(2015) 09 MAD CK 0290

In the Madras High Court

Case No : Writ Petition (MD). No. 2154 of 2015 and M.P. (MD) Nos. 2 to 4 of 2015

The Senior Regional Manager, Hindustan Petroleum Corporation Ltd. — APPELLANT

Vs

The District Collector, Thanjavur and Others — RESPONDENT

Date of Decision : 09-09-2015

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2015) 09 MAD CK 0290

Hon'ble Judges : R. Subbiah, J

Bench : Single Bench

Advocate : M. Sridhar, for the Appellant; N. Manoharan, Special Government Pleader, Advocates for the Respondent

Final Decision : Allowed

Judgement

R. Subbiah, J—This Writ Petition has been filed challenging the proceedings of the second and third respondents dated 06.02.2015 and 13.02.2015 respectively.

2. The learned counsel appearing for the petitioner would submit that the petitioner is the Hindustan Petroleum Corporation Limited. In the year 1959, the petitioner corporation has taken over the vacant site on lease from M/s. Kasi and Sethu, which is a family concern for taking care of the family business and estate of the respondents 6 and 7. Subsequently, in the year 2004, by virtue of a partition deed, the properties were divided and the demised property was allotted to the respondents 6 and 7. However, on renewal of lease, till date, the petitioner corporation has been in continuous possession and as per the original arrangement subsequent to the renewal of lease agreement dated 30.03.2000, the petitioner corporation has been depositing the rents to the credit of the respondents 6 and 7 in their account in City Union Bank, Kumbakonam Branch. As per the dealership agreement dated 13.04.2005, the outlet is being operated by the dealer M/s. Sivaraman & Co., Kumbakonam. The explosives licence stands

in the name of the petitioner corporation and is valid upto 31.12.2015 which is renewable as per the policy conditions. In the meanwhile, even prior to the expiry of the lease period, the respondents 6 and 7 have filed a vexatious suit in O.S. No.44 of 2011 on the file of the Additional Sub Court, Kumbakonam, for recovery of vacant possession and recovery of past and future rent. In the said suit, the seventh respondent is the second plaintiff who was examined in chief about nine months back and she is purposely avoiding to be cross-examined and thus, the said suit is still pending.

3. It is the further case of the petitioner that on a petition filed by the sixth and seventh respondents, the Sub Collector, Kumbakonam, had sent a notice dated 02.09.2014 to the dealer for enquiry on 04.09.2014. The said notice was challenged by the dealer by filing W.P. No.14912 of 2014 before this Court on the ground that the Sub Collector, Kumbakonam, has no jurisdiction or authority to issue the notice. After hearing all the parties concerned, this Court had quashed the said notice dated 09.12.2014. In the meanwhile, the sixth and seventh respondents have submitted an application on 25.06.2014 before the second respondent to cancel the No Objection Certificate issued by the authorities to run the outlet and the same was forwarded to the third respondent. The second respondent had issued a show cause notice dated 09.01.2015 to the petitioner corporation and the petitioner corporation had also submitted their reply and objection on 20.01.2015. Since the respondents 6 and 7 have already set the law in motion by filing a suit in O.S. No.44 of 2011, the attempts made by them to evict the petitioner corporation and its dealer is liable to be prevented. Further, the dealership agreement and the explosive licence are still valid and is in force. In spite of receipt of objections of the petitioner dated 20.01.2015, without even affording an opportunity of personal hearing, the respondents 1 and 2 have cancelled the No Objection Certificate granted to the petitioner corporation and had informed the third respondent to cancel the explosives licence and thereby they have violated the principles of natural justice and the Explosives Rules, 2002 particularly Rule 150(1) of the Petroleum Rules, 2002. Further, the third respondent, even without giving any opportunity of hearing, cancelled the licence vide order dated 13.02.2015 and thereby violated the provisions to Rule 152(III)(a) of Petroleum Rules, 2002. Challenging the said proceedings dated 06.02.2015 and 13.02.2015, the petitioner has come forward with this Writ Petition.

4. While admitting the Writ Petition, this Court has granted an order of interim stay.

5. On appearance, the second respondent has filed a counter in the form of vacate stay petition stating that the petitioner corporation herein has entered into a lease agreement with M/s. Kasi and Sethu to have a retail outlet for petrol / diesel sales from 01.04.1998 to 31.03.2014 which was executed by Thiru.N.Sivaraman, Managing Partner of M/s. Kasi and Sethu. Thereafter, in the year 2004, by a partition deed, the demised property was apportioned to the

respondents 6 and 7 herein. The lease deed and the partition deed executed in the year 1998 and 2004 were signed by the same Thiru.N.Sivaraman. Hence, the ownership of the land was changed in the year 2004 and obviously, the petitioner corporation had to enter into a new agreement with the new owner of the land viz., the respondents 6 and 7 in the year 2004 itself and if not, after the expiry of the lease period at least in order to have a valid right to store petroleum products in the site, as contemplated in Rule 150(1) and152(1)(i) of the Petroleum Rules, 2002. As such, the petitioner corporation has lost their right to store petroleum products in the site. In view of the above factual position, the respondents 6 and 7 have made a representation to the second respondent herein to cancel the No Objection Certificate stating that they are not willing to extend the lease agreement after its expiry on 31.03.2014, who in turn, has called for a report from the Sub Collector, Kumbakonam. In order to submit his report to the second respondent, the Sub Collector, Kumbakonam, has summoned the dealer of the petitioner corporation to ascertain the details of valid documents required to be possessed for carrying on the petroleum business. Aggrieved over the above action of the Sub Collector, Kumbakonam, the dealer Thiru.N.Sivaraman has filed a writ petition in W.P.(MD)No. 14912 of 2014 and the same was allowed holding that the dealer should not be enquired and the licensee, the petitioner corporation should alone be enquired regarding the validity of the lease of the land by the second respondent. Pursuant to the above order, the second respondent has issued a notice to the petitioner corporation calling for their explanation to take action against them as their outlet is functioning without valid lease deed from 01.04.2014 as the valid lease deed is required under Rule 150(1) and 152(1)(i) of the Petroleum Rules, 2002. In reply to the notice, without producing the valid lease deed beyond 31.03.2014, the petitioner corporation has offered their explanation stating that they are lawful tenant. Therefore, the second respondent after due consideration of the explanation offered by the petitioner corporation reported to the third respondent to take necessary further action regarding the explosive licence granted to the petitioner stating that the No Objection Certificate issued for the grant of explosive licence to the petitioner corporation stands cancelled vide proceedings dated 06.02.2015. On receipt of the above report, the third respondent has cancelled the explosive licence granted to the petitioner corporation vide proceedings dated 13.02.2015. It is further stated that the orders passed by the respondents 2 and 3 are in consonance with the Rule 150(1) and 152(1)(i) of the Petroleum Rules, 2002. The respondents 3 to 5 have adopted the counter filed by the second respondent. Therefore, they have sought for dismissal of the writ petition.

6. The respondents 6 and 7 have also filed a vacate stay petition in M.P.(MD) No. 3 of 2015 stating that they are the absolute owners of the property comprised in Door No. 46/47, Gangadeeswaran North Street, Kumbakonam, which was leased out to the petitioner corporation and the said lease had already been come to an end on 31.03.2014 by efflux of time and therefore, the petitioner corporation has

no right over the property to deal with petroleum and other allied products. Hence, by representation dated 25.06.2014 these facts have already been brought to the notice of the appropriate authority. Therefore, as per the provisions of the Petroleum Act and the rules made thereunder, the petitioner corporation cannot carry on its activity in the property belonging to the respondents 6 and 7. The Sub Collector, Kumbakonam, had issued a notice to ascertain the facts relating to the representation made by the respondents 6 and 7. In fact, the District Authority viz., the District Revenue Officer, gave an opportunity to substantiate the right of the petitioner. Since no positive document had been produced after the time granted to the petitioner, the District Authority found that there is no valid lease deed in favour of the petitioner and this factum was intimated to the Licensing Authority as contemplated under the provisions of the Act. The Licensing Authority being satisfied that the enquiry had been conducted in respect of the domain within which the District Authority acts as licensing authority, proceeded to cancel the licence. Therefore, there is no infirmity or lack of opportunity of being heard in this case. Further, as on date the petitioner does not have any semblance of right in respect of the property and as such cannot agitate as if he has got some right in the property. The suit in O.S. No.44 of 2011 on the file of the Additional Sub Court, Kumbakonam, is on a different cause of action. The failure on the part of the petitioner corporation to pay rent in spite of intimation given regarding allotment of property to the shares of these respondents, would disentitle them from seeking relief under Article 226 of the Constitution of India. Thus, they have sought for dismissal of this Writ Petition.

7. Heard the submissions made by the respective counsels and perused the materials available on record.

8. From the submission of the learned counsel for the petitioner corporation, it could be seen that the petitioner corporation has entered into a lease agreement with the sixth and seventh respondents for running a petroleum outlet in the demised premises. Even prior to the expiry of the lease, the respondents 6 and 7 have filed a suit in O.S. No.44 of 2011 on the file of the Additional Sub Court, Kumbakonam, for recovery of vacant possession and recovery of past and future rent. When the suit is pending, the respondents 6 and 7 have made a representation to cancel the No Objection Certificate stating that they are not willing to extend the lease agreement after its expiry on 31.03.2014. As per the instructions of the second respondent, the Sub Collector, Kumbakonam, in stead of sending to the petitioner corporation, has sent a notice to the dealer. According to the petitioner, when the suit is pending, the respondents have no authority to conduct an enquiry on the representation made by the respondents 6 and 7 who are trying to evict the petitioner corporation from the land by illegal means. The learned counsel for the petitioner also drew the attention of this Court to the proviso to Rule, 150 of Petroleum Rules, 2002, to the effect that before cancelling a No Objection Certificate, the licensee shall be given a reasonable opportunity of being heard. But, in the instant case, no opportunity of

hearing was given to the petitioner corporation and therefore, on that ground itself, the impugned orders are liable to be set aside. But, contrary to the above submissions, the learned counsel appearing for the respondents 6 and 7 would rely upon the judgment of the Hon''ble Supreme Court in the case of C. Albert Morris Vs. K. Chandrasekaran and Others, (2005) 9 JT 127 : (2006) 1 SCC 228 for the proposition that any right which the dealer has over his site was the right which he had acquired in terms of the lease. When that lease expired and when the landlord declined to renew the same and also called upon the erstwhile tenant to surrender possession, the erstwhile lessee could no longer assert that he had any right to the site. His continued occupation of something which he had no right to occupy cannot be regarded as source of a right to the land of which he himself was not in lawful possession. Therefore, irrespective of the pendency of the suit, as of now, there is no valid lease in favour of the petitioner corporation. Hence, they have no right to continue in possession of the land. Under such circumstances, the orders passed by the respondents 2 and 3 cannot be found fault with. Further, in so far as the submission that no opportunity of hearing was given to the petitioner corporation is concerned, in order to find out the fact only whether there is any valid lease in favour of the petitioner, the second respondent had issued notice to the petitioner corporation and the petitioner corporation had also offered their explanation and only thereafter, the second respondent had passed the order dated 06.02.2015. When that being the case, no purpose is going to be served, even if opportunity of personal hearing is given. Further, the learned Special Government Pleader for the respondents 1 and 2 submitted that as against the order passed by the second respondent the petitioner is having an appeal remedy under Rule 154(2) of the Petroleum Rules, 2002.

9. Considering the submissions made by the counsels appearing for respective parties, this Court is of the opinion that no finding can be rendered with regard to the right of the petitioner continue to run because this Court is not conducting any roving enquiry or a trial in this writ petition. However, since the respondents 2 and 3 have passed the orders without giving an opportunity of personal hearing to the petitioner corporation, on that ground the impugned orders dated 06.02.2015 and 13.02.2015 passed by the respondents 2 and 3 is liable to be set aside. Accordingly, the impugned orders dated 06.02.2015 and 13.02.2015 are set aside and the matter is remit back to the authorities concerned. This Court directs the authorities concerned to consider the matter afresh after giving an opportunity of being heard to the petitioner corporation and pass appropriate orders within a period of four weeks from the date of receipt of a copy of this order. Further, it is made clear that by virtue of the order of interim stay, the petitioner corporation was allowed to run the petroleum outlet, the same shall be continued till the orders are passed by the respondents afresh.

10. In the result, this Writ Petition stands allowed. No costs. Consequently, the connected miscellaneous petitions are closed.