(2015) 02 MAD CK 0310

In the Madras High Court

Case No : Writ Petition No. 24411 of 2013 and M.P. No. 1 of 2013

Rane Engine Valve Limited and Others — APPELLANT

Vs

The Collector and Others — RESPONDENT

Date of Decision : 18-02-2015

Acts Referred:

Citation : (2015) 2 LW 638 : (2015) WritLR 312

Hon'ble Judges : T.S. Sivagnanam, J

Bench : Single Bench

Advocate : Ramakrishnan Viraraghavan, Barrister, for the Appellant; S. Gunasekaran, Government Advocate, Advocates for the Respondent

Final Decision : Allowed

Judgement

T.S. Sivagnanam, J.

1. Heard Mr. Ramakrishnan Viraraghavan, Barrister, learned counsel appearing for the petitioners and Mr. S. Gunasekaran, learned Government Advocate appearing for the respondents. The petitioners have filed this writ petition seeking issuance of a writ of Certiorari calling to quash the order no Rc.J6/49509/1999 dated 4 July 2013 on the file of the First Respondent and consequently forebear the respondents from collecting a sum of Rs. 3,55,53,054/- or any other amount towards arrears of leases rent and municipal tax.

2. The petitioners have challenged the order passed by the District Collector, Chennai by which the District Collector has directed the petitioner to remit the arrears of rent with retrospective effect from 01.07.1998 to 30.06.2000 being a sum of Rs. 37,83,535/-.

3. The un-disputed facts are that the petitioner was granted lease of a strip of land on 04.01.1974 for a period from 01.01.1971 to 30.06.1975. By proceedings dated 24.07.1978, the first respondent proposed to increase the lease rent for the next five years. The petitioner consented to the increase in lease rent at Rs.

6182.75 per annum. Subsequently, by another proceedings dated 18.06.1979 the first respondent increased the lease rent to Rs. 12,365.50.50 and the petitioner by letter dated 25.07.1979 consented only for Rs. 6182.75 and did not agree for further increase. Subsequently, by communication dated 29.12.1980, lease rent was fixed at 6182.75 and it was renewed from 01.07.1980 to 30.06.1985. Further renewal was granted upto 30.06.1990 by proceedings dated 26.02.1987. During 1993 a letter was sent by the second respondent calling upon the petitioner to consent for renewal of the lease and the petitioner enclosed the consent letter dated 21.12.1993 and requested the challan for three years from 01.07.1990 to 20.06.1993. Further, the petitioner informed the second respondent by communication dated 28.12.1994 that they have paid lease rent and municipal tax for the period from 01.07.1990 to 30.06.1995 being a sum of Rs. 268,448.75 and such remittance was made on 15.04.1994. The petitioner applied for further renewal from 01.07.1995 to 30.06.1998 by application dated 13.05.1998 and the lease rent for the said period was also remitted being a sum of Rs. 161,069.25. Consent letter was also sent by the petitioner during July 1999. Subsequently, the second respondent by communication dated 06.04.2000 confirmed that recommendations have been made for renewal of the lease from 01.07.1990 to 30.06.2000 and calling upon the petitioner to pay the lease rent amounting to Rs. 161,070 within seven days. After about two years by communication dated 16.09.2002 the second respondent demanded Rs. 36,76,151 by retrospectively enhancing the lease rent from 01.07.1995 to 30.06.1999. Challenging this revision of lease rent with retrospective effect the petitioner filed appeal before the first respondent on 18.12.2002. In the meantime, the second respondent sent a letter demanding the amount. The petitioner filed another appeal against such a demand raised by the second respondent dated 26.09.2003 and the appeal was entertained in Appeal No. 138 of 2003. Subsequently, in 2004, the petitioner has paid the lease rent of Rs. 107,382 for the period from 01.07.2003 to 30.06.2005 without prejudice to their rights. The demand was served on 16.07.2014 demanding 1.87 crores. An appeal was preferred by the petitioner to the first respondent on 11.08.2004. Being affected by the huge demand of lease rent with retrospective effect, the petitioner addressed the first respondent on 25.08.2004 offering to surrender the land and termination of the lease and also sent reminder to the first respondent. As no communication was received thereafter and the second respondent continued to demand the amount of Rs. 1.87 Crores by issuing repeated demands. Subsequently, the surrender has been accepted and transfer of charge certificate has been signed by the Revenue Inspector and petitioners representative on 04.11.2008. Thereafter, series of communications were sent during the year 2010 demanding arrears of lease rent. The petitioner sent a legal notice to the first respondent on 17.01.2013 requesting first respondent to consider the petitioner''s appeal petition which is pending and fix an early date for hearing of the aforesaid appeal and disposed of the same at the earliest after affording a personal hearing. On receipt of the legal notice, impugned order has been passed without affording opportunity to the petitioner and without adverting to any of the points raised by the petitioner and solely relying upon the objection given by the Audit General.

4. It is to be noted that the copy of objection given by the Audit General has not been furnished to the petitioners and no notice in this regard was issued. Further, the grounds raised in the appeal has not been adverted to in the impugned order.

5. Learned counsel appearing for the petitioners submitted that the unilateral enhancement of lease rent that too with retrospective effect is absolutely without jurisdiction and contrary to provisions of Board Standing Order 24-A read with Appendix XXX-A, clause 7 which requires consent of the lessee to be obtained before enhancement of the lease rent. Further, it is submitted that retrospective enhancement is wholly without jurisdiction and it is not known on what grounds Auditor General has raised the objection and the petitioner did not consent for any increase and whatever was reasonable increase was agreed to and the same was paid without any default and unilateral increase of lease rent with retrospective effect does not arise.

6. In support of the contentions, learned counsel placed reliance on the decision of this Court in the case of K. Pranbhakaran Nair v. The Tahsildar, Gudalur Taluk, Nilgiris District and two others reported in 2002 (1) CTC 270 and the decision of this Court in the case of Madras Race Club v. Joint Commissioner, Commissioner of Land, and Administration, Government of Tamil Nadu, Chennai and others reported in (2013) 6 MLJ 212.

7. Heard the learned Government Advocate on the above submissions. After hearing the learned counsels for the parties and considering the entire facts, it is evidently clear that the impugned order has been passed without taking note of any of the objections raised by the petitioner. Impugned demand is demand for lease rent with retrospective effect.

8. The first contention raised by the petitioner in the appeal petition is that the retrospective revision of lease rent is without jurisdiction and revision of lease rent cannot be done without the consent of the lessee. In this regard reliance was placed on the relevant provisions of the Board Standing Orders. When such a contention was raised by the petitioner, there was a duty enjoined upon the first respondent to consider the same, since it goes to the root of the matter. The objection raised by the Audit General cannot be a sole basis for the demand. The demand should have been preceded with a show cause notice and the show cause notice should clearly indicate as to how the authorities propose to demand enhancement of the lease rent with retrospective effect when the petitioner did not consent for the same.

9. In the instant case, there is no such attempt even made by the respondent before issuing the demand. Therefore, the impugned demand of increased lease rent with retrospective effect solely based on Audit General objection, without notice to the petitioners and without hearing the petitioners is illegal and unsustainable. Furthermore, the impugned order is devoid of any reasons and

merely refers to a report of the Audit General and the contents of the report is also not discussed.

10. Thus, viewed from any angle, the enhance in lease rent with retrospective effect without notice or opportunity to the petitioners is arbitrary and unreasonable. Hence, the writ petition is allowed and the impugned order is set aside. However, liberty is granted to the respondent to initiate fresh action after issuing notice to the petitioners and proceed in accordance with law. This writ petition is allowed with the above observation. No costs. Consequently, the connected miscellaneous petition is closed.