

(2001) 11 KL CK 0001
In the High Court Of Kerala
Case No : O.P. No. 23464 of 2000

Wahid

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 05-11-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2001) 2 KLJ 934

Hon'ble Judges : P.K. Balasubramanyan, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : George Poonthottam, for the Appellant; Mohan C. Menon, Government Pleader and P.C. Sasidharan, for the Respondent

Final Decision : Allowed

Judgement

P.K. Balasubramanyan, J.—The petitioner, who claims to be a social worker and a municipal councilor of the Corporation of Trivandrum, has approached this Court with the Original Petition praying of the issue of a writ of cortiorari to quash an order issued by the Government of Kerala dated 5.6.2000 allotting an area of 2500 sq.ft. in favour of M/s. Malayalam Communications Ltd. to set up a studio in the first floor of Travancore House Palace in New Delhi on rental basis at the rate of Rs. 75.00 per sq.ft. According to the petitioner, this order was not backed by a government decision to lease out any portion of the Travancore House Palace in New Delhi to any private individual or a company not owned or controlled by the State and that the grant to respondent No. 2, the Malayalam Communications Ltd., was done without following any procedure and arbitrarily and it was really a distribution of largesse by the Government and that the grant was based on political consideration. It is further contended that the rent fixed was low compared to the rent payable by the other lessees who were corporations controlled by the Government and by the State Bank of Travancore in the same floor and that the grant was not in public interest. The petitioner has a further case that though what was purported to be leased out was only on area of 2500

sq.ft., what respondent No.2 was doing was to occupy a larger extent in the first floor unauthorisedly but with the connivance of the authority concerned.

2. In the counter affidavit filed on behalf of the State what is stated is that there was no Government decision not to let out any portion of the Travancore House Palace in New Delhi to any individual or a company not owned or controlled by the State. It is stated that a request was received from respondent No.2, a public limited company, for allotment of space in Travancore House Palace, New Delhi and the Government deputed an officer to New Delhi to examine the feasibility of the request received from the company. Thereafter it was decided to grant the lease for a period of three years and a lease deed in that behalf marked Ext. R1 had been executed. It is stated that an area of 3370 sq.ft. in the very same floor was being occupied by the State Bank of Travancore. The State Bank of Travancore was paying a monthly rent of Rs. 50.00 per sq.ft. In the year 1999 the rent was enhanced to Rs. 100.00 per sq.ft. what was leased out to the company was the rear portion of the first floor and the rent of Rs.75.00 per sq.ft. was reasonable. It is not stated in the counter affidavit that there was any Government order or cabinet decision authorising the grant of such a lease. As noticed, what is stated is that there was no Government decision restraining allotment of space in Travancore House Palace in New Delhi to private parties on rental basis. It is contended that there was no abuse of power and the Government had taken care of public interest and no concession was granted to respondent No.2. The specific allegation of the petitioner that respondent No.2 was the front of a political party was not specifically dealt with in the counter affidavit, except stating that it was a public limited company.

3. The company, the second respondent, in its counter affidavit did not disclose how the shares were held in the company or by whom. The motive behind the filing of the Original Petition by the petitioner was questioned. It was denied that the company was managed and administered by persons belonging to Communist party of India (Marxist). This was to meet the allegation of the petitioner that this was a distribution of largesse by the Marxist led Government to a Marxist Front organization. The application filed by the Company was duly processed and the lease was granted. The rent fixed was reasonable and commensurate with the rent prevalent in the locality. The company was a public limited company incorporated under the Companies Act. The shares were allotted to persons in terms of the Memorandum of Association and under the provisions of the Company Law. It is also contended that certain persons attempted to file a Writ Petition before the Delhi High Court questioning the decision to lease out the area to the company. But that original petition was dismissed and in view of that, nothing remains to be decided in this Original Petition .

4. It is seen that respondent No. 2 was incorporated on 2.4.2000. It is not disclosed by the company in this counter affidavit as to who are the major shareholders of the company though there is a denial that it consists of mainly the members of the Communist Party of India (Marxist). It is seen that, on

3.5.2000, about one month after its incorporation, the company made an application for allotment of space in Travancore House Palace, New Delhi and on 5.6.2000 the Government passed the order Ext. P1. Neither in the counter affidavit filed on behalf of respondent No. 1 Government, nor in the counter affidavit filed on behalf of the respondent No. 2 company, it is disclosed whether any Rule or Regulation governed the grant of such leases by the Government. A lease of a building or a part of a buildings, the normal rules relating to transfer of Government property must govern. It is in this context that learned counsel for the petitioner contended relying on the decision of the supreme court in *Ramana Dayaram Shetty v. International Airport Authority* (1993 (3) SCC 489) and in *Ram and Shyam Company Vs. State of Haryana and Others*, that the disposal of public property partakes the Character of a trust. So disposal of the State property in public interest must be by such method as would grant an opportunity to the public at large to participate in it, the State reserving to itself the right to dispose it of as best to subserve the public weal. In answer, learned counsel for respondent No. 2 contended that the said principle will not govern the grant of lease or licences by the Government as the one involved in the case, which is only a lease of the property for a period of three years and that the government was not obliged to give an opportunity to the public at large to participate in any tender or auction of the right to occupy the premises as a lessee. The learned Government Pleader submitted that there was no competent decision to lease out any part of the Travancore House Palace to any private individual or a private or public limited company which is not owned or controlled by the State and that what is seen is that on a request received from the company, an order Ext. P1 was issued granting the lease and it was followed up by execution of Ext. R1 lease deed. The learned government Pleader submitted that there was no inviting of tenders and no other formalities was complied with.

5. The argument of learned counsel for the company that while deciding to lease out a building owned by it, the state need not adhere to the principles settled in the decision in *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, and *Ram and Shyam Company Vs. State of Haryana and Others*, . The Government was free to entertain an application by any private individual or by a company and it would take a decision to grant a lease. Counsel could not say whether there was a Cabinet decision permitting the grant of such a lease. But counsel submitted that the fact that a process of tender of offering the building on lease to the public at large so as to enable all those who were interested in bidding for the right was not adopted, was not fatal to the grant now made in favour of the company and there was no reason for this court to interfere.

6. We find it difficult to accept the contention of learned counsel for the company. Whether it is an outright sale of Government property or transfer of property by way of lease, we think that the same principle as enunciated in *International Airport Authority's* case must govern. Even in the recent case in *Fenner (India) Ltd. Vs. Punjab and Sind Bank*, , the Supreme Court stated that the Government

actions are liable to be based on standards which should not be arbitrary or unauthorized. Their Lordships quoted the observations in International Airport Authority's case. This decision indicates that even in the matter of leases, the same principle should apply in the absence of specific rules or regulations governing such a lease. It is, therefore, clear that the Government could not have granted a lease of the area in question to the second respondent company on the basis of some private negotiation without calling for tenders and without giving an opportunity to the public at large to make their offers for taking the particular portion on lease. In that view, the action of the first respondent in passing orders Ext. P1 has to be held to be illegal and arbitrary.

7. It is argued by learned counsel for respondent No. 2 that a Writ Petition filed before the Delhi High Court was not entertained by that Court and the same was dismissed and in the light of that decision, it was not proper for this court to interfere with the order Ext. P1. We find it difficult to agree with this submission. It is seen from Ext. R2(a) judgment that the said Writ Petition filed before the Delhi High Court was dismissed without being admitted, the court declining jurisdiction to go into the relevant matters. It is also seen that after noticing that the lease was being granted without tender process, and noticing the argument that it was a perpetual lease that was granted, the court found on a scrutiny of the lease deed produced as Ext. R1 along with the counter affidavit filed by the State Government here, that it was only a lease for a term of three years. The Delhi High Court essentially stated that the grant could not be challenged in proceedings under Article 226 of the Constitution of India and declined to interfere. Since that was only a dismissal in limine, we are not satisfied that the said decision can preclude the present petitioner, who was not a party to the proceeding before the Delhi High Court, from seeking an adjudication of the contentions he has put forward in this Original Petition.

8. It appears to us that before any part of the Travancore House Palace is let out to any private individual or a company, whether private limited or public limited but not controlled by the State, there has to be a decision by the Government in principle to grant such leases. It is seen that earlier there was a recommendation by the Estimates Committee of the State Legislature not to lease out nay part of the premises to private individuals or entities. There is therefore all the more reason for a formal decision on this aspect. It is seen that, earlier, the entire building had been let our to M.R.T.P. Commission. It is only after the Commission vacated, that portions were allotted to the Kerala State Electricity Board, KELTRON, Cauvery Water Dispute Call and M/s. State Bank of Travancore, all Corporations or entities controlled by the State. It is submitted by learned counsel for the petitioner that the Estimates Committee of the Kerala Assembly has submitted a special report in the year 1993 recommending that for no reason, any part of the Travancore House Palace at New Delhi should be let out to any private individual, association or establishment and that decision thereafter has always been acted upon by the government and that there was no decision thereafter to go against the special recommendation of the estimates

committee. It is in this context that we have to appreciate the allegation on behalf of the company and on behalf of the first respondent that there was no decision not to let out the building to any person other than a company or corporation owned or controlled by the State. The failure to do so has first to be a decision regarding whether any part of the building should be let out to a company like respondent No. 2 or a private individual or a private limited implemented only after framing the necessary regulation in that behalf and after following the procedure of calling for tenders. The grant of a lease under the circumstances to respondent No. 2 on the basis of some sort of private negotiation therefore requires to be struck down as unauthorized and not in public interest.

9. The doctrine of public trust has made great strides in our jurisprudence. The said doctrine constitutes the Government a trustee in respect of the properties under its control. The Government has to deal with them prudently and befitting the position of a trustee and in the light of the principles settled by the International Airport Authority's case and the cases following it. In this context, we may notice that even in the case of a land acquired by the Government under the Land Acquisition Act for a public purpose and a part of the land was found to be not necessary, this court held that the portion found not necessary, could not be returned to the original owner for the price at which the acquisition was made, but that the land had to be disposed of only in terms of the relevant rules or at market value. That was in *Bhaskaran Pillai v. State of Kerala* 1991 (2) KLT 332. We may notice that this decision was affirmed by the Supreme Court in *State of Kerala v. Bhaskaran Pillai* 1997 (2) KLT 217. This, in our view, also indicated that the first respondent could not have let out any part of Travancore House Palace building without inviting tenders and without giving all citizens an opportunity to compete in the matter of getting a lease of the premises. The action in granting a lease by receiving an application in that behalf from respondent No. 2 and granting the same, has to be held to be arbitrary and in excess of the power of the State to deal with public property. On that ground also, the lease has to be found to be invalid.

10. There was considerable controversy whether the rent fixed was reasonable or too low. According to counsel for the petitioner, the State Bank of Travancore was paying Rs. 100.00 per sq.ft. and that area was located adjacent to the area leased out to the company and on the same floor. According to counsel for the company, the rent fixed was reasonable and this could be seen from the documents produced by the company along with its additional counter affidavit. The learned Government Pleader suggested that the committee or officer authorized to make a recommendation had recommended that the rent should be fixed at Rs. 100.00 per sq.ft. the same rate of rent that was being paid by the State Bank of Travancore. No material was brought to our notice to show on what basis the rent was fixed at Rs. 75.00 per sq.ft. We are therefore, not in a position to decide one way or the other on this aspect. But, on the other aspect our conclusion is not justified, this aspect may have to be considered and it may

have to be decided whether the rent now fixed is commensurate with what the Government could get if it had let out the building after calling for tenders and giving an opportunity to the entire public to participate in the tender process.

11. Learned counsel for the company submitted that going by Ext. R1 lease deed, it could be seen that what was leased out was two main rooms and the adjacent areas. But on going through the schedule to the lease deed and the description contained therein, we find considerable vagueness in the description of the premises let out. There is a case for the petitioner that more than 2500 sq.ft. had been permitting to be occupied by respondent No. 2 though that contention is denied by the company. But we have to notice that the description when dispute arises between the parties regarding their respective rights and obligations. We feel that it should have been avoided when the State executed the rent deed. Counsel for the petitioner submits that this is because of the hurried manner in which whole transaction was put through and of course that is also disputed by learned counsel for the second respondent company.

12. During the course of the hearing it was submitted before us by learned counsel for the second respondent company that none of the tenants were paying any rent to the Government and the Government was not taking steps to realize the rent. We find it somewhat surprising to hear such a submission. If the submission represents the true facts, it is obvious for the State to take steps immediately to recover the rent from the tenants in occupation of the portions of the Travancore House Palace and if they are not paying the agreed rent, to take steps to evict them. The Government has a duty to the public to ensure that the amounts due are collected from the tenants and if the tenants are not paying the rent, to take steps to evict them. The Government has a duty to the public to ensure that the amounts due are collected from the tenants and if the tenants are not paying the rent, to evict them, so that the building could be put to better use. There will, therefore, be a direction to the Government to take steps to recover the entire rent in arrears from those Corporations or entities which are in possession of portions of the Travancore House Palace.

13. In the view of our finding that the grant of the present lease cannot be supported in view of the absence of fairness in entering into the transaction with a public limited company and without following a proper procedure in dealing with public property, the order Ext. P1 has to be quashed. Similarly, the lease Ext. R1. We also direct the Government to take steps to recover the rents in arrears from all the tenants of Travancore House Palace, New Delhi, immediately.

14. The Original Petition is allowed in the above manner.