IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29-09-2006

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MR. JUSTICE M. JAICHANDREN

O.S.A.NOs.64 to 66 OF 2001

The Chairman,
The Tamil Nadu Industrial
Development Corporation Ltd.,
19-A, Rukmini Lakshmipathi Road,
Egmore, Chennai 600 008. .. Appellant in all the OSAs

Vs.

1. K. Jayaraman

2. S. Duraisamy .. Respondents in all the OSAs

All these appeals have been filed under Clause 15 of the Letters Patent R/w. Order 36 Rule 11 of O.S. Rules against the common order passed by the learned single Judge in A.Nos.669, 670 and 668 of 2001 in C.S.No.741 of 1998 dated 13.2.2001.

For Appellant : Mr. Dulip Singh for
M/s. King & Patridge

For Respondents : Mr.K.N. Nataraj

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COMMON JUDGMENT

P.K. MISRA, J

Three appeals have been filed against the order of the learned single Judge dated 13.2.2001 rejecting the three applications numbered as Appln.Nos.668, 669 and 670 of 2001 in C.S.No.741 of 1998.

2. In order to appreciate the questions raised, it is necessary to notice in detail the various facts and circumstances.

C.S.No.741 of 1998 was filed by one K. Jayaraman, Respondent No.1 in all the appeals, against T.S. Ravi, (Defendant No.1) T.S. Sulochana (Defendant No.2) and S. Duraisamy (Defendant No.3 – present Respondent No.2 in all the appeals) claiming Rs.53,16,750/- with interest on Rs.45 lakhs and to pass a charge-decree against the immovable properties of the defendants 1 and 2 as per the schedule.

During pendency of such suit, Appln.No.1969 of 1999 was filed for directing the first Garnishee, namely, the Deputy Salt Commissioner, to pay Rs.30 lakhs to the plaintiff. In the said application, the present appellant, Tamil Nadu Industrial Development Corporation, was impleaded as second Garnishee. In the said application, the present appellant, who was arrayed as Respondent No.5, has not appeared. However, the Deputy Salt Commissioner, Respondent No.4, had appeared through the Advocate. At that stage, a direction was issued to the Deputy Salt Commissioner to pay a sum of Rs.30 lakhs directly to the plaintiff from and out of the compensation amount payable to the present Respondent No.2.

3. Contempt Application No.192 of 2000 was filed against the Deputy Salt Commissioner as well as the Chairman, the Tamil Nadu Industrial Development Corporation, hereinafter referred as "the TIDCO" (present Appellant) alleging that such order has not been complied with.

In such contempt application, a counter affidavit was filed by the Deputy Salt Commissioner. In such counter affidavit it was indicated that a vast extent of land in Ennore Group of Salt Factories belong to the Salt Department of Government of India. A part of such land in Thillai Village had been leased out to the present Respondent No.2 for the manufacture of salt. TIDCO intended to acquire some of those lands for the purpose of putting up a Petro Chemical Industrial Park and such request was considered by the Salt Department and it was decided that such land should be handed over to the present appellant. The market value of the land would be paid to the Salt Commissioner and the present appellant would compensate the lessees of those lands. The compensation which would be paid directly to the lessees was to be decided on the basis of the mutual discussion between the present appellant and the respective lessees. It was therefore indicated in the counter affidavit that such amount being directly payable by the present appellant to the present Respondent No.2, namely, the lessee, and as no amount had been paid to the Salt Commissioner by the appellant towards compensation payable to the lessees, such compensation was to be directly paid to the lessees

concerned by the appellant.

In the counter affidavit filed by the present appellant in the contempt application it was indicated that there was no direction to the present appellant to pay any amount and the contempt application filed against such appellant was not maintainable. It was further indicated that TIDCO has proposed to establish a Petro Chem park at Ennore and in response to the request of the TIDCO, the Salt Commissioner, Government of India by order dated 21.1,.1999 accorded approval for the transfer of Salt Pan Lands at Ennore in favour of TIDCO through the State Government on satisfactory compliance of the terms and conditions as enumerated in the order. It was further indicated :-

> "One of the conditions of the according of approval was that TIDCO shall pay compensation to the lessees of the salt land for extinguishing the lease hold rights which TIDCO and the lessees may arrive at through mutual negotiations. The Salt Pan Lands were predominantly leased out to various salt lessees by the Salt Department. The Govt. of India desired that TIDCO make its own arrangement to negotiate with the salt lessees for settlement of compensation for premature surrender by them and for take over of the leased lands. The compensation payable to the Salt lessees as consideration for premature surrender of the leased lands were to be in addition to the provisional market value of Rs.35,000/- per acre payable to Salt Department as consideration for the sale of the land to TIDCO. TIDCO has already effected payment of the entire sale consideration in favour of the Salt Department. TIDCO also took efforts to negotiate with the sale lessees by convening meetings of the salt lessees on 19.11.1998 and 23.12.1998 respectively. It was agreed during the said meeting that for premature surrender of the subsisting lease TIDCO would pay compensation at the rate of Rs.16,000/- per acre for undeveloped lands and Rs.18,000/- per acre for developed lands. The compensation would be payable to the salt lessees only upon their establishing to the satisfaction of TIDCO encumbrance free title to the lease and submission of the original licence, lease deed and No Due Certificate besides execution of a deed of surrender of lease in favour of TIDCO."

It was further indicated that on 3.9.1999, the Salt Department had informed TIDCO that the lease in favour of present Respondent No.2 had been terminated for default of the terms of lease and possession of the land would be taken over and handed over to TIDCO through the officials of the Government of Tamil Nadu and possession was accordingly handed over to TIDCO on 4.9.1999. Respondent No.2 had approached TIDCO on 22.3.2000 for compensation, but TIDCO had replied by letter dated 8.5.2000 that since lease had been cancelled and no leasehold right had been surrendered, the present Respondent No.2 was not entitled to compensation through TIDCO.

4. On 17.7.2000, in the contempt application, an order was passed directing TIDCO to deposit the amount arrived at towards compensation due to the present Respondent No.2 and the matter was directed to be posted on 26.7.2000. The present appellant at that stage filed LPA.No.126 of 2000 impleading the contempt applicant as well as the Deputy Salt Commissioner. Ultimately, a sum of Rs.30 lakhs had been deposited by the appellant and the contempt application and the subsequent LPA.No.135 of 2000 were disposed of without determining any question.

5. On 24.1.2001, the appellant filed three applications, namely, Appln.Nos.668, 669 and 670 of 2001. On 2.2.2001, Contempt Application No,.192 of 2000 was closed while observing that the plaintiff (applicant in the contempt application and Respondent No.1 in the appeal) was entitled to such amount.

6. There is no dispute that such amount has been withdrawn by the plaintiff in the suit. On 7.2.2001, the plaintiff made an endorsement on the plaint withdrawing the suit as settled out of court in view of the payment received. On 13.2.2001 the suit was dismissed as settled out of court. On the very same day, the learned single Judge allowed the application of the present Respondent NO.1 regarding payment of the amount to the plaintiff. On the very same day, the learned single Judge under the impugned order dismissed the Appln. Nos.668, 669 and 670 of 2001 with a direction to the present appellant to deposit a sum of Rs.99,06,203/- minus Rs.30,00,000/-, already paid towards the balance amount payable to present Respondent No.2. Learned single Judge has observed that even though the lease in favour of the present Respondent No.2 has been cancelled by the Salt Commissioner, such order of cancellation has been quashed by the High Court in W.P.No.16811 of 2000, which was allowed on 1.2.2001.

7. In Appln.No.668 of 2001, the prayer was to frame an issue as to whether TIDCO is liable to the second respondent and consequently to the plaintiff and to provide an opportunity to the appellant to contest the same. Prayer in Appln.No.669 of 2001 was to the effect that pending such determination, there should be stay of disbursement of the sum deposited by the appellant. Prayer in Appln.No.670 of 2001 was for a direction to deposit the sum of Rs.30 lakhs in a fixed deposit.

8. Under the impugned order, the learned single Judge has rejected all the three applications and observed that the present appellant was liable to deposit a sum of rs.99,06,203/-, which was payable to the present Respondent No.2.

9. Learned counsel appearing for the appellant has submitted that since the lease of the present Respondent No.2 had been cancelled by the time the possession was handed over to the present appellant by the Salt Commissioner, there was no liability to pay any amount as compensation to the present Respondent No.2 as he was not an existing lessee on the date of handing over of possession. The second contention is to the effect that even assuming that there was some justification for directing payment of Rs.30 lakhs to the plaintiff, the learned single Judge should not have directed the present appellant to pay a total sum of Rs.99,06,203/- towards the amount payable to the present Respondent No.2 as such question was not to be decided by the learned single Judge.

10. Learned counsel appearing for the respondents has supported the order of the learned single Judge. He has also submitted that the licence in favour of Respondent No.2 had been cancelled by the Salt Commissioner. However, such order was challenged by Respondent No.2 in W.P.No.16811 of 2000, which was allowed by the learned single Judge by order dated 1.2.2001 and it was indicated therein that the writ petitioner (present Respondent No.2) can take steps to realise the amount payable to him in accordance with law.

11. A perusal of the various facts and circumstances, including the orders passed in C.S.No.741 of 1998 and the different applications arising therefrom, indicate as hereunder :-

The suit has been filed by K. Jayaraman, the present Respondent No.1, against three defendants claiming certain amount due from such defendants. The present Respondent No.2 was Defendant No.3 in the said suit. Initially an order was passed by the trial court directing the Deputy Salt Commissioner, the first Garnishee, to pay a sum of Rs.30 lakhs to the plaintiff. At that

stage, the plaintiff apprehending that the amount payable by the present appellant Tamil Nadu Industrial Development Corporation may be paid to some other person authorised by Defendant No.3 (present Respondent No.2), had filed subsequently an application for directing the present appellant not to pay such amount to any third party, but to deposit such amount towards the due of the plaintiff and that is how the present appellant was treated as the second Garnishee. However, at no point of time any specific order has been passed against the present appellant to deposit Rs.30 lakhs. At that stage, the plaintiff filed Contempt Application, wherein the Salt Commissioner was arrayed as Respondent No.1 and the present appellant was arrayed as Respondent No.2. In the reply, the Salt Commissioner took the stand that in fact the compensation payable to various licensees was to be directly paid by Tamil Nadu Industrial Investment Corporation (present Appellant) and, therefore, the Salt Commissioner was not required to make any deposit. It took the stand that such amount should be paid by the appellant Corporation. The present appellant, however, has taken the stand that no amount was payable to Defendant No.3 (present Respondent No.2) as the lease in his favour had been cancelled by the Salt Commissioner and land had not been surrendered by Defendant No.3 (present Respondent No.2), but possession had been delivered by the Salt Commissioner after cancellation of such licence in favour of Defendant No.3 (present Respondent No.2). At that stage, the learned single Judge, while dealing with the Contempt Application, has passed an order directing the present appellant to deposit the entire amount allegedly payable to Defendant No.3. Against such direction, the present appellant had filed L.P.A.No.126 of 2000 contending that no such direction can be given while dealing with the contempt application. In the meantime, the present appellant had filed a supplemental affidavit clarifying certain provisions and highlighting the fact that at any rate the direction to the Salt Commissioner was to pay only Rs.30 lakhs and, therefore, there was no justification to direct payment of the entire amount. On the basis of such supplemental affidavit, the learned single Judge had apparently modified the earlier order and had directed the present appellant to deposit a sum of Rs.30 lakhs. In view of this subsequent direction regarding deposit of Rs.30 lakhs, the LPA filed by the present appellant was dismissed as not pressed as obviously the present appellant was willing to deposit such amount. Thereafter, such amount of Rs.30 lakhs was deposited by the present appellant and the contempt application was closed against the Salt Commissioner as well as the present appellant by recording such fact. At that stage, the suit was still pending. The present appellant filed Application Nos.668 to 670 of 2001. In Appln.No.668 of 2001, the present appellant had prayed for framing an issue as to whether the present appellant is liable to

the second respondent (Defendant No.3) and to provide an opportunity to the appellant to contest the same. The prayer in Appln.No.669 of 2001 was to the effect that till such determination is made regarding the liability of the appellant, such amount (Rs.30 lakhs) should not be disbursed to the plaintiff. The prayer in Appln.No.670 of 2001 was for a direction to deposit such sum of Rs.30 lakhs in a fixed deposit.

While the matter stood thus, the plaintiff entered into a compromise with Defendant No.3 restricting the liability of Defendant No.3 to Rs.30 lakhs and agreeing to receive such amount in satisfaction of the amount due from the defendants. Such suit was dismissed as settled out of court by order dated 13.2.2001 and on the very same the learned single Judge rejected the three applications filed by the present appellant. While rejecting such applications, the learned single Judge has also issued a further direction to the present appellant to deposit the entire amount allegedly payable to Defendant No.3 after deducting the sum of Rs.30 lakhs already deposited.

12. After carefully considering the rival submissions and going through the materials on record, we are unable to uphold the order passed by the learned single Judge. The inter se liability between the present appellant and Respondent No.2 has not been determined. Since the present appellant was questioning its liability to pay any amount to Respondent No.2, including the sum of Rs.30 lakhs directed to be deposited, as per the provisions, the learned single Judge was required to frame an issue relating to that aspect and to consider the same.

13. It is no doubt true that Respondent No.2 is now relying upon the order passed by the learned single Judge dated 1.2.2001 in W.P.No.16811 of 2000, wherein the cancellation of the licence has been quashed. However, the learned counsel appearing for the appellant has submitted that the present appellant was not a party to such writ petition. In this connection, it is also pointed out by the learned counsel for the appellant that as a matter of fact the present appellant had already intimated to Respondent No.2 in August, 2000 that such an appellant is not liable to pay any compensation to the present Respondent No.2 as the licence in favour of Respondent No.2 had been cancelled. Learned counsel appearing for the appellant has therefore submitted that since the appellant was not a party to the order passed in the writ petition and the appellant had already intimated denying its liability to pay any compensation to Respondent No.2, it cannot be assumed that the liability of the present appellant had already been determined in a manner known to law in any proceedings to which the appellant was a party. Even

though the learned counsel for the respondents has submitted that the order passed by the learned single Judge was justified and the present appellant should be treated as bound by such order, we do not think it would be appropriate for us to deal with that question. We, therefore, do not express any opinion on that aspect, save and except by noticing the contention raised by the appellant that its liability to pay Respondent No.2 had never been determined and therefore such question is required to be considered in a manner known to law. However, we make it clear that this order should not be construed as expression of any opinion on this aspect.

14. In our considered opinion, the learned single Judge has therefore committed an illegality in not framing an issue regarding the inter se liability of the appellant vis-a-vis that of Respondent No.2. Application No,.668 of 2001 should have been allowed and the matter should have been determined.

15. The other two Applications relate to the question of deposit of such amount in fixed deposit and direction regarding stay of disbursement of such amount. These prayers have practically become infructuous in the sense that the plaintiff / Respondent No.1 has already withdrawn the amount. Since Defendant No.2 has agreed to the compromise decree and such decree has apparently been satisfied, it may not be necessary now to re-open that question. However, if ultimately it is found that the present appellant was not liable to pay Rs.30 lakhs to Defendant No.3, since such position had been brought about by the compromise effected by Defendant No.3, it would be appropriate to observe that in such an event appropriate direction can be issued by the court to Defendant No.3 (present Respondent No.2) to refund such amounty along with the reasonable interest to the present appellant.

16. The next question is as to whether the learned single Judge was justified in directing the present appellant to deposit the balance amount. So far as this aspect is concerned, we fail to understand as to how the learned single Judge assumed jurisdiction to direct deposit of balance amount when such question did not arise for determination at all. The suit had been filed by the plaintiff / Respondent No.1 against three defendants claiming certain amount and the plaintiff had prayed for issuing garnishee orders against the Salt Commissioner and subsequently against the present appellant. The learned single Judge had specifically directed that a sum of Rs.30 lakhs should be deposited. While considering the question of issuing garnishee order in the suit filed by the plaintiff, the learned single Judge need not have expanded the scope by directing the present

appellant to deposit the balance amount. As a matter of fact, we do not find any petition or prayer anywhere even by Defendant No.3 regarding such a direction. Such a direction was wholly uncalled for in the suit. If Defendant No.3 is otherwise entitled to any further amount in addition to the amount of Rs.30 lakhs, which is subject to the garnishee order, it was and it may be still open to Defendant No.3 to realise such amount in accordance with law by taking recourse to appropriate proceedings. However, the present order should not be construed as conferring a right on Defendant No.3 to claim such amount in the proceedings now to be decided by the trial court and it is for Defendant No.3 to workout his remedy, if any, in accordance with law.

17. Subject to the aforesaid observations and directions, O.S.A.No.64 of 2001 is allowed and the other two appeals are disposed of. There would be no order as to costs.

18. In course of hearing, the learned counsel appearing for the appellant has raised a contention that the impugned orders had been passed by the learned single Judge on his last working day on the eve of his retirement and, therefore, such orders are vulnerable. As a matter of fact, such a submission is factually and grossly incorrect as the learned Judge retired about four months thereafter. Even otherwise, we do not think it would be fair on the part of any party or his counsel to raise such a contention as every Judge has a duty to work till his retirement and an order cannot be challenged merely because some judicial order has been passed on the last day of the retirement.

dpk

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Sub Assistant Registrar, Original Side, High Court, Madras.

2. The Record-keeper, O.S.. Records High Court, Madras.

+3 cc to Mr. K.N. Nataraj, Advocate sr no. 46420, 46421, 46422
+3 ccs to King and Patridge Advocate sr no. 46491

AKM(Co)
NM(18.10.2006)

OSA.NOS.64 TO 66 OF 2001