

(2015) 03 MAD CK 0564

In the Madras High Court

Case No : Writ Petition No. 27238 of 2014 and W.P. No. 376 of 2015

K. Anand and Others

APPELLANT

Vs

G. Sivakumar and Others

RESPONDENT

Date of Decision : 26-03-2015

Acts Referred:

Citation : (2015) 4 MLJ 669

Hon'ble Judges : T.S. Sivagnanam, J

Bench : Single Bench

Advocate : M.R. Thangavel, R. Syed Mustafa and C. Munusamy, for the Appellant; R. Vijayakumar, A.G.P., A.R.L. Sunderasan for A.L. Ganthimathi, M. Saravanakumar, O.R. Santhana Krishnan and K. Ethiraj, Advocates for the Respondent

Final Decision : Dismissed

Judgement

T.S. Sivagnanam, J—The issue involved in both these Writ Petitions concerns the approval of a property for storage of "A" and "B" class petroleum products of Bharat Petroleum Corporation Limited (hereinafter referred to as the respondent Corporation). In W.P. No. 27238 of 2014, the petitioner is one Mr. K. Anand and seeks for a direction to the Territory Manager of the respondent Corporation to dispose of his representation dated 09.09.2014. In the said representation, the petitioner has requested the second respondent to withdraw the Letter of Intent issued in favour of G. Sivakumar and award the retail outlet dealership to the petitioner. An application was made under Rule 144(1) of the Petroleum Rules, 2002 for grant of No Objection Certificate in favour of the respondent Corporation for storage of Petroleum products in the property leased to G. Sivakumar. This application was considered and the District Revenue Officer-cum-Additional District Magistrate, Tiruppur District, the first respondent herein granted approval vide proceedings dated 24.12.2014. This proceedings is put to challenge by one Mr. P.S. Palanisamy in W.P. No. 376 of 2015. The grounds of challenge are that the first respondent failed to follow the procedure

contemplated under Rule 103 of the Explosive Rules, 2008 and failed to adhere to the directions issued in W.P. No. 6886 of 2013, dated 06.08.2013. Further, it is submitted that the owner of the property namely N. Sivasakthi, the second respondent had no authority to lease out the common land in which the Writ Petitioner Palanisamy, is said to be entitled to 1/4th share, which is used as drain from his land. Thus, it is seen that Palanisamy is not a person who applied for the retail dealership, but he appears to be the adjacent land owner, where the out let is proposed to be located. Therefore, his objection is with regard to the rights, the land owner, the second respondent, and that the second respondent cannot lease out the entire property including the drain portion to the third respondent for the purpose of establishing the outlet. Therefore, W.P. No. 376 of 2015 has to be taken up for consideration first and the result of the other Writ Petition will depend upon this Writ Petition.

2. The facts which are necessary for the disposal of the Writ Petitions are that the respondent Corporation called for applications for appointment of retail outlet dealers by advertisement, dated 15.09.2011/16.09.2011. One of the sites which was advertised, was Muthur in serial No. 282 of the advertisement. There were totally 10 applicants, out of which 9 were found eligible. In the interview conducted on 18.01.2012, all the 9 applicants were found to be eligible to be considered for empanelment. The Dealer Selection Committee of empanelled the candidates in the order of merit. The third respondent G. Sivakumar stood first in the merit list followed by Mr. K. Anand, the petitioner in W.P. No. 27238 of 2014, and the third was one Mr. K. Kuppururai, the marks secured by all three of them are 94.00, 92.86 and 92.43 respectively. The petitioner K. Anand lodged a complaint to the respondent Corporation stating that the land offered by the third respondent, who has empanelled as the first candidate in the merit list belongs to N. Sivasakthi, the second respondent. It was stated that the lessor acquired title to the property pursuant to a judgment and decree in O.S. No. 7 of 2007, on the file of the District Munsif Court, Avinashi, which decree was registered as document No. 3140 of 2010, on the file of the Sub-Registrar, Avinashi. It was stated in the complaint that the schedule of the property in the lease deed, dated 11.10.2011, executed by the second respondent in favour of the third respondent does not tally with the schedule of property as per the decree registered as document No. 3140 of 2010. Therefore, the Corporation was requested to cancel the empanelment of G. Sivakumar and select the petitioner K. Anand as a dealer, as he stood second in the merit list.

3. Another complaint was given by the Writ Petitioner Palanisamy and nine others alleging that the third respondent have shown a waste water canal as part of the leasehold property. For the complaint given by the petitioner Palanisamy, the respondent Corporation sent a reply on 25.05.2012. Thereafter, the Letter of Intent was issued to the third respondent on 17.12.2012. The petitioner Palanisamy filed a Suit in O.S. No. 68 of 2012, before the District Munsif Court, Kangayam and filed an Interlocutory Application in the Suit in I.A. No. 1884 of 2012, praying for an order of Interim Injunction. In the mean time, the

respondent Corporation applied to the District Collector for grant of "No Objection Certificate" for their proposal to put up retail outlet in the said property. At that stage, the petitioner Palanisamy filed W.P. No. 6886 of 2013, to quash the order passed by the Tahsildar, Kangeyam and an order of Interim Injunction was granted in the said Writ Petition, restraining the District Revenue Officer, Dharapuram and Tahsildar, Kangeyam from granting "No Objection Certificate" to the third respondent for establishing the retail outlet. The petitioner filed another Interlocutory Application in O.S. No. 211 of 2013 in IA. No. 1008 of 2013 and the Trial Court granted an order of Interim Injunction. In the Writ Petition filed by the Palanisamy, a direction was issued to the first respondent to consider and dispose of the application submitted for grant of "No Objection Certificate" and while doing so, the Court directed that the procedure indicated under Rule 103 of the Explosive Rules to be followed, after notice to the Writ Petitioner and the third respondent. The first respondent after enquiry, granted the No Objection Certificate with the condition that the Corporation should not make any disturbance to the drainage canal, and should not make any encroachment or construction work on the southern side above the drainage. This order dated 24.12.2014, is impugned in this Writ Petition.

4. The learned counsel appearing for the petitioner after reiterating the factual contentions submitted that the first respondent failed to obey the direction issued by this Court in W.P. No. 6886 of 2013, dated 06.08.2013, and failed to follow the procedure contemplated under Rule 103 of the Explosive Rules. By referring to the said Rules, it is submitted that the procedure contemplated therein is mandatory in nature, so as to ensure that the antecedents of the applicant, lawful possession of the site, genuineness of the purpose, interest of the public and other verifications or enquiries, as may be required by the Licensing Authority. It is submitted that the first respondent failed to issue any statutory publication of the notice, as mandated under Rule 103 of the Explosive Rules, 2008. Further, the Distance Rules, which has been mentioned, has not been considered as regards the location and the residential houses within the radius of 100mts. Further, it is submitted that the first respondent ought to have considered the judgment rendered by the Civil Court in O.S. No. 68 of 2012, dated 20.10.2014. Further, it is submitted that when O.S. No. 211 of 2013, was pending before the Civil Court, the first respondent ought to have waited for the decision to be rendered in the Civil Suit. In support of his contention, the learned counsel placed reliance on the decision of the Hon'ble Division Bench in the case of Chemfab and Alkalis Limited v. District Manager-cum-District Collector (2007) 5 MLJ 1117.

5. The learned counsel appearing for the petitioner K. Anand would support the stand taken by the petitioner Palanisamy and contend that on the grounds raised by the Palanisamy, No Objection Certificate could not have been granted to the third respondent and even if it has been granted, the same is illegal and liable to be cancelled and the same has to be cancelled and the petitioner has to be awarded the dealership, as he is No. 2 in the merit list. Thus, the petitioner in

WP. No. 27238 of 2014, depends upon the case of the Palanisamy petitioner in WP. No. 376 of 2015.

6. The learned Standing counsel for the respondent Corporation after reiterating the facts set out in the counter affidavit submitted that so far as the objection regarding the common canal raised by the Writ Petitioner, the original lease deed executed by the second respondent in favour of third respondent dated 11.10.2011 has been cancelled by a deed of cancellation dated 12.01.2015 and subsequently a fresh lease deed has been executed and registered bearing document No. 89 of 2015 in which 3 feet width and 286 feet length common drainage has been excluded and therefore, the grievance of the Writ Petitioner stands redressed. Therefore, the decree obtained in O.S. No. 68 of 2012, stands fulfilled and even therein, the Court observed that the grant of decree would not stand in the way of the defendants (respondents 2 and 3 herein and others) to grant licence for running the Petrol Pump on the north of the second item of the Suit Schedule Property. Therefore, it is submitted that the No Objection Certificate granted by the first respondent is perfectly valid.

7. So far as the direction issued by this Court in the earlier Writ Petition, it is submitted that the first respondent conducted a full investigation in terms of the order passed by this Court and thereafter granted No Objection Certificate after site verification and verification of other details, consideration of complaints etc. and as such, there is no violation of the principles of natural justice.

8. The learned Senior counsel appearing for the third respondent submitted that though in the earlier Writ Petition, a direction was issued by this Court to follow the procedure contemplated under Rule 103 of the Explosive Rules, the No Objection Certificate sought for by the respondent Corporation being under the Petroleum Rules, the Authority considered the entire objections, conducted site inspection and thereafter, granted No Objection Certificate subject to certain conditions. Further, it is submitted that after the execution and registration of the new lease deed bearing document No. 89 of 2015, the petitioner cannot have any grievance and O.S. No. 211 of 2013, questioned the lease agreement dated 11.10.2011, on the ground that the common property measuring 3 feet X 286 feet has been included in the lease area. In fact the interest of the petitioner was sufficiently safeguarded, while passing the impugned order of no objection. Therefore, it is submitted that after following due procedure, the order has been passed and the order is perfectly legal and valid.

9. The learned Government Pleader appearing for the first respondent by relying upon the counter affidavit submitted that after the direction issued by this Court in earlier Writ Petition, necessary enquiry was initiated and giving reasonable opportunity to the respective parties to put forth their respective claims and after considering the materials and following the procedure under the statute, No Objection Certificate was granted sufficiently safeguarding the interest of the petitioner. Therefore, it is submitted that the first respondent has followed all the procedures required to be followed under law and has issued the order in an

unbiased manner and the Writ Petitioner is in the habit of filing false petitions with bald and vague allegations against the officials.

10. Heard the learned counsels appearing on either side and perused the materials placed on record.

11. The challenge is to an order passed by the first respondent under Rule 144(1) of the Petroleum Rules, 2002. In exercise of the powers conferred under the said Rules, No Objection Certificate has been granted to the respondent Corporation for storage of Petroleum products in the land in question subject to the condition that the respondent Corporation should not in any manner disturb the 3 feet X 286 feet drainage running in the property and should not make any encroachment or make any construction work in the Southern side of the said drainage.

12. The petitioner has challenged the impugned order on three grounds firstly, by contending that the first respondent failed to adhere to the direction issued by this Court in W.P. No. 6886 of 2013, dated 06.08.2013, and failed to follow the procedure under the Explosive Rules. Secondly, that the first respondent ignored the judgment and decree in O.S. No. 68 of 2012, dated 20.10.2014. The third ground is that when the Suit filed by the petitioner in O.S. No. 211 of 2013 was pending and Interlocutory Applications were also pending, the first respondent ought not to have proceeded with the matter.

13. With regard to the first ground, the learned counsel appearing for the petitioner relied upon the decision of the Hon'ble Division Bench of this Court in the case of Chemfab And Alkalies Limited v. District Manager-cum-District Collector (supra), in the said case, the appeal was against an order passed in a Writ Petition filed challenging the No Objection Certificate granted by the District Magistrate. The Appellant therein was the manufacturer of Caustic Soda and Producer of Hydrochloric Acid, Sodium Hypo Chlorite and Liquid Chlorine is classified as the hazardous and in the site abutting their factory, the respondent proposed to put up a Petroleum outlet, in spite of their objection, No Objection Certificate was issued. This was challenged in the Writ Petition in which a defence was taken that under the Petroleum Rules, 2002, there is a no provision for granting personal hearing regarding the objections and the Collector having been satisfied that there is no possibility of any danger, granted the "No Objection Certificate". In the back ground of those facts, the Hon'ble Division Bench observed that when objection is raised to setting up the Petrol Pump adjacent to a factory manufacturing highly inflammable Chemical, state functionaries are to enquire properly and considered the representations in proper manner to prevent untoward incidents. The said decision is of no assistance to the case of the petitioner, since it is not his case that No Objection Certificate cannot be granted on the ground of safety, rather his objection was only on one aspect namely, a common drainage channel was in existence in the southern side of the property and while executing the lease deed, the land owner/the second respondent granted lease to the third respondent, the entire extent of property including the

common channel.

14. Coming to the next aspect on question No. 1, with regard to the direction issued by this Court in W.P. No. 6886 of 2013. While disposing of the said Writ Petition, this Court observed that the core question for consideration is whether the first respondent was bound to conduct an independent enquiry before issuing No Objection Certificate or by simply accepting the report submitted by the Tahsildar. While considering the said question, reference was made to the provisions of the Explosive Act and the Rules framed thereunder and accordingly, the direction was issued. In the instant case, admittedly the No Objection Certificate was sought for under the provisions of the Petroleum Rules and not under the provision of the Explosive Act or the Rules framed there under, this appears to have not been brought to the notice of the Court earlier. In such circumstances, it has to be examined as to whether the first respondent considered the matter in a proper prospective and whether the parties were afforded reasonable opportunity. From the materials placed before this Court and the counter affidavit of the first respondent, it is seen that the petitioner was afforded an opportunity and it is not as if, the first respondent has not taken note of the entire objections, in fact the enquiry was conducted on 05.09.2014 after issuing notice dated 30.08.2014 and after considering the objections, the impugned No Objection Certificate has been issued subject to the conditions which sufficiently safeguard the interest of the petitioner. Therefore, ground No. 1 is decided against the petitioner.

15. The second ground of challenge is by referring to the decree in O.S. No. 68 of 2012, dated 20.10.2014. The Court while decreeing the Suit and granting an decree of permanent injunction observed that grant of injunction would not stand in the way of the defendant or Licensing Authorities to grant licence to the first and second defendants in running the Petrol Pump on the north of the second item of Suit Schedule Property and the second item of Suit Schedule Property is the common channel. Therefore, the decree passed by the Civil Court is not an embargo for the Licensing Authority to consider the grant of No Objection Certificate. That apart even much earlier to the judgments passed in the Suit, the Writ Petition filed by the Writ Petitioner was disposed of by this Court issuing directions to the first respondent. Admittedly, the first respondent was not a party to the Suit, therefore the decree does not bind the first respondent. Therefore, ground No. 2 is decided against the petitioner.

16. Ground No. 3: with regard to the third ground of challenge is by referring to pendency of O.S. No. 211 of 2013. Admittedly, the challenge to the lease agreement, dated 11.10.2011, executed by the second respondent in favour of the third respondent was on the ground that the common channel was also included in the leasehold area. As noticed above, the impugned No Objection Certificate imposes the condition on the third respondent not to put up any construction on the channel and not to disturb the channel. Therefore, the validity of the lease deed was questioned only on that ground. During the

pendency of the said Suit, the second respondent, the owner of the property cancelled the lease deed dated 11.10.2011, by executing a deed of cancellation on 12.01.2015 and after registering the same, executed a fresh deed of lease excluding the channel portion and the same has also been registered as document No. 89 of 2015. Therefore, the interest of the Writ Petitioner has been sufficiently safeguarded and the impediment pointed out by the petitioner does not any longer survive. Accordingly, ground No. 3 is also decided against the petitioner.

17. For all the above reasons, the petitioner has not made out any case for interference with the impugned order passed by the first respondent granting No Objection Certificate to establish the retail out let and accordingly, W.P. No. 376 of 2015 fails and the same is dismissed.

18. As pointed out earlier, W.P. No. 27238 of 2014, was filed by K. Anand canvassing the case of the petitioner Palanisamy and he had no independent grounds or grievance against the third respondent. Furthermore, he did not challenge the No Objection Certificate granted in favour of the third respondent. As W.P. No. 376 of 2015 has been dismissed, necessarily W.P. No. 27238 of 2014, has to be dismissed as devoid of merits. In the result, both the Writ Petitions in W.P. No. 27238 of 2014 and 376 of 2015, are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.