 IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving the Judgment	Date of Pronouncing the Judgment
25.10.2024	**22.01.2025**

A.No.5499 of 2024
in
C.S.No.107 of 2019

RMT.TEEKAA RAMAN, J.

This application is filed to modify the order dated 13.02.2019 made in C.S.No.107/2019 as follows:

(a) to permit the respondent to pay a sum of Rs.60,00,00,000/- (Rupees Sixty Crores only) to the 1st applicant in instalments within a period of one year and (b) to permit the applicants and respondent to rectify Clause 3.3 suitably on the basis of modification made by this Court.

2. The plaintiffs in C.S.No.107/2019 filed this application for the above relief.

3(a). Mr.V.Ayyadurai, learned Senior Counsel for the applicants and Mr.I.Abrar Mohammed Abdullah, learned counsel for the respondent submitted that in view of the subsequent development that is stated in the petition, they proposed to amend Clause 3.3 of the lease deed executed between the parties. As per the conditional order of this Court dated 13.02.2019 on payment of Rs.60,00,00,000/- (Rupees Sixty Crores only) to the first applicant in instalments within a period of one year.

3(b). Learned counsel for the respondent would state that with regard to the terms, they are agreeable, however, the period may be spanned over two years.

4(a).After perusing the application and typeset of papers and calculation sheet and the resolution passed in the Board meeting held on 04.10.2024, this Court finds that the present applicants moved this Court by filing the above suit praying for jointly developing 13.5 Acres of land and to lease out 2.5 Acres of land in Survey No.316 of Kottivakkam Village. This

Court, by order dated 13.02.2019 was pleased to permit the Applicants to enter into a Deed of Lease in respect of all those pieces and parcels of land of a total extent of about 250 cents, shaded in Blue Colour in the annexed plan to the lease deed, being the aggregate of 244.5 cents marked as 'B' in the annexed plan to the lease deed and 5.5 cents marked as 'B1' in the annexed plan to the lease deed, comprised in Survey No.316 Patta No.110, of Kottivakkam Village, Sholinganalur Taluk, Kancheepuram District situated at No.4/341, Rajiv Gandhi Salai, Chennai-600 041, for a period of ninety five years six months and two days.

4(b). It appears that the applicants executed a lease deed in favour of the respondent as permitted by this Court by order dated 13.02.2019. The lease deed dated 18.09.2020 was registered as Doc.No.1781/2020 on the file of the Sub Registrar, Adyar. Thereafter, the lease was executed in consideration of the lease rent described in Clause 3.2 of the lease deed and in addition to the lease rent, the respondent has to construct for the lessor 2,30,000 sq. ft of built up area with specification set out in Annexure-B attached to the lease deed at a cost not exceeding Rs.80,50,00,000/- (Rupees Eighty Crores and Fifty Lakhs only) at the rate of Rs.3,500/- per sq. ft. (inclusive of taxes) on the 13.5 acres or thereabouts of the land (herein referred to as the Balance Land) remaining out of the larger extent after excluding the already leased land. The above amount had to be spent over the period of construction which would range about three years.

5(a). It is seen from the records that the first applicant had executed a lease deed in favour of the respondent for an extent of 5 Acres by a registered deed of lease dated 20.04.2017. As per the standing orders of the Greater Chennai Corporation, the first applicant had to gift about 2.3073 acres to the Greater Chennai Corporation for obtaining building permission for doing construction as per MOU dated 14th November, 2015 and order dated 13.02.2019. The statutory bodies insisted for surrendering of 10% of the entire land measuring about 20.73 acres even though the first plaintiff wanted to develop only 10 acres initially and then development was extended to remaining extent.

5(b). In compliance of the above said provision, the 1st Applicant had to gift lands for open space reserve, Link Road, Public Purpose & TANGEDCO. In view of gifting larger extent of lands to Chennai Corporation, the 1st applicant had to explore the possibilities of developing the remaining extent of land. Three gift deeds were executed in favour of Greater Chennai Corporation in Document No.2399 of 2021 gifting an extent of 2.10 Acres for Open Space Reserve (OSR) and another extent of 20.73 cents for formation of Link Road (LR) and another extent of 18.04 cents for Public Purpose and for TANGEDCO. Thus an extent of 6.85 Acres remained to be developed in Kottivakkam, after set apart lands for service projects (Destitute Home, Working Women's Hostel, Old Age Home, Tamil Medium School and CBSE School), leasing of lands to the respondent and gifting of lands to Chennai Corporation.

6. From the submissions made by the learned Senior Counsel Mr.V.Ayyadurai for the applicants, it is seen that the statutory authorities

have increased the FSI from 1.98 to 3.25 which enables the applicants to construct about 16.5 lakhs sq.ft. in the remaining extent of land. The proposed development includes commercial project and hotel development. As a consequence, the earlier order passed by this Court has to be modified by enabling the 1st applicant to receive monetary value for construction of 2.3 lakhs sq.ft. instead of constructing of 2.3 lakhs sq.ft.

7(a). On perusal of the lease deed dated 18.09.2020, the respondent is under an obligation to construct 2,30,000 sq.ft., but in view of the subsequent developments for the entire remaining area, the applicants will be approaching this Court for obtaining necessary permission, at a later point and the applicants have already entered into an agreement of construction with M/s.Hansem Building Systems India Private Limited and started construction initially the service projects namely, Destitute Home, Working Women's Hostel, Old Age Home, Tamil Medium School and CBSE School.

7(b). Thus, I find that both the parties have sat together and wanted a modification of the Clause 3.3 with regard to the payment due to the increase in FSI and subsequent development to construct 16.5 lakhs sq.ft. Both the parties have come to an understanding that the respondent has to pay Rs.60,00,00,000/- (Rupees Sixty Crores Only) (inclusive of taxes) in multiple instalments within one year period in lieu of their obligation to construct 2,30,000 sq.ft. as per Clause 3.3 of the lease deed. The applicants have considered the proposal of the respondent in their board meeting held on 04.10.2024 and resolved to obtain appropriate orders from this Court in view of subsequent developments in increase in FSI and MOU with another builder.

8. After hearing the submissions of Mr.V.Ayyadurai, learned Senior Counsel, who would submit that the present modification will be beneficiary to the applicants/plaintiffs, who are doing yeoman service as per the articles of the Association. Both the parties appear to have discussed with the expert opinion of the Chartered Accountant with regard to the Present Value Approach (Calculating the lump sum value using discount rate methodology)

and Compound Interest Approach (Assuming a growth rate on the proposed amount) and accordingly, arrived at the above said amount of Rs.60,00,00,000/- (Rupees Sixty Crores only) in multiple instalments within the stipulated period in lieu of their obligation to construct 2,30,000 sq. ft as per Clause 3.3 of the lease deed.

9(a). On perusal of the order passed by this Court in C.S.No.107/2019 dated 13.02.2019, I find that total extent of land is 21 acres. As per the permission granted in C.S.No.862 of 2003 to develop 10 acres of land and as approved by the Hon'ble Supreme Court in Civil Appeal Nos.1798 to 1800 of 2013, 5 acres of land to be leased out for 99 years to the respondent and the remaining 5 acres of land shall be developed by the Applicants, for which, the respondent shall pay Rs.130 crores in a phased manner. Subsequently, the parties agreed for leasing of 2.5 acres in addition to 5 acres already leased to the respondent/defendant in lieu of developing 2,30,000 sq. ft. in the remaining extent of 13.5 acres.

9(b).Thus total extent is 21 acres; already leased 5 acres and proposed to lease 2.5 acres. Hence, the applicants approved to lease out 2.5 acres of land and approached this Court in C.S.No.107/2019 for the above said reliefs. Hence, they filed the above suit seeking the relief of granting permission to the plaintiffs to enter into an agreement with the defendant for the construction of 2,30,000 sq.ft in an area measuring 13.5 acres in the Schedule C of the plaintiffs and to grant permission for the plaintiffs to execute the deed of lease in favour of the defendant in respect of 2.5 acres of land described in Schedule B of the suit schedule mentioned property and this Court decreed the suit on 13.02.2019.

9(c). Accordingly, lease deed was executed in respect of 2.5 acres of land by lease deed dated 18.09.2020. A copy was enclosed in the typeset of papers. Gift deed for the purpose of OSR was executed on 19.08.2021. Another gift deed for Greater Chennai was executed on 19.08.2021 for the formation of Link Road and another three gift deeds were executed for TANGEDCO, Public Purpose and for old citizens on 23.07.2024 and hence, I find that both the parties before this Court are strictly adhering to the terms of the lease as stated by this Court in its order dated 13.02.2019 and also as per the statutory application as contemplated under the Greater Chennai Corporation Building and Development Rules.

9(d). From the submissions of both the counsel, I find that in view of the subsequent development, the FSI has been increased from 1.98 to 3.25 which would enable the applicant to develop 16.5 lakhs sq. ft. in the remaining extent of land. Hence, due to the increase in FSI and intention to develop 16.5 lakhs sq.ft., the respondent has come forward to pay Rs.60,00,00,000/- (Rupees Sixty Crores Only) (inclusive of taxes) in multiple instalments within one year period in lieu of their obligation to construct 2,30,000 sq.ft. as per Clause 3.3 of the registered lease deed. The applicants have considered the proposal of the respondent in their Board meeting held on 04.10.2024 and resolved to have appropriate orders from this Court.

10. Accordingly, the present petition is filed. After taking note of the

terms discussed between the parties as reflected in the extract of minutes of the Board meeting dated 04.10.2024, both the parties have approached this Court for appropriate orders. Considering the fact that both the parties are proceeding as per the terms as contained in the judicial order passed by this Court and also taking note of the Present Value Approach and Compound Interest Approach adopted for arriving at Rs.60,00,00,000/-(Rupees Sixty Crores only) (inclusive of tax) in lieu of their obligation to construct 2,30,000 sq. ft as per Clause 3.3 of the lease deed, I find that such an amendment to the lease deed will be in the welfare of the applicants/plaintiffs on equitable terms of both the parties. Accordingly, the relief sought for by the applicants/plaintiffs at para No.9 is hereby appears to be equitable terms of both the parties and it is beneficial for the applicants/plaintiffs.

11. Accordingly, this application is **allowed** as prayed for except the condition that instead of payment of instalments spanning for one year, it shall be 18 months. Though the learned counsel for the respondent has prayed 24 months, I find that ends of justice will be met by awarding 18

months in multiple instalments mutually agreed between the parties.

12. Accordingly, both the relief sought for in the application are granted. The parties shall enter into a rectification or modification or amendment as suggested by the respective parties and such an exercise shall be completed as early as possible and to register the document as amendment/rectification for agreement of the earlier lease deed.

13. In fine, the present Application is allowed to the extent as indicated above.

22.01.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

PJL

RMT.TEEKAA RAMAN, J.

PJL

ORDER
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