

(2010) 09 MAD CK 0029

In the Madras High Court

Case No : Writ Petition (MD) No. 7022 and WPMP (MD) No. 7628 of 2005

R. Banuraman

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 16-09-2010

Acts Referred:

Citation : (2010) 09 MAD CK 0029

Hon'ble Judges : T. Raja, J

Bench : Single Bench

Advocate : S.S. Sundar, for the Appellant; D. Sasikumar, G.A., for the Respondent

Final Decision : Dismissed

Judgement

T. Raja, J.—The present writ petition has been filed challenging the Government Order in G.O. Ms. No. 328 (Revenue Department), dated

26.05.2005, in and by which, an extent of 20.5 cents of land in S.F. No. 40/2 of Rethinakottai Village, Aranthangi Taluk, Pudukottai District, (in

the course of this order referred to as "the land in question") granted to the Petitioner's father-in-law on lease basis, came to be resumed by the

Respondents/State by restricting the extension of lease period as the date of issuance of the impugned Government Order and imposing a general

ban on the assignment or extension of lease in respect of the said land as it is a classified watercourse poramboke.

2. Learned Counsel for the Petitioner points out that the land in question, with a total extent of 23 cents, belongs to the Government and that

originally, it was leased out to one Navin Raj, who had held the leasehold right over it for about 20 years i.e., till 06.04.1988. The lease was not

renewed and further, there was default in payment of rent to the Government by the said Navin Raj. After his demise, there was no action taken by

his legal heirs to get back the leasehold rights, this resulted in the 4th Respondent taking over possession of the land.

It is further stated that during 1995, the father-in-law of the Petitioner late Manicka Udayar, on coming to know that the land in question was

available for lease, applied to the Revenue Department for grant of lease of land to an extent of 20.5 cents for running a bus service station. The

then Revenue Divisional Officer (ROD) was willing to recommend the case of the Petitioner's father-in-law for grant of fresh lease provided the

loss caused to the Government due to the default committed by the previous lessee-Navin Raj was made good and suggested for payment of entire

arrears of the lease amount defaulted, whereupon, a sum of Rs. 25,000/- was remitted by Manicka Udayar on 03.11.1995. Subsequently, on the

recommendation of the RDO, the District Revenue Officer (DRO) and the Special Land Commissioner-cum-Commissioner for Land

Administration, decided to grant lease in favor of the Petitioner's father-in-law in respect of the land in question. Ultimately, a Government Order

in G.O. Ms. No. 287 (Revenue Department), dated 12.03.1997, directing grant of lease in favor of Manicka Udayar subject to the usual

conditions as per Revenue Standing Order (RSO) No. 24-A came to be issued, fixing 14% of the market value as lease amount and a formal lease

deed was executed, stipulating the lease period initially for 3 years taking effect from 09.06.1997 with affixed rent as Rs. 42,569/- per annum.

Subsequently, the Petitioner's father-in-law created a Public Charitable Trust in the name of "Manick am Pichai Ammal Education Rural Health

Improvements Charitable Trust" by a deed of trust, dated 19.07.1997, and as such, apportion of the land to an extent of 7.5 cents was being

utilized for setting up of a Training Centre to give free training to poor students in the field of computer, tailoring etc.

Learned Counsel for the Petitioner further pointed out that one C. Thirunavukkarasu, claiming to have purchased leasehold rights in respect of the

land in question from the erstwhile lessee-Navin Raj, filed a suit before Civil Court in O.S. No. 235 of 1996, which was dismissed on 27.10.1998,

and also preferred a writ petition before this Court in W.P. No. 8241 of 1997 with a prayer not to permit the official Respondents to lease out the

property in favor of Manicka Udayar or any other person, and the said petition came to be dismissed by order dated 23.04.2004, observing that a

lease granted in favor of a lessee cannot be transferred to any other person as it would be opposed to the conditions of lease particularly in a

situation where the lessee himself was dead and the rents were not paid and that, in the absence of right to claim any title over the land, Petitioner-

Thirunavukkarasu cannot have any amenities over the impugned order in granting the lease in favor of Manicka Udayar/present Petitioner's father-

in-law and another.

It is further submitted that though the Petitioner's father-in-law was paying the lease amount as per the lease agreement without any default and,

long before expiry of the lease agreement, had also applied for extension of lease, such application was not seriously considered by the

Respondents. While the Petitioner's father-in-law was in possession of the land in question, he died on 02.09.2002.

The Petitioner, being one of the trustees of the public charitable trust created over an extent of about 7.5 cents of land, in succession to his father-

in-law, was in continuous possession of the entire land in question. Pending consideration of the application sent by the Petitioner's father-in-law

prior to his death for extension of land, the Petitioner, having been put in possession of the lease hold land as his successor, submitted a

representation to the 2nd Respondent for renewal of lease in her favor stating that other legal heirs of late Manicka Udayar gave a consent letter in

an unequivocal expression consenting for extension of lease in her favor.

It is also stated that the 4th Respondent/DRO, Pudukottai, and the 3rd Respondent/District Collector recommended for renewal of lease in favor

of the Petitioner and for fixation of rent. On examining the case of the Petitioner, the 2nd Respondent/Special Commissioner also recommended for

renewal of lease, however, the first Respondent, in an unjust manner passed G.O. Ms. No. 328, Revenue Department, dated 26.05.2005,

extending the lease by way of regularization only up to the date of the Government Order and directing resumption of land on the ground that the

land in question is a nedungulam poramboke (watercourse-tank poramboke) and there is a general prohibition for grant of lease or assignment in

respect of those lands which are classified as tank proamboke.

By advertng to the above factual aspects, learned Counsel submits that the impugned Government Order is liable to be set aside since it singles out the case of the Petitioner, for, similar lands with same or similar classification have been assigned and leased in favor of others for commercial ventures, but, in the case of the Petitioner, the first Respondent specifically directed the 3rd Respondent to resume the land immediately on the date of publication of the Government Order and not to extend the lease any further. Even though the Petitioner did not commit any default and had promptly paid the lease amount, she was not given an opportunity to put forth certain factual aspects noted in the impugned order relating to payment of rent, etc.

It is further contended that for the past 40 years, the land in S.F. No. 40/2 was given on lease for commercial purpose and the Government was continuously receiving rent at commercial rates; that being so, restoring the classification of such land as watercourse (negungulam) poramboke is only an apparent mistake and the resumption would only be a loss to the Government. Therefore, the impugned Government Order is liable to be quashed as it is highly arbitrary, unfair and unreasonable.

Ultimately, it is prayed that the Respondents, who acted in an unfair and unjust manner in utter violation to the principles of natural justice, may be directed to relax the temporary ban or the general prohibition standing in the way of assignment or extension of lease hold rights in favor of the Petitioner regarding the land in question, by quashing the impugned Government Order as otherwise the Petitioner, who is also doing public service by running a charitable trust in a portion of the land, would be put to irreparable loss and hardship.

3. Per contra, learned Government Advocate appearing for the Respondents/ State submitted that the land in question measuring to an extent of 23 cents and classified as nedungulam poramboke (watercourse poramboke) was originally leased out to one Navinraj, who committed default resulting in cancellation of the lease granted in his favor, whereupon, the Petitioner's father-in-law and one Rajendran, who applied for 20.5 cents of land and 1 cent respectively, were given leasehold right fixing 14% of land revenue as lease rent per annum, whereupon, one Thirunavukkarasu filed O.S. No. 235 of 1996 before District Munsif Court, Aranthangi, for

permanent injunction on the ground that he purchased the leasehold right from the erstwhile lessee Navin Raj, and the said suit was dismissed by judgment dated 27.10.1988. Subsequently, he filed W.P. No. 8241 of 1997 before this Court and the said petition was dismissed and thereupon, the grant of lease in favor of Petitioner's father-in-law Manicka Udayar and one Rajendran was upheld. After completing the lease period viz., three years, Manicka Udayar made a renewal application and in the mean while, he died on 02.09.2002. Thereafter, the Petitioner, who is the daughter-in-law of lessee-Manicka Udayar, made a representation to the authorities, seeking renewal of lease. The representation was duly considered and her case was recommended for grant of lease. However, the Government, taking note of various crucial aspects including a specific directive of the High Court issued in W.P. No. 20186 of 2000 vide order dated 27.06.2005, to the State Government prescribing ban regarding allotment and assignment of lands classified as watercourse and water bodies, and also considering the fact that the land in question had already been classified as a water course poramboke, declined to further extend the lease period except till the date of issuance of the impugned G.O. on the ground that every tank, pond, kuttai, vari, odai or any other water course proamboke classified by the Settlement Authorities at the time of settlement of village is absolutely necessary to protect the welfare of the people for maintaining the water courses which are absolutely essential to recharge ground water levels. Since any decision taken otherwise would run contrary to the directive issued in the aforesaid judgment of this Court, the Government could not positively consider the claim of the Petitioner and under such circumstances, the Petitioner cannot challenge the impugned Government Order passed in larger interest of the public and therefore, the writ petition is liable to be dismissed.

4. Considered the rival submissions advanced on either side. The issue that arises for consideration is as to whether the Respondents are justified in rejecting the claim of the Petitioner for extension of lease and ordering resumption of land.

5. Admittedly, the land in question at S.F. No. 40/2, Rethinakottai Village, Aranthangi Taluk, Pudukottai District, leased out to the Petitioner's father-in-law for an extent of 20.5 cents, is a classified water course poramboke.

Originally, the land in question with some more extent viz., 23

cents, was leased out to one Navin Raj for running a kerosene Depot and it is stated that he was a chronic defaulter and after his demise, his Legal

heirs did not come forward to revive/renew the leasehold rights in their favor. Subsequently, on the application made by the Petitioner's father-in-

law and one Rajendran, they were granted lease in respect of 20.5 cents and 1 cent respectively, by virtue of G.O. Ms. No. 287, dated

12.03.1997. One Thirunavukkarasu, claiming to have purchased leasehold rights from the erstwhile lessee NavinRaj, initiated civil proceedings in

O.S. No. 235 of 1996 which came to be dismissed by judgment dated 27.10.1998 and the writ petition filed by him in W.P. No. 8241 of 1997

challenging the grant of lease to the Petitioner's father-in-law and Rajendran was also dismissed with the following observation:

The only ground on which the Petitioner seeks his claim over the land is the purchase of the lease hold right by a unregistered sale deed. It cannot

be disputed that the lease granted in favor of the lessee cannot be transferred to any other person, as it would be opposed to the condition of

lease. Moreover, after the demise of the lessee himself and the rents were also not paid, the Respondents-2 and 3 are entitled to resume the land

as per the terms and conditions of lease. A person is entitled to claim any right much less to any lease hold right only on the ground that he has

derived such a right from the erstwhile lessee. As the claim would be contrary to the lease conditions, in the absence of right to claim any title over

the land, the Petitioner cannot have any amenities over the impugned order in granting the lease in favor of Respondents 2 and 3.

6. Now, the grievance of the Petitioner is, even though an application for extension of lease was made by her father-in-law long before expiry of

the lease period and, after his death in the year 2002, she herself, being successor to the Trust created by him in a portion of the land in question

and having been granted consent letters from other legal heirs of her father-in-law for extension of lease in her favor, made representation to the

2nd Respondent, without even affording an opportunity to her, the first Respondent in an unfair manner straight way ordered resumption by the

impugned Government Order.

7. From a careful scrutiny of the impugned Government Order, this Court finds

that the first Respondent, before proceeding to resume the land, elaborately traversed into all relevant aspects including the status of the land, the claim of the parties as well as the grievance/representation made in that regard, and the said Authority, taking note of the fact that the land in question is a watercourse poramboke and there is a general ban and prohibition to deal with the same by way of grant of lease, assignment etc., ultimately ordered for resumption of the land. In that context, as rightly pointed out, it must also be borne in mind that maintenance of water bodies such as kuttai, tank, vari, odai and any other water course poramboke, as such is absolutely essential to protect and recharge ground water levels in the larger interest of the public. Public interest is paramount and it always prevails over individual and private interests and, viewing from such a longer perspective, this Court is of the considered opinion that there was nothing wrong on the part of the authority in passing the order of resumption, which is just and equitable. Even otherwise, the Petitioner does not derive any automatic right to claim extension of lease, for, the authorities have to look into all essential facts and circumstances even before proceeding to renew a license or lease.

8. Another vital aspect is, the learned Government Advocate has brought to the notice of this Court that the impugned G.O. came to be passed

keeping in mind the observations made by a division Bench of this Court while disposing of W.P. No. 20186 of 2000, by order dated

27.06.2005, on the aspect of maintenance of water courses in the State. In this regard, it is relevant to quote below the observations of the

Division Bench in the nature of a directive to the State:

Inasmuch this writ petition has come before us by way of a public interest litigation, we take this opportunity to direct the State Government to

identify all such natural water resources in different parts of the State and wherever illegal encroachments are found, initiate appropriate steps in

accordance with the relevant provisions of law for restoring such natural water storage resources which have been classified as such in the revenue

records to its original position so that the suffering of the people of the State due to water shortage is ameliorated.

In terms of such specific direction issued to the State for strict implementation, this Court could infer that the authority has, in an endeavor to

implement the same, ordered resumption with a view to restore the original position of the land in question as a water course in the larger interest of the public to prevent water scarcity and recharge ground water levels in the area.

9. In support of his submission, learned Counsel relied on the decisions of the Apex Court reported in Food Corporation of India Vs. M/s.

Kamdhenu Cattle Feed Industries, M.P. Oil Extraction and Another Vs. State of M.P. and Others, and U.P Awam Vikas Parishad Vs.

Gyan Devi (Dead) by L.Rs. and another, etc. etc., on the principle of "legitimate expectation" and stated that, in a case of this nature, failure to

consider and give due weight to the legitimate expectation of the Petitioner would render the ultimate decision arbitrary. Reliance is also placed on

another judgment of the Apex Court in Dwarkadas Marfatia and Sons Vs. Board of Trustees of the Port of Bombay, to highlight the principle that

public authorities as landlord are not expected to behave like private landlord and, in particular, any authority covered under Article 12 cannot act

arbitrarily even in contractual matters and must act only to further public interest; and it is submitted that, in the present case, the Petitioner is

treated as an unequal while similarly placed persons are allowed to enjoy the benefit.

10. The above mentioned judgments are not related to either lease of land or renewal of lease. Therefore, in the above circumstances, the case

laws relied on by the learned Counsel for the Petitioner, as cited supra, on the point of legitimate expectation and arbitrary exercise of power are

held to be not applicable to the present case as they are distinguishable on facts. In the present case, the Government being party to a public

interest litigation before the court, in implementation of the directives issued, took diligent steps in restoring the water bodies/courses to their

original position and the present case being one such instance, this Court does not find any reason much less valid reason to interfere with the

impugned proceedings. Consequently, the Writ Petition fails and it is dismissed as devoid of merits. Connected Miscellaneous Petition is closed.