IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 03.08.2016

Delivered on : 16.08.2016

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

WP.No.5857 of 2003

1 The General Manager
Union of India owning
Western Railway,
Church Gate,
Mumbai 400 020.

2 The Railway Board
Union of India, New Delhi. .. Petitioners

Versus

1 The Secretary
Railway Rates Tribunal,
Victoria Crescent Road,
Chennai 600106.

2 Sree Dig Vijay Cement Company
Private Limited currently known
as Gujarat Composite Limited
Ahmedabad 382 470. .. Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for a writ of certiorari calling for the records relating to the impugned judgment dated 18.12.2000 in complaint No.2 of 97 on the file of the 1st respondent herein and quash the same as illegal.

For Petitioners: Mr.V.G.Suresh Kumar
R1 : Tribunal
For R2 : No appearance

ORDER

The petitioners challenge the impugned judgment dated 18.12.2000 passed by the Railways Claim Tribunal - 1st respondent herein, in holding that the decision taken by the petitioners / respondents in Complaint No.2/1997 to increase the value of the land in question by 10% every year, is arbitrary and without any reasonable basis, had filed this writ petition.

2 The facts leading to the filing of this writ petition, briefly narrated are as follows:-

[A] The Ministry of Railways [Railway Board] had framed guidelines dated 17.09.1985 in No.83/W2/LM.18/87 for rationalisation of guidelines for commercial licensing of railway lands and also indicated that the revised guidelines will come into force with effect from 01.04.1986. It is relevant to extract the following:-

> "2.Rates for Licensing:-
>
> 2.1. The licence fee will be fixed as a percentage of the market value of the land being licensed as followed:-

Type of Plots	% of Market value for fixing annual licence fee
a.Ordinary commercial plots including City Booking offices and not Agencies, etc	10%
b.Plots licensed for steel yards, coal Dumps, Bulk Oil Installations, Private Sidings for actual covered area on ordinary commercial plots [item [a]] provided with covered installations/structures not exceeding by 8'x 8' hut for a chowkidar	15%
c.Retail oil Depots/Outlets etc.	20%

> 3.Periodicity of revision:-
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> a.In case of class 'A' & 'B' cities as notified by the Government [including Metropolitan Cities, State Capitals and large commercial towns etc.]

b.Other towns-After every 3 years. No intermediate revision of licence fees is contemplated.

4.Fixing Market Value of Land:-

4.1.The market value of land, has to be determined on a realistic and fair basis. The assessment data from the following sources may be obtained for this purpose and land value fixed keeping in view any one or more of the following assessments:-

a.Valuation of Revenue Authority
b.Valuation of Town Planning Deptt.
c.Actuals as per PWD & CPWD transactions.
d.Actual transactions, as per documents filed in the Sub-Registrar's office.
e.Value of land as assessed by professional evaluators of the States & Central Governments."

[B] The first petitioner, based on the above said revised guidelines, took a decision in Circular dated 14.10.1985 directing the Divisions attached to it, to take immediate action and had also directed the concerned Divisions to notify the parties without any further delay and also calling upon them to file the Compliance Report.

[C] The 1st respondent had taken note of certain difficulties reported during implementation of the Board's revised Guidelines and had revised the instructions in suppression of the Letters dated 17.09.1985 and 08.10.1987 and it is relevant to extract the following clauses:-

"3.Rates of License Fee:-

3.1 License fee of plots will continue to be fixed as a percentage of the land value, determined as per the procedure detailed in para-4 below the percentage now applicable to various types of plots will be as under:-

Type of Plots	Annual License fee as a percentage of land value
a]Commercial Plots-for City Booking Agencies, Out Agencies etc.	6%
b]Ordinary commercial plots without structures	6%

c]Ordinary commercial plots with temporary structures for stacking/storing — 7-1/2% for the whole area allocated including covered area.

d]Steel Yards/Coal Dumps Bulk oil installation etc. — 10%

e]Land used to lay private Sidings — 6%

f]Shops Retail Oil Depots etc. — 20%

4.Fixing of Land value:-

4.1 As the end use of the land licensed for the above purposes is generally directly related to traffic movement it does not bear any directed relation to the land value advised by the Revenue Authorities etc., which is for a different end use. A market value for working out rental fee payable. This shall be fixed on the basis of the land value of the surrounding area as on 01.01.1985 as determined from the Revenue Authorities and/or from the following:-

a] Evaluation of Town Planning Department
b] Actual as per PWD & CPWD transactions.
c] Actual Transactions, as per documents filed in the office of the Sub Registrar.
d] Value of land as associated by professional evaluators of the State and Central Governments.

4.2 The Value so fixed shall be increased notionally every year on the 1st of April, starting from 01.04.1986 at the rate of 10% over the previous year's value to arrive at the value for the following year based on which the license fee to be paid shall be fixed. Once the notional value has been so obtained it shall apply to all plots at that station."

[E] The 2nd respondent herein, challenging the legality of the revision of the rent based on the revised Guidelines dated 29.08.1995 as well as the revised Guidelines itself, had invoked the jurisdiction of the Railway Rates

Tribunal, Madras, by filing a complaint under section 36[c] of the Railways Act, 1989. In the complaint, it is averred among other things that the revised guidelines are patently and ex-facie unreasonable and unjust and has absolutely no basis or nexus to the real market value and the revised guidelines has not taken into consideration, the various decisions of the Court as to the arriving of the market value of the land and therefore, a claim of a sum of Rs.3,87,692/- at any rate, is excessive and prayed for declaration that the said amount shall not be collected from them and since it is based on the revised guidelines dated 29.08.1995, has challenged the legality of the same also. The 2nd respondent herein, as a consequence of the above said prayers, prayed for refund of the excess land rent collected from them or to adjust the amount collected by crediting it to the complainant's account.

[F] The petitioners who are arrayed as the respondents in the said complaint, filed their reply that the Railway Rates Tribunal vest with the jurisdiction to find out whether the particular rate is reasonable or not and would further state that the very same complainant filed Complaint No.4/1994, challenging the very same land rent and it was disposed of by taking into consideration the undertaking given by the complainant/1st respondent therein, that the entire arrears will be paid within a period of four months and also granted them liberty to challenge the 10% increase and also the revised guidelines and since the complainant/2nd respondent herein has agreed to pay the revised land rent, it cannot make a challenge in the form of present complaint. The petitioners herein/respondents, on the merits of the case, would contend that there is every basis and rationale for taking the land value as on 01.01.1985 as the base year and would further state that it is a matter of public notice that there were spiraling in accordance with the land values from the year 1985 and taking into consideration all the relevant aspects, a fair and reasonable decision has been taken to increase the rent at the rate of 10% and it cannot be found fault with. It is further stated that the arrears claimed from the petitioners, as being the difference in the land rent, is in consonance with the revised guidelines and prayed for dismissal of the complaint.

[G] The Railway Rates Tribunal, Chennai, after hearing the rival submissions, framed the following issues for consideration:-

- Is the complaint not maintainable for the reasons stated in answer statement?
- Whether the Tribunal has got jurisdiction in respect of prayer 13[a], [b] and [d] of the complaint?
- Are the land licence charges fixed in accordance with the revised guidelines /

proceedings No.82/W2/LM/18/87 dated 29.08.1995 unreasonable?

- If the land licence charges are unreasonable what are the reasonable charges?
- To what relief?

[H] As regards Issue No.1, as to the maintainability of the complaint, the Tribunal stated that in the light of the earlier order dated 14.10.1996, granting liberty to the 2nd respondent herein/complainant to the challenge the annual revision as well as the revised guidelines on the land value which came into being after 01.04.1986, the complaint is maintainable. The Tribunal, on the merits of the case found that CW1 who entered the witness box on behalf of the Railway Administration, has no idea about the land value in order to sustain the market value arrived at in respect of the land leased to the petitioners and regarding the land value, except Ex.C1, which is nothing but a letter given by the Chief Officer, Kali Nagar Palika, Taluka Dascroi District, Ahmedabad, no other material in the form of documentary and oral evidence was let in, in support of the contentions. The Tribunal has also gone into the legality of the guidelines and found that the said guidelines relating to determining the land value as mentioned in the Railway Board's Letter seem to be fair and reasonable and however, fixation of the base year, i.e., January 1985, should be increased by 10% on the 1st April of every succeeding year, without giving any reason or rationale and therefore, found that it is arbitrary. The Tribunal has also indicated that it is not their intention to express any opinion on the reasonableness or otherwise on the entire guidelines issued by the Railway Board vide communication dated 29.08.1995, as they are primarily concerned with determining the reasonableness or otherwise of the charges levied by the Railway Administration. The Tribunal also expressed disappointment as to the non-furnishing of the details/basis or rationale for such an uniform rate of increase every year at the rate of 10% and so also the witness examined on their behalf. The Tribunal, after arriving at such a finding, has found that there is no justification for imposing arbitrary increase in value of the land in question by a certain percentage every year and also expressed its view that the land value should be taken as Rs.130/- per sq.m. from 1985-1986 without annual increase of 10% in line with the value taken for every plot in the same survey number and was sustained by the Tribunal in Complaint No.1 of 1997. The Tribunal also had taken into consideration the legitimate revenue due to the Railways. It has formulated a formula and given a finding that the Railway Administration may revise the land value at Rs.130/- per sq.m., in respect of the land leased out to the 2nd respondent herein / complainant annually starting from the year 1993-1994 using the inflator or deflator equal to the annual percentage increase/decrease in the relevant price index which is used to measure the change in the value of Rupee at all India level, to arrive at the land value and the rent payable on the date of the complaint and it should obtain the information on the monthly/annually price index relevant for the purpose from the Government Organisation which complies the price index and accordingly, set aside the impugned decision of the Railway Administration and passed the following order:-

> "[a] The respondents shall revise the land value of Rs.130/- per sq.m. in respect of the land in question annually starting from the year 1993-94 [the year in which the respondents decided to revise the licence fee/rent] using an inflator/deflator equal to the annual percentage increase/decrease in the relevant price index which is used to measure the change in the value of Rupee at all India level to arrive at the land value and rent payable on the date of the complaint. For example, the percentage change in the value of Rupee in 1993-94 would be the percentage increase/decrease in the annual average of the relevant price index in 1993-94 over the annual average of 1992-93. Needless to say that the respondents will be free to approach this Tribunal for an increase in land value based on actual market value which is in excess of value now determined with sufficient materials to prove their case, any time in future.
>
> [b] Licence fee / rent for the plot of land in question from 01.04.1997, i.e., the date of complaint, shall be calculated and charged to the complainants every year on the basis of land value arrived at in the manner mentioned above.
>
> There will be no order as to costs."

3 Mr.V.G.Suresh Kumar, learned counsel appearing for the petitioners has drawn the attention of this Court to section 36 of the Railways Act, 1989 and would submit that the said provision speaks about the complaint against the Railway Administration and as per sub-clause [3], the complaint may be preferred against the Railway Administration in respect of levying any other charge, which is unreasonable and however, in the case on hand, the Tribunal had gone to the extent of setting aside the portion of the decision in the form of revised guidelines and hence, on the sole ground, the impugned judgment warrants interference. The learned counsel appearing for the petitioners, on the merits of the case, would contend that since

the revision of land rent was reasonable, taking into consideration of the relevant factors, the Railway Rates Tribunal ought not to have interfered with the same in exercise of its jurisdiction and prays for setting aside the impugned Judgment.

4 Though the 2nd respondent was served and their name appears in the Cause List, there is no representation on their behalf.

5 The primordial question that arises for consideration is whether the impugned judgment declaring the Railway Board's revised guidelines dated 29.08.1995, is arbitrary and also the revision of rate of Rs.3,87,692/- being the land rent, is unreasonable.

6 In the decision reported in AIR 1963 SCC 217 [Upper doab Sugar Mills Ltd., Shamili [U.P.] Vs. Shahdara [Delhi] Saharanpur Light Railway Co.Ltd, Calcutta], the rates charged relating to the institution of the complaint with a consequential direction for refund of excess amount collected, was put to challenge and the matter has reached the portals of the Hon'ble Supreme Court of India. The respondent / Railways put forth the contentions that the Tribunal had no jurisdiction to entertain the complaint as regards the reasonableness of rates prior to institution of complaint and the Tribunal had no jurisdiction to grant any refund. The Tribunal, in the said case, took a decision that it had arrived at the decision that it had no jurisdiction to entertain or try the complaint as regards the reasonable or otherwise of the rates and charges made prior to the institution of the complaint on May 6, 1860 and it had no jurisdiction to grant any refund. The Hon'ble Supreme Court of India has held that in making the complaint, the complainant can ask only for a declaration that the rate or charge is unreasonable and it is only that declaratory relief which the Tribunal has been authorised to give and there is no provision available enabling the Tribunal to give a consequential relief of refund.

7 In AIR 1973 SCC 1281 [Union of India Vs. M/s. Modi Industries Ltd.], revised siding charges were ordered to be paid with a retrospective date and it was put to challenge by invoking Common Law rule and filed a suit. The Hon'ble Supreme Court of India has taken into consideration the decision reported in AIR 1963 SCC 217 [cited supra] and two other decisions reported in AIR 1968 SCC 22 [Union of India V. Indian Sugar Mills Association, Calcutta] ; and AIR1964 SCC 1268 [Raichand Amulakh Shah V. Union of India], and held that the views of the High Court of Allahabad that the question of reasonableness of the charges, cannot be gone into.

8 This Court has considered the rival submissions and also the ratio laid down in the above cited decisions and is of the view that the Tribunal cannot go into the legality or otherwise of the guidelines. However, it can decide the reasonableness and justifiability of the revised rates.

9 The Tribunal in the impugned judgment, in paragraph 13 has observed that "the guidelines relating to determining the land value as mentioned in the Railway Board's letter seem to be fair and reasonable, even though there could be some difference in the value of non-railway land in the 'surrounding areas' and Railway land adjacent to Railway lines and sidings. However, the guideline that the value fixed for the base year [i.e., January 1985 in this case] should be increased by 10% on the 1st April every succeeding year, without giving any reason or rationale for such a direction is, in our view, is arbitrary." The Tribunal was also conscience of the fact that it is primarily concerned with the determination of reasonableness or otherwise of the charges levied by the Railway Administration on the complainant, towards rent or license fixed for the railway plot or land in their occupation. The Tribunal had gone through the oral evidence of CW1 and found that he was not posted with/aware of the facts of the case and the only exhibit filed was Ex.C.1, which is nothing but a letter given by the Chief Officer, Kali Nagar Palika, Taluka Dascroi District, Ahmedabad, stating that the cost of the land with construction per square yard round about December, 1995 was fixed at the rate of Rs.1000/- for property tax, Rs.2000/- per sq.yard for commercial land and for open land, Rs.200/- per sq. yard. The Tribunal further found that there are guidelines available for fixing market value of the land under section 23 of the Land Acquisition Act and also taken into consideration the decisions rendered by the Hon'ble Apex Court in

[1] 1993 [3] SCC 240 [Inder Singh & Others Vs. Union of India and others]

[2] 1994 [5] SCC 138 [K.A.A.Raja & Others Vs. State of Kerala and Another]

[3] 1996 [9] SCC 18 [State of M.P. Vs. Mohan Lal and others] ;

[4] 1994 [6] SCC 64 [Mehtab Singh & Others vs. State of Haryana].

and found that the Railway Administration have not filed any documentary evidence to sustain the principles laid down in the above cited decisions as to the fixation of the market value and therefore, left with no other option to decide/fix the market value of the land based on the materials made available to them. The Tribunal further found that RW1 who was examined on behalf of the Railway Administration has got no idea about the nature of the land for which refund of rent was made and also taken into consideration his admission that he has not inspected the place. The Tribunal further found on the basis of the materials that the yearly increase at the rate of 10% of the land value from 1985 appears to be arbitrary and though opportunity was given to the Railway Administration to sustain the same, they failed to furnish any basis or rationale for such an uniform increase of rate at the rate every year and further that no reasons have been adduced or given as to the basis for 10% annual increase. The Tribunal on facts found that the land leased in favour of the 2nd respondent, is used for dumping waste and has no commercial value and taking into consideration the interest of the Railway Administration also has formulated the formula and set aside the decision of the Railway Administration to increase the value of the land in question by 10% every year.

10 It is pertinent to point out at this juncture that the Railway Rates Tribunal did not give any finding as to the legality of the revised guidelines ; but on appreciation of facts, has thought it fit to give a finding as stated above. The Tribunal did not also granted any refund or adjustment as prayed for by the 2nd respondent / complainant.

11 It is to be remembered at this juncture that the findings given by the Tribunal on a thorough consideration of the materials placed before it, normally will not be interfered unless it has shown that the findings are perverse or based on 'no evidence'. Since the Tribunal has exhaustively dealt with the factual aspects as well as the legal position as to the fixation of the market value of the land and had given elaborate reasons, this Court, in exercise of its jurisdiction under Article 226 of the Constitution of India, cannot interfere with the same.

12 In the result, the writ petition is dismissed and the impugned judgment dated 18.12.2000 in complaint No.2 of 97 on the file of the 1st respondent herein, is sustained. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

AP
To
1 The Secretary
Railway Rates Tribunal,
Victoria Crescent Road,
Chennai 600106.

2 Sree Dig Vijay Cement Company
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