

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.11.2019

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.17754 of 2019
and
W.M.P.No.17167 of 2019

M/s.Chandra Agency
Rep. by its Proprietor
Sri.Mouthucomarassamy
No.1, East Coast Road,
Marapalam Junction
Pondicherry - 605 004.

...Petitioner

vs.

1.The Union of India
Rep. by its Chief Secretary
Secretariat, Puducherry.

2.The Commercial Tax Department
Represented by
The Commercial Tax Officer (RC)
Ellaipillaichavady
Puducherry - 605 005.

3.M/s.Indian Oil Corporation Limited
(Marketing Division)
Rep. by its Chief Divisional Retail Sales Manager
Trichy Divisional Office
"Triveni" 3rd Floor, B-35,
Shastri Road, Thillai Nagar,
Trichy.

4.Prabhavathi
W/o.M.Ganesan

5.G.Raghavendar
S/o.M.Ganesh

...Respondents

*R4 & R5 impleaded as per the order dated 14.11.2019
passed in W.M.P.No.31124 of 2019 in W.P.No.17754 of 2019

Writ Petition filed under Article 226 of the Constitution
of India praying to issue a Writ of Certiorari, calling for
the records related to the impugned proceedings
No.34460015148/CTO-RC/2019-20 dated 11.06.2019 issued by the
2nd respondent and quash the same.

For Petitioner: Mr.M.Ravi
for Mr.Babu Rangasamy

For Respondent: Mr.J.Kumaran
Additional Government Pleader
for R1 & R2
Mr.R.Sreedhar, for R3
Mr.L.Chandrakumar, for R4 & R5

O R D E R

This writ petition is filed challenging the proceedings of the second respondent dated 11.06.2019. Through the impugned proceedings, the second respondent called upon the petitioner to produce fresh lease agreement to continue the business.

2. The following are the short facts and circumstances essential for the disposal of this writ petition.

The impleaded respondents 4 & 5 claimed to be the owners of the property situated at No.1, East Coast Road, Mudaliarpet, Pondicherry, Olande Village, Ward 'K', Block No.7, T.S.No.92, R.S.No.52/4, Katah No.162/1, measuring an extent of 22,192 sq.feet. The third respondent/Indian Oil Corporation took the said property on lease for a period of 20 years under lease agreement entered into on 24.06.1999. After obtaining lease, the third respondent/Indian Oil Corporation granted distributorship to the petitioner to run the petroleum outlet as the service provider in the said premises. The lease period expired on 23.06.2019. The petitioner obtained VAT registration from the Commercial Tax Department, Puducherry and the same was also renewed periodically. As on date, renewal is valid upto 2021. Before expiry of lease period, the second respondent issued the impugned notice dated 11.06.2019 and called upon the petitioner to produce fresh lease agreement also by indicating that failure to produce such lease agreement would result in taking action to initiate cancellation of registration. Therefore, the present writ petition is filed challenging the above notice dated 11.06.2019.

3. The learned counsel for the petitioner submitted that the Commercial Tax Department itself has erroneously directed the Indian Oil Corporation not to renew lease, since the subject matter property is under attachment by the Commercial Tax Department for realization of the tax dues. Therefore, he contended that the Commercial Tax Department cannot seek for renewal on one hand and issue a direction to the Indian Oil Corporation not to renew lease on the other hand.

4. The learned counsel for the Indian Oil Corporation submitted that they have already filed a civil suit in

O.S.No.1434 of 2019 on the file of the Principal District Munsif Court, Pondicherry, against the impleaded respondents 4 & 5 herein, and the petitioner, seeking for mandatory injunction directing the defendants 1 & 2 therein (respondents 4 and 5 herein) jointly to execute the lease deed by extension/renewal for further period of 20 years with effect from 24.06.2019 in favour of the plaintiff/Indian Oil Corporation and for permanent injunction restraining the defendants 1 & 2 from in any manner dispossessing plaintiff's dealer viz., the third defendant (the petitioner herein) from the suit schedule property. It is further submitted that the said suit is still pending.

5. The learned Additional Government Pleader appearing for the second respondent/Commercial Tax Department, submitted that there are huge tax arrears to be recovered and therefore, the tax Department should not put in a position to initiate action for recovery of such tax dues from the owners of the property.

6. Heard the learned counsels appearing for the respective parties.

7. Challenge made in this writ petition is only against the notice issued by the second respondent calling upon the petitioner to produce fresh lease agreement to continue the business. There is no dispute to the fact that the lease obtained by the third respondent from the owners viz., the respondents 4 & 5 expired on 23.06.2019. However, it is an admitted fact that even before expiry of the lease period, the Indian Oil Corporation has filed the suit in O.S.No.1434 of 2019 on the file of the Principal District Munsif Court, Pondicherry on 15.06.2019 seeking mandatory injunction and permanent injunction as stated supra. It is stated that the said suit is still pending, wherein, the petitioner has also been arrayed as third defendant. Whether the lease granted in favour of the third respondent and got expired on 23.06.2019, is liable to be renewed or not, is a matter, now seized of by the Civil Court and thus, the said issue has to be considered and decided by such forum after considering the respective pleadings of the parties and the evidence let in by them.

8. Hence, this Court, at this stage, is not expressing any view on the merits of the claim made by both parties. However, the present impugned communication has been issued by the second respondent calling upon the petitioner to produce fresh lease agreement also by informing that the failure to do so would result in initiation of cancellation of the registration. This Court is of the view that the Indian Oil Corporation, who is the plaintiff in the above said suit should take steps to implead the second respondent/Commercial Tax Department, also as a party/defendant in the said suit and seek for appropriate relief/interim relief against the said respondent, pending disposal of the said suit, in view of the

impugned notice issued on 11.06.2019. Since this Court has relegated the parties to agitate their rights before the Civil Court, where the above said suit is pending, this Writ Petition is disposed of under the following terms and conditions:

(a) The third respondent shall file implead petition to implead the second respondent/Commercial Tax Department, as a party/defendant in the said suit along with appropriate interim application seeking interim relief against the said respondent, within a period of four weeks from the date of receipt of a copy of this order.

(b) On filing of such interim application, the learned Principal District Munsif, Puducherry, shall consider the said application and pass orders on the same on merits and in accordance with law, after hearing all the parties within a period of four weeks thereafter.

(c) Till an order is passed by the learned Principal District Munsif, Puducherry, as observed supra, the second respondent shall maintain status quo as on today in respect of registration of the petitioner with the Commercial Tax Department.

(d) The order made in this writ petition, however, will not preclude the Commercial Tax Department, viz., the second respondent from proceeding further with the action already initiated for recovery of the tax dues from the owners of the property viz., the respondents 4 & 5.

No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Chief Secretary,
Union of India
Secretariat, Puducherry.

2.The Commercial Tax Officer (RC),
The Commercial Tax Department
Ellaipillaichavady
Puducherry - 605 005.

3.Chief Divisional Retail Sales Manager,
(Marketing Division)
Trichy Divisional Office
"Triveni" 3rd Floor, B-35,
Shastri Road, Thillai Nagar,
Trichy.

+lcc to Mr.L.Chandra Kumar, Advocate, S.R.No. 94869
+lcc to Mr.Babu Rangasamy Associates, Advocate, S.R.No. 94791
+lcc to Mr.R.Sreedhar, Advocate, S.R.No. 94543
+lcc to the Government Pleader, S.R.No. 94762

W.P.No.17754 of 2019

CP(CO)
GN(27/12/2019)