

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.06.2019

PRONOUNCED ON : 28.06.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Writ Petition No.9179 of 2019 and
W.M.P.Nos.16876, 9726 and 9727 of 2019

M/s.Indian Oil Corporation Limited,
Rep. By its Chief Manager,
Coimbatore Divisional Office,
Indian Oil Bhavan,
8/1079, Avinashi Road,
Coimbatore - 641 018.

.... Petitioner

Vs

1.The Commissioner,
Udumalpet Municipality,
Udumalpet,
Tirupur District.

2.M/s.Sriram Agencies,
120, Palani Road
Udumalpet Town,
Tirupur District.

.... Respondents

Prayer :- This Writ Petition is filed under Article 226 of the Constitution of India for a writ of Certiorarified Mandamus calling for the records pertaining to the order of the first respondent in Roc.No.874/2015/A1 dated 11.02.2019 and quash the same and consequently direct the respondent to permit the petitioner to run the retail outlet with fresh lease and on mutually agreeable terms as has been done for the past more than 50 years.

For petitioner : Mr.C.Mani Shankar, Senior Counsel
for M/s.V.Ananthanatarajan

For 1st Respondent : Mr.S.R.Rajagopal,
Additional Advocate General,
Assisted by Mr.A.S.Thambuswamy

For 2nd Respondent : Mr.B.Kumarasamy

ORDER

The Indian Oil Corporation which is the petitioner herein entered into lease agreement with the first respondent Municipality, in respect of vacant land measuring an extent of 9080 sq.ft for operating the petrol/diesel retail outlet. The lease period was for 9 years commencing from 01/04/2010. Under the terms of lease agreement, the period of lease is renewable for further period, on mutual consent.

2.The petitioner Corporation in its letter dated 05/10/2018 requested the first respondent to renew the lease for a further period of 9 years. The first respondent has declined to renew the lease on the ground that, it require for public use and called upon the petitioner to vacate the land on or before 31/03/2019 and deliver vacant possession. The said letter dated 11/02/2019 is impugned in this writ petition.

3.In the affidavit, the petitioner has averred that, as per the lease agreement, the term of lease was for 9 years. The monthly rent for the first three years was fixed as Rs.40,250/- . For the second three years period, it was fixed at the rate of Rs.46,288/- pm and Rs.53,231/- for the third three years period. While so, the first respondent tried to evict the petitioner prematurely and let the premises for lease under public auction based on the Municipality resolution No.1789 dated 01/04/2015. This was objected by the petitioner. Without considering their objections, the first respondent passed final order dated 15/07/2016 directing the petitioner to vacate and deliver the vacant land. Aggrieved by this order, the petitioner invoked the arbitration clause in the lease agreement and the matter was referred to the arbitration. In the arbitration proceedings, the Arbitrator has passed the following order:-

“(a) Consequently the claimant corporation is entitled to an AWARD declaring that the order of respondent dated 15.07.2016 cancelling the existing lease deed dated 05.08.2010 granted for 9 years from 01.04.2010 and ending on 31.03.2019 is null and void, unenforceable and non-est in eye of law;

(b) that the claimant is entitled to an award of a permanent injunction restraining the respondent, their men, agents, servants and others from in any manner interfering with the possession and enjoyment of the Retail Outself of Corporation situated in S.No.143, T.S.No.10, Ward No.F, Block No.1,

Municipal Ward No.9 of Udumalpet Municipal area of an extent of 9080 sq.ft in 2770 sq.mt.in Kanakkampalayam in the registration of sub district of Thiruppur terms of the rights under the lease deed dated 05.08.2010 (Ex C2)."

4.It is contented by the learned counsel for the petitioner that, on the eve of expiry of lease period, the petitioner has expressed its desire to renew the lease for further period of 9 years, as per the lease terms. The first respondent has declined the request arbitrarily, in violation of natural justice principle. The petitioner through its Dealer, the second respondent herein, catering the need of the general public by supplying the essential commodity, by investing huge money. Closure of the petrol bunk abruptly will cause huge monetary loss to the petitioner apart from inconveniences to the regular customers.

5.It is further contented by the learned counsel for the petitioner that, the letter of the first respondent which is impugned in the writ petition was issued by the first respondent without applying his mind on the representation made by the petitioner through its letter dated 05/10/2018. Without following the fundamental requirements, the order of eviction has been issued, in a mechanical manner. Hence, according to the learned counsel for the petitioner, the order is biased and motivated by malafide.

6.Countering the above averments, the learned Additional Advocate General appearing for the first respondent submitted that, the petitioner is sought to hand over the vacant land leased to it, in view of the expiry of the lease period i.e on 31/03/2019 which is the last date of lease period. The reason for not renewing the lease period as requested by the petitioner, is also stated in the letter, which is impugned. The petitioner is fully aware of the fact that the 'Municipality weekly chandy' behind its petrol bunk, could not be operated to its fullest capacity and be converted into 'daily market' due to the difficulty faced for adequate ingress and egress.

7.The earlier request made by the Municipality to hand over the land was objected by the petitioner quoting the lease agreement which was for 9 years ending on 31/03/2019. The learned Arbitrator has also in her award, allowed the claim of the petitioner to be the property only till the end of the lease period and not further. The first respondent now seeks for the land back on expiry of lease period. The petitioner is trying to squat on the property to auger his commercial interest at the

cost of general public interest.

8.The learned Additional Advocate General appearing for the first respondent would emphasis that there is not even an iota of arbitrariness in the order passed by the first respondent. Only after due application of mind, taking note of the request of the petitioner for renewal as against the need for land to establish daily market, converting the existing weekly chandy, the first respondent has passed the impugned order, informing the petitioner that renewal of lease is not possible, in view of the need of the land for public use.

9.The subject land was leased to the first respondent some 50 years ago and presently, the land is in possession of the second respondent who is the Dealer under the petitioner. In the past 50 years, the topography of Udumalpet Town has change drastically and the need of the public for better amenities have also grown. The Municipal Administration has thought fit to provide better market facility for the 'general public' by converting the 'weekly chandy' into 'daily market'. No arbitrariness or malafide could be seen even remotely in the said intention.

10.The respondents might have earlier taken a wrong decision to take over the land before the expiry of the lease period from the petitioner but, now, after the efflux of time and expiry of the lease period, the petitioner has no legal right to refuse to vacate the land. The judgment of a Full Bench of this Court in Ramaraju -vs- State of Tamilnadu reported in (2005(2) CTC 741), which is general in nature, is not relevant to the facts of this case, in view of the earlier proceedings and finding of this Court and the award passed by the learned Arbitrator in respect of the lease agreement between the petitioner and the first respondent.

11.When the first respondent tried to prematurely terminate the lease, the petitioner moved this court in W.P.No.13585/2016. This Court while dealing with W.P.No.13585/2016 and connected batch of writ petitions has passed the following order:-

".....6. A perusal of the lease deeds dated 19.01.2001 and 23.07.2010 would reveal that the period of lease, in respect of both the petitioners, comes to an end only on 31.03.2019 and therefore, the respondent 6

Municipality should not have issued the impugned orders stating that the period of lease came to an end on 31.03.2013 itself by efflux of time. Further, the lease deed has been entered into by the respondent Municipality with the respective petitioners on 19.01.2001 and 23.07.2010 and when the respondent Municipality is a party to the respective lease deeds, it is not open to the respondent Municipality, to contend, that the lease has been entered into, contrary to law. On both grounds, the orders under challenge, in these writ petitions, cannot be sustained.

7. However, taking into consideration, the public purpose for which the property concerned in the respective writ petitions, are required by the respondent Municipality, namely, for expansion of Bus Terminus (W.P.No.13585 of 2016) and for providing an entry point to the weekly shandy (W.P.No.14091 of 2016), the intention of the respondent Municipality cannot be suspected. Though the reasoning given in the impugned orders for terminating the lease granted to the respective petitioners, are untenable, the purpose for which the properties are required by the respondent Municipality, is in public interest. Therefore, while setting aside the impugned orders, it is open to the respondent Municipality to issue proper notice to the respective petitioners, with regard to termination of lease, at the earliest and proceed in accordance with law."

12. Subsequently, when the first respondent issued notice to vacate, it was challenged before the Arbitrator. The learned Arbitrator after considering the spirit of the lease agreement terms and the intention of the first respondent has passed the award on 25/03/2017.

13. The order of the first respondent which is impugned in this writ petition reads as under:-

"In reply to your letter dated 05.10.2019 requesting renewal of the lease is concerned, the same cannot be granted as the property in question is required for the Municipality for the public use.

As per the arbitration award passed by Justice Chitra Venataraman, you are entitle to be in possession only up to 31.03.2019.

In view of the same, you are hereby called upon to vacate and deliver vacant possession on or before 31.03.2019, failing which, the Municipality will take possession of the property on 01.04.2019 without any further notice to you."

14. Without looking into the past litigation history, if any one look at the above order of the first respondent in isolation, may entertain an impression that, it is arbitrary and non-speaking. On combined reading of the High court court order in W.P.No.13585 of 2016 etc batch cases and the subsequent arbitration award passed taking note of the High Court order mentioned above, there is no room to say that the action of the first respondent reclaiming the leased land is arbitrary or malafide.

15. For the reasons stated, the writ petition is dismissed. Since, it is informed that the petitioner has put up construction and installed sumps and pumps, to facilitate the petitioner to remove the installations, time is granted upto 30/07/2019. No costs. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

jbm
To

1. The Commissioner,
Udumalpet Municipality,
Udumalpet,
Tirupur District.

+1 CC to Mr.A.S.Thambuswamy, Advocate sr 54577.
+1 CC to Mr.B.Kumarasamy, Advocate sr 54203.
+1 CC to Mr.V. Ananthanatarajan, Advocate sr 54579.

W.P.No.9179 of 2019

SSD(CO)
SP(12/07/2019)