<u>HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE</u>
<u>AND</u>
<u>HON'BLE SRI JUSTICE S.V. BHATT</u>

<u>WRIT APPEAL No. 1153 OF 2015</u>

29-12-2015

Between:
Nawajish Sultan Ali Virani

… Appellant

And

State of Telangana, rep., by its Principal Secretary, Municipal Administration & Urban Development, Government of Telangana, Secretariat, Hyderabad and others

… Respondents

HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE
AND
HON'BLE SRI JUSTICE S.V. BHATT

WRIT APPEAL No. 1153 OF 2015

ORDER: (per the Hon'ble the Acting Chief Justice Dilip B. Bhosale)

This appeal is directed against the order dated 22-12-2015 disposing of Writ Petition No.26134 of 2015 filed by the appellant. In the writ petition, the appellant questioned the notification dated 12-06-2015 issued under Section 11 (1) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short 'the Act') as well as notice dated 12-06-2015 issued under Section 15 (2) of the Act, proposing to acquire premises No.5-1912, Putli Bowli, Hyderabad, measuring1371 square yards (for short 'the land'), as illegal and violative of Chapter II of the Act and the Constitution of India.

The appellant claims to be a partner of partnership firm M/s. Higrade Service Centre (for short 'the firm'). There are only two partners of the firm, one the appellant and the other, K. Srikant Rao, the owner of the land. It appears, there was a dealership agreement entered into by and between the Hindustan Petroleum Corporation Limited (HPCL) and the firm for sale of petroleum and diesel products. The petroleum outlet run by the firm is stated to be running from 15-01-1964. The income generated, as stated by the appellant, from the business of the petroleum outlet was the only source of livelihood of the appellant. The appellant claims that he spent huge amount towards development of the outlet.

In this backdrop, Sri Raghunandan, learned Senior Counsel for the appellant submitted that the appellant being a person interested as contemplated by Section 3(x) of the Act, the respondents ought to have granted him hearing before acquiring the land and assessed the social impact in the light of the fact that the appellant is losing his livelihood. He invited our attention to Section 3 (x) and the provisions dealing with social impact assessment in Chapter II of the Act.

We have perused the impugned order. Learned Judge framed two points. We are concerned only with the first point. Learned Senior Counsel did not make any submission on the second point. The points framed by learned single Judge read thus:

> "1. Whether the petitioner has locus standi to question the acquisition proceedings?
>
> 2. Whether the impugned notification is affected on account of lapse of Central Ordinance 5 of 2015?"

It is not in dispute that the owner of the land has taken Rs.15 Crores as compensation and the lessee i.e., HPCL has taken about Rs.66 Lakhs as compensation. The appellant has not come before the Court either stating that he did not receive anything from the owner or whether there was any understanding between him and the owner while accepting the compensation of

Rs.15 Crores for acquisition of the land. It is also not in dispute that the firm has not challenged the acquisition. In this backdrop, we perused reasons recorded by learned single Judge holding that the appellant has no *locus standi* to question the acquisition proceedings. The relevant observations made by learned single Judge read thus:

> "13. Petitioner, undoubtedly, is neither owner nor lessee of the petroleum outlet, in question, which is under acquisition. Even according to the averments in the affidavit, the petitioner entered into partnership agreement with one of the owners and he is one of the partners. Since the owners have given consent for acquisition (which is not in dispute) and since the lessee viz. HPCL has not taken any further proceedings after rejection of their objections to the preliminary notification, it

has to be held that neither the owner nor the lessee objects to the acquisition.

14. In law, a dealer of a petroleum outlet appointed by the lessee viz. by the oil company is merely that of the licensee, as held by the Supreme Court in **MD. SALIM v. MD. ALI** (AIR 1987 SC 2173) para 2 thereof is extracted hereunder:

"**2**. One of the attesting witness to the said agreement was Md. Ali, the respondent herein, who was at the relevant time landlord and is now represented by his legal representatives to this application. On a construction of the different clauses of the aforesaid document we are of the opinion that this was an agreement for management of the business of the tenant. It was not and cannot be construed as an agreement of sub-tenancy. There was no exclusive possession with the respondent. There was no parting of possession of the premises, there was only a right to "manage" the business, looking after the existing business with fixed monthly payments and this cannot be construed as an agreement of sub-tenancy. Therefore, though the landlord had knowledge of the document and as such can be said to have consented to the bargain it cannot be said to be consent to an agreement of sub-tenancy."

The aforesaid legal position is reiterated in a decision earlier rendered by me in **MUMMANA SURYA RAO v. HINDUSTAN PETROLEUM CORPORATION LIMITED** (2015 (6) ALD 521) wherein it was held as under:

"**12**. I am unable to see any legal right vested in the petitioner to sustain the prayer sought for in this writ petition as, even according to the petitioner, he was appointed as an Operator/Contractor for a period of one year only. It is well settled that the Dealers of Petroleum Outlets leased to a Petroleum Company are merely Licensees and cannot be equated to the status of a Lessee. In the present case, the petitioner does not fall in the capacity of either a Lessee or a Licensee and is only a Contractor/Operator of Lessee. Hence, the petitioner is not entitled for continuation of the contract beyond the period for which he was appointed and contrary to the 1st respondent's right to appoint any contractor of its choice to run the Outlet. The legal position on such question is already settled by a decision of Supreme Court in MD. SALIM v. MD. ALI"

Applying the said principle, the petitioner at best, being partner of the dealer, it has to be held that he has no *locus standi* to question the acquisition proceedings.

Point No.1 is accordingly answered against the petitioner."

We have independently considered the provisions contained in Section 3 (x) which define ‘person interested’. In the facts of the present case, in our opinion, person interested is the firm and not an individual partner of the firm. The contention urged by learned Senior Counsel, therefore, deserves to be rejected outright. Insofar as contention regarding social impact assessment study is concerned, that also need not be considered in the light of the fact that the owner of the land consented for acquisition and accepted about Rs.15 Crores as compensation.

Learned Advocate General submitted that there has to be some understanding between the owner and the appellant in respect of sharing of the compensation. He submitted that if at all contention of the appellant that he spent huge amount for development of the outlet is correct, he can workout his remedies against the owner,in the light of the terms and conditions of partnership deed.

We would not like to express any opinion on this controversy. We are satisfied that the appellant has no *locus standi* to challenge the acquisition in the manner in which he has done in the instant proceedings.

Hence, the appeal is dismissed.

Miscellaneous petitions, if any, also stand disposed of.

DILIP B. BHOSALE, ACJ

S.V. BHATT, J

29-12-2015
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