

(2005) 04 MAD CK 0018
In the Madras High Court
Case No : Writ Appeal No. 2062 of 2003

L. Boomiraja

APPELLANT

Vs

The District Collector

RESPONDENT

Date of Decision : 28-04-2005

Acts Referred:

Indian Medical Council Act, 1956 — Section 10A
Industrial Disputes Act, 1947 — Section 33(2)
Tamil Nadu Minor Mineral Concession Rules, 1959 — Rule 8

Citation : (2005) 3 LW 91

Hon'ble Judges : Markandey Katju, C.J;F.M. Ibrahim Kalifulla, J

Bench : Division Bench

Advocate : G. Rajagopalan, for N. Damodaran, for the Appellant; V. Raghupathy, Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

Markandey Katju, C.J.—This writ appeal has been filed against the impugned order of the learned single Judge passed in Writ Petition

No.8567 of 2003 dated 19.3.2003.

2. Heard the learned counsel for the parties and perused the record.

3. It appears that a lease deed dated 26.9.2001 was executed between the Government of Tamil Nadu and the appellant, by which, lease of

certain lands were granted to the appellant for the period from 1.4.1998 to 31.3.2003.

4. Since the lease deed was executed only on 26.9.2001 and registered on 23.10.2001, the appellant filed the writ petition praying for extension of

the period of lease alleging that it should be deemed to have commenced from the date of execution of the lease deed. Since the lease deed was

executed on 26.9.2001 his prayer was that it should be treated to continue for another five years from 26.9.2001 i.e. upto 26.9.2006.

5. The learned single Judge in his impugned order has directed that the lease shall continue till 7.10.2003 subject to payment of 40% extra lease

amount. The learned single Judge has treated the lease deed as having been executed on 8.10.1998 although the lease deed produced before us

shows that it was executed on 26.9.2001. Learned Senior Counsel for the appellant relied on the decision of the Supreme Court in V. Karnal

Durai Vs. The District Collector, Tuticorin and another, and also the decision in Beg Raj Singh Vs. State of U.P. and Others, .

6. A Division Bench of this Court in Director General of Foreign Trade, Ministry of Commerce, New Delhi vs. M/s. R.B. & Sons., Chennai and

another (Writ Appeal No.3891 of 2004 decided on 7.12.2004) has already distinguished the decision of the Supreme Court in Beg Raj Singh's

case cited supra. The Division Bench held that a Court cannot direct extension of the period of a licence, lease or other grant where it is for a fixed

period and the Court must maintain judicial restraint in this connection. If the licensee or lessee was prevented to operate for a part of the period of

the licence or lease, then his remedy is to get refund of proportionate amount of licence or lease fee or compensation for any damage he might have

suffered, but the period of licence or lease cannot be extended by the Court. Courts must exercise self restraint and should not encroach into the

domain of the Executive or the Legislature, as held by this Court in Rama Muthuramalingam, State Propaganda Committee Member Vs. The

Deputy Superintendent of Police and Others, .

7. No doubt, if there are statutory rules, then of course, the matter will be covered by the statute, because it is well settled that the statute will

override the contract. In the present case, there are statutory rules contained in Rule 8 of the Tamil Nadu Minor Mineral Concession Rules, 1959

(hereinafter referred to as the "Rules"). Clause (i) of Rule 8 of the Rules states:

The date of commencement of the period of lease granted under this Rule shall be the date on which the lease deed is executed.

Learned Senior Counsel for the appellant has emphasised on Rule 8(i) of the Rules which states that the date of commencement of the period of

lease granted under this Rule shall be the date on which the lease deed is

executed. Since the lease deed was executed on 26.9.2001 he has contended that it will continue till 26.9.2006. We do not agree.

8. Clause (ii) of Rule 8(1) of Rules states:-

the lease shall expire on the date specified in the lease deed and in no case extension of the period of lease shall be made.

9. Clause (ii) of Rule 8 of the Rules specifically states that the lease shall expire on the date specified in the lease deed. It further states that in no case extension of the period of lease shall be made.

10. The language of clause (ii) of Rule 8 (1) of the Rules is mandatory and peremptory. A perusal of the lease deed shows that it has been

specifically mentioned in Clause 4 that the said premises shall be held by the lessee from the 1st day of April 98 to the 31st day of March 2003

which shall however be determinable as hereinafter provided. In V.Karnal Durai v. District Collector (supra) the Supreme Court no doubt quoted

clause (ii) but thereafter it did not deal with it, and it considered only clause (i). Hence the decision is distinguishable.

11. In the present case, the lease deed itself states that the lease shall expire on 31.3.2003. In view of clause (ii) of Rule 8 of the Rules, we have to

hold that the appellant's lease expired on 31.3.2003. We may also note that clause (ii) of Rule 8 of the Rules uses negative language in saying ""in

no case extension of the period of lease shall be made."" It is a settled principle of interpretation that when a statute is couched in negative language,

it is all the more mandatory and peremptory.

12. As stated by Crawford:-

Prohibitive or negative words can rarely, if ever, be directory. And this so even though the statute provides no penalty for disobedience"" (vide

Crawford ""Statutory Construction"")

The same view has been taken by the Supreme Court in Haridwar Singh Vs. Bagun Sumbrui and Others, , Lachmi Narain and Others Vs. Union

of India (UOI) and Others, , Mannalal Khetan and Others Vs. Kedar Nath Khetan and Others, , etc.

13. In M. Pentiah and Others Vs. Muddala Veeramallappa and Others, , the Supreme Court observed:-

Negative words are clearly prohibitory and are ordinarily used as a legislative

device to make a statute imperative

The same view has been taken in *Nasiruddin and Others Vs. Sita Ram Agarwal*,

14. A provision requiring "not less than three months" notice was hence regarded as mandatory, vide *Lachmi Narain and Others Vs. Union of*

India (UOI) and Others, . For the same reason, Section 10A of the Medical Council Act, 1956 (as amended in 1993) has been held to be

mandatory, vide *K.S. Bhoir Vs. State of Maharashtra and Others*, . For the same reason, Section 33(2)(b) of the Industrial Disputes Act, 1947

(as amended in 1993) has been held by the Supreme Court to be mandatory, vide (*Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal*

Sharma and Others, .

15. Learned Senior Counsel for the appellant contended that clause (ii) of Rule 8 of the Rules will not apply when the lease deed is executed on a

date subsequent to the period from which it is to commence. We cannot agree. If we accept this contention, we will be adding a proviso to clause

(ii) of Rule 8 of the Rules. It is well settled that Court cannot add or delete from a statute as that is the function of the Legislature or its delegate.

16. As observed by the Privy Council:-

We cannot aid the legislature's defective phrasing of an Act, we cannot add or mend and, by construction make up deficiencies which are left

there"" (vide *Crawford v. Spooner* 1846) 6 Moo PC1

This view has been followed in *Lord Howard de Walden v. IRC* (1948) 2 All ER 825 (HL ; *Nalinakhya Bysack Vs. Shyam Sunder Haldar and*

Others, , *State of Madhya Pradesh and another Vs. G.S. Dall and Flour Mills and Others, Grasim Industries Ltd. Vs. Collector of Customs*,

Bombay, . See further *Union of India and another Vs. Deoki Nandan Aggarwal, State of Gujarat and Others Vs. Dilipbhai Nathjibhai Patel and*

Another, .

17. In AIR 1945 108 (Privy Council) , the Privy Council observed:-

It is contrary to all rules of construction to read words into an Act unless it is absolutely necessary to do so

The same view has been taken by the Supreme Court in *Assessing Authority-cum-excise and Taxation Officer, Gurgaon and Another Vs. East*

India Cotton Mfg. Co. Ltd., Faridabad, and Director-general, Telecommunication

and Another Vs. T.N. Peethambaram, . Hence, it is well settled

that the Court cannot reframe the legislation, because it has no power to legislate.

18. In holding that Section 96(2) of the Motor Vehicles Act, 1939 is exhaustive of defences open to an insurer, the Supreme Court refused to add

the word "also" after the words "on any of the following grounds" and observed:

This, the rules of interpretation, do not permit us to do unless the section as it stands is meaningless or of doubtful meaning" vide "British India

General Insurance Co. Ltd. Vs. Captain Itbar Singh and Others, ".

19. The same view was taken by the Supreme Court in Sri Ram Ram Narain Medhi Vs. The State of Bombay, ; Pandit Ram Narain Vs. The State

of Uttar Pradesh and Others, ; The Jumma Masjid, Mercara Vs. Kodimaniandra Deviah, ; K.M. Viswanatha Pillai Vs. K.M. Shanmugam Pillai, ;

C.V. Raman Vs. Management of Bank of India and Another, and Union of India v. Deoki Nandan Aggarwala AIR 1992 SC 96 etc.

20. The literal rule of interpretation has to be applied under which if the language of statute or rule is clear then the Courts must follow the plain

language, vide Gwalior Rayons Silk Mfg. (Wvg.) Co. Ltd. Vs. Custodian of Vested Forests, Palghat and another, , Md. Ali Khan v. CWT AIR

1997 SC 1165 (vide page-1167), Institute of Chartered Accountants v. Price Waterhouse AIR 1998 SC 74 Dental Council of India v. Hari

Prakash AIR 2001 C 3303 etc. "Courts must not add or delete words in a statute". In the present case the language of clause (ii) is clear. Hence

we are of the clear opinion that the only relief which the lessee can get (if at all) is to get a direction for refund of the proportionate amount of the

lease/licence amount/damages/compensation in accordance with law, but he cannot get extension of the lease. The impugned order is set aside and

it is substituted by this judgment. The writ petition and the writ appeal are both dismissed. W.A.M.P.No.761 of 2005 is dismissed.

21. Learned Senior Counsel for the appellant contended that the interpretation which we have given will cause hardship and will be inequitable to

the appellant. It is well settled that when there is a conflict between law and equity, it is the law which has to prevail. Equity can only supplement

the law but cannot supplant it.

22. In *Madamanchi Ramappa and Another Vs. Muthalur Bojjappa*, , the Supreme Court observed:-

What is administered in Courts is justice according to law, and considerations of fair play and equity, however important they may be, must yield

to clear and express provisions of the law

23. Similarly in *Gauri Shankar Gaur and Others, etc. Vs. State of U.P. and Others*, , the Supreme Court observed:-

In construing a statute equity will not relieve against a public statute of general policy in cases admitted to fall within the statute and it is the duty of

the Court to give effect to the legislative intent.

Thus, it is well settled that equity can supplement to but cannot supplant the statutory provisions. Where the language of the law is clear, "it is not

"safe" to bend the arms of law only for adjusting equity", vide *Ahmedabad Municipal Corporation Vs. Virendra Kumar Jayantibhai Patel*, . The

same view was taken in *Smt. Rampati Jaiswal Vs. State of U.P. and others*, and *Chhetrapal Singh v. State of U.P.* 2004 All.L.J. 993.

24. Hence while dealing with statutory provisions, the Courts should not be guided by "humanitarian consideration" and emotional appeal, for the

reason that if Courts proceed on these basics, it would amount to altering or amending the statutory provisions or requirements of law. Instead, the

Court should be guided by the maxim "dura lex sed lex", which means "the law is hard, but it is the law".

25. Thus equity considerations are not applicable in a case of clear statutory provisions nor are the Courts empowered to pass an order contrary

to law on the basis of "humanitarian considerations". It is only when there is a gap in the law or there is ambiguity in it, that equity can be applied.

26. In the present case, the law i.e. Clause (ii) of Rule 8 of the Rules is clear and there is no scope for importing equity into it.

27. In view of the above the impugned Judgment of the learned single Judge cannot be sustained, and it is set aside. The writ petition is dismissed,

and the writ appeal is allowed.