

(2011) 02 MAD CK 0096

In the Madras High Court

Case No : Writ Appeal (MD) No. 659 of 2010 and M.P. (MD) No. 1 of 2010

S. Karunanidhi

APPELLANT

Vs

The District Collector, The Assistant Director and The
Executive Officer

RESPONDENT

Date of Decision : 22-02-2011

Acts Referred:

Citation : (2011) 8 RCR(Civil) 2206

Hon'ble Judges : R. Subbiah, J;N. Paul Vasanthakumar, J

Bench : Division Bench

Advocate : R. Sundar, for the Appellant; R. Janakiramalu, Spl. G.P., for the
Respondent

Final Decision : Dismissed

Judgement

R. Subbiah, J.—The present appeal is preferred against the order dated 28.09.2010 passed by a learned single Judge of this Court in W.P.

(MD) No. 8422 of 2010, whereby the learned single Judge has dismissed the writ petition filed by the Appellant.

2. The Appellant has filed the writ petition to quash the proceedings of the 3rd Respondent made in Na. Ka. No. A2/63/2010 dated 21.06.2010

and consequently directing the 3rd Respondent to extend the lease period of the Petitioner's fishing right after receiving 15% amount from him as

per G.O. Ms. No. 147, Municipal Administration and Water Supply Department dated 30.12.2000.

3. The case of the Appellant/writ Petitioner is that he was the successful bidder with regard to fishing right in a tank situated at S.F. No. 138,

Sengulam, Thiruverumbur Panchayat, Trichy District, for the year 2009-2010 and his bid was confirmed being the highest by the 3rd Respondent

Panchayat on 05.06.2009. The Appellant was permitted to carry out the fishing activity up to 31.07.2010. According to the Appellant, as per

G.O. Ms. No. 147, Municipal Administration and Water Supply Department, dated 30.12.2000, if any lessee intended to extend their lease

period up to three years, they have to pay additional 15% lease amount to the concerned Panchayat and in such event, they can get extension of

lease for further three years.

Hence, for getting extension of lease as per the said G.O., the Appellant has given a written request before the 3rd Respondent on 26.05.2010 by

giving consent for further extension to the third Respondent Panchayat. The 3rd Respondent Panchayat has passed a resolution on 18.06.2010

and the Appellant had received the impugned proceedings dated 21.06.2010 stating that the public auction would be proposed to be conducted

with regard to the fishing rights on 07.07.2010 at 11.00 AM. The said order was challenged by the Appellant in the writ petition considering that

since the 3rd Respondent informed about further extension of lease in the Proceedings dated 05.06.2009, he has invested huge sum in the fishing

activities; but, all of a sudden, without considering his request, the 3rd Respondent unilaterally passed the impugned proceedings which is in

violation of G.O. Ms. No. 147 dated 30.12.2000 and claimed that he is eligible for further extension on payment of additional 15% amount.

4. The case of the Appellant was resisted by the 3rd Respondent contending that if the lease period is extended with 15% enhancement of lease

amount of previous lease amount, the 3rd Respondent Panchayat will get the less revenue. But, at the same time, if the Panchayat holds public

auction for the period 2010-2011, it would get more than Rs. 2 lakhs for the said period. Hence, as per the said G.O. Ms. No. 147, in order to

increase the revenue of the Panchayat, the Council unanimously resolved to hold public auction for further period instead of extension of previous

lease. Moreover, as per G.O. Ms. No. 147, before three month's of expiry of lease period, the Appellant should have given representation to the

3rd Respondent for extension of lease period; but in the instant case, the Appellant has not given the representation three months prior to the

expiry of lease. Therefore, the Appellant cannot claim any right relying on the said G.O., and he is not entitled to get the extension of the lease

period.

5. The learned single Judge, on a consideration of entire materials and submissions of both sides, has dismissed the writ petition on a finding that

simply because in the original lease, a clause has been inserted to the effect that if the Petitioner seeks extension, he has to make an application 15

days before the expiry of the lease period, that will not give any right in favour of the Appellant to extend the lease, by accepting 15% increased

amount of lease. Aggrieved over the same, the present appeal is filed.

6. Heard the learned Counsel for both sides.

7. The issue regarding grant of lease or sale of public property is already considered by the Supreme Court in the decision reported in Aggarwal

and Modi Enterprises Pvt. Ltd. and Another Vs. New Delhi Municipal Council, wherein it is held as follows:

Disposal of public property partakes the character of trust and there is distinct demarcated approach for disposal of public property in

contradiction to the disposal of private property i.e., it should be for public purpose and in public interest. Invitation for participation in public

auction ensures transparency and it would be free from bias or discrimination and beyond reproach.

Applying the said judgment, one of us (NPVJ) in W.P.(MD) No. 13308 of 2010 by order dated 23.12.2010 set aside the auction conducted and

ordered fresh auction. The said order was upheld by the Division Bench in W.A. (MD) No. 24 of 2011, dated 11.01.2011.

8. In the decision reported in 2010(5) SC 467 (Rakesh Kumar Goel etc. v. U.P. State Industrial Development Corporation Ltd., and Ors.), the

Supreme Court considered the similar issue and in paragraph 37 held thus;

...the disposal of public property partakes the character of trust and the government or the public authorities are obliged to make all attempts to

obtain the best available market price while disposing of public properties. Ram and Shyam Company Vs. State of Haryana and Others, ; V.

Purushotham Rao v. Union of India (2001) 10 SCC 305 (paragraph 26); Aggarwal and Modi Enterprises Pvt. Ltd. and Another Vs. New Delhi

Municipal Council, ; Meerut Development Authority Vs. Association of Management Studies and Another, . He also submitted that it was not

open to the government or the public authority to dispose of public property

below the reserve price. In support of the submission he invited our attention to a decision of this Court in Anil Kumar Srivastava Vs. State of U.P. and Another,

9. During the course of arguments, the learned Special Government Pleader submitted that if the Panchayat holds public auction, it would fetch more income rather than giving extension by accepting 15% increased amount from the Appellant. We are also of the opinion that, as observed by the learned single Judge, the clause contained in the G.O., is only an enabling provision however, it does not prevent the Panchayat from holding a public auction if the Panchayat comes to the conclusion that in the event of public auction, it would fetch more revenue to the Panchayat.

Therefore, as a matter of right, the Appellant cannot seek for extension of lease. In fact, the learned Special Government Pleader submitted that the Panchayat is agreeing to give the fishing right in favour of the Appellant if he pays Rs. 1,50,000/-; but the Appellant is not willing to pay the said amount and he is willing to pay only Rs. 50,000/-. Under such circumstances, we are of the considered view that the Appellant has not made out any case that he is having a legal right to get an extension and as such, the writ appeal is liable to be dismissed.

10. Accordingly, the writ appeal fails and is dismissed. No costs. Consequently, connected M.P. is closed.