(2001) 02 MAD CK 0080

In the Madras High Court

Case No : C.S. No. 741 of 1998 and Application No''s. 668 to 690 of 2001

K. Jayaraman and etc. APPELLANT

Vs

T.S. Ravi and Others etc. RESPONDENT

Date of Decision : 13-02-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 46C

Citation : AIR 2001 Mad 422

Hon'ble Judges : I. David Christian, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

I. David Christian, J.—All the three applications have been filed by the Tamil Nadu Industrial Development Corporation Limited, Chennai, who is the Garnishee in Appln. No. 1969 of 1999. These applications have been filed praying for a decision on the point raised by the petitioner as to whether he is liable to the second respondent/third defendant and consequently to the first respondent/ plaintiff and to provide an opportunity to contest the application, pending disposal of the application, to stay payment out of the amount of Rs. 30 lakhs in credit of the suit made by the petitioner and also a direction to deposit the amount of Rs. 30 lakhs in fixed deposit so that it may accrue interest, pending disposal of the suit.

2. The Company Secretary of Tamil Nadu Industrial Development Corporation Limited has filed an affidavit in support of the applications raising the following contentions :--

Tamil Nadu Industrial Development Corporation Limited known as TIDCO has no privity of contract either with the plaintiff or the 3rd defendant in C. S. No. 741 of 1998. On the Garnishee application taken out by the plaintiffs against TIDCO and the Salt Commissioner, Jaipur at the instigation of the third defendant in the suit, the plaintiff has obtained orders against the Deputy Salt Commissioner for payment of Rs. 30 lakh allegedly payable to the third defendant. The plaintiff filed a Contempt Application in C. A. No. 192 of 2000 against Deputy Salt Commissioner and the petitioner herein for violation of the order passed in Garnishee proceedings. This petitioner was not given an opportunity to raise his contentions when the order was passed in Garnishee application. By an order dated 3-8-2000 this Court directed this petitioner to deposit a sum of Rs. 10 lakhs to the credit of the suit while observing that the main issues can be agitated later. The petitioner has preferred L. P. A. No. 135 of 2000 against the said order before the Division Bench of this Court and subsequently the same was dismissed and in the meantime a direction was issued to this petitioner to comply with the order directing to deposit, passed by the single Judge. Accordingly the petitioner has deposited a sum of Rs. 30 lakhs to the credit of C. S. No. 741 of (sic) on 10-1-2001. L.P.A. also was dismissed on 12-1-2001. It has now become necessary for framing of an issue with regard to liability, if any, of this petitioner vis-a-vis the third defendant, in the suit and to seek conclusive determination of the same as otherwise the first respondent will seek payment out of the monies deposited by the petitioner into Court. If the Garnishee disputes his liability, the Court may order that any issue or question necessary for determining his liability be tried or determined for (sic) like any issue or question in a suit may be tried or determined. The petitioner does not owe any liability to any of the parties to the suit either by way of compensation or otherwise. The petitioner is not liable to meet the claim of any of the defendants in the suit. The petitioner Corporation is a wholly owned Government of Tamil Nadu Undertaking and the money deposited is public money and it is not possible to recover the same if paid out to third parties. Therefore, it may be decided as to whether the petitioner is liable to the second respondent/third defendant to pay any amount as compensation. Pending disposal of this claim, a stay may be granted restraining the plaintiff from taking out the money by way of a cheque application and also for depositing the amount in fixed deposit so that the deposit may accrue interest.

3. The first respondent/plaintiff filed a counter raising the following contentions:--

The suit has been filed by this respondent for recovery of a sum of Rs. 53,16,750/-against one Ravi, Sulochana and the second respondent Duraisamy, The plaintiff also filed Appln. No. 3468 of 1998 for attachment of the amount available in the hands of the garnishee herein payable to the third defendant. Application was allowed and the Court passed an order of Interim attachment to the extent of suit claim by issue of a pro-order for of the amount available in the hands of the Salt Commissioner, Garnishee therein. The Salt Commissioner subsequently filed his counter stating that the amount is liable to be paid by the petitioner herein and he also admitted that the amounts are available in excess of the plaintiffs claim. Second respondent Duraisamy has attended the meetings convened by the Salt Commissioner and the petitioner and the petitioner has agreed to pay compensation due to him. Subsequently the respondents 1 and 2 entered into a compromise and as per which the third defendant Duraisamy shall collect the entire compensation from the garnishee and pay the same to the petitioner. As per the compromise, the second respondent/ third defendant has to pay a sum of Rs. 30 lakhs in full and final settlement of the suit claim. Subsequently the order was modified on the application filed by the first respondent and the second respondent agreed that the first respondent/plaintiff himself may be permitted to collect Rs. 30 lakhs him the TIDCO. But, the garnishees, namely the Salt Commissioner and TIDCO refused to pay the amount and only after a Contempt Application has been filed in C.A. No. 192 of 2000 and a direction was given to the petitioner to deposit the amount to the credit of the suit, the petitioner deposited the said sum. In fact the petitioner has preferred L.P.A. No. 135 of 2000 and the same was subsequently dismissed. The Order passed by this Court directing payment of Rs. 30 lakhs to the petitioner has become final and this was held by the Division Bench in L.P.A. No. 126 of 2000. In the Contempt Application also orders have been passed and it has been also held that the first respondent/plaintiff is entitled to withdraw the money in Court deposit made by the petitioner. Contention of the petitioner that Salt Commissioner, Jaipur has cancelled the lease in favour of Duraisamy is untenable. In fact during the enquiry in Contempt Application, the Salt Commissioner has made it very clear that the petitioner is liable to pay the compensation due to the second respondent. The second respondent Duraisamy filed a Writ Petition In W. P. No. 16811 of 2000 challenging the cancellation of the lease and the same was also allowed. There is no legal impediment in allowing the application filed by this respondent for payment out. There is no need for further framing of any Issue or point for consideration with regard to the order allowing the plaintiff to withdraw the money deposited in the suit. All these applications are therefore liable to be dismissed.

4. Both sides have made their submissions.

5. The point for consideration in these applications is as to whether the petitioner TIDCO is liable to pay the amount in Court deposit to the second respondent or to the first respondent as compensation and whether the cheque application made by the first respondent is to be allowed?

6. The point :--

Parties are referred to as they are arrayed in the suit C.S. No. 741 of 1998 and the applicant/garnishee is referred to as TIDCO in short for Tamil Nadu Industrial Development Corporation Limited, Chennai.

Plaintiff Jayaraman filed the suit C.S. No. 741 of 1998 against three defendants including Duraisamy, the second respondent herein, for recovery of a sum of about Rs. 53 lakhs. The plaintiff also filed Garnishee Application impleading TIDCO, Salt Commissioner, Jaipur and the Deputy Salt Commissioner, Chennai as garnishees and praying for a direction directing the garnishees not to pay the money due to the third defendant in their hands pending disposal of the suit. An order of attachment by pro-order was also passed. Subsequently the plaintiff and the defendants 1 to 3 entered into a compromise and prayed for attachment to be raised. They also filed a compromise petition in the application for attachment stating that Rs. 30 lakhs due to the third defendant in the hands of TIDCO may be directed to be paid to the plaintiff directly in full settlement of the suit claim. Accordingly TIDCO was directed to pay the amount of Rs. 30 lakhs to the plaintiff Jayaraman and since TIDCO refused to make the payment, a Contempt Application was filed and during pendency of the Contempt Application, TIDCO was directed to deposit Rs. 30 lakhs in Court to the credit of the suit and it was also held that TIDCO is liable to pay the amount to the third defendant Duraisamy. Since the third defendant has compromised with the plaintiffs, it has become payable to the plaintiff Jayaraman. As against the order directing the applicant to deposit the amount, TIDCO preferred L.P.A. No. 126 of 2000 and the Division Bench also directed to deposit the amount in the meantime. TIDCO has deposited Rs. 30 lakhs to the credit of C.S. No. 741 of 1998. L.P.A. was also finally dismissed.

7. Subsequently the plaintiff Jayaraman in pursuance of the compromise entered already between the defendants in the Garnishee application, has made an endorsement to the effect that the suit itself may be dismissed as settled out of Court. The plaintiff has also filed an Application in A.No. 618 of 2000 for payment out of the amount in Court deposit to himself. Under such circumstances, the petitioner TIDCO, who has made the deposit to the credit of the suit, has come forward with these applications questioning their liability to pay the amount to the third defendant and therefore questioning the right of the plaintiff to receive the amount as a result of compromise arrived at between the plaintiff and the defendants.

8. It is not in dispute that an extensive area of more than 1000 hectares belonging to the Salt Department of Union of India has been acquired by the State for the purpose of putting up a Petro Chemical Industrial Park by TIDCO. It is also not in dispute that the Government of India, Ministry of Industries (Department of Industrial Policy and Promotion) have approved the transfer of Salt Department lands measuring 1434 Hectares to the Government of Tamil Nadu for the establishment of Perto Chemical Industrial Park in Ennore near Chennai. The order was passed on 6-1-1999. There is no dispute with regard to the fact that the acquired land measuring 1434 Hectares belonged to the Salt Department of Government of India. Transfer of lands by the Salt Department in favour of TIDCO was duly communicated to TIDCO by a letter of the Salt Commissioner in C. No. L.11012/2/W/GL/96 dated 21-1-1999. Copies of the letter were also issued to all Salt licencees by the Salt Department Including Duraisamy, the third defendant. Transfer of lands by the Salt Department in favour of TIDCO has been effected in April 1999 and it was from the Salt Department, the TIDCO has taken possession of the lands. Request of the Government of Tamil Nadu for transfer of lands belonging to the Salt Department was considered by the Industrial Department of Government of India and to avoid cumbersome procedure of going through the provisions of the Land

Acquisition Act, Ministry of Industries decided by itself to order transfer of lands belonging to the Salt Department to the Tamil Nadu Government in turn to TIDCO, but on specific conditions.

9. It is also not disputed that TIDCO has agreed to pay compensation for the acquired land to the salt Commissioner, Jaiur at the rate of Rs. 35,000/- per acre. It is also not in dispute that the lands acquired by TIDCO from the Salt Commissioner, Jaipur were all in active possession and enjoyment of the lessees who have been granted licence to develop the land and cultivate salt in salt pans. So, even before the transfer was made, the Salt Commissioner has made it very clear that TIDCO must pay compensation not only to the owner, namely the Salt Commissioner, Jaipur but they must also pay compensation to the lessees for surrender of lease hold rights because the lease has been terminated and they have to be deprived of their valuable rights. The Government order transferring the land to TIDCO for this purpose has specifically stated that TIDCO must pay compensation to the Salt Commissioner, Jaipur for the entire lands acquired by TIDCO at the rate of Rs. 35,000/- per acre and it was also made very clear that TIDCO must also pay compensation to the licencees by holding negotiations with them and the Salt Commissioner of Government of India shall not be dragged into any Court in respect of the compensation payable to the lessees of the Salt Department.

10. In fact even prior to the order dated 6-1-1999 transferring the land by the Salt Commissioner in favour of TIDCO, TIDCO has been directed to negotiate with the licencees or lessees of salt pans to arrive at the compensation payable to them for the pre-mature surrender of their licence rights. It is, also not in dispute that in November and December 1998 itself, long prior to the formal order of transfer made by the Government of India, meetings were held between TIDCO and the licencees, who numbered about 20 including the third defendant Duraisamy. Of the acquired lands, third defendant Duraisamy was in possession of 650.51 acres as lessee and TIDCO negotiated with Duraisamy and others with regard to compensation payable to them for the premature surrender of leasehold rights in view of the intended transfer of land to TIDCO. TIDCO has produced on the previous occasion the minutes of the meeting held between the officials and the lessees including Duraisamy on 19-11-1988 and 23-12-1998. Lessees of the Salt Department including the third defendant did not object to the transfer of lands or surrendering their leasehold rights and instead of going to the Courts to get compensation, they have agreed when the TIDCO offered to pay them due compensation for surrender of their leasehold rights. Negotiations between TIDCO and lessees including the third defendant took place in pursuance of the direction given by the Salt Department that before ever transfer of lands. TIDCO must pay due compensation to the lessees besides paying value of the land to the Salt Department. Therefore, TIDCO in its wisdom has chosen to convene meetings of the licencees including third defendant and two meetings were held on 19-11-1998 and 23-12-1998.

11. Minutes of the meetings held on 19-11-1998 and 23-12-1998 would show that the lessees including the third defendant and TIDCO has arrived at quantum of compensation payable to the lessee by TIDCO. TIDCO has agreed that they shall pay compensation to the lessees at the rate of Rs. 16,000/- per acre for the undeveloped land and Rs. 18,000/- per acre for the developed land. This is besides the agreement to pay Rs. 35,000/- per acre to the owner, namely the Salt Commissioner, Jaipur by TIDCO. Learned counsel appearing for TIDCO even during the hearing of Contempt Application has submitted that the actual amount due to the third defendant Duraisamy in view of the agreement entered between himself and TIDCO has been worked out and arrived at Rs. 99,06,203/- deducting the amount due by Duraisamy to the Salt Department. By no stretch of imagination TIDCO can question their liability to pay Duraisamy, the third defendant even after the quantum of amount has been arrived at. This has been accepted by TIDCO even in the month of December, 1999 whereas the actual order of transfer of lands was made by the Government of India by its letter dated 6-1-1999. Therefore it is futile on the part of TIDCO to contend that there is no privity of contract between itself and D3.

12. The only ground on which TIDCO now wants to go back on the earlier commitment is that the Salt Commissioner, Jaipur by an order dated 31-8-1999 terminated the lease and resumed the lands from Duraisamy and it was the Salt Department which handed over the lands to TIDCO on 4-9-1999 and therefore they are not liable to pay the amount to the third defendant lessee Duraisamy. Lease has come termination even long before the date of alleged cancellation or at least with effect from 6-1-1999 when the Government of India transferred the lands to TIDCO. Therefore, on the face of it, the order alleged to have been passed by the Salt Commissioner on 31-8-1991 long after the lease has been terminated cannot be sustained. In fact during hearing of the Contempt Application, learned Additional Solicitor General has clearly submitted that the order of cancellation made by the Salt Commissioner is not tenable and if challenged in Court it will not stand a moment scrutiny, in which case Duraisamy will make a claim upon the Salt Department and they would have to meet the claim. Therefore, the order of the Salt Commissioner dated 31-8-1999 has to be ignored and it was submitted that TIDCO must be directed to pay compensation agreed by it so far as the third defendant-Duraisamy is concerned.

In fact the Deputy Salt Commissioner, Chennai has clearly stated in his affidavit filed in contempt application as follows :--

"Letters are also issued to various Salt licencees of Salt Department as well as the second respondent on 29-1-1999 mentioning the licence numbers and also stating that the abovesaid area could be taken over by the Department for handing over to TIDCO as soon as TIDCO confirms that they have paid the compensation to all the licencees. The lease therefore cannot be said to be subsisting excepting to the extent of payment of compensation and delivery of possession to TIDCO. Pursuant to this communication dated 29-1-1999, the second respondent TIDCO wrote a letter to Duraisamy on 21-5-1999 informing him that the terms and conditions for compensation to the Salt Licencees are enumerated as per the Minutes of the meeting convened by TIDCO on 19-11-1998 and 23-12-1998. The land was resumed and handed over to TIDCO. After approval of Government of India the lease has come to an end subject only to the condition that the licencees should be paid compensation for the acquired land and there was no lease subsisting to be cancelled and cancellation of lease of Duraisamy on 31-8-1999 is not relevant. This cannot be taken advantage by TIDCO to deny compensation to Duraisamy. The contention that the possession of the lands were handed over by the Salt Department and not by Duraisamy cannot be accepted because possession of the entire land has been handed over only by the Salt Department. It is necessary to have the matter of compensation in the leasehold rights of Duraisamy to be settled once for all so that the Salt Department may not be further dragged to Court and the Court may be pleased to direct the second respondent TIPCO to deposit the entire compensation due to the lessee as per their calculation mentioned in the supple-mental affidavit filed by the second respondent. The Salt Department shall not be faced with any claim from anybody for surrender of leasehold rights and that the petition may be accordingly ordered."

13. From what has been stated above, the following propositions emerge which cannot be refuted by TIDCO on any reasonable ground. Firstly TIDCO has acquired the lands belonging to the Salt Department of Government of India and has agreed to pay compensation due to the Salt Department and its lessees. Transfer of entire land has also been made by the Salt Department to TIDCO in pursuance of the order made on 6-1-1999 by the Government of India. Conditions under which transfer has been effected in favour of TIDCO by the Government of India are to the effect that TIDCO shall pay compensation agreed by it to the lessees who have been made to prematurely surrender their leasehold rights. Further condition is that Salt Commissioner shall not be dragged to any proceedings in Court in respect of the amount payable to the lessees and it is the responsibility of the TIDCO to meet all the claims.

14. TIDCO has already negotiated for and agreed with the quantum of compensation to be payable to the lessees including the third defendant. TIDCO is a signatory of the minutes of the meeting held on 23-12-1998 and third defendant Is also a signatory to this. Calculation has been made by TIDCO as per which TIDCO is liable to pay a total sum of Rs. 99,06,203/- to the third defendant. Salt Commissioner, Jaipur, who has passed an erroneous order of termination of lease of Duraisamy dated 31-8-1999 has also submitted that the order is erroneous because it has been passed long after termination of the lease by virtue of transfer of lands in favour of TIDCO. It has been also now held in W.P. No. 16811 of 2000 by this Court that order of cancellation made by the Salt Commissioner cancelling the licence of Duraisamy is illegal and has been set aside. Therefore, TIDCO cannot have reasonable objection in granting the amount due to the lessee, namely Duraisamy. In fact the Deputy Salt

Commissioner, Chennai, who handed over possession of the lands to TIDCO has filed an affidavit to the effect that to avoid any litigation or proceedings in which Salt Department is dragged and TIDCO shall deposit the entire amount of compensation of Rs. 99,06,203/- in Court to the credit of this suit.

15. Now that the attitude of TIDCO has become obvious in raising untenable contentions that they do not intend to pay due compensation to the lessee third defendant and as prayed for by the Deputy Salt Commissioner, TIDCO is directed to deposit the ntire amount due to Duraisamy to the credit" of the suit (minus) Rs. 30,00,000/-already deposited by TIDCO. TIDCO has obtained possession of the lands acquired only through the Deputy Salt Commissioner, Chennai and only by virtue of the order dated 6-1-1999 passed by the Government of India, TIDCO has become lawful owner of the property enabling him to proceed with the prestigious project of a Petro Chemical industrial park at Ennore near Chennai. TIDCO has agreed to pay compensation due to Duraisamy and others and it is unbecoming of a public undertaking company like TIDCO to go back on its commitment. TIDCO is only doing an illegal act especially after the orders passed in the Writ. Moreover, the owner of the lands, namely the Salt Department of Government of India has also directed TIDCO to pay entire amount due to the third defendant and TIDCO cannot drag its feet. Moreover, a suit has been filed by the plaintiff against Duraisamy and others and the suit is also being dismissed as settled out of court in view of the defendants, including the third defendant Duraisamy consenting to the plaintiff withdrawing the amount of Rs. 30 lakhs made by TIDCO in Court deposit. The third defendant need not be driven to file another litigation for the amount due to him and since TIDCO itself has Invited this finding and since previous owner the Deputy Salt Commissioner has also requested this Court to direct TIDCO to deposit the entire amount due to the third defendant, a direction is accordingly passed in this suit directing TIDCO to deposit the entire amount due to Durisamy to the credit of this suit.

16. In the result, the petitions filed by the Garnishee - TIDCO are all dismissed and TIDCO is also further directed to deposit Rs. 99,06,203/- minus Rs. 30,00,000/- (already deposited). In view of the fact that TIDCO is a State undertaking, it is not mulcted with costs. TIDCO shall comply with the directions within period of one month.