

(2013) 02 MAD CK 0164

In the Madras High Court

Case No : Writ Petition No. 3958 of 2009

Lords Park Hotel

APPELLANT

Vs

State of Tamil Nadu and Another

RESPONDENT

Date of Decision : 22-02-2013

Acts Referred:

Citation : (2013) 3 MLJ 648

Hon'ble Judges : Vinod K. Sharma, J

Bench : Single Bench

Advocate : Rita Chandrasekar for Aiyar and Dolia, for the Appellant; R. Ravichandran, Additional Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Vinod K. Sharma, J.—The petitioner prays for issuance of a writ in the nature of certiorari to quash the order Na.Ka.10996/A5, dated 5.2.2009, ordering the petitioner to deposit three years lease amount of Rs. 35,92,566/- (Rupees Thirty Five Lakhs Ninety Two Thousand Five Hundred and Sixty Six only). The petitioner, M/s. Lords Park Hotel, is a partnership firm which is carrying on hotel business since 21.4.1997. The petitioner firm was allotted area measuring 15 Cents for the purpose of parking space on an annual rent of Rs. 2,000/- (Rupees Two thousand only) vide Notification No. 37456/65/A2, dated 16.10.1968. The land was repossessed by the State Government vide order dated 8.11.1973 and after that, fresh allocation was made for land measuring 9836 Sq. Ft. exclusively for car parking on an annual rent of Rs. 19,505/- (Rupees Nineteen Thousand Five Hundred and Five only), which was subsequently reduced to Rs. 9,752/- (Rupees Nine Thousand Seven Hundred and Fifty two only), thereafter further reduced to Rs. 7,730.40 (Rupees Seven Thousand Seven Hundred and Thirty and Forty Paise only) finding that actual land allotted was only 7800 Sq. Ft.

2. The first respondent on 6.3.1989, issued a notice to take possession of the land, on the ground that there was no regular lease deed. The request of the petitioner for reducing the rent was also not accepted. It is the case of the

petitioner that the possession of the land was taken by the second respondent on 14.3.1989, on the allegation that rent was not paid. Thereafter there was change in the constitution of the firm. The case of the petitioner is that the hotel was renovated by newly constituted firm at high cost. The petitioner firm after renovation approached the Collector of Coimbatore for reallocation of land. On considering the request for reallocation, the petitioner was directed to deposit a sum of Rs. 2,53,161/- (Rupees Two Lakhs Fifty Three Thousand One Hundred and Sixty One only), which was complied with by the petitioner, and representation was filed with the Collector for restoration of land in view of the fact that arrears along with interest and surcharge stood paid.

3. The petitioner thereafter filed W.P. No. 3098 of 1997 seeking execution of lease deed by impleading the Collector of Coimbatore and Commissioner of Coimbatore Corporation as parties. The said writ petition was withdrawn on the asking of the authorities. After the withdrawal of writ, recommendation was made to allot 5676 Sq. Ft. for being used as parking space at an yearly rent of Rs. 1,80,000/- (Rupees One Lakh and Eighty Thousand only), but not accepted by the State of Tamil Nadu.

4. The petitioner, being aggrieved by the rejection of the request for allotment of land for parking space, issued a legal notice and questioned non grant of lease.

5. A representation was also made to the Hon"ble Minister of Revenue for reconsideration of the request of the petitioner for allotting 5676 Sq. Ft. on lease to the petitioner for being used as parking area. Vide order dated 13.6.2006, a lease for 5676 Sq. Ft. was granted to the petitioner for being used as parking space on special terms and conditions. The lease money was fixed at the rate of 14% of the market value of the land, which was inclusive of surcharge, but the lease was not executed nor possession of the land was handed over to the petitioner.

6. The hotel was also not declared as star hotel. However, the petitioner was granted licence in Form FL.3 bearing No. 19/97-98 by the Commissioner of Prohibition and Excise vide R.Dis.(F) No. 11358 of 1997 with validity up to 31.3.1998, which was subsequently renewed yearly till 2004.

7. For the year 2004-2005, the Commissioner of Prohibition and Excise, vide order dated 30.9.2004, renewed the licence of the hotel only up to 31.10.2004 on the condition that the hotel should make arrangement for necessary parking space, as required under Rule 2(xvi)(g) of the Tamil Nadu Liquor (Licence and Permit) Rules, 1991 before 31.10.2004.

8. The petitioner challenged the order of the Commissioner of Prohibition and Excise by filing W.P. No. 31081 of 2004, wherein the stand of the petitioner, as set out in the preceding part of the paragraph, was that for allotment of 5676 Sq. Ft. of parking space, the request was pending with the first respondent.

9. It was also the stand of the petitioner that the requirement of parking area

was not applicable to the case of the petitioner.

10. The writ petition was disposed of by ordering the parties to maintain status-quo with permission to the Commissioner of Prohibition and Excise to take appropriate action in accordance with law within stipulated time.

11. Being aggrieved by the order of the Hon''ble single Judge, the petitioner filed W.A. No. 3843 of 2004. During the pendency of the writ appeal, the licence of the petitioner was renewed from time to time. The Commissioner of Prohibition and Excise, in his order for the years 2006 and 2007, renewed the licence subject to the condition that the petitioner shall pay the difference in privilege fee, if any demanded in future, subject to the outcome of W.A. No. 3843 of 2004.

12. Thereafter, no further steps were taken for fixation of annual rent, execution and registration of the lease deed, or for handing over possession of the land to the petitioner in pursuant to G.O. Ms. No. 370, Revenue Department, dated 13.6.2006. The Hon''ble Minister of Revenue was also informed about non handing over of the space to the petitioner.

13. It is pleaded that thereafter the second respondent, namely the Tahsildar, made a demand for payment of rent. The petitioner objected to the demand on the ground that no lease was executed nor possession of the land handed over the petitioner pursuant to G.O. Ms. No. 370, Revenue Department, dated 13.6.2006, therefore, the petitioner was not liable to pay any rent to the respondents.

14. The petitioner also denied having encroached the land as alleged by the second respondent, but the second respondent vide impugned order demanded a sum of Rs. 35,92,566/- (Rupees Thirty Five Lakhs Ninety Two Thousand Five Hundred and Sixty Six only) as rent for three years from 13.6.2006 to 13.6.2009 for utilization of 5676 Sq. Ft. of area of the Government.

15. The reasons given for demanding the rent are:

(i) that the site is in possession of the petitioner and is being used as parking space; and

(ii) that FL3 (Bar licence) was got renewed every year by showing the government space as parking space.

16. It is the case of the petitioner that the second respondent, vide the impugned order, has threatened the petitioner to initiate action for recovery of the lease amount under the Revenue Recovery Act, besides taking possession of the land.

17. The impugned order is challenged on the following grounds:

i) That when specific directions were issued vide G.O. Ms. No. 370, Revenue Department, dated 13.6.2006 to the Tahsildar to get the lease deed executed and to submit a report, but no such lease deed was executed. Therefore, no

relationship of lessor and lessee came into existence therefore no lease amount can be claimed from the petitioner;

ii) That the respondents pursuant to G.O. Ms. No. 370, Revenue Department, dated 13.6.2006 were to ascertain the market value of the property and on that basis determine the annual rent payable by the petitioner every year, but the said exercise has not been carried out till date;

iii) That it has been wrongly stated that the land is in possession of the petitioner, whereas a specific stand has been taken by the respondents that the possession of the land was taken back on 14.3.1989;

iv) That the reason given for demanding the lease money, namely that the petitioner has been granted FL3 Licence on the basis of the parking space, is not true as the parking space was not required by the petitioner for obtaining bar licence; and

v) That the respondents have slept over the representation of the petitioner for execution of lease deed and for handing over the possession.

18. In sum and substance, the challenge to the impugned order, is on the ground that there is no valid lease deed executed between the parties and that the possession of the land was not handed over to the petitioner, therefore, there is no obligation on the part of the petitioner to pay rent or any arrears. Whereas the stand of the respondents is space is in possession of the petitioner and is used as parking space, which is proved from the fact that the petitioner while getting the licence renewed have shown this space as parking place. Thus there is dispute on facts regarding possession which can not be gone into in this writ.

19. Otherwise also the impugned order is only a show cause notice calling upon the petitioner to pay the lease money on the ground that the land is being used by the petitioner, with a threat to take action for recovery in accordance with law. The petitioner, on the other hand, has disputed the fact of allotment and possession. Therefore, it is always open to the petitioner to reply to the show cause notice taking the plea taken in this writ petition and contest the proceedings if any taken under the Revenue Recovery Act.

20. The writ petition merely against demand notice is not competent, specially when it raises disputed questions of fact as contradictory stand is taken by the petitioner, as for grant of licence the stand is that the space is used for parking, whereas the impugned order is challenged on the ground that lease deed was not executed in favour of the petitioner and therefore possession was not handed over.

21. Whether the petitioner are in possession or whether used the space for parking space is a disputed question of fact, which cannot be gone into in this writ petition. The writ petition is also premature as no final order has been passed. For the foregoing reasons, the writ petition is dismissed, with liberty to the petitioner to take all available plea before the authorities as and when

proceedings for recovery are initiated against the petitioner.

No costs. Consequently, M.P. No. 1 of 2009 is closed.