IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED :18.02.2020
CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.No.29066 of 2005
and
WPMP.No.31780 of 2005

Sri Venkateswara Agency
Nagapattinam,
rep.by its Managing Partner
Sri.V.Muthuganesan. ... Petitioner

Vs

1.The General Manager,
Southern Railway,
Madras - 3.

2.The Divisional Railway Manager,
Divisional Office, Works Branch,
Tiruchirappallai. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking for an issuance of a writ of Certiorari, to call for the records of the 2nd respondent in his proceedings No.T/W.105/VII/25 dated 21.06.2005 and quash the same.

For Petitioner : Mr.V.Vijay Shankar

For Respondents : Mr.P.T.Ramkumar
Standing Counsel

ORDER

This writ petition has been filed challenging the impugned letter of the second respondent dated 21.06.2005 calling upon the petitioner to remit a sum of Rs.4,23,080/- towards license fee dues as per the enclosed statement dated 31.03.2006. As per the enclosed statement, the petitioner has been called upon to pay a sum of Rs.2,52,742/- towards arrears of license fee payable from 1986 to 2005 and a sum of Rs.1,70,336/- as liquidated damages for the delayed payment of license fee at the rate of 12 % per annum. In all, a total sum of Rs.4,23,080/- was demanded from the petitioner by the second respondent.

2.The case of the petitioner is that they are licensees under the respondent occupying a space measuring 5570 sq.ft of land at Nagapattinam for Bulk Oil installation purposes. It is their case that they have been paying the license fees as per the rates fixed by the respondent. It is also their case that the license fee for the site occupied by the petitioner's firm was revised from time to time by the respondents and the petitioner has been paying the license fee accordingly. According to the petitioner, to their shock, by letter dated 05.04.1995, the second respondent revised the license fee retrospectively from 01.04.1986 and directed the petitioner to pay a sum of Rs.3,32,905/- towards arrears of license fee from 01.04.1986 till 31.03.1995. The said letter disclosed that the second respondent had arrived at the market value of the land as on 01.04.1991 and had fixed the license fee at 20% thereof. It is the case of the petitioner that the annual license fee was arbitrarily raised from Rs.6,730/- to Rs.57,554/- from the year 01.04.1990 onwards i.e. an increase of nearly 9 times. Despite several representations questioning the arbitrary revision, the respondents continued to demand the revised license fees. However, the petitioner continued to pay the license fee fixed earlier at Rs.6,730/- per year.

3.According to the petitioner, the Railway Board, New Delhi, issued detailed guidelines vide circular dated 29.08.1995 for calculating the market value of Railway lands leased out to private parties superseding all previous guidelines / circulars issued by them. As per the said circular, the railway board had directed that the market value of the lands to be calculated as on date i.e. on 01.01.1985 and increase of 10% made annually from the next year i.e. from 01.04.1986. It is the case of the petitioner that the circular provides that for Bulk Oil Installations (such as one held by the petitioner's firm) the license fee shall be 10% of the market Value. According to the petitioner, the said circular also directed that all earlier cases have to be reviewed in the light of the said guidelines and if necessary, refund of excess amount should be made to the concerned parties.

4.It is the case of the petitioner that he was not aware of the Railway guidelines and came to know about the same only in the year 1998. It is their case that on coming to know about the railway board guidelines, they made a representation on 02.11.1998 to the second respondent referring to the said circular and requested them to fix the license fee for the petitioner based on the criteria referred to in the circular. According to the petitioner, in their representation, the petitioner had pointed out that market value of the lands as on 01.01.1985 was only Rs.23,000/- per acre as per the certificate of the valuation given by the Sub-Registrar, Nagapattinam. Therefore, according to them, for 5,570 sq.ft, which is under the occupation of the petitioner, the market Value as on 01.01.1985 works out to Rs.2,952/- and increase of 10% per year works out to Rs.295/- per year. However, according to the learned counsel for the petitioner, the circular of the Railway Board provides in clause - 6 that the minimum license fee shall be Rs.1000/- per annum. It is the case of the petitioner that in his representation to the respondents, he pointed out that the license fee fixed by the respondents earlier was extremely high and requested the second respondent to refix the license fee taking into consideration the certificate of valuation given by the Sub-Registrar, Nagapattinam.

5.According to the petitioner, after much delay, the second respondent by letter dated 13.04.1999 replied to the petitioner firm stating that the representation has been considered and that the market value has been arrived at by applying the circular dated 29.08.1995 of the Railway Board. The said letter directed the petitioner to pay a sum of Rs.1,20,820/- towards the arrears of license fee from 01.04.1986 till date. According to the petitioner, though this was a substantial reduction from the earlier amount of Rs.3,32,905/- no particulars as to how the market value was arrived at was given in the said letter. It is the case of the petitioner that on verification from the office of the second respondent, he was informed that particulars will be intimated shortly. According to the petitioner, while they were expecting the second respondent to furnish full particulars as requested by them, they were shocked to receive another letter dated 18.05.1999 from the second respondent calling upon the petitioner to pay a sum of Rs.1,55,425/- towards arrears of license fee from 01.04.1986.

6.The petitioner filed W.P.No.9790 of 1999 before this Court challenging the letter dated 18.05.1999 of the second respondent. By order dated 28.04.2003, W.P.No.9790 of 1999 was disposed of by this Court by giving a direction to the respondent to consider the petitioner's representation with regard to the fixation of license fee in the light of the circular dated 29.08.1995 issued by the Railway Board. Pursuant to the order dated 28.04.2003 passed in W.P.No.9790 of 1999, this impugned order dated 21.06.2005 has been passed enclosing the statement and directing the petitioner to pay a sum of

Rs.4,23,078/- comprising of Rs.2,52,742/- as arrears of license fee from 1986 to 2005 and a sum of Rs.1,70,736/- as liquidated damages calculated at the rate of 12% per annum. Aggrieved by the impugned order, this writ petition has been filed.

7.A counter affidavit has been filed stating that the fixation of the amount demanded has been made only based on the Railway Board's guidelines and circular dated 29.08.1995. According to them, the decision of the Railway Board is a policy decision of commercial leasing of Railway lands applicable to the entire country where Railway lands are licenced. According to them, the petitioner, who is having a retail outlet, is liable to pay license fees as per the aforesaid circular. As per the circular, the petitioner is liable to pay annual license fee at 20% of the market value of the land in occupation and the market value has to be escalated at 10% per annum. It is also their case that the claim of liquidated damages at 12% per annum is not arbitrary as the same is in accordance with instructions contained in paras 1025, 1026 & 1027 of the Indian Railways Board for the Engineering Department (1989 Edition). According to them, the impugned demand for a sum of Rs.4,23,080/- is made only in accordance with the Railway Board's Circulars. It is also their case that the second respondent is adopting the same method for all the persons, who are in occupation of the Railway Lands as laid down by the Railways Guidelines. It is their case that there cannot be any discrimination between the occupants of the lands.

8.Heard Mr.V.Vijay Shankar, learned counsel appearing for the petitioner and Mr.P.T.Ramkumar, learned standing counsel appearing for the respondents.

9.The learned counsel for the petitioner drew the attention of this Court to the letter dated 06.11.1981 addressed by the respondents to M/s.R.M.Ganapathy Mudaliar & Co. Dealer, Indian Oil Corporation, Nayanakara Street, Nagapattinam and pointed out that the land occupied by the petitioner is being utilised only for Bulk Oil Installation purposes at Nagapattinam. The learned counsel for the petitioner further drew the attention of this Court to the circular dated 29.08.1995 of the Railway Board and submitted that under the said circular, for Steel yards/Coal dumps, bulk oil installations etc., the annual license fee is calculated at 10% on the prevailing market value as on 01.01.1986. However, according to him, arbitrarily, the respondents have calculated the annual license fee at 20%, which is applicable only for shops, retail oil depots etc.

10.The learned counsel for the petitioner then drew the attention of this Court to the impugned demand dated 21.06.2005 and pointed out that in the statement enclosed along with the impugned demand, the respondents have erroneously calculated the annual license fee at 20% of market value of the land from 1986 to 2005, though as per the circular of the railway Board referred to above, they are entitled to calculate the license fee only at 10% of the market value as the petitioner is only having a Bulk Oil Installation Depot. The learned counsel for the petitioner also submitted that the petitioner is not liable to pay any liquidated damages as the arbitrary fixation of the license charges has been challenged by him and there is no dispute that he has been paying the license fees applicable prior to the arbitrary revision. Further, there is no basis for the demand of liquidated damages when neither there is any circular nor is there any contract for demand of liquidated damages. It is also his case that the guideline value as on 01.01.1986 is Rs.23,000/- per acre as per the certificate issued by the Sub-Registrar is taken into consideration, the license fee payable by the petitioner will be much lower.

11.Per contra, learned standing counsel for the respondents would point out that the space measuring 5,570 sq. ft. occupied by the petitioner is only a retail outlet and therefore, the annual license fee payable by the petitioner as per the circular is 20% of the land value. According to him, only in cases where the licensees occupy very large extent of land, the category steelyards/coal dumps, bulk oil installations etc., as found in circular dated 29.08.1995 shall apply. The learned standing counsel for the respondents would submit that the license fee fixed and the amount demanded is only in accordance with two circulars; one dated 29.08.1995 and another dated 08.06.2005 of the Railway Board. The learned standing counsel pointed out that from 1986 to 2005, the license fee was fixed under 1995 circular at 20% of the market value of the land as on 01.01.1986 and from 2005 - 2006 onwards, the license fee was fixed based on 2005 circular and the license fee was fixed at 10% on the market value of the land. The learned standing counsel also referred to the circular dated 29.08.1995 and in particular, he referred to clause 4.2., which provides for enhancement of license fee, which reads as follows:

> "4.2.The value so fixed shall be increased notionally every year on the 1st of April, starting from 01.04.1986 at the rate of 10% over the previous years value to arrive at the land value for the following year based on which the licence fee to be paid shall be fixed. Once the notional

value has been so obtained it shall apply to all plots at that station.

However, for the Metropolitan towns of Bombay, Calcutta, Delhi & Madras if the HOD's Committee feel that the land rates are widely varying within the City, two or more rates can be utilized for that City. Using this method. There should henceforth be no need to seek fresh values from the Revenue Authorities nor should arrears of collection of license fee on this account be allowed to accumulate."

According to the learned standing counsel, in accordance with clause 4.2., the annual license fee has also been enhanced at 10% each and every year.

DISCUSSION:

12.The case of the petitioner is that the space has been allotted only for Bulk Oil Installations, whereas, it is the case of the respondents that the petitioner is occupying the space for a retail outlet. It is also the contention of the respondents that only for large scale Industries, Bulk Oil Installations is applicable and not for a small scale industry like that of the petitioner who is running only a retail outlet. Therefore, according to the respondents, the license fee has been fixed at 20% on the market value of the land as on 01.01.1986 as per the circular dated 29.08.1995 issued by the railway board. The rates of license fee applicable for various types of plots are found in clause 3 of the circular dated 29.08.1995. Clause 3 of the circular dated 29.08.1995 reads as follows:

3.Rates of licence fee

3.1.Licence fee of plots will continue to be fixed as a percentage of the land value determined as per the procedure detailed in para 4 below. The percentage now applicable to various types of plots will be as under.

Types of Plots	Annual Licence fee as a percentage of land value.
a.Commercial plots - for City Booking Agencies, Out Agencies, etc.,	6%

b. Ordinary commercial plots without structures.	6%
c. Ordinary commercial plots- with temporary structures for stacking/storing	7 ½% for the whole area allocated including covered area.
d. Steel yards/Coal dumps, bulk oil installations etc.,	10%
e. Land use to lay private sidings	6%
f. Shops, Retail oil Depots etc.,	20%

13. Several communications received from the respondents have been filed by the petitioner in the typed set of papers along with the writ petition. As seen from the communications received from the respondents, it is clear that the space occupied by the petitioner is only for a retail outlet. The communications include letters dated 13.04.1999 and 18.05.1999 as well as the impugned order 21.06.2005. This Court earlier directed the Government Pleader to provide details of the guideline value for the land occupied by the petitioner as on 01.01.1986. Pursuant to the said oral directions, the learned Government Pleader has also placed before this Court a letter dated 27.11.2019 addressed to the Special Government Pleader stating that the guideline value of the property, if it is calculated on square feet basis is Rs.40/- per square feet and if it is calculated on hectare basis, it is Rs.43,560/- per hectare for the period from 1985 to 87. If the calculation is done based on Rs.40/- per square feet, the license fee payable by the petitioner will be much higher and if it is calculated at Rs.43,560/- per hectare, the licence fee payable by the petitioner will be lower. As seen from the above, there are several disputed questions of fact involved.

14. However, this Court can take judicial notice of the fact that since the petitioner is occupying 5,570 sq. ft of the respondents land, the arrears of license fee demanded by the respondents under the impugned demand from 1986 to 2005 amounting to Rs.2,52,752/- is a reasonable sum. However, without any basis, the respondents have claimed a sum of Rs.1,70,336/- as liquidated damages at the rate of 12% per annum as neither there is any contract which enables the respondents

to claim liquidated damages or a circular issued by the Railway Board fixing liquidated damages at 12% per annum. Further, the liquidated damages has been calculated retrospectively right from the period 1986 to 2005 despite the fact that the petitioner has challenged the alleged arbitrary revision of license fees before this Court in W.P.No.9790 of 1999 and hence, this Court is of the considered view that the claim for liquidated damages under the impugned demand is arbitrary and illegal. In the considered view of this Court, as far as the fixation of arrears of license fee at Rs.2,52,752/- is concerned, there is no scope for interference as the said claim is a reasonable sum and further, there are disputed questions of fact involved which cannot be adjudicated in a writ petition.

15.For the foregoing reasons, this court is of the considered view that the impugned order dated 21.06.2005 will have to be quashed only with regard to the claim of Rs.1,70,336/- towards liquidated damages and with regard to the claim of Rs.2,52,742/- towards license fees, the same will have to be sustained.

16.The learned counsel appearing for the petitioner, after passing the order, submitted that the petitioner has been paying license fee of Rs.71,255/- as annual license fee to the respondents from 2013 onwards, which is in excess of the demand made by the respondents under the impugned demand. He seeks a direction from this Court to give a representation to the respondents for adjustment of the excess amount already paid by the petitioner subsequent to the filing of this writ petition. This Court is of the considered view that no prejudice will be caused to the respondents, if the petitioner is permitted to give such a representation.

17.For the foregoing reasons, the impugned demand dated 21.06.2005 is hereby quashed with regard to the claim for the liquidated damages amounting to Rs.1,70,336/- and in so far as the claim for a sum of Rs.2,52,742/- towards arrears of license fee for the period from 1986 - 87 to 2005 - 06 is concerned, it is sustained and the petitioner is directed to pay the said amount to the respondents within a period of eight weeks from the date of receipt of a copy of this order. With regard to the representation to be submitted by the petitioner as stated supra, the petitioner is directed to submit a representation to the second respondent and the second respondent is directed to consider the same on merits in the light of the circular issued by the Railway Board within a period of eight weeks from the date of receipt of a copy of this order.

18.With the aforesaid directions, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

sms

To

1.The General Manager,
Southern Railway,
Madras - 3.

2.The Divisional Railway Manager,
Divisional Office, Works Branch,
Tiruchirappallai.

+1 cc to Mr.V.Vijay Shankar Advocate sr14278
+1 cc to Mr.P.T.Ram Kumar Advocate sr13931

W.P.No.29066 of 2005
and
WPMP.No.31780 of 2005

rsv(co)
aa15/04/2020