
(2005) 01 MAD CK 0047
In the Madras High Court
Case No : W.A. No. 175 of 2005

DCW Limited

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 27-01-2005

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Contract Act, 1872 — Section 62

Citation : AIR 2005 Mad 264 : (2005) WritLR 93

Hon'ble Judges : Markandey Katju, C.J.;D. Murugesan, J

Bench : Division Bench

Advocate : Nalini Chidambaram for Gladys Daniel, for the Appellant; V. Raghupathy, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Markandey Katju, C.J.—This writ appeal has been filed against the interim order of the learned single Judge dated 08.11.2004.

2. We have heard the learned counsel for the parties, and have perused the records.

3. The petitioner/appellant is a Public Limited Company having its registered office at Dhrangadara, Gujarat, and is carrying on the business of manufacturing and selling chemicals and production of salt for industrial and domestic purposes in the State of Gujarat and Tamil Nadu.

4. The State of Tamil Nadu had originally leased out a vast area of land to M/s. Wimco Limited measuring 28,765 acres of swamp and poromboke lands in Vedaranyam Taluk, Nagapattinam District and Thiruthuraipoondi Taluk, Thanjavur District by G.O.Ms. No. 625, Revenue, dated 14.2.1963. The lease was for a period of 40 years commencing from 1963 and ending in 2003 for the purpose of manufacture of salt for

use in the factory to be set up. M/s.Wimco Limited surrendered a major portion of the land of 16,500 acres to the first respondent. Thereafter, by

a G.O, the first respondent ordered resumption of unutilised land measuring 9044.47 acres leaving a balance of 3185.53 acres for utilization by

M/s.Wimco Limited for setting up of a factory for the manufacture of salt and its by-products. Since M/s. Wimco Limited found its enterprise not

giving adequate income it had sought permission of the first respondent/State of Tamil Nadu for transferring the leasehold rights over the salt lands

to the petitioner herein. M/s.Wimco Limited filed an application in the year 1990 requesting the first respondent to consider its request for transfer

of its leasehold rights over the salt lands in favour of the petitioner herein. The first respondent by G.O.Ms. No. 603, Revenue, dated 15.4.1991

permitted the petitioner, a major producer of salt, to take over the leasehold rights and passed the following order: -

¶½ (i) The Government permits M/s.Wimco Limited to transfer the lease hold rights in favour of M/s.DCW Limited with effect from 1.4.91 for the

same purpose of manufacture of salt and its by-products, subject to the specific condition that M/s.Dharangadhara Chemical Works Limited

should enter into a fresh lease agreement with the Government from the above said date.

(ii) The Government also directed that the above lease is subject to the general conditions laid down under R S O 23-A and that the lease should

be for the initial period of 12 years as per the orders issued in G.O.Ms. No. 1106, per acre per annum and royalty of Rs. 1/- per tonne of salt

produced subject to a minimum of Rs. 25/- per acre per annum as per G.O.Ms. No. 1075, Revenue, dated 22.6.82.

(iii)The Collector of Thanjavur District is requested to act upon the above orders of the Government and also furnish a copy of the lease agreement

referred to in para-4 above.

5. Pursuant to the above G.O, leasehold rights was transferred in favour of the petitioner from M/s.Wimco Limited. The first respondent fixed the

period of lease as 12 years as per the orders issued in G.O.Ms. No. 1106, Revenue, dated 13.6.88 and the lease rent was fixed at Rs. 2/- per

acre per annum and the maximum royalty was fixed at Rs. 25/- per acre per annum. Pursuant to the aforesaid G.O.Ms. No. 603 dated 15.4.1991

the State Government permitted the transfer of the leasehold rights from M/s.Wimco Limited to the petitioner, and an Indenture of Lease dated

13th May 1991 was executed between the State of Tamil Nadu/first respondent and the petitioner covering 3185.53 acres of land in Vedaranyam

Taluk under Survey No. 193 at village Kandinavayal, Survey No. 143 at village Ayakkarambulam and Survey No.193 at Village Pannal. In terms

of the decision of the Government in G.O.Ms.No. 1106 dated 18th June 1998, the said lease was to be valid for a period of 12 years expiring on

31st March 2003.

6. It is alleged in paragraph-13 of the petitioner's affidavit that on the basis of the indenture dated 13th May 1991, the petitioner started its

activity of manufacturing salt in the swampy area of Vedaranyam and has been paying the annual rent per acre without default and has also been

able to increase the salt production from 524 metric tones, which was produced in the year 1989-90 when the production was managed by

M/s.Wimco Limited systematically every year by virtue of investing several crores of rupees for the purpose of improving the bunds, channels,

canals, crystallisers and condensers by bringing in better technology and higher investment. It is alleged that by virtue of all these developments, the

total salt production had increased from 524 metric tones to 64,578 metric tones in 1993-94.

7. Paragraph-15 of the petitioner's affidavit states: -

G.O. No. 1106 dated 13th June 1988 provided that if the lessee abides by all the conditions of lease and carries on the industry profitably, it could

apply for renewal of the lease for a further period of 12 years, which would be sanctioned automatically. In this regard, paragraph-4 of G.O. No.

1106 dated 13th June 1988 reads as under: -

The Government has examined all the aspects very carefully. It has considered that the proposal of 12 years period of lease would be adequate for

the investors to recover the investments made. If the lessees abide by the conditions of lease and carry on the industry profitably, they could apply

for renewal of the lease for as further period of 12 years, which would be sanctioned automatically on the merits of the individual cases. The

Government, therefore, direct that the period of lease in respect of State Government lands leased out for manufacture of salt shall be 12 (twelve)

years in all cases of such lease uniformly and that the lease rent shall be revised once in three years on the basis of the then prevailing market value

of land. ½

8. It is alleged in paragraph-16 of the petitioner's affidavit that the position of automatic renewal of the lease for a further period of 12 years was

again reaffirmed and reiterated by the Government in a subsequent G.O.Ms. No. 1810 dated 30th May 1991.

9. Since the lease in question was coming to an end on 31st March 2003, the petitioner by letter dated 18th December 2002 wrote to the District

Collector, Nagapattinam District as follows:-

As the lease of the said lands expires on 31st March 2003, we herewith enclose the duly filled in application for renewal of the said lands in our

favour for a further period of 40 years. Our company shall abide by all usual terms and conditions for renewal of the lease.

There was no reply to the aforesaid letter. Thereafter, the petitioner addressed letter dated 25th July 2003 to the Special Commissioner and

Commissioner, Land Administration Department, Government of Tamil Nadu/ second respondent stating that they abide by all the terms and

conditions of the lease, and requested for extension of their lease. The petitioner pointed out that by furnishing bank guarantee, as demanded by the

Government, all legal and financial requirements had also been fulfilled. The petitioner, further, pointed out that it is in the interest of the

Government to favourably consider its request, and to further co-operate with the Government it had agreed to withdraw its writ petitions pending

before this Court provided the Government agreed for extension of the lease. It is alleged in paragraph-21 of the petitioner's affidavit that the

petitioner by letter dated 24th September 2003 had informed the Nagapattinam District Collector's office that they were in a position to pay the

full disputed amount of Rs. 95,79,134/- due up to 30th June 2003, which amount they had earlier secured through bank guarantees. Following this

letter, the petitioner on 26th September 2003 paid the said amount of Rs. 95,79,134/-, which has been acknowledged by receipt dated

29.09.2003. Thus, it is alleged that the entire amount towards lease rent, royalty etc. up to 30th June 2003 stood fully satisfied. Despite payment

of the entire demand, the Government did not take any action for renewal of the

lease amount. On the other hand, the Tahsildar, Vedaranyam by letter dated 27.09.2003 raised a further demand for 12% compound interest on lease rent, cess surcharge and royalty. It is alleged that this demand has been raised for the first time and by letter dated 27th September 2003, the petitioner was called upon to pay an amount of Rs. 2,17,87,573/-, and also withdraw Writ Petition Nos. 1560 of 1998 and 3590 of 1995 pending before this Court to enable consideration of their request for extension of the lease beyond 31st March 2003. By letter dated 06.10.2003, the petitioner addressed a letter to the second respondent requesting him to renew the lease in favour of the petitioner for a further period of 20 years. It is alleged that on 23.10.2003, the Tahsildar, Vedaranyam raised a demand for Rs. 1,18,08,849/- alleging that the same was the balance amount due from the petitioner towards rent and royalty and threatened to repossess the land and take revenue recovery proceedings against the petitioner if the amount was not repaid with immediate effect.

10. It is alleged in paragraph-25 of the petitioner's affidavit that the petitioner came forward to pay the above amount without prejudice to the rival claims in W.P. No. 29539 of 2003. On payment of the above said amount, this Court passed an order restraining the respondents from repossessing the land. Despite payment of the lease amount, the application of the petitioner for extension of lease is still pending. Hence, the petitioner has prayed for a mandamus directing the respondents to pass orders on the application dated 18.12.2002 and to dispose of the representations dated 25.07.2003 and 06.10.2003 for extension of lease.

11. In the aforesaid writ petition (W.P. No. 29195 of 2004), the impugned interim order has been passed against which the present writ appeal has been filed.

12. Mrs.Nalini Chidambaram, learned senior counsel appearing for the appellant, contended that a direction be given to decide the petitioner's application for renewal of lease. We are not inclined to give any such direction, as such direction for deciding an application, though apparently innocuous, are usually utilized for putting pressure on the authorities. A perusal of Deed of Indenture dated 13.05.1991 shows that the petitioner was granted temporary occupation of the land in question for 12 years

commencing from 01.04.1991, subject to certain conditions. Condition No.

12 states: -

The grantee shall on the termination or revocation of the grant restore the said lands to the granting authority in as good conditions, as it consistent with the foregoing conditions

A perusal of condition No. 12 shows that on the automatic termination of the grant after 12 years, i.e., on 31.03.2003, the grantee was under

obligation to restore the lands to the grantor in good condition. However, it is evident that the appellant (grantee) never handed back the

possession of the lands in question to the first respondent on or after 31.03.2003. The termination of the grant, which was to expire after 12 years

from 01.04.1991, is automatic since the grant itself is for a time bound period of 12 years. Thus, after 12 years from 01.04.1991, the grantee had

no right to remain in possession of the land in question, but they illegally continued in possession.

13. A perusal of the Deed of Indenture dated 13.05.1991 shows that there is no provision therein for renewal of the grant. Hence, in our opinion,

after 31.03.2003, there should be a fresh public auction/public tender, as held by this Court in S. Selvarani Vs. The Commissioner, Karaikudi

Municipality and Another, . In Selvarani's case, we have discussed the case law on the point in great detail, and hence, the same is not being

repeated here. Reference has been made in the above said decision to the decisions of the Supreme Court, vide Haji T.M. Hassan Rawther Vs.

Kerala Financial Corporation, ; Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, ; Kasturi Lal Lakshmi Reddy,

Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another, ; Fertilizer Corporation Kamgar

Union (Regd.), Sindri and Others Vs. Union of India (UOI) and Others, ; Shri Sachidanand Pandey and Another Vs. The State of West Bengal

and Others, ; Committee of Management of Pachaiyappa's Trust Vs. Official Trustee of Madras and Another, ; Ram and Shyam Company Vs.

State of Haryana and Others, etc.

14. It is well settled in the aforesaid decisions that property belonging to the Government or an instrumentality of the State is not private property,

and hence it cannot be disposed off at the sweet will of the authorities in any

manner they choose. Such property can only be given by the State or instrumentality of State ordinarily through public auction/public tender as held in Selvarani's case cited supra S. Selvarani Vs. The Commissioner, Karaikudi Municipality and Another, . Public property is not largesse which can be given by the Government to anybody. Since the appellant was given the grant only as temporary occupation for a period of twelve years, they cannot insist that the grant be continued even after twelve years as of right. If the appellant has made any investment on the said land they should have realized that after twelve years they have to vacate the land, and it is not that they have a right to continue in possession of the land till eternity. The appellant has no monopoly over the said land which belongs to the Government. After expiry of the lease the public property should be put to public auction/public tender after advertising it in well-known newspapers having wide circulation, so that there is transparency in the matter and all eligible persons can apply. In this way, Article 14 of the Constitution of India will be complied with, otherwise it will be violated.

15. We are surprised that although the grant in favour of the appellant expired about two years ago, the appellant has still continued in possession of the said land, which was wholly illegal and unauthorized. The appellant has been in occupation of the land in question illegally after the grant had expired about two years ago. The appellant should have vacated the land on the expiry of the period of the grant and should not have continued in occupation thereof, thereafter. It may be mentioned that the indenture deed dated 13.5.1991 itself states that the grant is for temporary occupation. Surely the word temporary does not mean permanent.

16. As regards, the Government Order in G.O. Ms. No. 1106 dated 13.6.1998 on which reliance has been placed by the learned senior counsel for the appellant, we may mention that the deed of indenture dated 13.5.1991 between the appellant and the Government of Tamil Nadu is subsequent to that G.O. The deed of indenture makes no mention of the above said Government Order. Hence, in our opinion, the appellant cannot get any relief on the basis of the aforesaid Government Order. Had the Government's intention been to permit renewal of the grant there would have been mention of the said G.O in the indenture deed, but there is

none. Hence, the logical inference is that there was no intention on the part of the Government to automatically renew the lease. The indenture deed was a contractual transaction, and we cannot resort to material de hors the contract contained in the deed. A contract can be altered only by mutual consent of the parties, vide Section 62 of the Contract Act, and not unilaterally.

17. In our opinion, once a contract has been granted for a specific period, then on the expiry of that period there is no question of automatic renewal of the grant (unless permitted by the deed of grant itself), and there must be a fresh public auction/public tender after which alone a fresh grant can be given, otherwise Article 14 of the Constitution will be violated, and a monopoly may be created. If it is held that even if the period of the contract has expired there can be automatic and unilateral extension of the contract then logically it would mean that a contract can go on for term after term and can be extended for 100 years or even more. This would create a monopoly in favour of a party, which would be illegal. It would also be against the interest of the State because in a public auction the State may get a higher amount of royalty for the grant. In fact granting such extension creates an impression that there is some collusion between the grantee and the authorities. There should be transparency in such matters, otherwise public confidence will be shaken.

18. It has been submitted by the learned senior counsel for the appellant that the grantee has invested a huge amount of money, and hence his grant should be extended. We cannot accept this contention. When the contract is granted the party knows the period for which he has been granted the contract, and he also knows that his right exists only till the expiry of the contract. Hence, whatever investments he wants to make should be from that point of view. He cannot claim extension of the grant just because he has invested a huge amount of money.

19. As already stated above, there has to be a fresh deed after the expiry of the deed dated 13.5.1991 on 31.03.2003 and this fresh deed can only be granted after holding a fresh public auction/public tender after advertising it in well known newspapers having wide circulation. Merely because the appellant had deposited some amount, that will not confer any rights on the appellant, otherwise anybody can deposit any amount and

claim that merely by such deposit leasehold right has been granted.

20. As regards G.O. No. 1106 dated 13.06.1988, on which reliance has been placed by the learned senior counsel for the appellant, we are of

the opinion that the said G.O not being issued under any statutory provision does not confer any right on the petitioner. In *The Bihar Eastern*

Gangetic Fishermen Co-operative Society Ltd. Vs. Sipahi Singh and Others, , the Supreme Court observed:-

in order that mandamus may issue to compel the authorities to do something, it must be shown that there is a statute which imposes a legal duty and

the aggrieved party has a legal right under the statute to enforce its performance

In the present case, the aforesaid G.O (G.O. No. 1106 dated 13.06.1988) is not statutory in nature, and hence confers no right on the appellant.

21. It is well settled that purely administrative orders, which have no statutory force, are not enforceable in a Court of law, vide *J.R. Raghupathy*

and *Others Vs. State of A.P. and Others*, , *G.J. Fernandez Vs. State of Mysore and Others*, ; *The State of Maharashtra and Another Vs. Lok*

Shikshan Sansatha and Others, ; *Kumari Regina Vs. St. Aloysius Higher Elementary School and Another*, ; *The Deputy Assistant Iron and Steel*

Controller and Another Vs. L. Manickchand, Proprietor, Katrella Metal Corporation, Madras, and Andhra Industrial Works Vs. Chief Controller

of Imports and Others, . Such administrative orders do not have the force of law, and hence confer no legal right on any one, though their breach

may entail disciplinary action against the official, vide, *Abdulla Rowther v. S.T.A.T AIR 1959 SC 896* (vide para-11); Hence no writ lies for

enforcement of an administrative order, vide *Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and*

Others, ; *Abdullah Rowther v. S.T.A.T, AIR 1959 SC 896* (paragraphs-11 & 18); *Raman and Raman Ltd. Vs. The State of Madras and Others*,

etc.

22. Apart from the above, we may also mention that no Government Order can violate Article 14 of the Constitution. Article 14 is the

constitutional provision and no rule or Government Order can over ride this constitutional provision. We are of the view that if the period of a time

bound lease expires, there should be a fresh public auction/public tender so that all eligible persons can apply and there may not be a monopoly in

favour of any one, otherwise Article 14 of the Constitution will be violated. We have not been shown the relevant rules or G.O relating to grant of

land for salt manufacturing, but whatever these rules or G.O may be they cannot override Article 14 of the Constitution which ordinarily envisages,

grant/lease of public land by public auction/public tender after wide publicity so that there may be transparency in the matter.

23. Moreover, in our opinion, the petitioner's conduct also disentitles it for relief under the discretionary jurisdiction of Article 226 of the

Constitution. When a person remains in occupation of a property, even after his grant has expired, he is not acting in a fair manner. There was no

fresh grant or renewal in favour of the petitioner after 12 years period, which expired on 31.03.2003. Without a fresh grant of lease, the

occupation of the land in question by the petitioner was totally illegal and unauthorized. We are not inclined to exercise our discretion under Article

226 of the Constitution in favour of such unauthorized occupants, whatever may be the merits of the case. Writ jurisdiction is a discretionary

jurisdiction vide, Chandra Singh Vs. State of Rajasthan and Another, ; Mafatlal Industries Ltd. and Others Vs. Union of India (UOI) and Others, ;

R.Kasiammal v. The District Collector cum Inspector of Panchayats, Virudhunagar 2005 WLR 20 etc. We are not inclined to exercise our

discretionary jurisdiction under Article 226 of the Constitution in favour of the appellant, who has acted in such an improper manner of remaining in

unauthorized occupation of the land in question for a long period, even after the grant had expired. Merely because his application for extension of

the grant was pending he had no right to remain in occupation after the period of the grant had expired.

24. For the reasons given above, we find no force in this appeal, and we direct that the land in question shall be put to public auction/public tender

after advertising the same in well-known newspapers having wide circulation and permitting all eligible persons including the appellant, if eligible, to

bid in the same. The public auction/public tender shall be held by the State Government as early as possible, but not later than ten weeks from to-

day. The writ appeal is dismissed. No costs. Consequently, WAMP No. 282 of 2005 is also dismissed.