IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.03.2016

CORAM:

THE HON'BLE MR. JUSTICE SATISH K. AGNIHOTRI
and
THE HON'BLE MR. JUSTICE M. VENUGOPAL

W.A. No.136 of 2016 and C.M.P. No.1824 of 2016

1 State of Tamil Nadu
represented by its
Secretary to Government
Revenue Department
Fort St. George
Chennai

2 The Special Commissioner and
Commissioner of Land Administration
Ezhilagam
Chepauk, Chennai - 5

3 The District Collector
Nagapattinam

4 The District Revenue Officer
Nagapattinam

5 The Tahsildar
Special Deputy Tahsildar
Vedaranyam
Nagapattinam District Appellants/Respondents

vs.

The General Manager
Bharat Sanchar Nigam Limited
Thanjavur Telecom District
BSNL Complex, Ram Nagar
Balaji Nagar, Medical College Road
Thanjavur 613 007 Respondent/Petitioner

Writ Appeal preferred under Clause 15 of the Letters Patent challenging the order dated 28.10.2013 passed in W.P. No.8135 of 2007. Petition filed under Article 226 of the constitution of India to issue a writ of certiorari, calling for the records of the respondents 2 to 5 in Lr.No.VI/20773/2003 dated 11.01.2007 and to quash the same as illegal.

For appellants Mrs. A. Srijayanthi
Special Government Pleader

For respondent Mr. M. Govindaraj

JUDGMENT

(delivered by SATISH K. AGNIHOTRI, J.)

The instant appeal is directed against the order dated 28th October, 2013 passed in W.P.No.8135 of 2007, wherein and whereunder, the writ petition preferred by the respondent herein was allowed, quashing the demand of compound interest at Rs.7,61,467/-.

2 The facts in nutshell are that a piece of land to an extent of 0.20.0 hectares in S.No.180/2B, Vedaranyam Town and Taluk, Nagapattinam District was allotted and taken over by the Telecommunications department on 2nd March, 1993. Thereafter, transfer of the said piece of land was notified under G.O.Ms.No.44, Revenue Department, dated 20th January, 1997 for the purpose of construction of telephone exchange, on payment of present market value in addition to sub-division fees, stone value, etc. In the meantime, the Bharat Sanchar Nigam Limited (hereinafter referred to as "BSNL") was incorporated as a company pursuant to the Telecom Policy 1999 with effect from 1st October, 2000.

3 On 16th October, 2003, the respondent BSNL has received a communication from the District Revenue Officer, Nagapattinam, whereunder the respondent herein was called upon to pay the land cost to the tune of Rs.3,23,190/- and in addition, interest at the rate of 12% p.a. from 2nd March, 1993 to 31st October, 2003, in total a sum of Rs.10,84,657/-. The respondent herein received one more communication dated 13th February, 2004, whereunder the respondent was called upon to pay compound interest at the rate of 12% per annum till January, 2004, in total Rs.11,15,417/-. The respondent deposited the market value of the land as determined by the State to the tune of Rs.3,23,190/- on 3rd May, 2004. Thereafter, one more representation was sent in August, 2004, seeking to waive the compound interest on the ground that the respondent has raised the demand for a sum of Rs.1,51,122/- towards land cost only in November, 2002. Thus, charging the compound interest from the date of transfer of the land is unauthorised and illegal. The request of the petitioner was rejected vide impugned communication dated 11th January, 2007 on the ground that since the actual possession and enjoyment of the land was handed over in February, 1993 and as such, the respondent was liable to pay the interest as calculated by the appellants herein. Thus, the writ petition was filed by the respondent.

4 The learned Single Judge came to the conclusion holding as under :

> "8.At this stage, it is pertinent to note that initially the 5th respondent by a letter dated 18.10.2002 requested the Department to pay a sum of Rs.1,51,122/- to be paid towards the cost of the land and 12% compound interest for the period from 1.4.1999 to 1.4.2002. Thereafter, the 4th respondent by his proceedings dated 16.10.2003 demanded a sum of Rs.3,23,190/- being the land value etc. along with Rs.7,61,467/- towards interest.
>
> 9.Now the point that arises for consideration is as to whether the market value of the land-in-question has to be taken on the date of entry during the year 1993 or prevailing in the year 2004.
>
> 10.It is apparent on the face of the records that after long correspondence, the respondents 1 to 4 have permitted the petitioner to take possession of the land and the entry permission has been granted by letter dated 11.1.2007 of the 2nd respondent in which para 2 first three lines reads as follows :
>
> > "2.The prior entry permission was accorded by the District Revenue Officer, Nagapattinam over 0.20.0 hectares to Telecommunication Department on 26.02.93......"
>
> Therefore, the market value of the land in the year 1993 has to be taken and on calculation, a sum of Rs.1,51,122/- has been arrived at. But the 4th respondent has demanded a sum of Rs.3,23,190/- towards land cost and compound interest at the rate of 24% which comes at Rs.7,61,467/-, by his proceedings dated 16.10.2003."

5 We have examined the case from all angles, considered the submissions advanced by the learned counsel for the parties.

6 Incontrovertibly, the possession of the land in question was transferred to the then Telecommunication department of the Government of India for the purpose of construction of telephone exchange. It is also not in dispute that the then Telecommunication department was liable to pay the market value with certain charges. However, the same was

determinable by the revenue authorities. The Revenue authorities for the first time determined the market value to be Rs.1,51,122/- as is evident from the observation made by the learned Single Jude in paragraph 8 of the impugned order. The appellants have not produced the said letter dated 18th October, 2002, whereunder the market value of the land was determined at Rs.1,51,122/-. However it was revised to Rs.3,23,190/- by the subsequent communication dated 16th October, 2003. The appellants have not disclosed any basis for imposition of interest at the rate of 12% per annum exorbitantly from the date of the transfer of the land to the department. No interest is payable unless the value is determined and a demand was made for payment of the same. Interest is always payable when there is default in making payment of a certain amount.

7 In the case on hand, the market value was never ascertained prior to the communication dated 18th October, 2002 and as such, the demand of interest from the date of transfer of land is unsustainable in the eyes of law. It is well settled principle of law that the interest is payable only when the amount is not paid on the day when it became payable to the other party. In the case on hand, the amount of the market value to the tune of Rs.1,51,122/- became payable only on receipt of the communication dated 18th October, 2002 of the Special Deputy Tahsildar / 5th appellant herein. However, the same was revised to Rs.3,23,190/-, as aforestated, and the demand was raised on 16th October, 2003, which was deposited on 3rd May, 2004. In such view of the matter, the respondent is entitled to reasonable interest from 16th October, 2003 on a sum of Rs.3,23,190/- till the actual payment is made. Thus, 6% interest is reasonable. Accordingly, the respondent herein is directed to pay interest at the rate of 6% per annum on the amount of Rs.3,23,190/- from 16th October, 2003 till the actual payment is made, within a period of four weeks.

8 Accordingly, the writ appeal stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

vvk

To

The General Manager
Bharat Sanchar Nigam Limited
Thanjavur Telecom District
BSNL Complex, Ram Nagar
Balaji Nagar, Medical College Road
Thanjavur 613 007

+1cc to Mr.Govindaraj, Advocate, S.R.No.19231
+1cc to the Government Pleader, S.R.No.19608

KK(CO)
EU(13/04/2016)

W.A. No.136 of 2016