IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 28.4.2005

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THE HONOURABLE MR. MARKANDEY KATJU, THE CHIEF JUSTICE

and

THE HONOURABLE MR. JUSTICE F.M.IBRAHIM KALIFULLA

Writ Appeal No.2062 of 2003

L. Boomiraja .. Appellant
(Petitioner in WP
No. 8567/03)

versus

The District Collector,
Dindigul District at
Dindigul. .. Respondent
(Respondent in - do -)

Writ Appeal filed under Clause 15 of the Letters Patent against the order passed in Writ Petition No.8567 of 2003 dated 19.3.2003. (WP No. 8567/03 presented under Article 226 of the Constitution of india to issue a Writ of Certiorarified Mandamus calling for the records relating to the proceedings of the District Collector, Dindigul District at Dindigul and made in Na.Ka. No. 701/98 (Mines) dated 26.2.2003 and quash the same and consequently direct the respondent herein to extend / grant the lease for a further period of five years to the petitioner in respect of stone quary situated in S.F. No. 1645 (part) of Vadamadurai Village, Vedasandur Taluk, Dindigul District for an extent of 4.74.5 hectares from the date of execution of the lease deed)

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for petitioner : Mr. G. Rajagopalan
Senior Counsel
for Mr. N. Damodaran

for respondent : Mr. V.Raghupathy
Govt. Pleader

JUDGMENT

(Judgment of the Court was delivered by
The Honourable the Chief Justice)

This writ appeal has been filed against the impugned order of the learned single Judge passed in Writ Petition No.8567 of 2003 dated 19.3.2003.

2. Heard the learned counsel for the parties and perused the record.

3. It appears that a lease deed dated 26.9.2001 was executed between the Government of Tamil Nadu and the appellant, by which, lease of certain lands were granted to the appellant for the period from 1.4.1998 to 31.3.2003.

4. Since the lease deed was executed only on 26.9.2001 and registered on 23.10.2001, the appellant filed the writ petition praying for extension of the period of lease alleging that it should be deemed to have commenced from the date of execution of the lease deed. Since the lease deed was executed on 26.9.2001 his prayer was that it should be treated to continue for another five years from 26.9.2001 i.e. upto 26.9.2006.

5. The learned single Judge in his impugned order has directed that the lease shall continue till 7.10.2003 subject to payment of 40% extra lease amount. The learned single Judge has treated the lease deed as having been executed on 8.10.1998 although the lease deed produced before us shows that it was executed on 26.9.2001. Learned Senior Counsel for the appellant relied on the decision of the Supreme Court in V. Karnal Durai v. District Collector, Tuticorin (1999) 1 SCC 475 and also the decision in Beg Raj Singh vs. State of U.P. (2003) 1 SCC 726.

6. A Division Bench of this Court in Director General of Foreign Trade, Ministry of Commerce, New Delhi vs. M/s. R.B. & Sons., Chennai and another (Writ Appeal No.3891 of 2004 decided on 7.12.2004) has already distinguished the decision of the Supreme Court in Beg Raj Singh's case cited supra. The Division Bench held that a Court cannot direct extension of the period of a licence, lease or other grant where it is for a fixed period and the Court must maintain judicial restraint in this connection. If the licensee or lessee was prevented to operate for a part of the period of the licence or lease, then his remedy is to get refund of proportionate amount of licence or lease fee or compensation for any damage he might have suffered, but the period of licence or lease cannot be extended by the Court. Courts must exercise self restraint and should not encroach into the domain of the Executive or the

Legislature, as held by this Court in Rama Muthuramalingam v. Dy. S.P., AIR 2005 Mad.1.

7. No doubt, if there are statutory rules, then of course, the matter will be covered by the statute, because it is well settled that the statute will override the contract. In the present case, there are statutory rules contained in Rule 8 of the Tamil Nadu Minor Mineral Concession Rules,1959 (hereinafter referred to as the "Rules"). Clause (i) of Rule 8 of the Rules states:

> " The date of commencement of the period of lease granted under this Rule shall be the date on which the lease deed is executed."

Learned Senior Counsel for the appellant has emphasised on Rule 8(i) of the Rules which states that the date of commencement of the period of lease granted under this Rule shall be the date on which the lease deed is executed. Since the lease deed was executed on 26.9.2001 he has contended that it will continue till 26.9.2006. We do not agree.

8. Clause (ii) of Rule 8(1) of Rules states:-

> "the lease shall expire on the date specified in the lease deed and in no case extension of the period of lease shall be made."

9. Clause (ii) of Rule 8 of the Rules specifically states that the lease shall expire on the date specified in the lease deed. It further states that in no case extension of the period of lease shall be made.

10. The language of clause (ii) of Rule 8 (1) of the Rules is mandatory and peremptory. A perusal of the lease deed shows that it has been specifically mentioned in Clause 4 that the said premises shall be held by the lessee from the 1st day of April 98 to the 31st day of March 2003 which shall however be determinable as hereinafter provided. In V.Karnal Durai v. District Collector (supra) the Supreme Court no doubt quoted clause (ii) but thereafter it did not deal with it, and it cosnidered only clause (i). Hence the decision is distinguishable.

11. In the present case, the lease deed itself states that the lease shall expire on 31.3.2003. In view of clause (ii) of Rule 8 of the Rules, we have to hold that the appellant's lease expired on 31.3.2003. We may also note that clause (ii) of Rule 8 of the Rules uses negative language in saying "in no case extension of the period of lease shall be made." It is a settled principle of interpretation that when a statute is couched in negative language, it is all the more mandatory and peremptory.

12. As stated by Crawford:-

> "Prohibitive or negative words can rarely, if ever, be directory. And this so even though the statute provides no penalty for disobedience", (vide Crawford "Statutory Construction")

The same view has been taken by the Supreme Court in Haridwar Singh v. Bagun Sumbrui, AIR 1972 SC 1242, (vide page-1247), Lachmi Narain v. Union of India, AIR 1976 SC 714, (vide page-726), Mannalal Khetan v. Kedarnath Khetan, AIR 1977 SC 536, etc.

13. In M. Pentiah v. Muddala Veeramallappa, AIR 1961 SC 1107 (vide page-113), the Supreme Court observed:-

> "Negative words are clearly prohibitory and are ordinarily used as a legislative device to make a statute imperative"

The same view has been taken in Nasiruddin v. Sita Ram Agarwal, (2003) 2 SCC 577 (vide page-589)

14. A provision requiring 'not less than three months' notice was hence regarded as mandatory, vide Lachmi Narain v. Union of India, AIR 1976 SC 714 (vide page-726). For the same reason, Section 10A of the Medical Council Act, 1956 (as amended in 1993) has been held to be mandatory, vide K.S. Bhoir v. State of Maharashtra, AIR 2002 SC 444 (vide page 448). For the same reason, Section 33(2)(b) of the Industrial Disputes Act, 1947 (as amended in 1993) has been held by the Supreme Court to be mandatory, vide (Jaipur Zila Sahakari Bhoomi Vikas Bank v. Ram Gopal Sharma, AIR 2002 SC 643 (vide page-648).

15. Learned Senior Counsel for the appellant contended that clause (ii) of Rule 8 of the Rules will not apply when the lease deed is executed on a date subsequent to the period from which it is to commence. We cannot agree. If we accept this contention, we will be adding a proviso to clause (ii) of Rule 8 of the Rules. It is well settled that Court cannot add or delete from a statute as that is the function of the Legislature or its delegate.

16. As observed by the Privy Council:-

> "We cannot aid the legislature's defective phrasing of an Act, we cannot add or mend and, by construction make up deficiencies which are left there" (vide Crawford v. Spooner, (1846) 6 Moore PC1)

This view has been followed in Lord Howard de Walden v. IRC, (1948) 2 All ER 825 (vide page-830) (HL); Nalinakhya Bysack v. Shyamsunder Halder, AIR 1953 SC 148 (vide page-152): 1953 SCR 533; State of Madhya Pradesh v. G.S. Dall and Flour Mills, AIR 1991 SC 772 (vide page-785): 1991 Supp (1) SCC 565; Grasim Industries Ltd. v. Collector of Customs, AIR 2002 SC 1706, (vide page-1709): (2002) 4 SCC 297. See further Union of India v. Deoki Nandan Aggarwal, AIR 1992 SC 96 (vide page-101):1992 Supp.(1) SCC 323; State of Gujarat v. Dilipbhai Nathjibhai Patel, JT 1998 (2) SC 253, (vide page-255): 1998 (2) Scale 145 (vide page-147).

17. In Renula Bose (Smt.) v. Rai Manmathnath Bose, AIR 1945 PC 108 (vide page-110), the Privy Council observed:-

> "It is contrary to all rules of construction to read words into an Act unless it is absolutely necessary to do so"

The same view has been taken by the Supreme Court in Assessing Authority-cum-Excise and Taxation Officer v. East India Cotton Mfg. Co. Ltd, AIR 1981 SC 1610 (vide page-1615) and Director General, Telecommunications v. T.N. Peethambaram, AIR 1987 SC 162. Hence, it is well settled that the Court cannot reframe the legislation, because it has no power to legislate.

18. In holding that Section 96(2) of the Motor Vehicles Act, 1939 is exhaustive of defences open to an insurer, the Surpeme Court refused to add the word "also" after the words 'on any of the following grounds' and observed: "This, the rules of interpretation, do not permit us to do unless the section as it stands is meaningless or of doubtful meaning" vide "British India General Insurance Co. Ltd. v. Capt. Itbar Singh, AIR 1959 S.C. 1331 (1334, 1335)".

19. The same view was taken by the Supreme Court in Sri Ram Ramnarain v. State of Bombay, AIR 1959 SC 459 (vide page-470); Ramnarain v. State of U.P, AIR 1957 SC 18; Jumma Masjid v. Kodimaniandra, AIR 1962 SC 847 (vide page-850); K.M. Viswanatha Pillai v. K.M. Sanmughan Pillai, AIR 1969 SC 493 (vide page-495); C.V.Raman v. Management of Bank of India, AIR 1988 SC 1369 (vide page-1377) and Union of India v. Deoki Nandan Aggarwala, AIR 1992 SC 96, etc.

20. The literal rule of interpretation has to be applied under which if the language of statute or rule is clear then the Courts must follow the plain language, vide Gwalior Rayon Silk Mfg. Co. v. Custodian, AIR 1990 SC 1747 (page-1752), Md. Ali Khan v. CWT, AIR 1997 SC 1165 (vide page-1167), Institute of Chartered Accountants v. Price Waterhouse, AIR 1998 SC 74 (vide page-90), Dental Council of India v. Hari Prakash, AIR 2001 C 3303 (vide page-3308), etc.

'Courts must not add or delete words in a statute'. In the present case the language of clause (ii) is clear. Hence we are of the clear opinion that the only relief which the lessee can get (if at all) is to get a direction for refund of the proportionate amount of the lease/licence amount/damages/compensation in accordance with law, but he cannot get extension of the lease. The impugned order is set aside and it is substituted by this judgment. The writ petition is dismissed and the writ appeal is disposed off. W.A.M.P.No.761 of 2005 is dismissed.

21. Learned Senior Counsel for the appellant contended that the interpretation which we have given will cause hardship and will be inequitable to the appellant. It is well settled that when there is a conflict between law and equity, it is the law which has to prevail. Equity can only supplement the law but cannot supplant it.

22. In Madamanchi Ramasppa v. Muthalur Bojjappa, AIR 1963 SC 1633, the Supreme Court observed:-

> "What is administered in Courts is justice according to law, and considerations of fair play and equity, however important they may be, must yield to clear and express provisions of the law"

23. Similarly in Gauri Shankar Gaur v. State of U.P., AIR 1994 SC 169 (vide para 14), the Supreme Court observed:-

> "In construing a statute equity will not relieve against a public statute of general policy in cases admitted to fall within the statute and it is the duty of the Court to give effect to he legislative intent."

Thus, it is well settled that equity can supplement to but cannot supplant the statutory provisions. Where the language of the law is clear, "it is not 'safe' to bend the arms of law only for adjusting equity", vide Ahmedabad Municpal Corporation v. Virendra Kumar Patel, AIR 1997 SC 3002. The same view was taken in Smt. Rampati Jaiswal v. State of U.P., AIR 1997 All 170 and Chhetrapal Singh v. State of U.P., 2004 All.L.J. 993.

24. Hence while dealing with statutory provisions, the Courts should not be guided by 'humanitarian consideration' and emotional appeal, for the reason that if Courts proceed on these basics, it would amount to altering or amending the statutory provisions or requirements of law. Instead, the Court should be guided by the maxim "dura les sed lex", which means "the law is hard, but it is the law".

25. Thus equity considerations are not applicable in a case of

clear statutory provisions nor are the Courts empowered to pass an order contrary to law on the basis of 'humanitarian considerations'. It is only when there is a gap in the law or there is ambiguity in it, that equity can be applied.

26. In the present case, the law i.e. Clause (ii) of Rule 8 of the Rules is clear and there is no scope for importing equity into it.

27. In view of the above the impugned Judgment of the learned single Judge cannot be sustained, and it is set aside. The writ petition is dismissed, and the writ appeal is disposed off.

Vu

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

The District Collector,
Dindigul District at
Dindigul.

+ONE CC TO MR.N. DAMODARAN, ADVOCATE (SR NO 21250)

+ ONE CC TO GOVT. PLEADER (SR NO 20684)

W.A.No.2062 of 2003

28.4.2005

JRG (CO)

BP/16.6