

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.02.2021

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P. No.27900 of 2019
and
WMP No.27476 of 2019

M.Balavenkatesan

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Petitioner

Vs

1. The Indian Oil Corporation Limited,
Rep. By its Managing Director,
No.G-9, Aliyavar Jung Marg,
Bandra East,
Mumbai Town - 400 051
Maharashtra State

2. The Indian Oil Corporation Limited,
Rep. By its General Manager,
(The Executive Director) (T.N.S.O.)
B-9, M.G. Road,
Chennai - 600 034.

3. The Indian Oil Corporation Limited,
Rep. By its Divisional Manager,
Divisional Office (Retail Sales)
No.8/1079, Avinasi Road,
Coimbatore Town,
Coimbatore - 641 018.

4. The Indian Oil Corporation Limited,
Rep. By its Divisional Manager
(Retail Sales),
1st Floor,
D.No.74, Rasi Nagar,
Salem Taluk,
Salem District - 636 302.

5. M/s.Aditya Traders,
AmmaniKondalampatti (Divya Theatre)
Kondalampatti Bye-Pass
NH-7,
Salem - 636 010.

...

Respondents

Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Mandamus directing the respondents 1 to 5 herein not to establish any gas bunk in the subject property viz., land measuring to an extent of 1 Acre comprised in Survey No.44/4A1 of Ammani Kondalampatti Village, Salem Taluk and District and also to grant interim injunction restraining the respondents from establishing any gas bunk in the subject property.

For petitioner ... Mr.C.Kasirajan

For respondents ... Mr.Mohammed Fayaz Ali
Standing counsel
R5 - Served - No appearance

ORDER

This writ petition has been filed for a Mandamus seeking for a direction to the respondents not to establish any gas bunk in the subject property viz., land measuring 1 Acre comprised in Survey No.44/4A1 of Ammanikondalampatti Village, Salem Taluk, Salem District.

2. The case of the petitioner is that he is the absolute owner of the aforementioned property and that he had leased out the said property to the respondent oil Corporation for a period of 29 years from 20.01.2006. According to him, under the lease deed, the respondent oil Corporation was permitted only to deal with petroleum products. However, according to him, contrary to the terms and conditions of lease deed dated 20.01.2006, the respondent/oil Corporation is now trying to set up a Compressed Bio Gas (CNG bunk) in the subject property. In such circumstances, the petitioner has filed this writ petition seeking for a Mandamus to direct the respondents not to set up the CNG bunk in his property.

3. A counter affidavit has been filed by the respondents 1 to 4 wherein, they have stated that under the lease deed dated 20.01.2006, the respondent/ oil Corporation has been permitted to deal with all petroleum products as well as other products. They have stated that Compressed Bio Gas, which the respondent/ Oil Corporation proposes to set up in the petitioner's property is also a fuel and the lease deed permits the respondent to deal with other products as well and therefore , there is no bar for them to deal with Compressed Bio Gas. It is also their case that the lessors are A. Muthusamy and A.Manickam, but the writ petition has been filed by one of the sons of A.Muthusamy

only. It is also their case that the lessors have already initiated eviction proceedings in O.S. No.454 of 2008 against the respondent/ oil Corporation, which is pending on the file of the I Additional District Munsif Court, Salem. According to them, being a contractual dispute, the writ petition is not maintainable and the only remedy available to the petitioner is to seek relief in the suit. It is also their case that only after getting permission from all the statutory authorities, they are setting up the Compressed Bio Gas unit in the premises of the petitioner.

4. Heard Mr.C. Kasirajan, learned counsel for the petitioner and Mr.Mohammed Fayaz Ali, learned Standing counsel for the respondents 1 to 4. Despite service of notice on the 5th respondent, no one has entered appearance on behalf of the 5th respondent.

5. The learned counsel for the petitioner drew the attention of this Court to the lease deed dated 20.01.2006 by which, the subject property was given on lease to the respondent /oil Corporation and would submit that oil corporation is permitted to deal with petroleum products and that Compressed Bio Gas which is extracted from agricultural waste cannot be treated as a petroleum product and hence the respondent/ oil Corporation cannot set up a compressed bio gas unit in the premises of the petitioner, which was let out to them for a period of 29 years.

6. Per contra, Mr.Mohammed Fayaz Ali, learned Standing counsel appearing for respondents 1 to 4 would submit that the lease deed permits the respondent/Oil Corporation to deal with petroleum products and other products. Further he would contend that Compressed Bio Gas is also a fuel and hence, the respondents cannot be prevented from dealing with the said product. He would also contend that being a contractual dispute, the only remedy available to the petitioner is to redress his grievance before the civil court. He would also submit that already the lessors have initiated eviction proceedings against the respondent/ oil Corporation and the same is pending in O.S. No.454 of 2008 on the file of the I Additional District Munsif Court, Salem. According to him, the relief sought for in this writ petition is an attempt made by the petitioner to evict the respondent /oil Corporation indirectly by adopting dubious methods. It is his further contention that the petitioner has no locus-standi to file this writ petition as there is another co-lessor who has not joined in filing this writ petition.

7. This Court has perused and examined the lease deed dated 20.01.2006 entered into between A.Muthusamy and A.Manickam as

lessors with the respondent /oil Corporation. The petitioner claims that he is the son of the deceased A.Muthusamy. As seen from the lease deed, the relevant portion, which deals with the products, the respondent /oil Corporation is permitted to deal with are as follows :

"WHEREAS the Lessors is the owners of the vacant piece or parcel of land admeasuring 25,575 sq. ft. and more particularly described in the Schedule hereunder written and delineated on the plan thereof hereto annexed and thereon surrounded by a Red coloured boundary line and whereas the Lessors has agreed to grant a lease of the said land and premises to the lessee on the terms and conditions hereinafter for the purpose of the Lessee's business and for the purpose of erecting Petrol and / or high speed diesel oil pump and servicing and lubricating stations and for using the said land and premises as oil and /or petroleum depot for storage and use of oil petroleum and other products and WHEREAS the parties hereto have agreed to obtain (or obtained) the permission of the Collector of Salem District and Corporation Local Authorities and all other public bodies and / or authorities sanctioning the use of the said land and premises for non - agricultural and industrial purposes and for the purpose of erection of pumps, service and lubricating stations and / or the storage of the aforesaid products and the business of the Lessee as aforesaid AND WHEREAS the parties have agreed to execute this Indenture of Lease in Triplicate".

8. As seen from the aforementioned recitals to the lease deed, it is clear that the property has been let out to the respondent/ oil Corporation for the purpose of erecting Petrol and / or high speed diesel oil pump and servicing and lubricating stations and for using the said land and premises as oil and /or petroleum depot for storage and use of oil petroleum and "other products"

9. Admittedly Compressed Bio Gas (CBG) is also used as a fuel for vehicles. Therefore, it will certainly come within the meaning of the "other products" mentioned in the recitals to the lease deed. Therefore, it cannot be said that the respondent /oil Corporation is attempting to set up a Compressed Bio Gas unit in the petitioner's property in violation of the terms and conditions of the lease deed dated 20.01.2006. As seen from the counter affidavit filed by the respondents 1 to 4 in this writ petition, they have also stated that only after obtaining approval from all the concerned statutory authorities, they intend to set up a Compressed Bio Gas unit in the petitioner's property. Even though, Compressed Bio Gas has been extracted from agricultural waste products, since it is used as

a fuel for vehicles, the contention of the learned counsel for the petitioner that the property was not let out to the respondent/ oil Corporation for dealing with Compressed Bio Gas cannot be accepted by this Court. Further, this Court is not an expert on the issues raised by the petitioner in this writ petition as to whether the Compressed Bio Gas unit, if set up in a residential area would be dangerous or not. It is for the statutory authorities concerned to look into that aspect. However, only with the approval of all the statutory authorities concerned, the respondents oil Corporation can set up a Compressed Bio Gas bunk in the petitioner's property.

10. For the foregoing reasons, there is no merit in this writ petition and the writ petition stands dismissed. However, if so advised the petitioner is given liberty to redress his grievance, if any, either before the statutory authorities concerned or before the civil court. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Managing Director,
The Indian Oil Corporation Limited,
No.G-9, Aliyavar Jung Marg,
Bandra East,
Mumbai Town - 400 051
Maharashtra State

2. The General Manager,
The Indian Oil Corporation Limited,
(The Executive Director) (T.N.S.O.)
B-9, M.G. Road,
Chennai - 600 034.

3.The Divisional Manager,
Indian Oil Corporation Limited,
Divisional Office (Retail Sales)
No.8/1079, Avinasi Road,
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Coimbatore - 641 018.

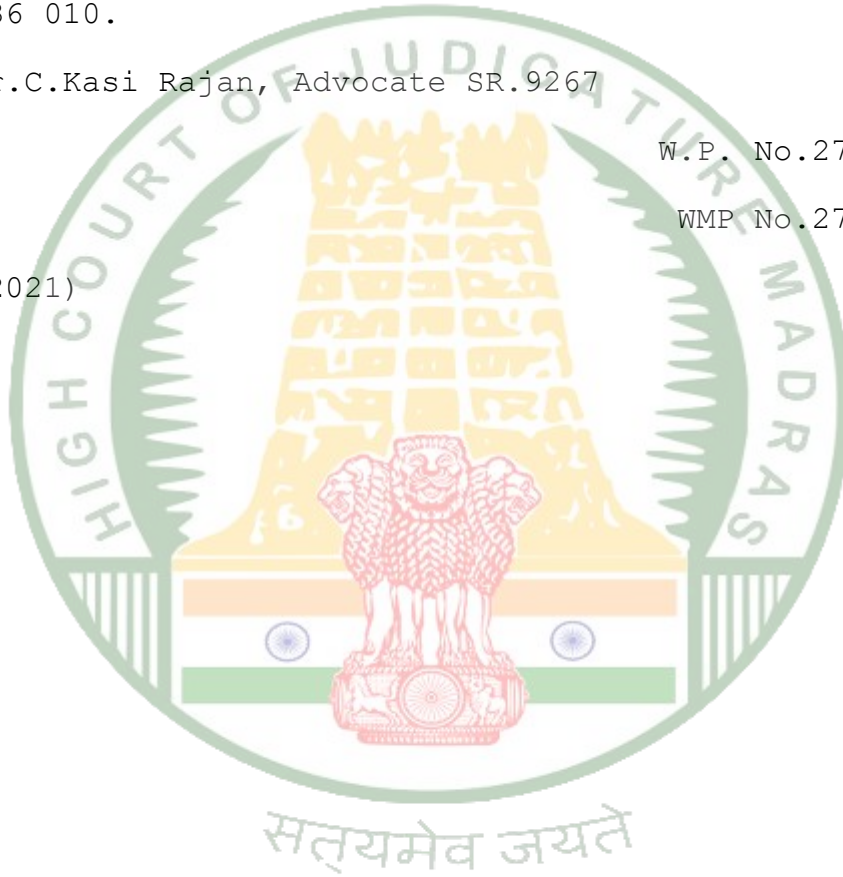
4.The Divisional Manager
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(Retail Sales),
1st Floor,
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5. M/s.Aditya Traders,
AmmaniKondalampatti (Divya Theatre)
Kondalampatti Bye-Pass
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Salem - 636 010.

+1cc to Mr.C.Kasi Rajan, Advocate SR.9267

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and
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MGR(CO)
CB(09/03/2021)



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