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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 23.11.2021

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.Nos.9578, 9579 & 9580 of 2011

and

M.P.Nos.2, 2 & 2 of 2011 and 1, 1 and 1 of 2012

WMP.Nos.5632, 5633, 5634 & 5635 of 2017

C.Major Sathia Moorthy Gopalan
Proprietor of Major's Eswari Enterprises,
Having office at No.1, Evening Bazaar,
Chennai-3. .. Petitioner in WP.9578/2011

Bhavani Agency
Rep. by its Partner B.Padmavathi,
Having office at No.1, Farzer Bridge Road,
MUC Corner, Chennai-3. .. Petitioner in WP.9579/2011

V.Govindaraju Mudaliar & Co.,
Rep. by its Partner L.Munishwar Ganesan,
Having office at No.2, Rattan Bazaar,
Chennai-3. .. Petitioner in WP.9580/2011

..Vs..

1. Indian Oil Corporation,
Chennai Divisional Office,
500, Anna Salai, Chennai-18.
2. The Defence Estates Officer,
Madras Circle,
No.306, Anna Salai, Teynampet,
Chennai 600 018. .. Respondents in all Wps

PRAYER in WP.No.9578 of 2011: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records comprised in the notice No.Q/86-B/IV/3/MC dated 31.3.2011 of the second respondent and quash the same and consequently forbear the respondents from in any manner interfering with the peaceful possession and business activity of the property situated at



No.1, Evening Bazaar, Chennai-3, bearing R.S.No.10116/2 to an extent of 4792.5 till the first respondent re-allot the dealership to the petitioner of any other Petrol bunk.

PRAYER in WP.No.9579 of 2011: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records comprised in the notice No.Q/86-B/IV/3/MC dated 31.3.2011 of the second respondent and quash the same and consequently forbear the respondents from in any manner interfering with the peaceful possession and business activity of the property situated at No.1, Farzer Bridge Road, MUC Corner, Chennai-3, bearing R.S.No.10116/2 Pt to an extent of 5942 Sqft. till the first respondent re-allot the dealership to the petitioner of any other Petrol bunk.

PRAYER in WP.No.9580 of 2011: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records comprised in the notice No.Q/86-B/IV/3/MC dated 31.3.2011 of the second respondent and quash the same and consequently forbear the respondents from in any manner interfering with the peaceful possession and business activity of the property situated at No.2, Rattan Bazaar, Chennai-3, bearing R.S.No.11378/15 to an extent of 4870.2 Sqft. till the first respondent re-allot the dealership to the petitioner of any other Petrol bunk.

(In all WPs)

For Petitioner : Mr.V.Balakrishnan

For Respondents : Mr.Vijay (for R1)
for M/s.Anand, Abdul & Vinodh Associates
Mr.G.Baskaran (for R2)
Central Government Standing Counsel

COMMON ORDER

The notice issued under sub section 1 of Section 5 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 is under challenge in the present writ petitions.

2.The petitioner in WP.No.9578 of 2011 served as Major in Indian Army and during the service period he suffered injuries and became disabled. Thus, he was allowed to retire from the service.

3.The first respondent Indian Oil Corporation allotted the retail outlet dealership to sell Petrol, Diesel and other Petroleum products under the defence category of personnel whose



disability is attributable to active military service at No.1, Evening Bazaar, Chennai-3. The second respondent Defence Estate Officer leased out the property to Indian Oil Corporation. In turn, the Indian Oil Corporation granted licence to the petitioner to run retail outlet dealership of Petrol Bunk at No.1, Evening Bazaar, Chennai-3 for a period of 15 years commencing from 12.04.2006 by entering into dealership agreement dated 12.04.2006. However, the agreement between the Indian Oil Corporation and the petitioner was renewed.

4.The learned counsel for the petitioner mainly contended that under Sub-section 2(b) of Section 4 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, all the persons concerned are entitled for notice and no such notice was issued to the writ petitioner and thus the impugned order is liable to be set aside. On this ground, an interim order was granted by this Court and the writ petition is pending for about 10 years. Pursuant to the interim stay granted by this Court, the petitioner is operating the retail Petrol Bunk.

5.Interestingly, the learned Central Government Standing Counsel states that a sum of Rs.8,99,79,194/- in W.P.No.9578 of 2011, Rs.9,56,71,990/- in W.P.No.9579 of 2011 and Rs.6,46,11,015/- in W.P.No.9580 of 2011 towards arrears of rent is to be paid to the Defence Department. In spite of several demands, the arrears of rent has not been paid by the Indian Oil Corporation and the Defence property is with the possession of the Indian Oil Corporation without payment of rent and therefore, they are liable to be evicted immediately.

6.The learned counsel appearing on behalf of the first respondent Indian Oil Corporation made a submission that the Corporation has taken a decision not to continue the licence in the premises as several disputes exist with the Defence Department and they are prepare to negotiate with the competent authorities of the Defence Department for settling the arrears of rent and other issues. It is needless to state that the Defence Department is entitled to recover the arrears of rent to be paid by the Indian Oil Corporation. As the Indian Oil Corporation is the lessee with whom the agreement was entered into by the Defence Department.

7.The learned counsel for the petitioner made a submission that he being a licensee is entitled for a notice. In this context, let us consider the scope of Section 4 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971. Section 4(1) reading as under:-

“(1) If the estate officer has information that any person is in unauthorised occupation of any public



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premises and that he should be evicted, the estate officer shall issue in the manner hereinafter provided a notice in writing within seven working days from the date of receipt of the information regarding the unauthorised occupation calling upon the person concerned to show cause why an order of eviction should not be made."

8. Sub Section 2 must be read cogently with reference to Sub-Section 1 of Section 4. Sub Section 2 cannot be read in isolation as the context mentioned is that, the show cause notice is to be issued to the "person concerned". The person concerned in the present context is the lessee Indian Oil Corporation and the petitioner is an alien to the lease agreement and there is no transaction between the Defence Department and the petitioner as far as the leasing of the Defence property is concerned.

9. The petitioner is only a licensee/permissive occupant by the Indian Oil Corporation and the learned counsel for the petitioner reiterated that the petitioner paid all the dues to the Indian Oil Corporation without any lapses. Thus, there is no contractual obligation between the petitioner and the Defence Department and the lease exists between the Defence Department and the Indian Oil Corporation and the arrears of rent also demanded by the Defence Department against the Indian Oil Corporation and not against the writ petitioner. Thus, the contractual obligation based on the agreement exist between the Defence Department and the Indian Oil Corporation and the petitioner being an alien to the contract cannot have any locus to institute the present writ petition and on that ground itself the writ petition is to be rejected.

10. Sub Section 2(a)(b) stipulates that the notice shall specify the grounds on which the order of eviction is proposed to be made and require all persons concerned, that is to say, all persons who are, or may be, in occupation of, or claim interest in, the public premises.

11. No doubt, the petitioner is allowed to run retail Petrol Bunk in the Defence property. However, he cannot be said to be a person concerned within the meaning of Sub Section 1 of Section 4. Thus, the purpose and object of Sub Section 2(b) is to ensure that all the persons connected with the lease and in possession of the property and those persons must be issued with notice and certainly not in respect of alien to the contract.

12. Thus, an alien to the contract has no right to claim that a notice must be issued under the provisions of the Act. The principles of constructive interpretation is to be adopted



in order to achieve the purpose and object of the act. The purpose and object of Section 4 is to ensure that the lessee gets an opportunity to defend their case in the manner known to law. Thus, a show cause notice is contemplated.

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13. Section 4 enumerates the procedures to be followed for issuing show cause notice. Thus, Sub Section 1 and 2 must be interpreted constructively so as to ensure that the persons concerned are issued with a show cause notice for the purpose of providing an opportunity to defend their case in accordance with the provisions of the act. Therefore, the very interpretation offered by the petitioner deserves no merit consideration as admittedly he is not a concerned person and he was just issued with the licence by the Indian Oil Corporation to run the retail Petrol Bunk and he is entitled only to get commission from and out of the sale.

14. As far as the property leased out is concerned, Indian Oil Corporation is in possession of the property. In view of the fact that the Indian Oil Corporation is in actual possession of the property and granted licence to administer the Petrol Bunk and the petitioner is entitled to get commission based on the quantum of sale made, there is no reason to recognise the petitioner as lessee or sub-lessee. Thus, the petitioner has no locus standi to question the disputes arising from and out of the contractual obligation through lease/agreement between the Defence Department and the Indian Oil Corporation.

15. Curiously by virtue of an interim order, both the Indian Oil Corporation and the petitioner are enjoying the defence property for about 10 years. The Indian Oil Corporation being a Government of India undertaking has failed to pay the arrears of rent to the Defence Department, which cannot be appreciated. The steps taken in this regard is also not explained. Thus, the Indian Oil Corporation also failed in its duty to settle the arrears of rent within a reasonable period of time and committed chronic default in payment of lease amount. Thus, the Indian Oil Corporation is also not entitled for any relief.

16. However, the learned counsel appearing on behalf of the Indian Oil Corporation made a submission that Corporation has already taken a decision to vacate the premises and hand over the same to the defence department and therefore, they will discuss the issues with the competent authorities and settle the arrears of rent to be paid in the manner known to law. In view of the said submission made, the petitioner cannot have any right as he is only a licensee appointed by the Indian Oil Corporation and thus, the petitioner is not entitled for any further opportunity.



17.The learned counsel for the petitioner states that the petitioner will be on streets, if he is vacated. Such a contentions is not laudable. In view of the fact that the petitioner is a retired Major and receiving a decent amount of pension and other defence service benefits, and further he is aged about 67 years. Under these circumstances, such a contention is unacceptable.

18.This Court after considering the facts and circumstances found that the Defence Department is finding it difficult to maintain such property, which all are not in possession and leased out for some commercial purposes. Thus, the defence properties are to be utilised for providing infrastructure facilities for the benefit of the Defence Department and if the properties are going to be leased out for commercial purposes to the third parties, the Defence Department is finding it difficult even to collect the rent from such tenants or lease holders and struggling to vacate the lessees.

19.The defence authorities may consider and take a decision for disposal of such properties by following the procedures as contemplated and if necessary by submitting a proposal to the Defence Ministry. Contrarily, the Defence Department cannot afford to litigate these commercial issues in the Courts for several years, which would cause great prejudice to the public interest and to the interest of the Defence Department.

20.In view of the fact that the petitioner has already enjoyed the Bunk for more than 10 years despite the fact that he has no locus to question the lease between the Indian Oil Corporation and Defence Department and made profits for the past about 10 years and the Indian Oil Corporation also has not paid the rent to the defence department for several years, this Court has to pass appropriate orders considering the public interest as the defence property is being abused by the Corporation and the petitioner being a licensee has taken undue advantage of the circumstances. Accordingly, this Court is inclined to pass the following orders:-

(i) the relief sought for in the present writ petitions stand rejected;

(ii) the first respondent Indian Oil Corporation is directed to stop the supply of Petrol, Diesel and all Petroleum products forthwith immediately with effect from the date of receipt of a copy of this order;

(iii) the Indian Oil Corporation is directed to vacate the premises and handover possession of the property to the second respondent Defence Estate Officer by following the procedures within a period of two months from the date of receipt of a copy of this order, as the Indian Oil Corporation had taken a



decision to vacate the premises;

(iv) the first respondent Indian Oil Corporation is directed to settle the arrears of rent, if necessary, by negotiating with the competent authorities of the Defence Department within a period of twelve weeks from the date of receipt of a copy of this order. If the first respondent fails to settle the amount, the second respondent defence authorities are at liberty to initiate all appropriate actions against the first respondent for recovery of dues as public debt.

21.The writ petitions stand dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

vs

To

1. Indian Oil Corporation,
Chennai Divisional Office,
500, Anna Salai, Chennai-18.
2. The Defence Estates Officer,
Madras Circle,
No.306, Anna Salai, Teynampet,
Chennai 600 018.

+1cc to Mr.V.Balakrishnan, Advocate, S.R.No.60733

+1cc to Mr.G.Baskaran, Advocate, S.R.No.60240

W.P.Nos.9578, 9579 & 9580 of 2011 and
M.P.Nos.2, 2 & 2 of 2011 and 1, 1 and 1 of 2012
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PM(CO)
SU(15/12/2021)