
(1996) 07 MAD CK 0036

In the Madras High Court

Case No : Writ Petition No's. 3637 and 6647 of 1996

A. Mohammed Ismail

APPELLANT

Vs

The Corporation of Madurai

RESPONDENT

Date of Decision : 18-07-1996

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1996) 2 CTC 455

Hon'ble Judges : Jayarama Chouta, J

Bench : Single Bench

Advocate : M. Sathyanarayanan, for the Appellant; E. Padmanabhan for P. Srinivas, for the Respondent

Final Decision : Dismissed

Judgement

Jayarama Chouta, J.—Since these two writ petitions relate to one and the same transaction and the parties are one and the same, I am

disposing of these writ petitions by this common order.

2. In W.P.No.3637 of 1996, the petitioner has sought for a writ of certiorarified mandamus calling for the entire records relating to Tender/Auction

notification published by the respondent in Malai Murasu, Madurai Edition dated 23.3.1996 and quash the same in respect of Serial No. 12,

Lodge at Meenakshi Nilayam, Periyar Bus Stand, Madurai-1 and direct the respondent to renew the licence in favour of the petitioner in respect

of Lodge at Meenakshi Nilayam, Periyar Bus Stand, Madurai.

3. In W.P.No.6647 of 1996, the petitioner has sought for a writ of certiorarified mandamus calling for the entire records relating to re-

tender/auction notification published by the respondent in Daily Thanthi, Madurai Edition, dated 30.5.1996 and quash the same in respect of

Sl.No,6, Lodge at Meenakshi Nilayam, Periyar Bus Stand, Madurai. 1 and direct the respondent to renew the licence in favour of the petitioner in

respect of Lodge, Meenakshi Nilayam, Periyar Bus Stand, Madurai till 1997-1998.

4. The necessary facts to dispose of these writ petitions could be gathered from the affidavits filed by the petitioner in these writ petitions. The

petitioner has stated that himself and one K. Elango originally made joint application dated 14.3.1991 praying for grant of licence to collect daily

rent from the lodge consisting of 14 rooms under the name and style of Meenakshi Nilayam, belonging to the respondent. The Commissioner of the

then Madurai Municipality by order dated 18.3.1991 was pleased to grant licence in their favour directing to pay a sum of Rs. 15,000 per month,

towards licence fee. As per the said order, the petitioner remitted sum of Rs. 75,000 consisting of three months advance at the rate of Rs. 15,000

per month and three months deposit at the rate of Rs. 15,000 after deducting a sum of Rs. 25,000 already paid. Necessary agreement was

executed. The petitioner further stated that the respondent periodically raised the amount by 10% of the previous year. On 27.5.1992, the licence

was transferred exclusively in the name of the petitioner. The petitioner received a notice dated 4.3.1998 from the respondent increasing the

licence fee by 10% which he was paying for the year 1992-93. The said notice referred to a Resolution No. 540 passed by the then Madurai

Municipality on 27.1.1993.

5. The affidavit further states that the respondent Municipality and other Corporations increased the licence fee for lease amount arbitrarily about

ten years back. G.O.Ms.No.285 dated, 29.4.1985 was passed increasing the lease amount at the rate of 15% over and above the lease amount

for the year 1984-85. Various licensees and licence holders filed writ petitions in this Court and also in the Supreme Court. The Supreme Court,

by a common order dated 23.4.1991 in C.A.Nos. 1991-1994 of 1991 with W.P. (Civil) No. 400 of 1986 filed by the Erode Perunthunilaya

Viyabarigal Sangam and three other Association made the following order:

We have given our anxious consideration to the contentions raised by both the parties. It seems to us that there is no point in dispossessing the

petitioners if they are prepared to pay the enhanced rent as per proposal to pay the enhanced rent as per the said Government Order. They are in

the premises doing business apparently with considerable investment. The periodical change of premises seems to be detrimental to their interests.

If the Municipality to assured of reasonable rent, it is proper that the petitioners be allowed to continue in the premises. They must however, pay

the rents at the increased rate of 15% more than the amount which is payable by them. This increased rate of rent at 15% shall be payable once in

a block period of three years commencing from 1.4.1988. The increased rate of 15% of the period from 1.4.1988 to 1.4.1991 shall be payable

within three months from today"".

6. Pursuant to the abovesaid order, the licence fee was increased by 15% on 1.4.1991 and again 15% from 1.4.1991 in respect of Meenakshi

Nilayam. It was increased by 10% for the period 1992-93 and the petitioner was directed to pay a sum of Rs.15;000 from 1.4.1992 to

31.3.1993. The respondent, by a notice dated 4.3.1993, sought to increase the licence fee by another 10% for the period 1993-94. Challenging

the said notice dated 4.3.1993, the petitioner filed W.P.No.8609 of 1993 for issuance of a writ of certiorarified mandamus to quash the said

notice and for bearing the respondent from increasing the rent beyond 15% of the rent paid for the lodge at Meenakshi Nilayam, Periyar Bus

Stand, Madurai during the year 1991-1992 till 31.3.1994. This Court passed an order dated 14.5.1993 in the stay and direction petitions ordering

interim stay on condition that the petitioner shall deposit with the respondent 15% of the increased rate of rent. Accordingly, the petitioner was

paying a sum of Rs. 15,225 from 1993-94 pursuant to the above said order.

7. The respondent has issued an order of cancellation dated 29.3.1995 in B1/17486/94, and cancelled the licence on the ground that the licence

period expired on 31.3.1995 and called upon the petitioner to deliver possession of the same on 1.4.1995. The petitioner submitted his

representation on 31.3.1995 bringing to the notice of the respondent that he has invested a huge amount in the said Lodge for making improvement

and asking him not to cancel the licence. The respondent by a memo dated 31.3.1995 made in B1/17486/95 has passed an order increasing the

licence fee by 15% on Rs. 16,500 and directed the petitioner to pay a sum of Rs. 18,975 for the year 1995-96. A further condition was imposed

that the petitioner should withdraw the writ petition.

8. Pursuant to the said order dated 31.3.1995, the petitioner was paying regularly the monthly licence fee of Rs. 18,975 and also complying with

all the necessary conditions. The respondent, by a notification published in Madurai Edition of Malai Malar 23.3.1996 has issued tender/auction

notification. The last date of submission of tender was fixed on 27.3.1996 and auction was conducted on 28.3.1996.

9. Challenging the said notification, the petitioner filed W.P.No.3637 of 1996 praying for the issuance of the relief which has been referred earlier.

The petitioner also filed W.M.P.No.5842 of 1996 staying for all further proceedings pursuant to the said notification. The said writ petition was

admitted on 26.3.1996 and this Court has passed an order to conduct auction as per the said notification, but, however, the confirmation of the

bids relating to the Meenakshi Lodge has been stayed.

10. Since the respondent published retender/auction as there was no bidder on the earlier auction in the "Dhinathanthi" dated 30.5.1996 inviting

bids for 18 items including the lodge at Meenakshi Nilayam figures as item No. 6., The petitioner filed W.P.No.6647 of 1996 in this Court for the

relief which I referred earlier. In the said affidavit, the petitioner has raised number of grounds to set aside the said tender notification.

11. On behalf of the respondent, the Commissioner of Corporation, Madurai has filed a counter-affidavit. In the said counter-affidavit, he has

stated the facts which made the petitioner to file the writ petition. He has stated the facts which made the petitioner to file the writ petition. He has

stated that furnished lodging accommodation has been provided by the respondent Corporation to the petitioner. Till 1990-91, it was under

departmental collection. There are double bed rooms and single rooms totalling 14 in number which are well furnished by providing cots, beds,

table, chairs and fans and the bath rooms also are fitted with amenities. For the year 1991-92, the respondent resolved to auction its right to collect

fees from the persons who stay in the said lodging house at the rates prescribed by the respondent. One K. Elango was the successful bidder for

the year 1991-92. On the joint application of the said Elango and the writ petitioner, licence for the lodging house was transferred in their joint

names. The respondent has stated that it is only a privilege of licence conferred on the successful bidder to collect fees from the persons who stay

in the rooms. The parties have executed necessary agreement and the said licence was removed without increasing the licence fee and subject to

the same terms and conditions, which were imposed during the year 1991-92.

12. For the year 1993-94, the respondent Corporation resolved to renew all the licences in respect of pay and use latrines and Meenakshi

Nilayam by increasing the licence fee by 10%. For the year 1993-94, the licence fee for Meenakshi Nilayam was fixed at Rs. 16,500 per month.

Once again, the respondent resolved to renew the licences for the year 1994-95 which came to an end on 31.3.1995. As the petitioner committed

default and as the licence period also expired on 31.3.1995, the respondent terminated the licence and took steps to auction the right to collect

fees from the lodging house.

13. After narrating the writ petition filed by the petitioner in this Court, the respondent has stated that as the licence for the period 1995-96 came

to an end on 31.3.1996, the respondent published an auction notification for various items including the right to collect fees from the lodgers, who

stay in Meenakshi Nilayam for the year 1996-97. The said notification had been challenged by the petitioner in the writ petition. After explaining

under what circumstances the licence fee has been enhanced, the respondent concluded by saying that there are no merits in these writ petitions

and they are liable to be dismissed as devoid of merits.

14. A reply affidavit has been filed by the petitioner denying the allegations made in the counter-affidavit of the respondent.

15. I Heard Mr. M. Sathyanarayanan the learned counsel on behalf of the petitioner and Mr. E. Padmanabhan, learned counsel on behalf of the

respondent and perused the records.

16. The main grounds of attack of the learned counsel for the petitioner were since it is a lease not a licence, the respondent should have extended

the lease. According to the learned counsel for the petitioner, the petitioner was treated as a lessee till 31.3.1996. Now the respondent cannot all

of a sudden terminate the lease and calling for auction of the said lodge without following the procedure laid down under law and hence, the action

of the respondent in issuing the said notification is illegal and is liable to be set aside.

17. On the other hand, learned senior counsel for the respondent countering the

said arguments of the petitioner's counsel submitted that it is not a lease but only licence, since only a furnished lodging house with all the necessary furniture and facilities have been handed over to the petitioner as the licensee to collect the amount for using the rooms at the rate fixed by the respondent Corporation. He has further submitted that no interest or right had been created in the said building and it was only for a period of one year which was subsequently continued. The respondent corporation has provided a furnished lodging house with all the furnitures and that too only to collect the amount from the persons who are using the rooms at the rate fixed by the respondent/Corporation and the respondent never parted with the interest over the said property to the petitioner and hence, the petitioner was there as a licensee and not a lessee. He has justified the action of the respondent Corporation in issuing a notification for calling for auction. He also pointed out that the petitioner being a defaulter, he cannot have any right to collect the amount either as a licensee or a lessee and on this ground also, the writ petitions are liable to be dismissed.

18. On these submissions, learned counsel invited my attention to the decision in *Sekaran T. v. The Managing Director, Thiruvalluvar Transport Corporation, Madras, 1994 (1) L.W.463*. He has invited my attention to the following passage:

It is well settled that whether an agreement has created a lease or licence is not left only to the language employed in the document to describe the parties as lessor and lessee or licensor and licensee. The distinction has been pointed out by Subba Rao, J in his minority judgment in the case of *Associated Hotels of India Ltd. Vs. R.N. Kapoor*, : ""if a document gives only a right to use the property in a particular way or under certain terms while it remains in possession and control of the owner thereof, it will be a licence. The legal possession and control of the owner thereof, it will be a licence. The legal possession, therefore, continues to be with the owner of the property, but the licensee is permitted to make use of the premises for a particular purpose. But for the permission, his occupation would be unlawful. It does not create in his favour any estate or interest in the property"".

There is, therefore, clear distinction between the two concepts.

Learned senior counsel also placed reliance in an another case in the same

Journal in V.S. Balakrishnan v. Pudukkottai Municipality, represented by the Commissioner, Pudukkottai, Pudukkottai Dist and Anr., 1994 1 L.W.571. The following passage has been relied upon by the learned senior counsel;

The writ petitioner was the successful bidder at the auction held by the 1st respondent-Municipality of the right of collecting fees in the weekly market for the period 1.4.1989 to 31.3.1990. The Writ Petition was filed to quash the Notification of the Municipality for the period 1.4.1990 to 31.3.1991, contending that the document executed between petitioner and Municipality was really a lease and the petitioner has become a tenant under the Municipality by virtue of the said document and it was not open to the Municipality by virtue of the said document and it was not open to the Municipality to hold a fresh auction for the period 1990-91 and dislodge the petitioner and that the petitioner is entitled to the benefit of G.O.Ms.No.285, Municipal Administration and Water Supply Department, dated 29.4.1985, under the terms of which the petitioner was entitled to continue on paying an increased lease amount of 15% every year. The contention of the Municipality was that what was given to the petitioner was not a lease and it was only a licence to collect fees from the persons who vend their goods in the weekly market at Pudukkottai. It was also argued that the Government Order referred to by the petitioner is applicable only to lease of buildings, stalls, lands, shops, bunks, etc. and not to a right to collect market fees.

Held: It is very clear from the Notification of auction that what was sought to be conferred or conveyed was only a right to collect the fees in the weekly market. The Notification related to about 15 items. The comparison of description of the other items shows that the Municipality intended only to confer a right to collect fees and nothing else. The document, dated 5.4.1989, on which reliance is placed, does not contain any description of any immovable property. The schedule merely refers to the right to collect fees in the weekly market. The document shows clearly that the parties did not intend to deal with any immovable property under the document, When it is a question of intention of the parties, it is clear from the document in question that there was no intention to deal with any immovable property.

In this case, the Court was considering the Government Order No. 285 Municipal Administration and Water Supply Department dated 29.4.1985

from which the learned counsel for the petitioner was deriving support on the basis of the Supreme Court decision.

19. Placing reliance on these decisions, learned senior counsel submitted that there was no relationship of lessor and lessee between the petitioner and the respondent.

20. Now let me consider the rival contentions put forward by the learned counsel on either side. To find out whether the petitioner was a lessee or

a licensee under the respondent, the recitals in the document entered into between the parties clearly make out it is not a lease, but, a license. Only

the right to collect the amount for using the rooms of the lodge has been given to the petitioner, the respondent has continued the possession of the

said lodging and the interest over the said property. The respondent has not created any interest in the said building with the petitioner. The

respondent asked the petitioner to collect the amount for using the rooms of the lodging without creating an interest over the said property in favour

of the petitioner. It is corporation which supplies water to the said building. Under those circumstances, keeping in view the ratio of the decisions

which have been referred to by me, I am of the opinion that the relationship of the petitioner, and the respondent is not that of the lessee and lessor,

but that of licensor and licensee. The learned senior counsel also invited my attention that the petitioner was a defaulter in payment of the licence

fee. Of course, that is the disputed fact and I am not giving any finding on the said issue whether the petitioner is a defaulter or not. Since I am

holding that there is no relationship of lessee and lessor, the petitioner cannot succeed in this writ petition.

21. Hence, for the reasons stated above, I see no merit in these writ petitions and accordingly, they are dismissed. No costs.