



W.P.(MD)No.19111 of 2020

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Reserved on : 22.03.2024

Pronounced on : 27.03.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

W.P.(MD)No.19111 of 2020

and

W.M.P.(MD)No.15981 of 2020

Indian Oil Corporation Ltd.,
through its The Chief Divisional
Retail Sales Manager,
No.2, Race course Road,
Divisional Office,
Madurai – 625 002.

... Petitioner

Vs.

1. The District Collector,
Office of District Collectorate,
Virudhunagar.

2. Sakthivel Raja

3. Thirumagal

... Respondents

Prayer : This Writ Petition filed under Article 226 of Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the



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records of the impugned order Na.Ka.C3/24348/2020 dated 05.12.2020 passed by the first respondent and quash the same as illegal and violation of natural justice without giving reasonable opportunity to the petitioner.

For Petitioner : Mr.M.Vallinayagam, Senior Counsel
for Mr.K.Muraleedharan

For R1 : M/s.K.Christy Theboral
Additional Government Pleader

For R2 : Mr.O.R.Gokul Abimanyu
for Mr.S.Sankara Pandian

For R3 : Mr.K.P.S.Palanivel Rajan

ORDER

The Writ Petition is directed against the order dated 05.12.2020 passed by the first respondent cancelling the No Objection Certificate (NOC) granted to the writ petitioner.

2. The writ petitioner is a Public Sector Company under the control of Ministry of Petroleum and Natural Gas.

3. The case of the writ petitioner-Company is that the writ petitioner-Company has a retail outlet at Madurai Road, Virudhunagar and



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is being operated through their dealer, third respondent under the name and style of M/s.Yes Pee Kay Agency, that the outlet is commissioned in the property situated in Survey No.11/6, Pelampatti Village, Madurai Road, Virudhunagar, which was owned by three persons, namely, U.Nirmala, S.Raji and R.Thirumagal, that they had given the land on lease in favour of the writ petitioner-Company for a period of 30 years between the period 18.06.2001 and 17.06.2031 vide registered lease deed dated 18.06.2001, that the writ petitioner-Company has developed the property and commissioned the retail outlet, that all belongings of the Corporation are available in the property and that M/s.Yes Pee Kay Agency is their dealer, in which, the third respondent is a partner.

4. It is the further case of the writ petitioner-Company that the land owners had availed some credit facilities from State Bank of India and since the said loan has become an NPA, the Bank had initiated SARFAESI proceedings by enforcing the security over the mortgaged property, the property now under the occupation of the writ petitioner-Company, that the second respondent and his wife had purchased the property from the Bank and sale certificate came to be issued on 13.12.2013 and the same



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was registered, that the property was sold under sale certificate but subject to the pre-existing lease with the writ petitioner-Company as per the provision of Transfer of Property Act, that the second respondent and his wife have become co-owners cum lessors of the property and thereby the tenancy has also been attorned, that the writ petitioner-Company has been paying rent previously to the previous owners and after the purchase by the second respondent and his wife, rent was being paid regularly till August-2017, that when the rent was sent for the subsequent periods by means of cheques, the same were refused to be received by the second respondent, that the second respondent and his wife have been taking serious efforts to get the physical possession of the property by illegal means, that they have also attempted to cause damages to the property of the writ petitioner-Company and that the writ petitioner-Company has then filed a suit in O.S.No.163 of 2019 on the file of the District Munsif Court, Virudhunagar, claiming permanent injunction restraining the second respondent, his wife and their men from in any manner interfering with the possession of the writ petitioner-Company as a statutory tenant and causing damages to its property.



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5. It is the further case of the writ petitioner-Company that the second respondent has sent a complaint to the first respondent, that the first respondent, without giving any opportunity and without conducting any enquiry, has passed the impugned order dated 05.12.2020 cancelling the No Objection Certificate (NOC) issued in favour of the writ petitioner-Company and that therefore, the writ petitioner-Company was constrained to approach this Court.

6. The learned Senior Counsel appearing for the writ petitioner-Company would submit that since the first respondent, without conducting any proper enquiry and without giving any reasonable opportunity, has passed the impugned order, in total violation of the principles of natural justice and as such, the same is liable to be quashed.

7. The learned Additional Government Pleader appearing for the first respondent would submit that the first respondent issued a notice to all the concerned including the writ petitioner-Company to appear for enquiry on 12.11.2020, that the second respondent alone has entered into appearance and no one has appeared on behalf of the writ petitioner-



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Company, that the first respondent, after recording the statement of the second respondent and also after getting a report from the Revenue Divisional Officer (RDO), Virudhunagar and taking note of the entire records, has passed the impugned order cancelling the No Objection Certificate (NOC) as per Rule 150 of the Petroleum Rules, 2002 and that since the writ petitioner-Company has not utilized the opportunity given to them, they cannot be allowed to say that the impugned order was passed in violation of the principles of natural justice.

8. It is the specific case of the writ petitioner-Company that on 12.11.2020, Senior Sales Officer of the writ petitioner-Company Prithiviraj has appeared before the first respondent and sought time to file their objections, that the first respondent has not taken on record his presence and his request for grant of time to file objections for the reasons best known to them, that the writ petitioner-Company counsel has then filed a vakalat and objection before the office of the first respondent on 13.11.2020 and sought time for personal enquiry, that the official in the office of the first respondent has received their objections and vakalat and informed that future date will be communicated for further enquiry, that



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despite specific request of the writ petitioner-Company counsel, the office of the first respondent has not provided the complaint copy and that the first respondent, without even providing the copy of the complaint, without considering their objections and without conducting any enquiry or hearing, has passed the impugned order.

9. When the learned counsel appearing for the second respondent would submit that no one from the writ petitioner-Company has entered into appearance during the enquiry, the learned Senior Counsel appearing for the writ petitioner-Company would submit that the counsel, who has filed vakalat and submitted objections before the office of the first respondent, is ready and willing to file an affidavit as to what had happened on 13.11.2020.

10. As rightly pointed out by the learned Senior Counsel appearing for the writ petitioner-Company, the first respondent, in the impugned order, has also stated that after getting statement from the second respondent on 12.11.2020, he has also examined the second respondent directly on 17.11.2020, but in the impugned order, it has not been



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whispered anywhere that notice was sent to the writ petitioner-Company directing them to appear for the subsequent hearing held on 17.11.2020 or for any other subsequent hearings. As rightly contended by the learned Senior Counsel appearing for the writ petitioner-Company, the first respondent has not produced any iota of evidence to show that notice was sent to the writ petitioner-Company directing them to appear for hearing subsequent to 12.11.2020 and the same was served on them.

11. It is pertinent to note that the second respondent and his wife have given an undertaking notarized affidavit on 25.02.2015. After narrating as how they have become the owners of the property, have specifically stated that after their purchase, they have stepped into the shoes of lessor and as such they are entitled to receive the rent that has been fixed and paid as per the lease agreement dated 18.06.2001 from the Indian Oil Corporation Ltd., that their receiving of rent amount is subject to outcome of the SARFAESI proceeding pending before the Debt Recovery Tribunal and other civil Courts and that they have given an undertaking that they will not make any claim or damages or compensation from the Indian Oil Corporation for the purpose we have



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stepped into the shop owner/lessor. Considering the above, it is very much clear that after their purchase from the Bank, they have accepted the writ petitioner-Company as their lessee and started to receive the rents and that the above would go to show that the tenancy has been attained.

12. The learned counsel appearing for the second respondent would submit that they have already filed a suit for ejectment against the writ petitioner-Company in O.S.No.102 of 2019 and the same is pending on the file of the Subordinate Court, Virudhunagar.

13. As rightly contended by the learned Senior Counsel appearing for the writ petitioner-Company, the second respondent, after accepting the writ petitioner-Company as a lessee and after receiving the rent for some years and after filing the suit for ejectment in 2019, the very lodging of the complaint before the first respondent to cancel the No Objection Certificate (NOC) given to the writ petitioner-Company would go to show their intention to cause troubles and hardship to the writ petitioner-Company. More importantly, the second respondent either in his complaint or in his statement has nowhere whispered about the filing of their ejectment suit and the pendency of the same.



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14. Rule 150 of the Petroleum Rules, 2002 reads as follows:-

“150. Cancellation of no objection certificate.-

(1) A no objection certificate granted under rule 144 shall be liable to be cancelled by the District Authority or the State Government, if the District Authority or the State Government is satisfied that the licensee has ceased to have any right to use the site for storing petroleum: Provided that before cancelling a no objection certificate, the licensee shall be given a reasonable opportunity of being heard.

(2) A District Authority or a State Government cancelling a no objection certificate shall record, in writing, the reasons for such cancellation and shall immediately furnish to the licensee and to the licensing authority concerned, a copy of the order cancelling the no objection certificate.”

15. As rightly pointed out by the learned Senior Counsel appearing for the writ petitioner-Company, the above Rule contemplates that the licensee should be given reasonable opportunity of being heard before cancelling the No Objection Certificate (NOC). But in the case on hand, as already pointed out, there is absolutely no evidence to show that reasonable opportunity of being heard was given to the writ petitioner-



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Company and as such, this Court has no hesitation to hold that the impugned order came to be passed in violation of the principles of natural justice. More importantly, when the ejectment suit filed by the second respondent is pending before the competent civil Court, the impugned order cannot be sustained and the same is liable to be set aside.

16. The learned Additional Government Pleader appearing for the first respondent and also the learned counsel appearing for the second respondent would submit that the above writ petition itself is not maintainable, since the writ petitioner-Company has not availed the appeal remedy provided in the Petroleum Rules, 2002. No doubt, Rule 154 of the Petroleum Rules, 2002 provides for an appeal against any order of the District authority refusing to grant or cancelling a No Objection Certificate and the same shall lie to the authority which is immediately superior to the said District authority.

17. The learned counsel appearing for the second respondent would submit that the writ petitioner-Company, without exhausting their alternate remedy provided under Rule 154 of the Petroleum Rules, has approached



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this Court directly, that the Hon'ble Supreme Court in cantena of decisions has reiterated the legal position that when there are alternative exhausting remedy, resort has to be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution of India, that the writ petitioner-Company has not even explained as to what prevented them from exhausting the alternative remedy and that therefore since an effective alternative remedy is available to the writ petitioner-Company, the present writ petition is legally not maintainable.

18. The learned Senior Counsel appearing for the writ petitioner-Company would submit that since the writ petition was admitted and interim order was also granted, the same cannot be held not maintainable on the ground of availability of alternative remedy at a later point of time. The learned Senior Counsel appearing for the writ petitioner-Company has relied on the judgment of the Hon'ble Supreme Court in ***Krishan Lal Vs. Food Corporation of India and others*** reported in **(2012) 4 SCC 786** and the relevant passage is extracted hereunder;

“11. It is true that there was an arbitration clause in the agreement executed between the parties. It is equally true that, keeping in view the nature of the controversy, any



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claim for refund of the amount deposited by the appellant could be and ought to have been raised before the Arbitrator under the said arbitration. The fact, however, remains that the High Court had entertained the writ petition as early as in the year 2002 and the present appeals have been pending in this Court for the past ten years or so. Relegating the parties to arbitration will not be feasible at this stage especially when the proceedings before the Arbitrator may also drag on for another decade. Availability of an alternative remedy for adjudication of the disputes is, therefore, not a ground that can be pressed into service at this belated stage and is accordingly rejected.”

19. The learned Senior Counsel appearing for the writ petitioner-Company has also relied on the decision of the learned Judge of this Court in ***Jai Enterprises, Chennai Vs. Commissioner of Customs (Appeals), Chennai and others*** reported in ***(2006) 3 MLJ 740*** and the relevant passage is extracted hereunder;

“8. Since the writ petition had been filed on 13.09.2005 and the same had been admitted and interim order had been passed in favour of the petitioner, in the considered view of this Court, it may not be equitable to reject the writ petition on the ground of availability of alternative remedy by way



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of an appeal to the Tribunal. Therefore, the contention of the learned ACGSC regarding the maintainability of the writ petition is not acceptable.”

20. In the case on hand also, the writ petition came to be filed on 15.12.2020 and this Court has granted interim stay on 22.12.2020. Hence, the present contention of the learned counsel appearing for the respondents regarding the maintainability of the writ petition, at this point of time, cannot be accepted.

21. In the result, the Writ Petition is allowed and the impugned order dated 05.12.2020 passed by the first respondent in Na.Ka. C3/24348/2020 is hereby quashed. Consequently, connected Miscellaneous Petition is closed. No costs.

27.03.2024

NCC :yes/No
Index :yes/No
Internet:yes/No
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1. The District Collector,
Office of District Collectorate,
Virudhunagar.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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Pre-Delivery Order made in
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and
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Dated : 27.03.2024