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W.P.No.21247 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.09.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.21247 of 2024
and W.M.P.No.23203 of 2024

S.Jayaprakash

... Petitioner

-Vs-

1. Greater Chennai Corporation,
(Parks And Play Field Department),
Represented By Its Department Head,
Ripon Building, Chennai - 600 003.

2. The Zonal Officer,
Zone-9, Division – 110,
Greater Chennai Corporation, Lake Area,
Nungambakkam - 600 034.

... Respondents

Prayer : Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Mandamus, forbearing the Respondents from disturbing the existing arrangements more specifically from disturbing the Petitioner from operating and maintaining the existing tennis courts (3 number) for two years at Nungambakkam Playground Lake area road, Division 110, Zone No.9 on a fixed revenue sharing model until the validity period that is upto 10.01.2026.

For Petitioner : Mr.P.J.Rishikesh
For Respondents : Mr.D.B.R.Prabhu
Standing Counsel



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ORDER

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This writ petition has been filed forbearing the Respondents from disturbing the existing arrangements more specifically from disturbing the Petitioner from operating and maintaining the existing tennis courts (3 number) for two years at Nungambakkam Playground Lake area road, Division 110, Zone No.9 on a fixed revenue sharing model until the validity period that is upto 10.01.2026.

2. Heard both sides and perused the materials available on record.

3. The petitioner is a Tennis player. The Tennis Stadium was constructed in the year 1996 in order to cater several public in and around Nungambakkam Area and handed over to Sports Development Authority. There are three tennis courts. It facilitates several players of different age group and gender to play the sport. While being so, in the year 2018, the first respondent had entrusted the maintenance of all the tennis courts to one 'Mullai Malar'. However, it did not perform its part and thereafter, in the year 2023, the first respondent decided to give back the tennis courts to the actual users. However, the first respondent floated E-tenders for operation and maintenance of existing tennis courts in Nungambakkam Playground. As per the notification, the petitioner had



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submitted bids and others had also submitted their respective bids and the bid was opened on 11.01.2024.

4. The petitioner had quoted a sum of Rs.4,68,000/- as a bid amount and he is the highest bidder. However, no work order was issued in favour of the petitioner. Though the petitioner was directed to remit a sum of Rs.37,500/- per month to the respondents to maintain the ground, now the respondents intended to vacate the petitioner to propose fresh tender notification.

5. A perusal of the status report filed by the respondents revealed that though the petitioner was a highest bidder and called for negotiation on 12.01.2024, it was delayed due to code of conduct for election and the tender was not processed in time. Therefore, work order was not given to the petitioner and he is occupying the tennis courts illegally.

6. Once the petitioner was permitted to occupy the courts and accepted the rents, it assumes that the petitioner was ordered for contract. In this regard, the learned counsel for the petitioner relied upon the Judgment of the Hon'ble Supreme Court of India reported in **2008 1 SCC 503** in the case of **Bharat Petroleum Corporation Ltd., Vs Great Eastern Shipping Co.Ltd.**, wherein it



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was held as follows:-

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“ 19. It is, no doubt, true that the general rule is that an offer is not accepted by mere silence on the part of the offeree, yet it does not mean that an acceptance always has to be given in so many words. Under certain circumstances, offeree's silence, coupled with his conduct, which takes the form of a positive act, may constitute an acceptance – an agreement sub silentio. Therefore, the terms of a contract between the parties can be proved not only by their words but also by their conduct.”

Therefore, the principle of *sub silentio* is clearly attracted in the case on hand.

7. He also relied upon the Judgment of the Hon'ble Supreme Court of India reported in **2022 2 SCC 25** in the case of ***Union of India and others Vs N.Murugesan and others.***

“ 18. Section 3 of the Act concerns itself with an act of communication, acceptance, and revocation of proposal. When an offer is made, it is required to be accepted by the receiver to partake the character of a concluded contract. Hence, the knowledge of the terms of the offer is a primary and essential factor for acceptance. To understand this better, when an acceptance is made in an unqualified manner, it takes in its sweep the said acceptance along with the knowledge of the terms of the offer. This is for the reason that an unaccepted offer creates neither any right nor obligation. Such an acceptance as existing under Section 7 of the Act must both be absolute and unqualified. As per Section 8, the performance of the conditions of a proposal or the acceptance of any consideration for a reciprocal promise which may be offered with a proposal is an acceptance of the proposal. Hence, an absolute and unqualified acceptance would give



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birth to the contract along with the terms of the offer.

25. Acquiescence would mean a tacit or passive acceptance. It is implied and reluctant consent to an act. In other words, such an action would qualify a passive assent. Thus, when acquiescence takes place, it presupposes knowledge against a particular act. From the knowledge comes passive acceptance, therefore instead of taking any action against any alleged refusal to perform the original contract, despite adequate knowledge of its terms, and instead being allowed to continue by consciously ignoring it and thereafter proceeding further, acquiescence does take place. As a consequence, it reintroduces a new implied agreement between the parties. Once such a situation arises, it is not open to the party that acquiesced itself to insist upon the compliance of the original terms. Hence, what is essential, is the conduct of the parties. We only dealt with the distinction involving a mere acquiescence. When acquiescence is followed by delay, it may become laches. Here again, we are inclined to hold that the concept of acquiescence is to be seen on a case-to case basis.”

The above Judgment is squarely applicable to the case on hand.

8. Once the petitioner was permitted to occupy the tennis courts for maintenance and receiving rents at the rate of Rs.37,500/- per month from the petitioner, it cannot be said that the petitioner is an illegal occupier. If at all the respondents intended to revise the rent, the respondents are at liberty to revise the rent, after giving an opportunity of hearing to the petitioner, within a period of four weeks from the date of receipt of a copy of this order. If the petitioner



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accepts the revised rent, he can continue till the completion of two years from the date of tender viz., December, 2026.

9. Therefore, the respondents are restrained from disturbing the Petitioner from operating and maintaining the existing tennis courts, till the revision of rent.

10. With the above directions, this writ petition is disposed of. Consequently, connected Miscellaneous petition is closed. There shall be no order as to costs.

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Internet: Yes
Index : Yes/No
Speaking/Non Speaking order
Neutral Citation : Yes/No
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To

1. The Department Head,
Greater Chennai Corporation,
(Parks And Play Field Department),
Ripon Building, Chennai - 600 003.
2. The Zonal Officer,
Zone-9, Division – 110,
Greater Chennai Corporation, Lake Area,
Nungambakkam - 600 034.



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G.K.ILANTHIRAIYAN. J.

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