IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.04.2019

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.Nos.21112 & 21121 of 2018
and
W.M.P.Nos.24769, 24782, 24781 & 24783 of 2018

Bharat Petroleum Corporation Limited,
Represented by its Territory Manager (Retail),
Chennai Territorial Office,
No.35, Vaidyanathan Street,
Tondiarpet,
Chennai - 600081. ...Petitioner
in WP.No.21112/2018

M/s. C.Lakshmi Narasimham & Son,
Bharat Petroleum Dealer,
Represented by its Managing Partner R.Sathyapriya,
W/o. Ravichandran,
No.107, Arani Road,
Sankaranpalayam, Vellore - 1. ...Petitioner
in WP.No.21121/ 2018

Vs.

1. Revenue Divisional Officer,
Vellore District,
Vellore.

2. V.S.Kumaran

3. M/s. C.Lakshmi Narasimhan & Son,
Represented by its Managing Partner,
Ms.R.Sathya Priya,
No.107, Arani Road,
Sankaranpalayam,
Vellore - 1. ...Respondents
in WP.No.21112/2018

1. The Territory Manager (Retail),
Chennai Territory Office,
Bharath Petroleum Corporation Limited,
No.35, Vaidyanathan Street, Tondaiyarpet,
Chennai - 81.

2. The District Collector,
   Vellore District,
   Vellore.

3. The District Revenue Officer,
   Vellore District,
   Vellore.

4. V.S.Kumaran,
   No.85A, Officers line, Toll gate,
   Vellore - 1.

...Respondents
in WP.No.21121/2018

Prayer in WP.No.21112 of 2018 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records on the file of the 1st respondent and quash the impugned order No.Pa.Mu.C2/9154/2015 dated 01.08.2018.

Prayer in WP.No.21121 of 2018: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the 3rd respondent pertaining to proceedings No.Pa.Mu.C2/9154/2015 dated 01.08.2018 and quash the same as illegal, arbitrary and non est in law and consequently forbear the 3rd respondent from interfering with the business affairs of the petitioner in any manner whatsoever.

For Petitioners: Mr.M.Vijayan for M/s. King & Partridge
(in WP.No.21112 of 2018)
Mrs.Chitra Sampath, Senior Counsel
for Mr.B.Vijay
(in WP.No.21121 of 2018)

For Respondents : Mr.S.N.Parthasarathy
Government Advocate for R1
(in WP.No.21112 of 2018)
Mr.M.Rajasekar for R2
(in WP.No.21112 of 2018)
Mr.S.N.Parthasarathy
Government Advocate for R1 to R3
(in WP.No.21121 of 2018)
Mr.M.Rajasekar for R4
(in WP.No.21121 of 2018)

COMMON ORDER

W.P.No.21112 of 2018 is filed by Bharat Petroleum Corporation Limited and W.P.No.21121 of 2018 is filed by the dealer of the Bharat Petroleum Corporation Limited. In both the writ petitions, the challenge made, is against the order passed by the District Revenue Officer, Vellore dated 01.08.2018 in cancelling the No Objection Certificate issued already for running the petroleum outlet.

2. Since the grievance of the petitioner in both the writ petitions is common and against the same order passed by the District Revenue Officer, their common case is stated as follows:-

The Bharat Petroleum Corporation Limited entered into tenancy agreement with the land owner by way of registered lease deed and the same was renewed up to 31.05.2003. Many efforts were made by the Corporation to renew the lease at market rate rental but it did not fructify. They came to know that the 2nd respondent in W.P.No.21112 of 2018, who is the 4th respondent in W.P.No.21121 of 2018 (hereinafter called purchaser) has purchased the property and made an application before the District Revenue Officer to cancel the NOC. Pursuant to such application, notice was issued to the petitioners for enquiry. Both the petitioners appeared before the District Revenue Officer on 16.07.2018. Though, he recorded the statement of the purchaser, these petitioners were not given opportunity to cross examine him. No documents were filed before the authority in support of the claim of the purchaser. The dealer viz., the petitioner in W.P.No.21121 of 2018 filed W.P.No.20762 of 2018, wherein an order was passed on 11.08.2018, permitting the petitioners herein to submit written explanation before the District Revenue Officer within two weeks and with further direction to the District Revenue Officer to consider the objection made by the parties also by providing opportunity of personal hearing and pass orders thereafter on merits. However, the District Revenue Officer on coming to know about the orders passed in the said writ petition, antedated the impugned order as 01.08.2018 and dispatched the same on 13.08.2018.

3. The District Revenue Officer filed a counter affidavit, wherein, it is stated as follows:-

The impugned order was passed after carefully perusing all relevant documents and statements made during enquiry. The Oil Company obtained No Objection Certificate from the Revenue authority for installation of underground storage tanks and after 14.06.2003, no renewal of lease was made between the Petroleum Corporation and the land owners. The petitioners attended the enquiry and both of them requested six months time to get the extension of lease from the present land owner. Though, enough time was given to both the petitioners, no lease or rental agreements were made between the present land owner and the petitioners. Therefore, the impugned order was rightly issued, cancelling the NOC.

4. The purchaser has filed a common counter affidavit, wherein it is stated as follows:-

He has purchased the property from one V.T.Srinivasan and 3 other owners in the year 2013. However, the lease originally granted by the owners got expired on 14.06.2003 itself. After the expiry of the lease period, the original owners refused to extend the lease and insisted the petitioners to vacate and handover the property. However, the petitioners did not vacate the premises. Therefore, the purchaser gave the representation to the Joint Chief Controller of Explosives to cancel the license and also an application before the District Revenue Officer to cancel the NOC. The District Revenue Officer conducted the enquiry and recorded the statements of the dealer and also the purchaser. After considering the representation made by the purchaser as well as the statements made by the parties, the impugned order was rightly passed. The petitioners are in illegal occupation of the subject matter property without even paying a single pie as rent.

5. The learned counsel appearing for the Bharat Petroleum Corporation Limited submitted as follows:-

The impugned order was passed by antedating the same on coming to know about the order passed in W.P.No.20762 of 2018 dated 11.08.2018. The District Revenue Officer infact has accepted in his counter affidavit, that the draft cancellation order was approved on 01.08.2018 and the fair copies of the above original draft were made and signed on 02.08.2018. Therefore, from the above statement made by the District Revenue Officer, it is evident that he has not passed the order and some other official has passed the same which was only approved by him. Therefore, it is evident that the District Revenue Officer has not applied his mind while passing the impugned order.

6. The learned senior counsel Mrs.Chitra Sampath appearing for the petitioner in W.P.No.21121 of 2018 contended that the impugned order was passed in violation of the order already passed by this Court in W.P.No.20762 of 2018 dated 11.08.2018, as both the petitioners were not given any further notice after 16.07.2018 for their appearance. Thus, the learned Senior Counsel contended that the matter has to go back to the District Revenue Officer to consider the matter afresh, in view of the order passed in W.P.No.20762 of 2018 dated 11.08.2018.

7. On the other hand, the learned Government Advocate appearing for the District Revenue Officer submitted that the impugned order was passed after hearing all the parties and that it was not antedated, as contended by the petitioners.

8. Mr.M.Rajasekar learned counsel appearing for the subsequent purchaser contended that admittedly, the lease period expired in the year 2003 and his client, though purchased the property in the year 2013, is not receiving even a single pie from the petitioners and therefore, they are not entitled for any indulgence from this Court. He further submitted that the impugned order was passed after hearing all the parties and therefore, the same need not be interfered with. After saying so, the learned counsel further submitted that if this Court feels that the matter has to go back to the District Revenue Officer for reconsidering the matter afresh, till a fresh order is passed by the said official, the petitioners may be directed to close down the business, in the absence of any lease.

9. Heard both sides and perused the materials placed before this Court.

10. The petitioners are running a petroleum outlet in a property which was let out by the vendors of the purchaser herein. There is no dispute to the said fact. Equally, there is no dispute to the fact that the said lease subsequently extended, however got expired on 01.04.2003. Thereafter, the purchaser herein purchased the property in the year 2013. The fact remains that the petitioners are continuously running the petroleum dealership in the said property, even after the expiry of the lease period all these years and after the purchase of the property by the purchaser herein as well.

11. This Court, at this stage, is not expressing any view on the validity or legality of the continuance of the possession and running the outlet in the subject matter property even after the expiry of the lease, as this Court, is inclined to set aside the impugned order and remit the matter back to the District Revenue Officer only on the ground that the said order was passed not by complying with the order issued by this Court in W.P.No.20762 of 2018 dated 11.08.2018. The District Revenue Officer after receiving the order made by this Court in the said writ petition, ought to have recalled the order passed already and complied with the said order by giving an opportunity of submitting the written submissions by the respective parties. At this juncture, it is relevant to quote the order passed by this Court in W.P.No.20762 of 2018 as follows:-

> 1. The petitioner has filed the above Writ Petition to issue a writ of Certiorarified Mandamus to call for the records of the 3rd respondent pertaining to proceedings dated 02.07.2018 and quash the same and consequently, forbear the 3rd respondent from cancelling the No Objection Certificate (NOC) granted under Rule 144(1) of Petroleum Rules 2002.

2. Mrs.Chitra Sampth, learned senior counsel for the petitioner submitted that though the petitioner has filed the Writ Petition to issue a writ of Certiorarified mandamus challenging the show cause notice dated 02.07.2018, it would be suffice to grant leave to the petitioner to submit the written submission before the 3rd respondent within a time frame.

3. Mr.M.Vijayan, learned counsel taking notice for the 1st respondent also submitted that the 1st respondent may also be given opportunity to file written submission before the 3rd respondent.

4. Mrs.P.Rajalakshmi, learned Additional Government Pleader taking notice for the respondents 2 & 3 submitted that the petitioner and the 1st respondent may be permitted to submit their written submission before the 3rd respondent and the 3rd respondent may be directed to decide the matter after giving notice to 4th respondent in accordance with law.

5. Having regard to the submissions made by the learned counsel on either side, I permit the petitioner and the 1st respondent to submit their written submissions before the 3rd respondent within a period of two weeks from the date of receipt of copy of this order and the 3rd respondent is directed to decide the matter, after giving notice to the 4th respondent and after giving due opportunity of personal hearing to the petitioner, the 1st respondent and the 4th respondent and pass orders, on merits and in accordance with law, as expeditiously as possible.

6. Till the order is passed by the 3rd respondent, the 3rd respondent shall not precipitate the matter.

7. With these observations, the Writ Petition is disposed of. No costs. Consequently, the connected miscellaneous petitions are closed.

12. Infact perusal of the said order would show that the learned Government Advocate, who took notice for the respondents 2 and 3 submitted before the Court that parties may be permitted to submit their written submissions before the District Revenue Officer. Now, it is contended that when the said order was

passed at the admission stage, the learned Government Advocate was not well informed about the impugned order already passed in this writ petition. Even going by the date of the impugned order and assuming that the same was passed before the order passed in the writ petition, in my considered view, once such consent order was passed before this Court, the District Revenue Officer, who passed the impugned order, ought to have recalled the same and allowed the parties to file the written submissions and thereafter, should have passed a fresh order after hearing all the parties, as directed by this Court. It has not been done in this case.

13. Therefore, this Court, is of the view that the matter has to go back to the District Revenue Officer for considering the matter afresh and pass a fresh order on merits and in accordance with law, in the light of the order already passed in W.P.No.20762 of 2018 dated 11.08.2018. At the same time, this Court, makes it very clear that it is not expressing any view on the merits of the rival contentions made by the parties, as it is for the said District Revenue Officer to consider and decide.

14. No doubt, the learned counsel for the subsequent purchaser submitted that in the mean time, the petitioner should be directed to close down the business. Admittedly, these petitioners are running the business even after the expiry of the lease after 01.04.2003 till this date. The subsequent purchase was made in the year 2013. When the petitioners are running the business even as on today and when this Court is inclined to remit the matter back to the District Revenue Officer for passing a fresh order on merits and in accordance with law that too by fixing a time limit, I do not think that asking the petitioner to close down the business in the meantime, will be just and proper, as this Court has not expressed, any view on the merits of the claim made by the respective parties. Therefore, the above request made by the learned counsel for the subsequent purchaser cannot be considered at this stage.

15. Considering the above stated facts and circumstances, both the writ petitions are allowed and the impugned orders are set aside. Consequently, the matter is remitted back to the District Revenue Officer, Vellore District to pass a fresh order on merits and in accordance with law, after following the order already passed in W.P.No.20762 of 2018 dated 11.08.2018. The petitioners shall file their written submissions before the District Revenue Officer within a period of seven days from the date of receipt of a copy of this order. On receipt of such written representation, the District Revenue Officer shall hold personal hearing and thereafter, pass fresh order on merits and in accordance with law within a period of three weeks thereafter. Both the parties are directed to co-operate with

the District Revenue Officer in passing the order within the time stipulated as stated supra, without seeking any extension of time. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. Revenue Divisional Officer,
   Vellore District,
   Vellore.

2. The District Collector,
   Vellore District,
   Vellore.

3. The District Revenue Officer,
   Vellore District,
   Vellore.

4.The Territory Manager (Retail),
  Chennai Territory Office,
  Bharath Petroleum Corporation Limited,
  No.35, Vaidyanathan St, Tondaiyarpet,
  Chennai -81.

+2ccs to Mr.M.Raja Sekhar, Advocate, S.R.No.35358
+2ccs to Mr.B.Vijay, Advocate, S.R.No.35254
+1cc to the Government Pleader, S.R.No.35350
+2ccs to M/s.King & Partridge, Advocate, S.R.No.34981

W.P.Nos.21112 & 21121 of 2018

RK(CO)

RRS(22/04/2019)