

(1990) 02 MAD CK 0031
In the Madras High Court
Case No : Writ Appeal No. 210 of 1990

Murali Krishnan	Vs	APPELLANT
A. Nagarajan and others		RESPONDENT

Date of Decision : 27-02-1990

Acts Referred:

Evidence Act, 1872 — Section 115
Transfer of Property Act, 1882 — Section 105

Citation : AIR 1991 Mad 108

Hon'ble Judges : Nainar Sundaram, J; Maruthamuthu, J

Bench : Division Bench

Advocate : R. Gandhi for M/s. M. Kandasamy L. Chandrakumar and T. S. Sivagnanam, for the Appellant; R. Muthukumaraswamy, for the Respondent

Judgement

Nainar Sundaram, J.—The controversy in this writ appeal relates to the leasing of a restaurant situated in the New Bus Stand at Omalur

belonging to the third respondent Panchayat. Earlier the appellant was the lessee of the restaurant. On the period of lease in his favour expiring,

an auction was proposed and it was held thrice, namely on 20-2-1989, 9-3-1989 and 17-3-1989. Since none of the auctions fructified tenders were

called for and the highest tender of the first respondent was accepted. The first respondent was granted the lease. However, the appellant

preferred an appeal to the second respondent and the second respondent cancelled the lease in favour of the first respondent on a reasoning that

as per G.O.Ms. No. 1396, Rural Development and Local Administration dated 23-7-1970 the third respondent was bound to make an offer to

the existing lessee, namely, the appellant in the event of a decision to revise the lease amount. This provoked the first respondent to approach this

Court by way of W.P. No. 16180 of 1989. That writ petition was considered by the learned single Judge of this Court and the learned single

Judge taking note of the participation of the appellant in all the three auctions and further the appellant making his tender, opined that the appellant

lost whatever rights he had under the Rules, and in this view, the learned single Judge allowed the writ petition preferred by the first respondent.

This writ appeal is directed against the order of the learned single Judge.

2. Mr. R. Gandhi, learned counsel for the appellant, would submit that the rules set out in the Government Order are mandatory in nature and they

cannot be skipped over and even if the party had not insisted and asked for his rights at the appropriate time he is not estopped from insisting for

conformity with the rules in the matter of granting lease. In this connection, learned counsel for the appellant places reliance on the pronouncement

of a Bench of this Court in *S. Diraviyakkon and Others Vs. The District Collector and Another*, .

3. In the present case, there were auctions held thrice as already noted. In all, the three auctions the appellant participated without demur.

Thereafter there was a call for tender. The appellant did make his tender. The appellant had no grievance and expressed no grievance with regard

to holding the auctions and calling for lenders and he did not insist for offer being made to him, on any revision of rent, at the appropriate time.

Consciously he participated in all the proceedings relating to auctions and tender, and not having come successful in those processes, he is turning

round and raising a voice of protest. It is true that the rules regulate the grant of the lease in a particular manner and the said rules could be stated

to be beneficial to an erstwhile lessee. But, at the same time, on stated facts and circumstances, it is possible to say that the erstwhile lessee was

content with what was happening and was not insisting for anything beneficial to him under the rules. That was his wisdom and choice. Having gone

through the other processes, it is not open to him to lodge a protest over them later, on the ground of incompetency or impropriety. Exactly this is

what has happened in the present case. The appellant was not insisting for any rights of his, under the Rules and he did not agitate for them at the

appropriate time. Having participated in the auctions held thrice and having made his tender, certainly it is not open to him to turn round, when the

ultimate results had gone against him, to say that there has been a violation of the rules to his prejudice. The mere construction of the rules may not

be of any avail to the appellant, in view of his conduct and the facts of the case. In our view, on the facts of the present case, the learned single

Judge rightly held that the appellant lost whatever rights he had by his own conduct. In the decision relied on by the learned counsel for the

appellant the learned Judges of the Bench had no occasion to deal with this question, on the same being raised before them and give an answer.

Mr. R. Gandhi, learned counsel for the appellant, would also submit that there is a civil suit, filed by the appellant and there was a temporary

injunction at the relevant point of time and the grant of possession in favour of the first respondent was only subject to the results in the suit.

Admittedly, the first-respondent is not a party to the suit. Even otherwise, the qualification at the time of putting the first respondent in possession,

subject to the results in the suit", is no consequence at all when the whole controversy has been thrashed out before this Court. On this ground, we

are not able to countenance the grievance of the appellant to counteract and set at naught the lease granted in favour of the first respondent. In the

said circumstances, we do not find any warrant for interference in Writ Appeal. Accordingly, this writ appeal fails and the same is dismissed. No

costs.

4. Appeal dismissed.