(2013) 08 MAD CK 0068

In the Madras High Court

Case No : Writ Petition No. 1890 of 2002

Hindustan Container Terminal APPELLANT

Vs

The Tiruvottiyur Municipality RESPONDENT

Date of Decision : 27-08-2013

Acts Referred:

Citation : (2013) 8 MLJ 474

Hon'ble Judges : C.S. Karnan, J

Bench : Single Bench

Advocate : Satish Parasaran, for the Appellant; R. Lakshmi Narayanan, Addl. Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

C.S. Karnan, J.—The brief facts of the case are as follows:-

The petitioner submits that the respondent/Municipality had called for tenders in respect of lease for a period of one year to let out open space to

an extent of 8.57 acres in T.S. No. 27, Survey Ward No. 1, Block 4 and 6, Tiruvottiyur, to be used as container terminal in the public auction

which was due to take place on 17.11.2000. In this connection, it is relevant to mention that prior to the above, under notification dated

20.08.2000, the respondent had called for tenders for the terminal yard wherein the period of lease was fixed as three years. The period of lease in

all the earlier auctions was given for three years at first instance, which was later on renewed for a further period of three years. For all these years,

the maximum amount that was offered for the container terminal was about Rs. 2,50,000/- per annum. It is for the first time, when the notification

dated 20.08.2000 was issued wherein, the period was specified as three years, certain disputes had arisen in the matter of selection of tender and

one of the tenderers had approached this Court in W.P. No. 15595 of 2000, challenging the bid, however, the said tender was not proceeded

with and accordingly, a re-tender was issued on 17.11.2000 as stated earlier.

The petitioner had participated in the above tender and offered the highest rate, viz., Rs. 2,82,893/- per month. The petitioner''s bid was confirmed

by the respondent and as per the terms and conditions, the petitioner had paid three months rent as security deposit and also paid the fourth

month''s rent. Even though for all these years, it was considered as a lease, an agreement was executed as if it is a lease agreement. However, the

respondent had chosen to describe in the terms and conditions as licence. Even at the time of execution of the lease deed, the petitioner questioned

the respondent as to why the period of tender was reduced to one year from three years. The petitioner also informed the respondent highlighting

the serious shortcomings with regard to the site viz., provision of compound wall, provision of gate, electricity supply and a possible sea erosion

preventive at the backside. The respondent though promising to look into the grievance ultimately, did not do so. In view of this, the petitioner had

to spend huge amounts for levelling the land to effect electricity connection and other infra-structural facilities for the safety of the containers.

2. As regards the nature of business, several multi-national co-operations have not come forward to enter into an agreement with the petitioner to

park their containers in view of the fact that the petitioner would not give the guarantee that it would enter into a long term agreement which was

one of the conditions insisted upon by prospective clients. At this stage, the petitioner felt that out of 8.57 acres, only 3.57 acres was capable of

being used and only if the lease is granted for a longer duration i.e., atleast for three years, the entire venture of taking the lease for purposes of

container terminal would have been productive and would have been beneficial to the interest of both the petitioner and the respondent.

Accordingly, the petitioner made a representation on 21.03.2001 highlighting all the problems and representing that it is willing to surrender the rest

of the vacant land viz., 5 acres to the respondent/Municipality. In the said representation, the petitioner specifically pointed out that in view of the

short term of the lease as opposed to the grant in the previous years, which was three years, the prospective clients would not come forward and

therefore the entire area could not be utilized. The respondent, by communication dated 27.03.2001 informed the petitioner that the request for

surrender was not accepted. At this stage, it is relevant to point out that as per G.O.Ms. No. 147, Municipal Administration dated 30.12.2000, it

is indicated that all the municipal lands should be leased out only for a minimum period of three years and that the concerned municipal council can

take a decision with regard to period of renewal for a further period of three years without resorting to public auction. The petitioner relying on the

G.O. made a representation on 05.06.2001, requesting the respondent to extend the tenure of lease to three years and also informed that in the

event of such an extension, the petitioner was willing to retain the entire 8.57 acres. This was followed by further representation by the petitioner to

extend the period of three years or in the alternative to permit the surrender of remaining lands as the project was not viable unless a minimum

period of three years is ensured.

3. The respondent instead of passing any orders by placing the matter before the Municipal Council sent a communication to the effect that the

entire amount should be paid for the total area of 8.57 acres, failing which, action will be taken to seal the premises. At that time, the period of

lease of the petitioner was coming to an end on 25.12.2001. Therefore, the petitioner approached the Court by filing W.P. No. 21229 of 2001,

for a mandamus directing the respondent to extend the lease for three years or in the alternative restrict the extension to 3.57 acres and adjust the

payment made already. In the said matter, a counter was filed by the respondent. After taking note of all the facts and circumstances, this Court, in

order to protect this respondent''s interest, directed the first respondent to dispose of the representation made by this respondent on 24.08.2001,

within one month from the date of production of the copy of this order on merits and in accordance with law. Further, this Court observed as

follows:-

The respondent is also directed to take into consideration the default committed by the petitioner in payment of rent. This order should not be

understood that this Court has given a direction to pass orders in favour of the petitioner irrespective of the merits of the case. The said representation should be disposed of only on its own merits.

Even before the receipt of the said order copy and without even adverting to the representation made by the Court, wherein, it was directed to

consider the matter on merits, an illegal order was passed on 20.12.2001, demanding past rentals. Most significantly, even before the expiry of the

lease, in a totally illegal fashion, the respondent proceeded to seal the container terminal preventing ingress and egress. The container terminal was

sealed on 20.12.2001. On the said date, there was approximately 800 containers belonging to well established foreign entities viz., M/s. Bay

Containers and about 600 containers belonging to M/s. Cross World Marine apart from 58 containers belonging to other entities such as Fairmacs

Shipping and Transport Services Pvt. Ltd., and one other Shipping Company viz., South Star Shipping Private Limited. Significantly two of the

foreign entities, which had a large number of containers, proceeded to have direct dialogue with the respondent and the respondent who had

illegally taken possession was collecting monies directly from the said parties and proceeded to release the containers through security men

appointed by them. There was virtual seizure of the container terminals without his representation having been considered on merits as directed by

this Court. It is understood that out of 800 containers belonging to M/s. Bay containers, about 650 containers have been released and out of 600

containers, 300 containers have been released in respect of Cross World Marine. Everything has been done between the respondent and the said

parties who had stored the containers in the godown leased out in favour of them. This action of the first respondent also greatly affected the

business reputation of the petitioner which was assiduously built over the years. Compounding the problems that was caused to the petitioner

concern which was irreparable, a communication dated 03.01.2002 was sent to him. The said communication was signed on 04.02.2002, but it

was received by the petitioner on 21st January 2002. In this, the respondent has sought to levy not only lease rental but also interest. What is

relevant is that even before passing an order on merits in accordance with the directions of this Court, the containers were sealed even prior to the

expiry of the lease period and the entire business operation of the petitioner was virtually frustrated. The sealing of the container terminals is virtually a high handed action on the part of the respondent Municipality. The petitioner also sent a detailed representation by issuing a

communication to the respondent on 04.01.2002, highlighting the prejudice that has been caused to them. The sealing of the terminal is totally

uncalled for and unwarranted and had the respondent acted reasonably and extended the lease for three years, it would have been possible for the

petitioner to pay the arrears, and even without giving an opportunity, after sealing the containers even without considering the representation on

merits as per the direction of this Court and just one day after the receipt of the order copy, the respondent himself has taken the law into his

hands. The respondent should have acted in a bona-fide manner and ought not to have resorted to the sealing of the premises even prior to the

expiry of the lease period causing loss to various innocent parties and also harming public interest. Several valuable materials were stored in

hundreds of containers by reputed foreign entities and all of them have been put to prejudice by the whimsical action of the respondent.

4. It is further submitted that it is not known as to how the respondent had released all the containers on the same day by having direct negotiations

with some of the foreign entities, thereby illegitimately affecting the reputation of the petitioner. Adding to all these, the respondent has now issued a

notification seeking to auction/tender in respect of the lease to let out the open space measuring 8.57 acres to be used as a terminal and the auction

is fixed to be held on 30.01.2002 at 2 p.m. Being aggrieved by the illegal auction of the respondent, the above writ has been filed for relief.

5. The above writ petition has been filed in the year 2002. As on date, no counter statement has been filed on behalf of the respondent and

therefore, this Court is constrained to pass a final order since the matter is pending for over 10 years on this Court file.

6. The highly competent counsel vehemently argued that the respondent has let out open space on lease for a period of one year, to an extent of

8.57 acres in T.S. No. 27, Tiruvottiyur, to be used as a container terminal in the public auction which took place on 17.11.2000. Before the expiry

of the one year lease period, the respondent has given notification dated 20.08.2000 and called for tenders for a period of three years, which is

premature notification. The petitioner had moved a writ petition before this Court directing the respondent to extend the lease or allow the surrender of 5 acres of land which was the subject matter of the lease. These reasonable grounds were not considered by the respondent. Further

the respondent proceeded to seal the container terminal and prevented ingress and it was sealed on 20.12.2001. On the said date, there was

approximately 800 containers belonging to M/s. Bay Containers and about 600 containers belonging to M/s. Cross World Marine apart from 58

containers belonging to other entities. This kind of action taken by the respondent is against the terms and conditions of the lease. As per the lease,

the open space to an extent of 8.57 acres has been assigned to the petitioner and as such, the petitioner is in physical possession of using the land

as lawful lessee. Under this situation, the respondent sealed the containers which is against law and justice and also made wrongful entry. The

container was sealed before the expiry of the lease period. The petitioner had informed the respondent highlighting the serious shortcomings with

regard to site viz., provision of compound wall, provision of gate and electricity supply and a possible sea erosion from the backside. These

grievances have not been addressed by the respondent and therefore, the same had been arranged by the petitioner at his costs. The very

competent counsel further contended that even though the lease period was for one year, the petitioner had neither given an undertaking nor was

there a specific clause made between the petitioner and respondent in the lease deal for grant of one year lease and as such the respondent has no

locus-standi to interfere with the said premises without due process of law for delivery of property. Further the respondent directly had talks with

foreign entities and had illegally taken possession without consent of the petitioner and also collected money directly from the said parties and

proceeded to release the containers through security men appointed by them. These kind of activities is against law and procedure. The petitioner

also invested over the said property by way of providing compound wall, gate, electricity supply and prevention of sea erosion. As the respondent

had neither given any reason nor had any discussions with the petitioner regarding the surrender of 5 acres land to the respondent before deciding

the issue, the subsequent action of the respondent is not appropriate.

7. The learned counsel for the respondent argued that the period of lease was for one year. Further, the petitioner had not paid the rent from

26.12.2000 to 25.12.2001 and as such, the petitioner had committed willful default. The petitioner had not complied with the terms and conditions

made between the petitioner and respondent and as such, the petitioner had committed breach of conditions. Hence, the respondent sealed the

container terminal. The respondent had sent several representations to the petitioner and asked him to pay the lease amount for a period of 12

months i.e., from January 2001 to December 2001 and as such, the petitioner is liable to pay about Rs. 34,00,000/-as arrears on lease. Further,

the respondent advised the petitioner to remit the said amount and release the container and the same has not been complied with by the petitioner

herein. Under these circumstances, the respondent released the containers after receiving dues from the foreign entities. Before this negotiation, the

foreign entities sent letters to the petitioner and disclosed the non-payment of dues by the petitioner amounting to around Rs. 25,00,000/-.

Therefore, the negotiations carried out between the foreign entities and the respondent has in no way been prejudicial to the interest of the

petitioner herein.

8. After the above discussion, this Court is of the view:-

(i) that the original lease period had expired on 25.12.2001, in the mean time, the writ petitioner had written a letter dated 27.03.2001 to the

respondent and expressed his willingness to surrender five acres of vacant land to the respondent herein since it is in excess to his needs.

(ii) the respondent issued a letter to the writ petitioner and asked him to pay Rs. 34,00,832/- as arrears of rent for using the said land.

(iii) It is seen that two of the customers of the petitioner, viz., M/s. Bay Containers Terminal Private Limited and M/s. Fairmacs Shipping and

Transport Services Pvt. Ltd., had sent a communication to the respondent herein and also to the petitioner regarding arrears of rent and as such, it

is evident that there is a dispute among the parties concerned.

(iv) This Court granted interim injunction on 30.01.2002, on condition that the petitioner shall deposit 50% of a rental balance of Rs. 25,00,000/-

within two weeks from the date of order, but it was not complied with by the petitioner. Hence, the interim injunction granted on 30.01.2002 was

vacated on 03.09.2003. Therefore, as the petitioner had disobeyed this Court''s order, he is not entitled to receive any favourable order in the same main writ petition.

9. On verifying the facts and circumstances of the case and arguments advanced by the learned counsels on either side and this Court''s view

mentioned above, this Court does not find any substantial force in the petitioner''s contentions to allow the writ petition. The respondent is at liberty

to issue a fresh notification. In the result, the above writ petition is dismissed. There is no order as to costs.

