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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 8537/2024**

M/S ASSOCIATES TRADING COMPANY Petitioner

Through: Mr. Vaibhav Gaggar, Mr. Rohit Anil
Rathi, Ms. Shefali Munde, Mr.
Yashas R.K., Mr. Utkarsh Tiwari and
Ms. Niharika Singh, Advocates.

versus

INDIAN OIL CORPORATION Respondent

Through: Ms. Mala Narayan, Mr. Shashwat
Goel and Ms. Isha Ray, Advocates for
R-1.
Mr. Parvinder Chauhan and Ms.
Aakriti Garg, Advocates for DUSIB.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

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31.05.2024

CM APPL. 35018/2024 & CM APPL. 35019/2024 (Exemption)

Allowed, subject to all just exceptions.

W.P.(C) 8537/2024 & CM APPLs. 35016/2024, 35017/2024

1. Petitioner has approached this Court challenging a communication dated 01.05.2024 whereby the Petitioner has been asked to pay Rs.29,42,44,282/- including licence fee of Rs. 28,08,27,019/-; damages of Rs.58,93,561.08/-; interest on damages of Rs.1,96,29,821/- from 19.04.1965 to 31.03.2024.
2. Petitioner operates a Petrol Pump. The dispute regarding fixation of licence fee not new. An earlier demand notice dated 26.02.2020 seeking a



sum of Rs.8,33,44,000/- towards ground rent and license fee was subject matter of W.P.(C) 3870/2022 wherein this Court *vide* Order dated 05.12.2023 directed the learned Counsel for the DUSIB to take instructions as to whether DUSIB would withdraw the said demand notice and issue a fresh demand notice to the Petitioner indicating the basis of calculating the ground rent. This Court *vide* Order dated 08.03.2022, passed the following order:

“1. Notice, Mr. Parvinder Chauhan, Adv. accepts notice for respondent No.2. The only issue raised by the learned counsel for the petitioner is that the computation of the amount in terms of the impugned communication though addressed to respondent No.1 has to be paid by the petitioner herein is not tenable. According to Mr. Gaggar, the amount needs to be computed in terms of the letter of the respondent No.2 at Page 124 which states that the rates of rent to be charged shall be decided by the Ministry of Health & Family Planning, Works and Housing and Urban Department, Government of India.

2. Mr. Parvinder Chauhan, learned counsel appearing for respondent No.2 on the other hand conceding that there is a typographical error at page 124 states that the rent is being computed as per the rates of DDA as followed by DUSIB.

3. Mr. Chauhan shall file an affidavit justifying the claim made by the said respondent in communication to the respondent No.1 dated February 26, 2020 and January 17, 2022.

4. During the course of hearing, Mr. Gaggar also states, petitioner shall pay to the respondent No.1 the undisputed amount as due and payable within two weeks.



5. I must state here that Mr. Chauhan during the course of hearing has taken objection on the maintainability of the petition, more so when the impugned communication is addressed to respondent No.1. In other words, there is no privity of contract between the petitioner and the respondent No.2.

6. Leaving the objection open, affidavit shall be filed by respondent No.2 within two weeks. Rejoinder thereto be filed by within one week thereafter.

7. Till the next date of hearing, no coercive action shall be taken against the petitioner.

8. List on March 31, 2022.”

3. On 18.12.2023, the W.P.(C) 3870/2022 was disposed of by this Court by passing the following Order:

"1. The instant writ petition has been filed challenging Demand Letter dated 26.02.2020 issued by Respondent No.2/DUSIB to Respondent No.1/IOCL seeking a sum of Rs.8,33,44,400/- for ground rent and license fee.

2. On 05.12.2023, it was stated by learned Counsel for Respondent No.1 that the aforesaid letter has been erroneously issued.

3. This Court had directed learned Counsel for Respondent No.2/DUSIB to take instructions in the matter.

4. Learned Counsel for Respondent No.2 states that the Demand Letter dated 26.02.2020 would be withdrawn. Resultantly, the writ petition has become infructuous.

5. The petition is disposed of as infructuous along with



pending application(s), if any.

6. It is always open for Respondent No.2 to take further steps in accordance with law."

4. The license fee has been fixed by the DUSIB which is under challenge in the writ petition.

5. Learned Counsel for the Petitioner states that on the face of it, the communication dated 01.05.2024 is unacceptable. He states that on one hand the license fee has been reduced but on the other hand the interest payable has been increased more than three times which defies logic. He further states that the basis of calculating the license fee and interest thereon is not clear from the impugned communication.

6. Learned Counsel for the DUSIB points out to Section 45 of the Delhi Urban Shelter Improvement Board Act, 2010 which reads as under:

"45. (1) Any person aggrieved by any notice, order or direction issued or given by the Board under this Act, may, within thirty days from the date of receipt of the notice, order or decision, appeal to the Lieutenant Governor: Provided that the Lieutenant Governor may entertain an appeal after the expiry of the said period of thirty days if he is satisfied that there was sufficient cause for not filing it within that period.

(2) An appeal to the Lieutenant Governor shall be made in such form and shall be accompanied by a copy of the notice, order or direction appealed against and by such fees as may be prescribed by rules.

(3) The order of the Lieutenant Governor on an appeal under subsection (1) shall be final.

4) No appeal shall be decided under this section unless



the appellant has been heard or has had a reasonable opportunity of being heard. ”

7. In view of the fact that there is an alternate efficacious remedy available to the Petitioner under the DUSIB Act, this Court is not inclined to entertain this Writ Petition only on this ground. However, in view of the fact that the Petitioner has been able to make out a prima facie case in its favour, this Court is inclined to permit the Petitioner to approach the Lt. Governor by filing an appeal within 30 days from today. In the facts of the present case, DUSIB is directed not to take any coercive steps against the Petitioner till the Lt. Governor decides the appeal of the Petitioner.

8. With these directions, the Writ Petition is disposed of along with the pending applications, if any.

9. It is made clear that this Court has not made any observations on the merits of the case and all the rights and contentions of all the parties are left open.

SUBRAMONIUM PRASAD, J

MAY 31, 2024

Rahul