RESERVED ON : 04.11.2016
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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : **10-11-2016**

Coram:

The Hon'ble Mr**. Justice M.SUNDAR**

Application No.1793 of 2011
in
C.S.No. 450 of 2003

S.M.M.Mohideen Wakf-Alal-Aulab
rep. By the Muthavalli S.M.S.Abdul Khader,
No.24, Soorappa Mudali Street,
Triplicant, Chennai 600 005.

… Applicant/Plaintiff

- Vs -

M/s. Hindustan Petroleum Corporation Limited
rep. By its Chief Regional Manager,
Thalamuthu Natarajar Building,
Gandhi Irwin Road,
Egmore, Chennai 600 008.

…Respondent/Defendant

Application has been filed under Order XX Rule 12 of C.P.C. Read with Order XIV Rule 8 of the O.S.Rules seeking to pass a final decree directing the defendant to pay mesne profits to the Plaintiff from 01.04.2000 till date of handing over possession of the Schedule Property at a rate fixed by appointing an advocate Commissioner; or other such relief.

C.S.No.450 of 2003

S.M.M.Mohideen Wakf-Alal-Aulab
rep. By the Muthavalli S.M.S.Abdul Khader,
No.24, Soorappa Mudali Street,
Triplicant, Chennai 600 005.

... Plaintiff

- Vs -

M/s. Hindustan Petroleum Corporation Limited
rep. By its Chief Regional Manager,
Thalamuthu Natarajar Building,
Gandhi Irwin Road,
Egmore, Chennai 600 008.

... Defendant

Suit with prayers for directing the defendant to quit and deliver vacant possession of the land described in Schedule to the Plaint, after removing the structure thereon and directing the defendant to pay to the plaintiff a sum of Rs.14,40,000/- towards past mesne profits upto the date of plaint; directing the defendant to pay to the Plaintiff future mesne profits at such rate as this Court may fix from the date of plaint upto date of delivery of vacant possession of the plaint schedule property to the plaintiff; directing the defendant to pay to the plaintiff the cost of this suit and to grant any other such reliefs.

For Plaintiff :: Mr.R.Mukundan

For Defendant :: M/s. O.R.Santhana Krishnan

JUDGMENT

The suit has been filed by the plaintiff, seeking a decree directing the defendant to quit and deliver vacant possession of the land described in Schedule to the Plaint, after removing the structure thereon and directing the defendant to pay to the plaintiff a sum of Rs.14,40,000/- towards past mesne profits upto the date of plaint; directing the defendant to pay to the Plaintiff future mesne profits at such rate as this Court may fix from the date of plaint upto date of delivery of vacant possession of the plaint schedule property to the plaintiff; directing the defendant to pay to the plaintiff the cost of this suit and to grant any other such reliefs.

2. Plaintiff is a Wakf (Private Wakf). The defendant is a Public Sector Oil Company namely, Hindustan Petroleum Corporation Limited. The defendant is a land lessee in respect of the suit schedule property admeasuring 8582 sq.ft. situated in Arcot Road, Madras.

3. For the purpose of brevity, convenience and clarity plaintiff is referred to as 'lessor Wakf' and the sole defendant is referred

to as 'HPCL'. The suit schedule property is referred to as 'demised land'. Lessor Wakf filed the above suit for recovery of possession of the demised land from HPCL and also for payment of mesne profits for use and occupation. Past mesne profits for the period from 01.04.2000 to 30.04.2003 and future mesne profits from 01.05.2003 to 31.01.2012. HPCL, filed written statement admitting that they were sub-lessees and that their lease expired. This Court by decree dated 22.09.2000, directed the defendant to surrender possession of the demised land to the lessor Wakf within a time frame. Ultimately, it is the admitted case between the lessor Wakf and HPCL that possession of the demised land was surrendered to the lessor Wakf on 02.12.2012. Therefore, future mesne profits is for the period from 01.04.2000 to 31.01.2012, as set out supra.

4. Under the circumstances stated supra, the lessor Wakf took out an application in Appl.No.1793 of 2011 with a prayer to pass final decree, directing the defendant to pay mesne profits and future mesne profits at a rate to be fixed by this Court. This Court directed the parties to lead evidence with regard to mesne profits and

quantification of the same. Evidence was let in. The Muthavalli of the lessor Wakf was examined as P.W.1 and through him 14 documents, Exs.P1 to P.14 were marked. Interestingly, HPCL did not let in oral evidence and did not mark any documents. Post evidence, the matter was listed before the Court.

5.The issues originally framed in the suit are as follows:

(1) Whether the defendant is liable to be evicted and the plaintiff is entitled to recover possession of the plaint schedule property ?

(2) Whether the plaintiff is entitled to recover the mesne profits from the defendant ?

(3) What other relief the parties are entitled to ?

Therefore, the computation of mesne profits and the quantification of the same for the period from 01.04.2000 to 31.01.2012 (past and future mesne profits) alone is the issue that survives now.

6. Heard Mr.R.Mukund, learned counsel for the lessor Wakf and Mr.O.R.Santhanakrishnan, learned counsel for HPCL. Suffice to say that all the 14 documents marked by the plaintiff are documents pertaining to the guide line value and market value of the demised land.

While Ex.P1, is a hard copy of the values downloaded from the internet. Ex.P14, is the guideline value of the demised land as furnished by the Sub Registrar in response to an application under Right to Information Act, filed by the Muthavalli of the lessor Wakf. The other documents are primarily in the nature of sale deeds of properties in the area in which the demised land is situated.

7. Based on the documents and the oral evidence, learned counsel for the lessor Wakf has filed a Memo of Calculation for the entire period (past and future mesne profits) from 01.04.2000 to 31.01.2012. The memo of calculation reads as follows:

MEMO OF CALCULATION OF DAMAGES

Extent of the Suit Property	8583 Sq.Ft.
Damages from	01.04.2000 till 31.01.2012

Details	***No. of months***	***Value per sq.ft.in Rs.***
01.04.2000 till 31.07.2007	51 months	2061
01.08.2007 till 28.09.2010	38 months	3765
29.09.2010 till 31.01.2012	16 months	5250
Calculation of weighted average of the guideline value per sq.ft.	(2051*51)+(3765*38) (5250*16)/106 months	Rs.3163 per sq.ft.

Value of the Schedule Property	***Rs.3163 - 8582 sq.ft.***	***Rs.2,71,44,866/-***	
Damages can be fixed at 12% of the value per annum	Rs.2,71,44,866/- 12%	Rs.32,57,383/-per year	
Damages per month	Rs.30,57,383/- 12 months	Rs.2,71,448/-per month	
Total amount of damages from 01.05.2003 till 31.01.2012 (10% months at the rate of Rs.2,71,448/- per month	Rs.2,71,448 X 105 months	Rs.2,85,02,040/-	
LESS amount of Rs.25,000/- per month paid by the defendant Rs.25,000 * 105 months)		(-) 26,25,000/-	
Amount of future mense profits payable by the defendant		Rs.2,58,77,040/-	Rs.2,58,77,040/-
Damages claimed by the Plaintiff from 01.05.2000 till 30.04.2003 at the rate of Rs.40,000/-per month for 36 months	Rs.40,000/- X 36 months	Rs.14,40,000/-	
Less amount paid by the defendant at RS.25,000/- per month		Rs.9,00,000/-	
Balance damages		Rs.5,40,000/-	Rs.5,40,000/-
Total amount towards past and future mense profits			Rs.2,64,17,010/-

8. The value of the land in the above Memo of Calculation has been taken, based on the documentary evidence let in. Learned counsel for lessor Wakf would draw my attention to Section 2(12) of the

Code of Civil Procedure, 1908 (CPC for brevity), which defines mesne profits and learned counsel would submit that it is for HPCL to have established profits which it actually received during the period of wrongful possession if HPCL contends that it is lesser than the above computation.

9. Per contra, learned counsel for HPCL would contend that the burden of proof is only on the lessor Wakf as it is the plaintiff. It is also contended by the learned counsel for HPCL that he does not admit any of the documents, Exs.P1 to P14, and that they were marked subject to objection.

10. As the matter lures largely on the documents/exhibits that have been marked, it becomes necessary to examine the objection subject to which the exhibits were marked. A perusal of the deposition would show that the lone objection to the marking of Exs.P1 to P14 is that they are not relevant. This is found in the deposition recorded by learned Master on 27.07.2011. Ex.P1 is the computer generated extract from the Official Website of the Government Department. This exhibit,

gives the guideline value for Arcot Road in which the demised land is situate. Therefore, the objection to the marking of this document is overruled. Equally, with regard to Exs.P2 to P13, no contra evidence has been let in to show that those properties (which are subject matter of those documents) are not situate any way near the demised land. In the cross examination also there is no cross examination or suggestion to the effect that the properties contained in Exs.P2 to P13 are not any way near the demised land. On the contrary, the cross examination is only with regard to the nature of the transactions, nature of documents namely, that some are undivided shares and therefore, are not truly reflective of the values. The cross examination of P.W.1 on Exs.P2 to P13 may be usefully extracted and the same runs as follows:

> "It is true that Ex.P2 is in respect of undivided share of land to an extent of 104 sq.ft. of schedule-B property. I do not know the extent of the property sold in Ex.P3 for which I am not the author. I am not the author of Ex.P4 also. I am a party to Ex.P5 document. This document refers the undivided share of 104 sq.ft. of property referred in schedule-C forming part of schedule-B. In Ex.P6, I am not the party. I am not a party to Ex.P7, As per Ex.P7, 38.203 sq.ft. undivided share has been sold. I am not a party of document Ex.P8. By perusing Ex.P8, I could be able to say the extent of

> property. The extent is 104 sq.ft. of undivided share. I am not a party to Ex.P9 document. The property conveyed as per Ex.P9 is 487.7727 sq.ft. of undivided share. I am not the author of Ex.P10. The property conveyed as per Ex.P10 is 104 sq.ft., of undivided share. I am not the author of Ex.P11. The extent of the property conveyed in Ex.P11 is 438.2886 sq.ft. of undivided share. I am not the author of Ex.P12. The extent of the property referred in Ex.P.12 is 97 sq.ft. of undivided share. I am not the author of ExP13. The extent of the property referred in Ex.P13 is 391.3232 sq.ft. of undivided share. It is true that Exs.P2 to Ex.P13 are the sale deeds in respect of undivided share of lands. I have not submitted any sale deed for vacant land other than Exs.P2 to Ex.P13."

Therefore, this objection is also overruled and Exs.P2 to P13 are held to be relevant. With regard to Ex.P14, it is addressed by the Sub Registrar to the Muthavalli of the lessor Wakf and it clearly states that it is in response to the Muthavalli's application under the Right to Information Act. It also gives the guideline value per square feet of Arcot Road wherein, the demised land is situated. Therefore, this objection is also overruled.

11. With regard to the burden of proof, it is true that the

burden of proof does not shift but the onus shift like a pendulum. The moment the lessor Wakf has let in evidence to show the value of the demised land and the profits that would have been received from the same, the onus shifts to HPCL to let in contra evidence and establish that it did not receive any profits at all or profits are lesser during the period of wrongful possession. Obviously, lessor Wakf will have no knowledge about the profits which HPCL could have derived and it is within the knowledge of HPCL. In this context, it is relevant to extract the definition of mesne profits as enumerated in Section 2(12) of Code of Civil Procedure, 1908, which reads as follows:

> "mesne profits of property means those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits, but shall not include profits due to improvements made by the person in wrongful possession".

Therefore, HPCL not having let in any contra evidence and not having let in any evidence to establish the actual profits which it derived/did not derive, cannot now be heard to contend that it is not liable to pay mesne profits to the lessor Wakf.

12. All that have been stated above would show that values

that have been derived from Exs.P2 to Ex.P13 which have been used as determinants for preparing the above said Memo of Calculation of the lessor Wakf is based on approximation and probability.

13. Learned counsel for HPCL relied on the judgment reported in **2000 (2) CTC 555** (The Executive Director vs. Sarat Chandra Bisoi) regarding comparison of land value based on transactions of adjacent properties and drew my attention to paragraph 7. That judgment on facts arises under land acquisition proceedings and fixation of compensation. The Honourable Supreme Court has opined that for lands forming subject matter of acquisition are large pieces of land while the evidence adduced by the landowners consists of transactions relating to small pieces of lands or plots. It is also observed that the value of small pieces of land is always on the higher side and large pieces of land may not fetch the price at the same rate. This Court follows this principle and slashes the mesne profits claimed by the lessor Wakf by 50%.

14. Therefore, this Court decides to slash the same by 50%.

Therefore, the revised Memo of Calculation would read as follows:

Value of the Schedule Property	***Rs.3163 - 8582 sq.ft.***	***Rs.2,71,44,866/-***	
Damages can be fixed at 12% of the value per annum	Rs.2,71,44,866/- - 12%	Rs.32,57,383/- per year	
Damages per month	Rs.30,57,383/- 12 months	Rs.2,71,448/- per month	
Total amount of damages from 01.05.2003 till 31.01.2012 (10% months at the rate of Rs.2,71,448/- per month	Rs.2,71,448 X 105 months	**Rs.1,42,51,020**	
LESS amount of Rs.25,000/- per month paid by the defendant Rs.25,000 * 105 months)		(-)26,25,000/-	
Amount of future mense profits payable by the defendant		Rs.2,58,77,040/-	**Rs.1,16,26,020**
Damages claimed by the Plaintiff from 01.05.2000 till 30.04.2003 at the rate of Rs.40,000/-per month for 36 monthts	Rs.40,000/- X 36 months	**Rs.7,20,000/-**	
Less amount paid by the defendant at RS.25,000/- per month		Rs.9,00,000/-	
Balance damages		Rs.5,40,000/-	**Rs.1,80,000/-**
Total amount towards past and future mense profits			**Rs.1,18,06,020/-**

15. As stated supra, that limb of the prayer for recovery of possession has already been acceded to/decreed on by this Court on 22.09.2010 and possession has also been surrendered on 02.12.2012. With regard to the two limbs of prayers regarding past and future mesne profits, the same is calculated at Rs.1,18,06,020/- as set out in the revised Memo of Calculation surpa. With regard to that limb of the prayer for costs, the parties are left to bear their respective costs. With regard to the residuary prayer there is no room or necessity for answering the same.

16. Be that as it may, before parting with the case, it is deemed appropriate to refer to another submission made at the Bar. That submission at the Bar was that certain payments have been made pursuant to interim orders of this Court by HPCL, to the lessor Wakf. It was submitted that it was pursuant to interim order dated 23.02.2006 and that a total sum cast to Rs.32,25,00,000/-. It is seen that from the Memo of Calculation filed by lessor Wakf that a sum of rupees Twenty Lakhs Twenty Five Thousand and another sum of rupees nine lakhs

totalling Rs.35,25,000/- has been given credit to. Therefore, this submission also does not survive. Application No.1793 of 2011 allowed on above terms and Suit prayers for past and future mesne profits decreed on the above terms.

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Index : Yes
Internet : Yes

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M.SUNDAR, J.

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