

(2011) 01 MAD CK 0172

In the Madras High Court

Case No : Writ Petition No. 30876 of 2002 and W.P.M.P. No's. 45131, 45132 of 2002 and 860 of 2009

Thiru Vi. Ka. Dr. Mu. Va. Educational Trust

APPELLANT

Vs

The Commissioner, Land and Estates and State of Tamil Nadu

RESPONDENT

Date of Decision : 19-01-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 45

Citation : (2011) 01 MAD CK 0172

Hon'ble Judges : K.K. Sasidharan, J; Elipe Dharmarao, J

Bench : Division Bench

Advocate : Satish Parasaran, for the Appellant; V. Bharathidasan and G. Desingu, Spl. G.P. for Respondent Nos. 2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

Elipe Dharmarao, J.—The Petitioner Trust was initially registered on 21.1.1955 under the Societies Registration Act, 1860 under the name

and style of "The High School Committee at Shenoy Nagar" and subsequent to the enactment of the Tamil Nadu Societies Registration Act, 1975,

it was re-registered as "Shenoy Nagar Educational Society" on 23.2.1993, with Registration No. 62/93. Thereafter, by the Trust Deed dated

25.2.1998, it was registered as a "Trust" under the present name and style of "Thiru Vi. Ka. and Dr. Mu. Va. Educational Trust", appointing one

of the Trustees Dr. V.T. Arasu as the First Managing Trustee/Secretary.

2. The Petitioner is a lessee of the lands belonging to the first Respondent/ Corporation in R.S. No. 21/3 part and 21/4 part etc. in Periakudal

village in sub registration district of West Madras (Shenoy Nagar) under two separate lease deeds. Under the first lease deed, land lease was

granted in respect of two blocks, named "A", measuring an extent of 1.50 acres, and "B", measuring an extent of 2.10 acres for a period of 33

years from 1.6.1955 to 31.5.1988 at the first instance. Thereafter, under the lease deed dated 2.4.1963, the lands in blocks "C" and "D",

respectively measuring 4.30 acres and 1.35 acres were also leased out to the Petitioner/Trust for a period of 33 years from 21.11.1962 to

20.11.1995. As per the terms of the lease deeds, "B" and "C" blocks are to be utilised as playgrounds; "A" block for running a High School and

"D" block for running an elementary school.

3. As could be seen from the materials placed on record, in "A" Block, the Petitioner Trust has constructed and established Thiru Vi. Ka. Higher

Secondary School, for boys and likewise, they have constructed and established Dr. B.M. Sundaravadanam Matriculation School, for boys and

girls, in Block "D". Blocks "B" and "C" were earmarked as playgrounds.

4. It is seen that the Petitioner Trust has sought for extension of lease in respect of "A" and "B" blocks for a period of 99 years from the year

1988. Based on the report of the first Respondent/Commissioner, the Government, by G.O. Ms. No. 114 Municipal Administration and Water

Supply Department, dated 4.4.1994, while ordering extension of lease in respect of "A" block, measuring an extent of 1.50 acres for a further

period of thirty years, fixing the lease rent at 7% of the market value, has ordered resumption of the land in "B" block, measuring an extent of 2.10

acres by the first Respondent/Commissioner for improvement as playground and use by the general public including school children. It seems,

pursuant to this G.O., the first Respondent has also resumed the land in "B" block, measuring an extent of 2.10 acres so as to be developed as a

playground.

5. While so, the Petitioner was issued with a notice dated 15.5.2002 by the first Respondent calling upon the Petitioner to hand over possession of

"C" block also to them for being developed into a playground for the use of local residents and students of Corporation schools as well as the

employees of the first Respondent, for which the Petitioner School have sent their representation dated 5.6.2002. But, however, the first

Respondent has issued the impugned order dated 10.7.2002, requiring the Petitioner to hand over block "C" land also for the purpose of

establishing Corporation playground.

6. The said order of the first Respondent is under challenge by the Petitioner in this writ petition, inter alia, on the ground that even though the

Petitioner Trust surrendered the only other playground available to the school situated in block "B" in the year 1994, as per the orders in G.O. Ms.

No. 114, dated 4.4.1994, the Respondents have utterly failed in carrying out any developmental work in respect of the said land and therefore, the

present attempt on the part of the Respondents to also resume the only playground (Block "C") available to the children studying in the Petitioner

schools once again on the same requirement of developing a common playground is not only without basis but also tantamount to colourable and

malafide exercise of powers, seriously detrimental to the public interest and inconsistent with the obligation of the State under Article 45 of the

Constitution.

7. We have heard the learned Counsel appearing on either side and perused the materials placed on record.

8. On the part of the Respondents, it has been argued that even though, as per the lease agreement, the Petitioner Trust started an elementary

school in "D" block, thereafter, they have converted it as a Matriculation School, in total violation of the lease conditions, for which the

Petitioner/Trust has replied that the establishment of the Matriculation School is not in contravention of the lease terms. It has further been

submitted on the part of the Petitioner Trust that at the time of grant of the lease by the first Respondent Corporation in favour of the Petitioner

Trust, the schools were generally classified only as elementary and Higher Secondary Schools and the matriculation schools were strictly not in

contemplation and it is indisputable that the land allotted to the Petitioner/Trust for educational purposes have been used by the Petitioner trust

solely for non-commercial educational purposes. It is also the contention raised on the part of the Petitioner Trust that the parents who admitted

students in the Petitioner's Matriculation School belong to the economically weaker sections such as masons, tailors and other daily wage earners,

in order to satisfy their long felt desire to provide their children English medium education for their better future and when such is the position, it is

surprising that the first Respondent Corporation should take serious objections

and seek to penalize the Petitioner Trust for providing matriculation system of education to children hailing from economically weaker sections.

9. It is not the case of the Petitioner Trust that the upgradation of the school from one of Elementary School to Matriculation School in "D" block

was ever permitted by the first Respondent Corporation. In fact, it is also seen from the averments of the counter filed by the first Respondent

Corporation that such upgradation was effected by the Petitioner Trust without their permission or knowledge or at least information. In fact,

having come to know of this upgradation, the first Respondent seems to have addressed the third Respondent authorities to clarify as to on what

basis the upgradation was granted to the Petitioner Trust. The explanation offered by the Petitioner Trust that at the time of grant of the lease by the

first Respondent Corporation in favour of the Petitioner Trust, the schools were generally classified only as elementary and Higher Secondary

Schools and the matriculation schools were strictly not in contemplation, also does not satisfy the requirement that being the lessee, the Petitioner

Trust is expected to strictly adhere to the terms and conditions of the lease deed and when the lease deed does not provide any clause for the

Petitioner Trust to act on its own, there is every reason for the lessor/the first Respondent to say that the lessee has violated the terms and

conditions of the lease. Even if it is accepted that Matriculation Schools were strictly not in contemplation when the lease deed was entered into

between the parties, that does not mean that the lessee can act on his own and in total violation of the terms and conditions and the obligations

created on him under the lease deed. The Petitioner Trust seems to have proceeded as if they are the absolute owners of the leased out lands,

forgetting the obligations created under the lease deed. What made the Petitioner Trust to proceed unilaterally in the matter of upgradation of the

school from Elementary School to Matriculation School, without any permission or authority of the first Respondent/lessor has not at all been

explained by the Petitioner Trust. It is not the case of the Petitioner Trust that they have either sought for the permission of the lessee/first

Respondent or they have requested the lessee to suitably amend the terms of the lease so as to upgrade the school. It is also seen from the

materials placed on record that the lease period for blocks "C" and "D" expired

in the year 1995 and has not been renewed by the first

Respondent so far. In view of the clear violation of the terms of the lease deed by the Petitioner Trust, we are not in a position to accede to the

request made on the part of the Petitioner Trust to direct the lessor/the first Respondent to renew the lease in their favour in respect of "C" and "D"

blocks. Remember, we are not finding fault with the Petitioner Trust's intention to upgrade the school from elementary to Matriculation, but, what

we want to insist on is that the Petitioner Trust should not have acted unilaterally in this regard since the terms and conditions of the lease deed are

staring and binding on them.

10. With respect to "A" block, it is also the allegation by the Respondents against the Petitioner that the Petitioner School is running a Tennis

Coaching Centre in the name of "Dr.V.T. Arasu Tennis Centre" for commercial purposes, by subletting the premises to a third party for running the

Tennis Club and Rs. 1,500/= is being charged per head as monthly fees for practising Tennis.

11. Though, by the reply affidavit filed on 23.6.2005, this allegation was denied by the Petitioner stating that Dr. V.T. Arasu Tennis Centre was

established by the Petitioner in block "C" and a portion of block "A" for the benefit of children studying in the Petitioner's school and further

admitting that the said Tennis Coaching Centre is also used by other children and general public beyond school hours on payment of a nominal fee

and also submitted the audited accounts in respect of the Tennis Coaching Centre on the ground that it will demonstrate the falsity of the first

Respondent's allegation that the Petitioner is profiteering from the conduct of the Tennis Coaching Centre, by the subsequent reply affidavit dated

19.3.2010, the Petitioner has stated that they have discontinued the said tennis course facility and that by the letter dated 10.10.2007, they have

also informed the first Respondent Commissioner about the discontinuing of the tennis course. From this, it becomes unambiguously clear that the

Petitioner Trust made use of the premises for commercial purposes and when it has been stiffly objected to and opposed by the first Respondent,

as a skin saving measure, they have resorted to discontinuing the tennis course. The contention of the Petitioner Trust that they are running the

tennis coaching centre for the benefit of their school children alone also gets

diluted in view of their further assertion that on payment of some charges, said to be nominal on the part of the Petitioner, even outsiders are permitted. It would have been a totally different situation had the tennis centre, was set up solely for the benefit of the Petitioner school without admitting the outsiders on payment of a fee, of course after getting necessary permission from the first Respondent. When there is no denying of the fact that the Petitioner Trust has admitted the outsiders also on payment of fee into the tennis course (whether nominal or otherwise) in the premises leased out to the Petitioner Trust that too without any permission of the first Respondent, it amounts to indulging in commercial activities, much against the terms and conditions of the lease.

12. The Petitioner has produced before this Court the statement of tennis account, for three financial years i.e. for the year ended on 31.3.2002, for the year ended on 31.3.2003 and for the year ended on 31.3.2004 to say that they did not derive any commercial benefit from out of running of the said tennis coaching centre. But, while exercising the extraordinary jurisdiction of the Court under Article 226 of the Constitution, this Court cannot go into such a complex question of fact attached to genuineness or otherwise of such of the accounts produced on the part of the Petitioner Trust. Further, in view of the assertion of the Petitioner himself that on some charges even the outsiders are allowed for tennis coaching, we need not have to attach much importance to the fact or otherwise of the income derived from out of the tennis coaching centre by the Petitioner Trust since the said assertion on the part of the Petitioner Trust itself is sufficient to hold that the Petitioner Trust has made use of the premises for commercial purposes, much against the terms and conditions of the lease deed. Further, from the above assertions of the Petitioner himself and from the materials placed on record, a legal presumption would arise that only realising their mistake, the Petitioner has discontinued the tennis camp pendente lite, and thus, the allegation of using the premises for commercial purposes, as against the terms of the lease by the school trust, has been proved.

13. What is being considered in the present case is a breach of a term of lease, which the paramount lessor is unwilling to condone. It is not in dispute that the commercial use of any part of the land is contrary to the use

permissible under the lease. It cannot be said that despite contravention of the terms of lease, the paramount lessor is debarred from exercising its rights under the terms of the lease.

14. It is also the allegation of the Respondent that the lease for the lands in "A" block expired in the year 1988 and for "C" and "D" blocks, it

expired in the year 1995 and after the expiry of the lease, it was not renewed in respect of blocks "C" and "D"; that for the lands in "A" block, the

Government granted lease for a period of 30 years from 1988 by fixing 7% of the market value as lease rent, but the school authorities have not

paid a single pie of lease rent for the past 21 years.

15. During the course of arguments, since it appeared to us that there is possibility of the parties arriving at a compromise, we have directed both

the parties to have a meeting so as to settle the dispute. According to the Petitioner, pursuant to such a direction of this Court, they met the first

Respondent on 8.2.2010 for settlement of the dues of the Trust, at which point of time, the first Respondent has arrived at the calculation that the

rental arrears in respect of "C" and "D" are Rs. Rs. 1,89,35,174/= (Rupees One Crore eighty nine lakhs thirty five thousand one hundred and

seventy four only) and by the communication dated 25.2.2010, the District Revenue Officer, Corporation of Chennai had demanded the said sum

of Rs. 1,89,35,174/= from the Petitioner Trust, but thereupon, by the additional counter affidavit dated 17.3.2010, the first Respondent has

arrived at the total arrears as Rs. 35,61,67,368/= (Rupees Thirty five crores sixty one lakhs sixty seven thousand three hundred and sixty eight

only) as lease arrears for the lands in "A", "C" and "D" blocks. This has been vehemently objected to by the Petitioner Trust by filing a reply

affidavit dated 19.3.2010 stating that pursuant to the directions of this Court, they have met the first Respondent on 8.2.2010 for settlement of the

dues of the Petitioner Trust, wherein the first Respondent demanded the sum of Rs. 1.89 crores, for which the Petitioner has also agreed for

renewal of lease of blocks "C" and "D" as evident from the letter dated 25.2.2010 bearing No. Ni. Ma.u.thu.na.ka. No. LE4/469/1990 issued by

the first Respondent to the Petitioner and while so, the Petitioner's counsel was served with a copy of the additional counter affidavit of the first

Respondent and only upon perusal of the said counter affidavit, the Petitioner

was shocked to note that the first Respondent has taken a stand that the Petitioner has to pay a tentative amount of Rs. 35,61,67,368/= towards alleged lease arrears for the lands in "A", "C" and "D" blocks. The Petitioners would further contend that the first Respondent realising that the Petitioner Trust may mobilise the funds through collection from its Trustees and other philanthropists, have revised the figure manifold to a total sum of Rs. 35,61,67,368/= with the sole object to somehow see that the Petitioner trust vacates the schools. On the part of the Petitioners two G. Os., bearing G.O. Ms. No. 83 dated 19.3.1991 and G.O. Ms. No. 35, dated 2.3.2005 issued by the Municipal Administration and Water Supply Department wherein the Government had leased out 78 grounds in Raja Annamalaipuram in the year 1991 and 35 grounds in Raja Annamalaipuram in the year 2005 in respect of two other school trusts at a rate of Rs. 100/= per ground per month have been pressed into service. In addition thereto, the Petitioner is said to have been reliably understood that the State Government had, around the year 1995 leased out lands to one Karnataka Sangh Higher Secondary School, Habibullah Road, T. Nagar, Chennai-600017 at a rate of Rs. 100/= per ground per month. Citing the said instances, the Petitioner Trust would say that the Respondents are biased towards the Petitioner Trust and would allege discrimination.

16. True, when pursuant to the direction of this Court, there were talks between the first Respondent and the Petitioner, the first Respondent has demanded only a sum of Rs. 1,89,35,174/= by the communication dated 25.2.2010, the same was enhanced manifold to Rs. 35,61,67,368/= by the first Respondent. But, it has to be pointed out that nullifying the contention of the Petitioner Trust that it is collecting only nominal fee from its students and that the buildings were never used for any commercial purposes, the first Respondent has arrived at such a figure since the Petitioner Trust is making use of the building for commercial purposes. We have already discussed the aspect of violations committed by the Petitioner trust from that of the lease deeds and therefore, we need not have to once again go into the said aspect. It would be suffice if we could see whether the argument advanced on the part of the Petitioner Trust that they are collecting only nominal fee from its students. In support of their contentions, the Petitioner Trust has produced before us the fee structure for both the Higher

Secondary School and the Matriculation School. As could be seen from the annual fee structure for the higher secondary school, a sum of Rs. 2025/= to Rs. 2525/= is being collected from the students of VI standard to XII standard respectively under the head miscellaneous fee, taking away the total annual fee to Rs. 2650/= to Rs. 3450/=. Likewise, for the matriculation school also, the fee structure has been produced before us which ranges from Rs. 2340/= to Rs. 2920/= for students of LKG to v. standard. The monthly fee for these students ranges from Rs. 140 to Rs. 170/=.

17. Having a comparative reading of all the particulars furnished by the Petitioner Trust, we are unable to accept their contention that they are running the Schools on charity purpose without there being the element of commercialism since no charitable schools, would collect huge sums from the students under different nomenclature as "special fee", "improvement fund" and "miscellaneous fee" as is being done on the part of the Petitioner. Only because of this reason, the first Respondent seems to have been re-calculated the entire lease arrears, further having regard to the aspect of violation of lease terms. We are unable to find any illegality in the said revised demand made by the first Respondent. Therefore, we are unable to accept these contentions raised on the part of the Petitioner. The extension of lease to some other schools under the G. Os., mentioned above, relied on by the Petitioner, also does not in any way augment their case in view of the fact there seems to be no allegation of any sort against such of the trusts, who got extension. Therefore, the Petitioner, a defaulter of the terms and conditions of the lease deeds, cannot equate himself with other Trusts against whom there seems to be no such allegations. Hence, it goes without saying that the Petitioner Trust shall have to clear all the arrears of lease amount, claimed by the first Respondent and the first Respondent is entitled to recover the said sums by due process of law.

18. The other argument advanced on the part of the Petitioner is that "B" block was already handed over by them to the first Respondent on their demand, to develop it as a playground long back, but, still it is lying vacant and therefore, the present contention of the first Respondent that they need the lands in "C" block for establishing a cycling velodrome for the benefit of

the general public also cannot be believed. The Petitioner Trust has also filed some photographs, said to be of "B" block already resumed by the first Respondent, which is lying vacant with some debris poured in it. True, the first Respondent has resumed the "B" block lands in 1994, pursuant to the orders in G.O. Ms. No. 114, dated 4.4.1994. Non-developing of the said land so far as a playground cannot be a ground for the Petitioner Trust to deny the right of the first Respondent to resume the lands for other purposes, particularly in view of the fact that the Petitioner Trust has violated the terms and conditions of the lease and also made use of the lands for commercial purposes. Further, it has to be kept in mind that the proposals of the first Respondent need to be approved at various levels where delay in approval and implementation is inevitable. A defaulter and a violator of the terms and conditions of the lease deed cannot be permitted to put stumbling blocks in the process of resuming the lands by the first Respondent.

19. Therefore, viewing from any angle, we do not see any reason to entertain the prayer of the Petitioner and accordingly, for all the above reasons, the writ petition filed by the Petitioner Trust is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

However, keeping in mind the paramount welfare of the students and teaching and non-teaching staff working in the schools, we direct the first

Respondent/Commissioner to resume the lands in "A" and "D" blocks, with the buildings standing thereon after completion of the academic year

2010-2011, at any cost before 1.6.2011. The first Respondent is entitled to resume the lands in "C" block immediately. It cannot be said that by

resuming the possession of block "C", the school in "A" block will be left without any access, since both from the First Main Road on the West

and Kamarajar Road on the North not only "A" block but also the school in "D" block can be accessed. The first Respondent is directed to take

all necessary measures to protect the interest of the students, teaching and non-teaching staff working in the schools, so far being run by the

Petitioner Trust and take all necessary measures to continue to run the schools, without any break or impediment, by the Corporation itself or by

entrusting it to any educational trust, with proven educational standards and experience in the field of rendering education to the children, by

following due process of law. For this purpose, the first Respondent can also call for tenders. No mention need be made that in case of entrusting the schools to any educational trust, as has been mentioned supra, the first Respondent/Commissioner shall see that the running of the schools by such Trust shall not be a commercial one and shall be strictly in accordance with the rules, regulations and law governing the subject. The first Respondent is entitled to recover the lease arrears from the Petitioner Trust as per law.