

IN THE HIGH COURT OF JUDICATURE AT MADRAS  
DATED : 05.02.2020

CORAM

THE HONOURABLE Mr. JUSTICE ABDUL QUDDHOSE

W.P.No.26226 of 2010 and  
M.P.No.1 of 2010

S.Prasanna Raj

... Petitioner

Vs.

1.The Rep.By Senior Divisional Retail Sales Manager,  
Indian Oil Corporation Limited,  
(Marketing Division)  
Salem Divisional Office,  
Indian Oil Officers Quarters, 1<sup>st</sup> Floor,  
No.74, Rasi Nagar, Jagir Ammapalayam,  
Salem-636 302.

2. Competent Authority and  
Special District Revenue Officer (LA) NH.68,  
Salem.

... Respondents

Prayer: Writ Petition filed under Article 226 of the  
Constitution of India praying to issue a Writ of Certiorari,  
calling for the records relating to the impugned notice in  
Ref.No.4104/3145 dated 30.10.2010, on the file of the first  
respondent quash the same.

For Petitioner : Mr.S.Doraisamy

For Respondents : Mr.R.Ravi - R1

Mr.Y.Parthasarathy - R2  
Government Advocate

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O R D E R

This writ petition has been filed challenging the impugned notice of demand, dated 30.10.2010, issued by the first respondent to the petitioner, informing him that a sum of Rs.3,84,105/- is payable by him as compensation for the structures put up by the respondents in the petitioner's property.

2. It is the case of the petitioner that he is an authorized dealer of the respondent Corporation and he is having a petrol bunk at Deivakurichi Village, Thalivasal, Athur Taluk, Salem District, comprised in S.No.47/4A2A & 48/3A1, measuring an extent of 30,000 sq. ft. According to the petitioner, the portion of the land was acquired by the second respondent, measuring approximately 3,000/- Sq. ft and compensation was also determined for the said acquisition.

3. It is the case of the petitioner that he had availed a loan with State Bank of Mysore and towards discharge of the said loan, a portion of the compensation amount was paid to the State Bank of Mysore, Athur Tauk, after petitioner gave consent for the same.

4. It is the case of the petitioner that without any basis, the second respondent by the impugned letter dated 30.10.2010 has demanded a sum of Rs.3,84,105/- from the petitioner on the score that the first respondent has put up structures in the petitioner's property, for which compensation has been paid by the second respondent, pursuant to the land acquisition. However, the petitioner claims that the entire superstructure was put up by the petitioner and the first respondent is not entitled for any compensation, from and out of the compensation amount determined by the second respondent. In such circumstances, this Writ Petition has been filed.

5. Heard Mr.S.Doraisamy, learned counsel for the petitioner and Mr.R.Ravi, learned counsel for the first respondent and Mr.Y.Parthasarathy, learned Government Advocate appearing for the second respondent.

6. The learned counsel for the petitioner has drawn the attention of this Court to the letter dated 27.12.2003 issued by the first respondent to the petitioner and pointed out that the retaining wall as well as the earth filling was done only by the petitioner, and hence, he submitted that the structures found in the petitioners property were put up only by the petitioner and therefore, the first respondent is not entitled for any compensation in respect of those structures.

7. The learned counsel for the petitioner also drew the attention of this Court to a letter dated 10.02.2010 issued by the Special Tahsildar, National Highways to the State Bank of Mysore, Athur Taluk and submitted that the petitioner had availed a loan from the State Bank of Mysore, and towards discharge of the said loan, based on the petitioners consent, a sum of Rs.4,46,326/- determined as compensation amount by the Land Acquisition Authorities, was paid directly by the second

respondent to the State Bank of Mysore for the partial discharge of the loan availed by the petitioner.

8. The learned counsel for the petitioner also contented that the impugned demand dated 30.10.2010 issued by the first respondent is arbitrary and illegal, since structures were only put up by the petitioner and the respondent is not entitled for any compensation for the acquisition of the structures by the second respondent.

9. Per contra, the learned counsel for the first respondent drew the attention of this Court to the lease agreement dated 28.04.2004 entered into between the petitioner and the first respondent and in particular, he referred to Clause-IV as well as VI of the said agreement and submitted that as seen from the above mentioned clauses, the tank structures were put up only by the first petitioner and they shall remain the property of the lessee, who is the first respondent herein.

10. The learned counsel for the petitioner also drew the attention of this Court to clause-I and II of the agreement and submitted that once the Government acquires the lands of the petitioner in which Petrol Bunk is situated, the lease shall get terminated and the lessee shall have the right to remove all the structures belonging to them found therein.

11. The learned counsel for the respondent also drew the attention of this Court to the determination of the said compensation made by the second respondent with regard to the land acquisition and submitted that a sum of Rs.3,69,323/- was determined as compensation by the second respondent towards the compound wall found in the petrol Bunk.

12. According to the first respondent, the compound wall found in the Petrol Bunk was constructed only by the first respondent and hence, they are entitled for compensation towards the same. It is also submitted by the learned counsel for the first respondent that the petitioner has constructed only the retaining wall and not the compound wall which was constructed only by the first respondent.

13. It is also further submitted that in the counter affidavit filed by the first respondent in paragraph No.11, they have specifically stated that the value of the retaining wall put up by the petitioner is only Rs.44,999/-. Hence, according to him, if at all the petitioner is entitled for any amount, he is only entitled for a sum of Rs.44,999/- and the balance amount out of the total payment of Rs.3,84,105/- is payable to the first respondent. However, the said contention of the learned counsel for the first respondent that the retaining wall can be

valued only a sum of Rs.44,999/- is disputed by the learned counsel for the petitioner.

14. It is also brought to the notice of the Court that prior to the impugned demand dated 30.10.2010, the first respondent has also intimated the petitioner on 20.09.2010 about several developments made in the site and that the structures were only constructed by them and therefore, they are entitled for compensation for the structural development made by them.

Discussion:

15. Admittedly, the lands measuring approximately 3450 sq. ft., out of the total extent of 30,000 sq. ft., in which petrol bunk is situated at Deivakurichi Village, Thalaivasal, Athur Taluk, Salem District, has been acquired by the second respondent and compensation amount has also been determined. It is also not in dispute that the compensation was paid by the second respondent towards structures found in the property, for a sum of Rs.3,69,323/-, determined by the second respondent as compensation, payable towards the compound wall found in the petrol bunk. The second respondent in the impugned demand dated 30.10.2010 has claimed a sum of Rs.3,84,105/- as compensation, payable for the structures put up by them in the petitioner's property, which was acquired by the second respondent. There is a specific clause in the agreement of lease entered into between the petitioner and the first respondent, wherein, the petitioner has agreed that in case of land acquisition, the lease shall stand terminated and the first respondent shall have the right to remove all the structures put up by them in the petitioner's property for the purpose of running a petrol bunk.

16. Clause I and II of lease agreement dated 28.04.2004, is extracted hereunder:

'1. In the event of the demised premises hereunder being acquired by Government or any public body for a public purpose, the lease shall terminate and neither party shall have any claim nor right against the other in respect of the terms and conditions stated herein. Provided that the parties hereto shall be respectively entitled to such remuneration as they may be awarded under the law.

2. Notwithstanding here in before containing if the lessee for any reason wish to terminate this lease at any time during the said term they shall be at liberty to do so on giving the Lessors one month's notice in writing of their intention in that behalf and then in such case immediately upon the expiration

of the period of such notice this Lease shall terminate and everything herein contained shall cease and be void walls, plant, tanks, fixtures, fittings or other appliances as shall be put up or erected by them on the demised premises at their own cost.

17. It is also made clear that there is one another clause in the lease agreement that the entirety of the structures shall remain in the property of the lessee, who is the first respondent herein. The relevant clause is extracted hereunder:

"The entirety of such tanks structures plan and outfit as shall be put up by the Lessee on the demised premises shall remain the property of the Lessee notwithstanding that they compromise fixtures embedded in or attached to the earth and the Lessor shall have no claim thereto in any manner whatsoever."

18. Admittedly, the compensation of the second respondent has been paid for the structures found in the petitioner's property. The details of the compensation paid towards compound wall are extracted hereunder:

| Sl. No. | Survey No. | Details of structure      | Value    | Detail s of wells | Value | Detail s of trees | Value | Total Value |
|---------|------------|---------------------------|----------|-------------------|-------|-------------------|-------|-------------|
| 1       | 2          | 3                         | 4        | 5                 | 6     | 7                 | 8     | 9           |
| 1       | 47/5       | Compound wall petrol bunk | 3,69,332 | -                 | -     | -                 | -     | 3,69,332    |
|         |            | Total                     |          |                   |       |                   |       | 3,69,332    |

19. The learned counsel for the petitioner drew the attention of this Court to the letter dated 27.12.2003 sent by the first respondent to the petitioner before awarding the dealership wherein they have stated as follows:

"2. you have to do earth filling by the depth of 1.5 metre by sand to Road level by your own cost.

3. You have to do construct Retaining Wall on both sides, 200 feet length in the east, 200 feet length in the west, 150 feet in the north by your own cost.

4. The proposed Buffer strip 15.72X3.00 has to be constructed by your own cost."

a. As seen from the aforesaid letter, it is clear that the petitioner will have to do only earth filling to the depth of 1.5 meter by filling of sand to the road level by his own cost.

b. He has to construct a retaining wall on both sides.

20. There is no reference to a compound wall in the letter dated 27.12.2003. A retaining wall is different from a compound wall. The compound wall will rest on the retaining wall. As seen from the compensation awarded by the second respondent towards structures, it is clear that compensation has been determined only towards a compound wall.

21. It is also not in dispute that there is exist a compound wall in the petitioner's property. The first respondent has also admitted in his counter affidavit that the retaining wall has been put up only by the petitioner for the value of Rs.44,999/-

22. According to the first respondent, a balance amount of Rs.3,84,105/- after the adjustment of Rs.44,999/- is payable to the first respondent. It is an admitted position that the cost of retaining wall is much lesser than the cost of compound wall which rest on the retaining wall. Hence, this Court is of the considered view that there is a justification in the demand made by the first respondent for the compensation towards the compound wall which was acquired by the second respondent pursuant to the land acquisition. The basis for the impugned demand dated 30.10.2010 is also justified as it is supported by the determination of compensation by the second respondent on 16.09.2009 for the compound wall, as detailed below:

'As you are aware, after taking said site on lease, we have made several developments in the site for making our petroleum retail outlet operational. The structures were constructed by us and hence, we are entitled for to compensation for the structural development made by us. Out of the payment made by NHAI, an amount of Rs.3,84,105/- is due to IOC on account of structures as detailed below:

|                          |   |                |
|--------------------------|---|----------------|
| Structure Value          | : | Rs.3,69,332.00 |
| Add 10% additional Value | : | Rs. 36,933.00  |
| -----                    |   |                |
| Sub total                | : | Rs.4,06,265.20 |
| Less: Salvage amount     |   |                |
| @ 6% of Rs.3,69,332/-    | : | Rs. 22,160.00  |
| -----                    |   |                |
| Net amount due to IOC    | : | Rs.3,84,105.00 |
| -----                    |   |                |

23. However, it is made clear that since the first

respondent has admitted in his counter affidavit in paragraph No.11 that out of the value of the retaining wall put up by the petitioner, the first respondent is entitled only for a sum of Rs.3,39,106/- out of the impugned demand, after adjustment of the said amount of Rs.44,999/-, which is payable to the petitioner pursuant to the land acquisition.

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

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

rli  
To

1.The Competent Authority and  
Special District Revenue Officer (LA) NH.68,  
Salem.

+1cc to Mr.R.Ravi , Advocate SR.No. 9965  
+1cc to Mr.S.Doraisamy , Advocate SR.No. 9088  
+1 cc to Government Pleader Sr.No. 9996

W.P.No.26226 of 2010  
and M.P.no.1 of 2010

A.SK(07/08/2020)

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