



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 20-09-2018

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.Nos.6682 & 6683 of 2016
and
W.M.P.Nos.5917 to 5919 of 2016

M/s.Bharat Petroleum Corporation Ltd.,
No.1, Ranganathan Gardens,
11th Main Road, Anna Nagar,
Chennai - 640 040
Rep.by its Territory Manager(Retail)
Mr.Debashis Naik
in both W.Ps

... Petitioner

..Vs..

1.The Estate Officer,
Additional Divisional Railway Manager
Southern Railway
Madras Division,
Chennai - 600 003.

2.Office of the Divisional Railway Manager,
Sr.DEN/Co-ordn/MAS
Southern Railway
Madras Division
Chennai - 600 003.

3.Office of the Sr.Divisional Finance Manager,
Southern Railway,
Madras Division,
Chennai - 600 003.

... Respondents in both W.Ps

PRAYER in W.P.No.6682 of 2016: Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the proceedings initiated under the Public Premises(Eviction of Unauthorized Occupants) Act, 1971, by the 1st Respondent vide Notice dt.25.11.2015 bearing reference M/W/234/Eviction/East/BPCL and quash the said proceedings as illegal and forbear the Respondents, its men, agents and representatives from levying or enforcing way leave charges in respect of the lands licensed to the Petitioner admeasuring around 20,688 sq.mts forming the pipeline corridor situated between the Petitioner's Installation Facility at Tondiarpet and



the Refinery of Chennai Petroleum Corporation Limited at Mannali near Thiruvottiyur Railway Station at Chennai.

PRAYER in W.P.No.6683 of 2016: Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the Respondents relating to the demand towards way leave charges raised on the Petitioner vide letter dt.08.12.2014 issued by the 2nd Respondent and confirmed vide letters dt.11.12.2014, 02.06.2015, 27.07.2015, 30.12.2015 issued by the 2nd Respondent and 01.02.2016 issued by the 3rd Respondent and quash the same as illegal and direct the Respondents to adjust the amount of Rs.10,39,58,729/- paid by the Petitioner under cover of its letter dt.27.01.2016 against the license fees payable in the future by the Petitioner in respect of the lands licensed to the Petitioner admeasuring around 20,688 sq.mts. forming the pipeline corridor situated between the Petitioner's Installation Facility at Tondiarpet and the Refinery of Chennai Petroleum Corporation Limited at Mannali near Thiruvottiyur Railway Station at Chennai.

Mr.Krishna Srinivasan

For Petitioner : M/s.S.Ramasubramaniam Associates
(in both W.Ps)

For Respondents : Mr.P.T.Ramkumar
for Railways
(in both W.Ps)

C O M M O N O R D E R

W.P.No.6682 of 2013: The order impugned passed by the 1st Respondent / Estate Officer under the provisions of the Public Premises(Eviction of Unauthorized Occupants Act, 1971) is under challenge in this writ petition. Further, a direction is sought for to forbear the Respondents, its men, agents and representatives from levying or enforcing way leave charges in respect of the lands licensed to the Petitioner admeasuring around 20,688 sq.mts forming the pipeline corridor situated between the Petitioner's Installation Facility at Tondiarpet and the Refinery of Chennai Petroleum Corporation Limited at Mannali near Thiruvottiyur Railway Station at Chennai.

1.1W.P.No.6683 of 2013: The relief sought for in this writ petition is to call for the records of the Respondents relating to the demand towards way leave charges raised on the Petitioner vide letter dt.08.12.2014 issued by the 2nd Respondent and confirmed vide letters dt.11.12.2014, 02.06.2015, 27.07.2015, 30.12.2015 issued by the 2nd Respondent and 01.02.2016 issued by the 3rd Respondent and quash the same as illegal and to direct



the Respondents to adjust the amount of Rs.10,39,58,729/- paid by the Petitioner under cover of its letter dt.27.01.2016 against the license fees payable in the future by the Petitioner in respect of the lands licensed to the Petitioner admeasuring around 20,688 sq.mts. forming the pipeline corridor situated between the Petitioner's Installation Facility at Tondiarpet and the Refinery of Chennai Petroleum Corporation Limited at Mannali near Thiruvottiyur Railway Station at Chennai.

2.The learned counsel for the writ petitioner made a sincere attempt to convince this Court by stating that the orders impugned are untenable in the eye of law. The respondents have acted contrary to the terms and conditions of the Licence agreement dated 21.03.2000 and submitted their own letter dated 17.08.1999.

3.It is contended that the respondents 2 and 3 have no jurisdiction to demand the amount of way leave charges, which is in violation of the terms and conditions of the Licence agreement.

4.The learned counsel for the petitioner though raised so many factual discrepancies in this regard, this Court is of an opinion that in the event of adjudicating those merits and the demerits, the same will affect the prospects of the writ petitioner to adjudicate the issues before the Estate Officer, who is a quasi judicial authority and a competent authority under the provisions of the Public Premises(Eviction of Unauthorized Occupants Act, 1971). In order to avoid all such conflicts in respect of the merits and the demerits raised by the respective parties, this Court has decided to go into the scope of the writ petitions.

5.The learned counsel for the writ petitioner further contended that the officer, who issued the way leave charges is superior than the 1st respondent, who is the Estate officer. Therefore, the petitioner may not get proper justice before the 1st respondent even in the case of adjudicating the issues before the Estate Officer.

6.The learned counsel for the respondent disputed the contentions raised on behalf of the writ petitioner by stating that the writ petitions are not maintainable in view of the fact that the order impugned is a show cause notice and issued under Section 4 of the Public Premises(Eviction of Unauthorized Occupants Act, 1971). Thus, the writ petitioner has to adjudicate the matter before the Estate Officer. Even after passing of an order by the Estate Officer, appeal remedies are provided under Section 9 of the said Act itself.

7.Relying on the said provisions, the learned counsel for the respondents cited the judgment of this Court in the case of



M.Sankara Subramanian Vs. The Director General of Police, reported in 2016 Writ L.R. 631 and the relevant paragraphs 23 and 24 are extracted hereunder:

"23.Hence, prima facie, show cause notice, dated 11.12.2015, issued under Section 4 of the Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act, 1975 (Tamil Nadu Act I of 1976) in our view, does not call for any interference. There is no manifest error, in issuing a show cause notice. The impugned order of the Writ Court is sustained.

24.In the light of the above discussion and decisions, the only course open to the party-in-person is, to submit his reply to the show cause notice. Hence, while dismissing the appeal, we permit the party-in-person, to submit his reply, to the show cause notice, within the time provided therefor. No costs. Consequently, C.M.P(MD)No.2050 of 2016 is closed."

8.No writ proceedings can be entertained against the show cause notice in a routine manner. Judicial Review against the show cause notice is certainly limited and intermittent interventions in quasi judicial proceedings are to be avoided. Only on exceptional circumstances, such an exercise can be done by the High Court by exercising the powers of judicial review. Routine intervention in such quasi judicial functions will create unnecessary complications in deciding the matters. Once, the proceedings are initiated by a quasi judicial authority by invoking the powers conferred under the statute, the said authority must be allowed to continue the same and conclude the proceedings by following the procedures as contemplated under law. Only in the event of gross injustice or total violation of the procedures, the High Court can interfere with such proceedings. In the present writ petitions, the petitioner is challenging the show cause notice and the letter issued by the 1st and 2nd respondents under Section 4 of the Public Premises (Eviction of Unauthorized Occupants Act, 1971). Thus, no writ can be entertained against such show cause notice in the absence of establishing that the show cause notice was issued by an authority having no jurisdiction or competency or if an allegation of mala fides are raised or if the same is in violation of the statutory rules in force. Even in case of raising allegation of mala fides, the authority against whom such an allegation is to be raised as a party respondent in his personal capacity in the writ proceedings. In the absence of any one of the legal grounds, no writ proceedings can be entertained against the show cause notice.

9.The writ petitioner has to submit his explanation / objections in respect of the show cause notice issued by the competent authority under the provisions of the Public Premises



(Eviction of Unauthorized Occupants Act, 1971). Contrarily, the proceedings cannot be stalled by filing a writ petition for an unspecified period.

10. The disputes now raised in the present writ petitions relating to certain contractual obligations. The learned counsel for the petitioner cites the terms and conditions of the Licence agreement and other documents, wherein the respondents have agreed certain formalities. However, those aspects are to be adjudicated by producing the original documents and by adducing evidences before the Estate Officer himself.

11. The Estate Officer is empowered to call for the records and adjudicate the same in the manner known to law. The Estate Officer has to provide an opportunity to all the parties concerned for the purpose of defending their case. Thus, the Estate Officer, while exercising the powers of a quasi judicial authority is bound to consider all the legal grounds including the point of jurisdiction, locus standi and other judgments of the higher Courts. Thus, it is left open to the writ petitioner to submit their explanation / objections in respect of the impugned show cause notice and file documents and adduce evidences before the Estate Officer, enabling him to adjudicate the matter by following the procedures as contemplated under the provisions of the Public Premises (Eviction of Unauthorized Occupants Act, 1971).

12. In this view of the matter, this Court is of an opinion that the writ petitions now filed against the show cause notice and the letters, need not be entertained at this point of time and the writ petitioner has got an adequate opportunity to redress their own grievances before the Estate Officer under the provisions of the Public Premises (Eviction of Unauthorized Occupants Act, 1971). The writ petitioner is permitted to raise all the legal grounds now raised before this Court in the writ petitions.

13. This being the factum of the case, this Court cannot entertain the writ petitions and the same is to be construed as premature. Thus, the writ petitions are devoid of merits and stand dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-VIII)

//True copy//

Sub Assistant Registrar

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To

1. The Estate Officer,
Additional Divisional Railway Manager
Southern Railway
Madras Division,
Chennai - 600 003.

2. Office of the Divisional Railway Manager,
Sr.DEN/Co-ordn/MAS
Southern Railway
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Chennai - 600 003.

3. Office of the Sr.Divisional Finance Manager,
Southern Railway,
Madras Division,
Chennai - 600 003.

+1cc to M/s.S.Ramasubramanian & Associates, Advocate SR.No.65649

+1cc to Mr.P.T.Ramkumar, Advocate SR.No.65691

W.P.Nos.6682 & 6683 of 2016

GMV (17/10/2018)