

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 11TH DAY OF AUGUST 2015/20TH SRAVANA, 1937

WP(C).No. 3545 of 2014 (P)

PETITIONER(S)/PETITIONER:

VISHNU FUELS,
I.O.C.DEALER, ANJILIPRA, THATTARAMBALAM
MAVELIKKARA-690103, REPRESENTED BY ITS PROPRIETOR
R.KESAVA KURUP, RESIDING AT KATHIRAPALLIL, KARICHAL
PAIPPADU(P.O), HARIPPAD, ALAPPUZHA-690556.

BY ADVS.SMT.SUMATHY DANDAPANI (SR.)
SRI.MILLU DANDAPANI
SRI.PREMCHAND R.NAIR

RESPONDENT(S)/RESPONDENTS:

1. UNION OF INDIA,
REPRESENTED BY ITS MINISTRY OF COMMERCE & INDUSTRY PETROLEUM &
EXPLOSIVES SAFETY ORGANIZATIONS(PESO)
KENDRIYA BHAVAN, BLOCK-C-2, 3RD FLOOR
(GO COMPLEX, KAKKANAD, KOCHI-682037.
2. INDIAN OIL CORPORATION,
PANAMPILLY AVENUE, PANAMPILLY NAGAR, ERNAKULAM-682036
REPRESENTED BY ITS TERRITORY MANAGER.
3. NIRMALA DEVI,
CHULLOOR HOUSE, ANJILIPRA, MAVELIKKARA
ALLEPPEY DISTRICT-690103.
4. THE DEPUTY CHIEF CONTROLLER OF EXPLOSIVES,
C-2, 3RD FLOOR, CGO COMPLEX
KAKKANAD, ERNAKULAM-682037.
5. THE ADDITIONAL DISTRICT MAGISTRATE,
COLLECTORATE, KOLLAM-691001.

R1,R4 BY ADV. SRI.N.NAGARESH,,ASG OF INDIA
R2 BY ADV. SRI.M.GOPIKRISHNAN NAMBIAR
R2 BY ADV. SRI.P.GOPINATH
R2 BY ADV. SRI.P.BENNY THOMAS

R2 BY ADV. SRI.K.JOHN MATHAI
R3 BY ADV. SRI.K.ANAND (SR.)
R3 BY ADV. SMT.LATHA KRISHNAN
R3 BY ADV. SRI.SHILPI M.LAL
R3 BY ADV. SRI.M.N.RADHAKRISHNA MENON
R5 BY GOVERNMENT PLEADER SRI MANOJ P KUNJACHAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 11-08-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1 PHOTOCOPY OF DEALERSHIP AGREEMENT EXECUTED BETWEEN THE PETITIONER AND 2ND RESPONDENT CORPORATION FORWARDED TO THE PETITIONER VIDE COVERING LETTER DATED 9.12.2009

EXT.P2 PHOTOCOPY OF THE LEASE DEED NO.28.6.1996 EXECUTED IN BETWEEN SMT.NIRMALA DEVI AND R.KESAVA KURUP.

EXT.P3 PHOTOCOPY OF ORDER ISSUED BY THE 4TH RESPONDENT VIDE NO.P/SC/KL/14/1805(P32975)DATED 10.1.2014 TO THE 2ND RESPONDENT

EXT.P4 PHOTOCOPY OF EXPLOSIVES LICENCE DATED 26.12.2013 ISSUED IN FAVOUR OF THE PETITIONER BY THE 4TH RESPONDENT

EXT.P5: PHOTOCOPY OF RELEVANT EXTRACT OF THE POLICY CIRCULAR NO.98(A) 10/2006 BY THE 2ND RESPONDENT.

RESPONDENT(S)' EXHIBITS

EXT.R3(a): TRUE COPY OF CONSENT DEED DATED 6.11.2011

EXT.R3(b): TRUE COPY OF LEGAL NOTICE

TRUE COPY

P.A TO JUDGE

jma

K. VINOD CHANDRAN, J

W.P(C) No. 3545 of 2014-P

Dated this the 11th day of August, 2015

J U D G M E N T

The petitioner is aggrieved with Ext.P3 which threatened suspension/cancellation of the explosive licence issued to the petitioner, under Rule 152 of the Petroleum Rules 2002 which was essential for carrying on the petroleum agency of the respondent Corporation in the subject land. The brief facts to be noticed are that the land in which the petroleum agency was carried on, belonged to the 3rd respondent. By way of a lease deed, at Ext.P2 the land was leased out to the proprietor of the petitioner firm for a period of 15 years. The lease itself was of 1996 and the same stood expired on 2011.

2. The petitioner relies on clause (14) of Ext.P2 to contend that it was optional for the lessor and lessee to extend the period of lease for a further period of five years, if they mutually desired so and contend that on such agreement the petitioner was

continued in possession of the land even after the expiry of the lease. The petitioner was taken by surprise insofar as Ext.P3 being issued for reason of the 3rd respondent having refused to grant “No Objection Certificate” for renewal of explosive licence, which is absolutely necessary for carrying on the petroleum outlet.

3. The contention of the petitioner that clause (14) enables the petitioner to continue even after the lease period, cannot be countenanced; unless there is any material to show that on mutual agreement such period of agreement is extended beyond the period specified in Ext.P2. In fact, the evidence is to the contrary which has been produced by the 3rd respondent as Ext.R3(a) wherein the proprietor of the petitioner had issued a consent; agreeing to handover the vacant premises on or before 30.06.2011. The lease was to expire on 27.06.2011. The petitioner cannot at this point raise any contention of the petitioner having been continued in the premise validly for a further period of five years from the expiry of

the lease period prescribed in Ext.P2.

4. C.Albert Mooris v. K Chandrasekaran and others (2006 (1) SCC 228) is apposite for reliance, in which the Hon'ble Supreme Court in almost identical situations held so:-

“ In our opinion, 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. “

5. The protection available under the Rent Control Act was also found to be not available since that covered only lease of buildings and the subject lease was of land alone. The position is

identical herein too.

6. In such circumstance, this Court is not convinced that the petitioner can be allowed to continue in the premises. The relief sought for by the petitioner though in the nature of reliefs against the 4th respondent and the 2nd respondent, effectively would be an order against the 3rd respondent and interdicting the 3rd respondent from obtaining valid possession of the land after the expiry and determination of the lease and that too contrary to a specific consent issued by the petitioner at Ext.R3(a).

7. In such circumstance, this Court is inclined to dismiss the writ petition. However, on the undertaking of the petitioner that he shall vacate the premises in six months there shall be a direction that he shall be issued with explosive licence for the next six months starting from today, after inspection of the premises and that the petitioner shall vacate the premises within six months. The aforesaid direction is only in view of the undertaking of the petitioner, since it

is an operating agency, carried on at the premises for the last 15 years. The Corporation shall also ensure that whatever machinery and equipments owned by the Corporation situated in the premises shall be shifted before expiry of six months.

Writ petition dismissed with the above limited reservation.

Sd/-

(K. VINOD CHANDRAN, JUDGE)

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P.A to Judge