IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 20.01.2017

Pronounced on : 22-03-2017

CORAM :

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Writ Petition No. 1527 of 2017

and

W.M.P. No. 1433 of 2017

M/s. Hindustan Petroleum Corporation Limited
represented by its Chief Regional Manager
Coimbatore Regional Office
HP House, No.18/3, Big Bazaar Street
Coimbatore - 641 001 .. Petitioner

Versus

1. The Tahsildar
   Udhagamandalam
   The Nilgiris District

2. The District Collector
   Udhagamandalam
   The Nilgiris District .. Respondents

Petition filed under Article 226 of The Constitution of India praying for a Writ of Certiorarified Mandamus to call for the records on the file of the first respondent and to quash the impugned order No.Na.Ka.A4/2114/2004 dated 16.11.2016 and consequently direct the respondents to fix reasonable rentals hereafter as per law after giving the petitioner a reasonable opportunity of hearing.

For Petitioner : Mr. Vijayan
for M/s. King and Patridge

For Respondents : Mr. A. Kumar
Special Government Pleader

ORDER

The petitioner, a Central Public Sector Undertaking within the administrative control of Ministry of Petroleum & Natural Gas and a Government Company as defined under the Indian Companies Act, has come forward with this writ petition questioning the correctness and/or validity of the order dated 16.11.2016 passed by the first respondent, wherein and by which, the first respondent has fixed the tentative lease rent for the premises in occupation of the petitioner at Rs.33,16,318/- for the fasli year 1426.

2. The petitioner corporation has taken on lease the land measuring 7684 square feet in Old Survey No.1694/2, New Survey No.D/4/36 at Charring Cross, Coonoor Road, Udhagamandalam from the respondents during the year 1968. The lease was renewed periodically from time to time with enhanced lease rent. The lease in favour of the petitioner was earlier renewed from 15.05.1981 to 14.05.2000 for nineteen years and the lease amount was periodically paid by the corporation to the respondents. Even while requesting the respondents to reduce the quantum of lease rent, the petitioner has paid the lease rent without any arrears upto 14.05.2005. While so, the first respondent sent a demand notice claiming Rs.12,92,959/- as lease rental arrear for the period from 2000-2007. In other words, such enhanced lease rent was claimed with retrospective effect from 2000. Even though the petitioner sought to reduce the quantum of lease rent, they have paid the amount under protest on 10.01.2007. Subsequently, for the period from 2008-2009, the respondents made a demand of Rs.2,74,222/- and it was also paid by the petitioner on 11.09.2008. Thereafter, on 04.06.2010, the petitioner has paid the rent for the period from 2009-2010. For the subsequent period, on 25.08.2011, a sum of Rs.2,85,525/- was paid towards rent for the period from 2010-2011. Further, for the period from 2011-2012, the demand made by the respondents for payment of lease rent at Rs.2,85,525/- was also paid by the petitioner by way of a cheque on 10.02.2012. Thus, according to the petitioner, they have been paying the lease rent periodically without any default. While so, the first respondent has issued the impugned communication determining the lease rent at Rs.33,16,318/- for the fasli year 1426. According to the petitioner, such lease rent was determined by the first respondent with retrospective effect from 15.05.2007 and therefore it was unjust, arbitrary and unreasonable.

3. The learned counsel for the petitioner would vehemently contend that the petitioner is a Public Sector Undertaking engaged in refining and marketing of petroleum products. According to the learned counsel for the petitioner, the petitioner corporation is engaged in catering to the needs of the public at large. However, the respondents, without taking

into account the periodical demands made by the petitioner for reducing the quantum of lease rent, has passed the impugned order without any basis. The learned counsel for the petitioner would further contend that the present demand made by the respondent is 21 times more than the lease rental fixed in the year 2000 and 7.7 times higher than the amount presently paid by the petitioner. By enhancing the lease rentals, a situation had been created whereby the petitioner finds it not viable to carry on the petroleum business in the locality.

4. The learned counsel for the petitioner would further contend that on 16.11.2016, the officials of the respondents have inspected the premises in question and illegally locked the power supply room and instructed the dealer appointed by the petitioner not to operate the retail outlet. Thereafter, according to the learned counsel for the petitioner, the impugned demand notice was issued on 16.11.2016 demanding a sum of Rs.33,16,318/- as lease rent for the fasli year 1426. Therefore, even before making the demand for enhanced lease, the respondents are not justified in locking the power supply room which had resulted in the business coming to a grinding halt. The learned counsel for the petitioner would vehemently contend that it is not as though the petitioner is a chronic defaulter in payment of rent and the enhanced rentals demanded by the respondents has been paid periodically. While so, according to the learned counsel for the petitioner, the respondents are not justified in either demanding the enhanced lease rent or locking the power supply room without any notice. Thus, according to the learned counsel for the petitioner, the impugned order passed by the first respondent is in violation of the principles of natural justice and on that ground it has to be set aside and consequently, he prayed for allowing the writ petition.

5. On the contrary, the learned Special Government Pleader appearing for the respondents, though not filed a counter, would contend that the present demand has been made on the basis of the prevailing guideline value for the land which is in occupation of the dealer appointed by the petitioner corporation. The petitioner cannot be expected to pay the lease rentals which was fixed in the year 2007 without any enhancement. The enhanced lease rent is warranted in view of the steep rise in the land value in the locality. The petitioner is doing commercial business in the land in question and therefore, the learned Special Government Pleader would only justify the demand made by the first respondent in the order dated 16.11.2016. It is further stated that it is not as though the first respondent has passed the order dated 16.11.2016 without affording any opportunity. In fact, before passing the order dated 16.11.2016, a notice dated 12.07.2016 was sent calling upon the petitioner to pay the enhanced lease rent. In

the said notice dated 12.07.2016, the first respondent has clearly indicated the guideline value of the land in question and the manner in which the enhanced lease rent was arrived at. Therefore, the learned Special Government Pleader only prayed for dismissal of the writ petition.

6. The learned Special Government Pleader appearing for the respondents, by placing reliance on the order passed by this Court on 21.09.2016 in WP No. 29312 of 2014 (M. Ashrafunnisa and others vs. Bharat Petroleum Corporation Limited and others) would only contend that the land is situate in the heart of the touristic important locality of Udhagamandalam. The extent of land leased out to the petitioner is 7684 square feet (0.07.13 hectares). Even during the year 2005, the value of one square feet of land in Udhagamandalam area was Rs.293/- and based on the same, the rental income was fixed during the year 2005. Similarly, taking note of the enhanced value of the land which is in occupation of the petitioner, the present enhanced rent was fixed by the first respondent and it calls for no interference by this Court.

7. I heard the learned counsel for the petitioner and the learned Special Government Pleader appearing for the respondents. Even though the lease rent was fixed by the respondents subject to certain condition, it will be enhanced at a later point of time taking into consideration the prevailing guideline value. Such was the modus operandi adopted by the respondents and based on the same, the petitioner had been paying the lease rent at the demand rate not in time but belatedly. The petitioner also did not object to the enhanced rent at any point of time earlier. Further, the present rent has been enhanced, after issuing a notice dated 12.07.2016 to the petitioner for which the petitioner did not issue any reply. Therefore, it is evident there was no objection on the part of the petitioner for the enhanced rent presently fixed by the respondent. Further, upto 2007, the lease rent was fixed and it was paid by the petitioner without any demur. Thereafter, enhancement was not made for many years. When ultimately, the respondents enhanced the lease rent based on the prevailing guideline value and also taking into account the locational advantage the property in occupation of the petitioner attracts - a locality of touristic importance, the petitioner has come forward with this writ petition. Even otherwise, before the enhanced rate, the petitioner has been paying a sum of Rs.2,85,529/- for the year 2011-2012 and thereafter also, they did not come forward to challenge the enhancement. When the present enhancement is made, as stated above, the petitioner has come forward with the present writ petition. Therefore, there is lethargy on the part of the petitioner and it is also taken note of by this Court. At any rate, the enhancement was made at

various stages and such enhnacement was made on the basis of the prevailing guideline value.

8. It is an admitted fact that the petitioner corporation is operating a petroleum retail outlet in the land in question through it's dealer from the year 1968. The land which is in occupation of the petitioner is 7684 square feet and it is located in the heart of Udhagamandalam Town. The lease rent was periodically enhanced by the respondents by taking note of the increase in the value of the land in the locality. As rightly pointed out by the learned Special Government Pleader for the respondents, even before issuing the order dated 16.11.2016, which is impugned in this writ petition, a notice was issued to the petitioner on 12.07.2016 in adherence to principles of natural justice and it is also enclosed in page No.21 of the typed set of papers filed by the petitioner along with the writ petition. It is seen from the records that for the notice dated 12.07.2016, the petitioner has not sent any reply or objection. it is also seen from the order dated 16.11.2016 of the first respondent that the enhanced lease rent for the fasli year 1426 is only Rs.7,83,305/- and it is calculated from the year 15.05.2007. Consequently, the enhanced lease rent was arrived at Rs.33,16,318/- from 15.05.2007. It is also clearly stated in the order dated 16.11.2016 that the amount demanded is only tentative and the revised lease rent will be intimated to the petitioner later. Thus, it is evident that the enhancement has become necessary in view of the increase in the guideline value of the land and various other factors. It is needless to mention that the demand made by the first respondent is an annual lease rent and if it is calculated per month, the lease rent will works out to Rs.2.75 lacs per year, which, in the considered opinion of this Court, is fair and reasonable taking note of the locational advantage the land in question attracts and the commercial operations carried on by the petitioner through their dealer. It is also seen from the affidavit filed in support of the writ petition that the petitioner paid a sum of Rs.2,85,525/- being the lease rent for the year 2011-2012 on 10.02.2012 and the same amount was paid thereafter till the receipt of the order dated 16.11.2016 enhancing the lease rent with retrospective effect from 15.05.2007. Therefore, the petitioner cannot have any grievance at all against the demand for payment of enhanced lease rent. The petitioner, having paid the enhanced rent even in the year 2012 with retrospective effect from 2007, is estopped from questioning the present enhancement made by the respondents. Further, the petitioner has accepted the lease rent at the rate of Rs.2,85,525/- per year and paid it even as early as in the year 2012, wheres, the enhanced amount now claimed only works to Rs.2,75,000/- per year. Further, as rightly pointed out by the learned Special Government Pleader, the petitioner is utilising the premises in

question for commercial purpose by operating a petroleum bunk through a dealer. In such circumstances, I find no reason to interfere with the order, which is impugned in this writ petition and consequently, the writ petition only deserves to be dismissed..

9. Accordingly, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Tahsildar
Udhagamandalam
The Nilgiris District

2. The District Collector
Udhagamandalam
The Nilgiris District

svi(CO)
md(10/04/2017)

WP No. 1527 of 2017