

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.No.8512 of 2012
and
M.P.Nos.1 & 2 of 2012

T.Karthick Raja ... Petitioner

Vs.

1.Union of India,
Represented by
The General Manager
Southern Railway,
Southern Railway Headquarters
part Town, Chennai - 600 003.

2.The Divisional Commercial Manager,
Office of the Divisional Railway Manager,
Southern Railway,
Commercial Branch, Park Town,
Chennai - 600 003.

3.The Branch Manager,
Corporation Bank,
George Town Branch,
Armenian Street,
Chennai - 600 001.

...

Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India for writ of Certiorari calling for the records in the order bearing No:M/C. 300/Cycles/TBM Prem 2 Wheeler dated 05.03.2012 passed by the Second respondent and quash the same.

For Petitioner : Mr.L.Rajasekar

For Respondents : Mr.P.T.Ramkumar
Standing counsel (for Railways)

ORDER

This writ petition has been filed challenging the order dated 05.03.2012 passed by the second respondent calling upon

the petitioner to pay a sum of Rs.15,48,209/- towards difference in licence fee for the period from 01.01.2011 to 31.03.2012. According to the second respondent, the petitioner has encroached upon extra space and hence is liable to pay additional licence fees and also pay liquidated damages.

2.It is the case of the petitioner that he has been awarded a contract for manning the premium Two Wheeler Parking Stand at Tambaram Railway Station for a period from 01.04.2009 to 31.03.2012 for a licence fee of Rs.13,59,000/- for an allotted area of 171 sq.m. It is the case of the petitioner that he has been paying the licence fee in accordance with the licence agreement and has been utilising the space without any encroachments. However, it is the case of the petitioner that by the impugned order dated 05.03.2012 passed by the second respondent without any prior notice and without holding any enquiry, the second respondent has informed the petitioner that he has made encroachment and is liable to pay licence fee for the additional space occupied by him and is also liable to pay liquidated damages and fine. Aggrieved by the impugned order dated 05.03.2012 passed by the second respondent, this writ petition has been filed.

3.Heard Mr.L.Rajasekar, learned counsel appearing for the petitioner and Mr.P.T.Ramkumar, learned Standing counsel (for Railways) appearing for the respondents.

4.The learned counsel appearing for the petitioner drew the attention of this Court to the impugned order dated 05.03.2012 and submitted that without any prior notice and without holding any enquiry, the second respondent has passed the impugned order. Further, he submitted that no notice of inspection was given to the petitioner and the copies of inspection reports were also not furnished to him. According to him, the impugned order is a non speaking order and the second respondent has violated the principles of natural justice.

5.Per contra, the learned standing counsel appearing for the respondents would submit that the only remedy available to the petitioner as against the impugned order is to approach the appellate authority mentioned in clause 37 of the agreement. Instead of approaching the appellate authority, the petitioner has filed this writ petition, which is not maintainable according to him.

6.DISCUSSION:

This Court has perused and examined the impugned order dated 05.03.2012. The impugned order has called upon the petitioner to pay a sum of a) Rs.15,28,015/- towards the difference in licence fees for the additional space occupied by him as an encroacher from 01.01.2011 to 31.03.2012; b) Rs.10,194/- towards pending liquidated damages and c) Rs.10,000/- towards fine.

7.The basis for the above said demand is that the petitioner encroached upon additional space than what was provided under the agreement as noticed from the various inspections carried out by the respondents. However, it is an admitted fact that no prior notice of inspection was given to the petitioner or copies of the inspection reports were furnished to the petitioner. It is also not in dispute that a sum of Rs.13,59,000/- was paid by the petitioner towards the licence fee as per licence agreement dated 01.04.2009, which expired on 31.03.2012. The amount, that the second respondent has claimed under the impugned order, is more than double the amount, than what the petitioner paid under the licence agreement dated 01.04.2009. Without affording any opportunity to the petitioner to raise objection with regard to the demand for the licence fee for the alleged encroached space occupied by the petitioner and without furnishing copies of the inspection reports, the second respondent, arbitrarily and without adhering of the principles of natural justice, has passed the impugned order dated 05.03.2012 calling upon the petitioner to pay a sum of Rs.15,48,209/-. The only contention raised by the learned standing counsel for the respondents is that under the licence agreement dated 01.04.2009, appellate remedy is available as per clause 37 found therein and according to him, the petitioner ought to have filed the appeal before the appellate authority. This contention cannot be accepted in view of the fact that the principles of natural justice have been violated by the second respondent under the impugned order dated 05.03.2012.

8.For the foregoing reasons, the impugned order dated 05.03.2012 passed by the second respondent is hereby quashed and the matter is remanded back to the second respondent for fresh consideration and the second respondent shall pass final orders after affording sufficient opportunity to the petitioner and after furnishing the copies of the documents, which they rely upon, within a period of eight weeks from the date of receipt of a copy of this order.

9. With the aforesaid directions, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

1. The General Manager,
Union of India,
Southern Railway Headquarters
part Town, Chennai - 600 003.
- 2.The Divisional Commercial Manager,
Office of the Divisional Railway Manager,
Southern Railway,
Commercial Branch, Park Town,
Chennai - 600 003.
- 3.The Branch Manager,
Corporation Bank,
George Town Branch,
Armenian Street,
Chennai - 600 001.

+1cc to Mr.P.T.Ramkumar, Advocate Sr.13028
+1cc to Mr.L.Rajasekar, Advocate Sr.12927

सत्यमेव जयते

W.P.No.8512 of 2012

and

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