discussions made earlier, the condition mentioned in the impugned Government Orders requiring the third party/erstwhile lessees to surrender the superstructure in favour of the temple or pay donation to the temple at the rate specified in order to enter into fresh lease arrangement is found to be valid and accordingly, all the Writ Petitions are dismissed. No costs. Consequently, the connected miscellaneous petitions are closed."

5. Though the Writ petition is of the year 2014, till date, the petitioner has not taken any effective steps to serve notice on the 4th respondent. Considering the period of pendency of this Writ petition, this Court is inclined to dispose of this Writ petition, based on the materials available on record.

6. Though very many grounds have been raised, the major grievance of the petitioner is with regard to the fixation of donation, which, according to the petitioner, is erroneous and impermissible. However, the fact remains

that the donation fixed was upheld by this Court in the aforesaid decision, which has not been challenged and, therefore, the same has attained finality and, therefore, the said decision is squarely applicable to the case on hand.

7. In such view of the matter, this writ petition is dismissed with a direction to the petitioner to deposit 50% of the donation demanded by the 4th respondent and in respect of the balance 50% amount, the petitioner is at liberty to make appropriate application before the 3rd respondent seeking reconsideration or waiver of donation and upon filing of any such application, the 3rd respondent is directed to consider the same and pass appropriate orders as expeditiously as possible, after affording opportunity to the petitioner and aggrieved persons if any. No costs. Consequently, the connected Miscellaneous petition is closed.

28.08.2024

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NCC : Yes/ No
Speaking Order : Yes/ No
Index : Yes/ No

To

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   Rep. by its Secretary to Government,
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M.DHANDAPANI, J.

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