

IN THE HIGH COURT OF ORISSA AT CUTTACK

WP(C) No.20056 of 2016
(Through hybrid mode)

Arun Kumar Panda and another ***Petitioners***

Mr. A.Tripathy, Advocate

-versus-

Union of India, New Delhi and others ***Opposite Parties***

Mr. P.K.Parhi, Advocate (ASG) (for O.P.no.1)

Mr. Srinivas Patnaik, Advocate (for O.P. no.2)

CORAM: JUSTICE ARINDAM SINHA

ORDER
22.02.2022

Order No.

- 05.** 1. The writ petition was moved before this Bench on 4th January, 2022.
2. Mr. Tripathy, learned advocate appeared on behalf of petitioners and submitted, his clients are owner of the land. Lease of the land was given to one Gollak Behera for operating retail outlet (RO) and said person obtained licence from Bharat Petroleum Corporation Limited (BPCL). The oil company terminated the licence by letter dated 14th June, 2007. Subsequent thereto, the oil company appointed M/s. D.R. Patra and Sons to operate the RO. His clients in tandem also granted lease to M/s. D.R. Patra and Sons. However, M/s. D.R. Patra and Sons abandoned the site. His clients did not get usufructs

of their property. As a result his clients had approached the oil company to itself take lease of the land. The oil company refused to do so. When this writ petition was filed and notice issued upon the oil company, it removed its effects on 20th April, 2017. By the removal first prayer of his clients has been met. There remains the relief of compensation, to be adjudicated and directed.

3. Mr. Patnaik, learned advocate appeared on behalf of the oil company and submitted, there is no privity of contract between petitioners and his client. There cannot arise, therefore, the question of compensation.

4. It was found from said termination letter dated 14th June, 2007 that the oil company had fixed 22nd June, 2007, for its officers to visit the RO to physically take over the site and, inter alia, undertake inventory of products lying there, including underground tanks and stock items etc.. Further disclosures in the writ petition made it clear that the oil company had been in control of the property. When the second person had abandoned the dealership and after many attempts of petitioners to obtain usufructs of the land from the oil company, it by letter dated 12th October, 2015 said that they would remove their properties latest by 30th November, 2015. It became clear that at least from 30th November, 2015 till 20th April, 2017, the oil company was wrongfully in possession of the property.

5. Petitioners were granted liberty to file additional affidavit regarding their contention of relief by payment of

compensation. In the affidavit, basis for the claim of compensation has been attributed to lease deeds executed by petitioners in favour of the two successive dealers of the oil company, providing, inter alia, for monthly rent and periodic increase thereto. On that basis in para-5, petitioners have claimed Rs.4,61,376/- and interest. Said paragraph is reproduced below.

“5. That it is respectfully submitted here that the petitioner is entitled to get a sum of Rs.4,61,376/- (Rupees Four Lakhs Sixty One Thousand Three Hundred Seventy Six only) from the Opp. Party No.2 in the year 2017 and in the mean time five years had already been elapsed, therefore the petitioner is entitled for getting interest for the delay payments @ 10% per annum till realization.

Under this circumstances the petitioners are entitled for getting a sum of Rs.4,61,376/- (Rupees Four Lakhs Sixty One Thousand Three Hundred Seventy Six only) from the opposite parties along with interest @ 10% per annum from the year April 2017 till realization from the opposite party No.2”

6. Today Mr. Pattnaik, relies on his client's additional counter affidavit carrying objection to the additional affidavit. He submits, there cannot be any order in the writ petition based on unregistered lease deeds. Secondly and without prejudice, rule 12 in order XX in Code of Civil Procedure provides for, inter alia, ascertaining mesne profits. As such basis of

calculating mesne profits cannot be terms of the unregistered deeds of leases. Third point is reiteration that there was no privity of contract between petitioners and his client. He relies on judgment of the Supreme Court in **Joshi Technologies International INC. v. Union of India and others**, reported in **(2015) 7 SCC 728**, paragraphs 61, 69, 69.1, 69.3 and 70.8. He submits, the writ petition is not maintainable based on the lease deeds as they contain terms of contract. Court should refuse to exercise discretion, the jurisdiction being discretionary.

7. Admitted position is the oil company did not have privity of contract with petitioners. That is why petitioners were made to go from pillar to post. Being an oil company, it has taken petitioners' land, anyhow. The two successive dealers were dealt with by the oil company in such a manner that one was terminated and the other fled, ostensibly giving the oil company authority to enter upon petitioners' land. Petitioners have moved Court for it to exercise discretion against the all powerful oil company in having done what they did. There is record of petitioners' appeals to the oil company for it to, inter alia, allow petitioners to run the RO. The oil company said that no RO can be run from the property. The question arises then as to why the oil company caused petitioners' land to be taken for the two dealerships.

8. Relief sought in this writ petition is not for enforcement of a lease based on unregistered documents. On pain of repetition, the oil company does not have privity of contract with petitioners. Court is convinced that petitioners are entitled

to minimum compensation. Minimum because the oil company through the first dealer (terminated) and the second absconding, used petitioners' land for their business, denying usufructs of it and continuing to deny based on contention of lack of registration and pleas regarding maintainability of the writ petition. The last plea, of the writ petition not being maintainable as based on contract, is contradictory to the oil company's own earlier contention of no privity of contract with petitioners. Conduct of the oil company, a public sector undertaking, shocks the conscience of Court.

9. Constitutional writ jurisdiction bestows extraordinary power on High Courts. Such power allows for the High Court to direct, inter alia, compensation apart from other directions for compelling action or restitution. Court has perused the additional affidavit and additional counter. It is ascertained that existence of documents and therein rates, relied upon by petitioners to make the claim, have not been disputed. Court finds a good basis for determining the compensation.

10. The oil company will pay compensation to petitioners at Rs.4,61,376/- along with simple interest at the rate of 4% per annum, calculated from 21st April, 2017 till the date of payment, if within 31st March, 2022. In event the payment is not made by that date, the aggregate of principal and interest accrued as on 31st March, 2022 will thereafter attract the same rate of interest but compounded with quarterly rests.

11. In making this order, the interpretation by **Joshi Technologies International INC** (supra) has been adhered to.

Court has examined petitioners' claim for compensation as public law character is attached to it inasmuch as the oil company, being a public sector company, has infringed legal right to property of petitioners. The oil company has, in aid of its contentions relied upon the authority but the interpretation of law therein can also well be relied upon by petitioners.

12. The writ petition is disposed of.

(Arindam Sinha)
Judge

RKS

