

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

FRIDAY, THE 11TH DAY OF SEPTEMBER 2015/20TH BHADRA, 1937

SA.No.48 of 2001 (E)

AGAINST THE JUDGMENT IN AS 354/1992 of II ADDL. DISTRICT COURT,
THIRUVANANTHAPURAM DATED 06-06-2000

AGAINST THE JUDGMENT IN OS 501/1988 of PRL. MUNSIFF COURT,
THIRUVANANTHAPURAM DATED 30-08-1991

APPELLANTS/RESPONDENTS/DEFENDANTS:

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1. M/S. HINDUSTAN PETROLEUM CORPORATION LIMITED,
A GOVERNMENT OF INDIA UNDERTAKING HAVING ITS
REGISTERED OFFICE AT 17, JAMSHEDJI TATA ROAD,
MUMBAI, REPRESENTED BY CHAIRMAN.
 2. M/S.HINDUSTAN PETROLEUM CORPORATION LIMITED.,
HAVING ONE OF ITS OFFICES AT TATA ROAD,
POST BAG NO.2612, ERNAKULAM, COCHIN - 682 031

BY ADVS.SRI.M.GOPIKRISHNAN NAMBIAR
SMT.PRIYA MAHESH

RESPONDENTS/ADDL. APPELLANT NOS.2 & 3/ADDL. PLAINTIFF NOS.2 & 3:

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1. R. SUBRAMONIAN, VEERABHADRA GARDENS,
PATTOM PALACE P.O.,
THIRUVANANTHAPURAM.
 2. KANTHIMATHI SREERAM, VEERABHADRA GARDENS,
PATTOM PALACE P.O.,
THIRUVANANTHAPURAM.

* ADDL. R3 IMPEADED

N.SASIDHARAN, SARASINI,
T.C.16/87, MEDICAL COLLEGE P.O.,
THIRUVANANTHAPURAM.

*ADDL. R3 IS IMPEADED AS PER ORDER DTD. 3.3.2011 IN
C.M.P.NO.504/2001

R1 & R2 BY ADV. SRI.T.C.SURESH MENON
R1 & R2 BY ADV. SRI.JIBU P THOMAS
R1 & R2 BY ADV. SRI.P.S.APPU
R1 & R2 BY ADV. SRI.A.R.NIMOD
R1 & R2 BY ADV. SRI.C.A.ANOOP
R3 BY ADV. SRI.P.A.AHAMED

THIS SECOND APPEAL HAVING BEEN FINALLY HEARD ON 11-09-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ALEXANDER THOMAS, J.

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Dated this the 11th day of September, 2015.

J U D G M E N T

This Second Appeal arises out of the impugned judgment dated 6.6.2000 in Appeal Suit, A.S.No.354/1992 rendered by the learned II Additional District Judge, Thiruvananthapuram. The impugned judgment in A.S.No.354/1992 arises out of the judgment and decree dated 30.8.1991 in O.S.No.501/1988 rendered by the Principal Munsiff Court, Thiruvananthapuram. The said suit was filed by the predecessor-in-interest of the respondents 1 & 2 in this Second Appeal. The suit was instituted for recovery of landed property and other consequential reliefs. The trial court held on the basis of the decision rendered by the Land Tribunal, Thiruvananthapuram that the defendant-Company is not liable to be evicted from the plaint schedule property since they are entitled to the benefit of permanent tenancy envisaged under Sec.106 of the Kerala Land Reforms Act (hereinafter referred to as 'the KLR Act').

2. As per the averments in the plaint, the plaint schedule property originally belonged to M/s. Maideenkunju and Sons Private

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Limited, Kollam and as per Ext.A1 agreement dated 24.7.1958 entered into between the original owner and M/s. Standard Vacuum Oil Company, which was duly incorporated as a company under the laws of the State Delaware, United States of America and was later known as M/s. ESSO for conducting a petrol dealership in the premises. As per Ext.A1 agreement, the plaint schedule property was handed over to M/s. ESSO with effect from 1.2.1957 for a period of 10 years and with an option to renew the same for another period of ten years. Later, the rights of M/s. Standard Vacuum Oil Company was taken over by the Central Government on the basis of the ESSO (Acquisition of Undertakings in India) Act, 1974 (hereinafter referred to as 'the ESSO Act') and the rights and liabilities of M/s. Standard Vacuum Oil Company stood vested and transferred in the Central Government as per Secs.3 & 4 of the ESSO Act. It is stated by the defendant-Company that subsequently, the rights of the Central Government stood vested in the defendant-Company (Hindusthan Petroleum Corporation Limited - HPCL) which was a public sector undertaking under the Government of India as envisaged in Sec.7(1) of the ESSO Act. Subsequently, the original plaintiff Smt.Lekshmi Ammal (mother of respondents 1 & 2 in the Second Appeal) became the owner of the plaint

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schedule property on 25.4.1961. That M/s. ESSO had for the purpose of conducting a petrol dealership had installed a tank and put up certain fixtures for their operations and that the fixtures and tanks are not buildings as envisaged under Sec.106 of the KLR Act. That the period of arrangement that subsisted between the plaintiff and defendant-Company in respect of the use of the above said land had expired on 31.1.1987 and that the defendant-Company is liable to vacate the premises and that they are not entitled to the benefit of permanent tenancy as envisaged under Sec.106 of the KLR Act. It is on this basis, plaintiff prayed for recovery of possession, mesne profit and other consequential reliefs.

3. On the other hand the defendant-Company in the written statement contended that the predecessor-in-interest of the defendant-Company, M/s. ESSO, had constructed a petrol bunk, buildings, compound walls, side ways and other structures in the plaint schedule property with cost coming to around Rs.3.5 Lakhs and that the period of lease arrangement had expired on 31.1.1987 and that the defendant-Company is entitled for permanent tenancy in terms of Sec.106 of the KLR Act. That all the structures and fixtures put up by the predecessor-in-interest of the defendant-Company in the plaint schedule property

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will come within the term building, that the contention of the plaintiff that Ext.A1 agreement dated 24.7.1958 does not amount to a lease is incorrect and that the same is a lease and that the plaintiff is not entitled to get recovery of plaint schedule property. Alternatively, it is also pleaded that in case the arrangement is not a lease, then the defendant-Company is also entitled to protection of Sec.60 of the Indian Easement Act since it is a licence coupled with transfer of property and such transfer is in force and that the licensee acting upon the licence had executed the work of permanent character and incurred expenses in the execution of the same, etc.

4. The trial court framed the following issues for determination in the suit which are as follows:

- “1. Whether the nature of transaction is the plaintiff entitled to recover the plaint schedule property from the defendants?
2. Is the mandatory injunction prayed for is allowable?
3. Reliefs and costs?”

5. The trial court referred the plea raised by the defendant-Company seeking the benefit of Sec.106 of the KLR Act for determination of the Land Tribunal concerned for its finding. The Land Tribunal considered the issue and entered into a finding that the defendant-Company is entitled to the benefit of Sec.106 of the KLR Act

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and therefore defendant-Company is not liable to be evicted from the land and that they shall be liable to pay rent for the period of tenancy and such rent could be varied once in 12 years as per Sec.106 of the KLR Act, etc. It is aggrieved by this judgment and decree of the trial court that the plaintiff had preferred A.S.No.354/1992 before the II Additional District Court, Thiruvananthapuram. The lower appellate court considered the issue as to whether the defendant-Company is entitled to the benefit of Sec.106 of the KLR Act and as to whether the plaintiff is entitled to get recovery of possession of the plaint schedule property as claimed in the suit.

6. It may be noted that during the pendency of Appeal Suit, the original plaintiff Smt. Lakshmi Ammal died and her legal representatives have come on record as additional appellants 2 & 3 in the Appeal Suit, who are now respondents 1 & 2 in this Second Appeal. The lower appellate court held that under Sec.106 of the KLR Act, if the lessee had constructed buildings for such commercial or industrial purpose before 20.5.1967 on any land leased for commercial or industrial purposes, then the lessee shall not be liable to be evicted from such land. Since the explanation to Sec.106 of the KLR Act envisages that lessee includes a legal representative or an assignee of the lessee,

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the lower appellate court proceeded to determine whether the defendant-Company is a legal representative of the original lessee or an assignee of the lessee. The lower appellate court held that the defendant-Company is neither a legal representative of the lessee as envisaged under Sec.2(11) of the Code of Civil Procedure and the defendant-Company is also not an assignee of the lessee. The latter finding was made by the lower appellate court by placing reliance on the decision of the Division Bench of the Apex court in the case State Bank of Travancore v. K.P.Vasudevan Pillai reported in 1971 KLR 663 = 1971 KLT 978. The lower appellate court held that since the defendant-Company was deemed to vest with the rights and liabilities of the original lessee only by virtue of the operation of law as envisaged in ESSO Act, the defendant-Company cannot be said to be an assignee of the lessee. The court below proceeded as if the defendant-Company could get permanent tenancy under Sec.106 of the KLR Act, only if they come either within the term 'legal representative' or 'assignee' as envisaged in the explanation of 106 of the KLR Act and as the defendant-Company is neither a legal representative nor an assignee, it is not entitled for the benefit of Sec.106 of the KLR Act. The lower appellate court also held that the alternative plea of the defendant-

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company that they are entitled for the protection of Sec.60 of the Indian Easement Act as a licensee is not tenable as Ext.A1 agreement is a lease and therefore the benefit of Sec.60 of the Indian Easement Act for a licensee, does not arise at all in the facts of this case and accordingly, repelled that alternative plea also. Accordingly, the lower appellate court reversed the judgment and decree of the trial court and held that from 1.2.1987, the defendant-Company is in unlawful occupation of the premises and therefore the plaintiff is entitled to get damages from 1.2.1987 till recovery is effected at the rate of rent at Rs.150/- per month for the said period, etc. In the decretal portion of the impugned judgment, the lower appellate court has held as follows:

“In the result, this appeal is allowed and the findings of the Land Tribunal and the decree and judgment passed by the court below are set aside. The suit is decreed by allowing the plaintiff to recover possession of the plaint schedule property from the defendants. The defendants are directed to remove all the structures installed by the lessee and hand over vacant possession of the property to the plaintiff. If the defendants fails to remove such structures, plaintiff is entitled to get such structures removed through court and in such case the plaintiff is entitled to recover the expenditure that will be incurred for the said purpose, from the defendants and their movable and immovable properties. The plaintiff is allowed to realise the entire costs of this suit from the Defendants and their assets. The plaintiff is further allowed to recover damages at the rate of Rs.150/- per month for the period from 1.2.1987 till recovery is effected, from the defendants and all their movable and immovable properties. In the nature of this appeal the parties are

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directed to suffer their respective costs.”

Being aggrieved by the impugned judgment and decree passed by the learned II Additional District Judge, Thiruvananthapuram in A.S.No.354/1992, the defendant-Company has filed the instant Second Appeal wherein additional appellants 2 & 3 in the Appeal Suit have been arrayed as respondents 1 & 2 in the Second Appeal. Later, as per order dated 3.3.2011 in C.M.P.No.504/2001, this Court has ordered the impleadment of the licensee of the defendant-Company (who is said to be now running the petrol pump as per the authorisation of the appellant-Company) has been impleaded as additional 3rd respondent in the Second Appeal. This Second Appeal has been admitted by this Court on 15.1.2001 for consideration of the following substantial questions of law:

“i) Whether the lower appellate court was wrong in finding that the Appellants/Defendants were not entitled to the protection of Section 106 of the Kerala Land Reforms Act, 1963.

ii) Is not the successor in interest of a tenant by operation of law entitled to the protection under section 106 of the Act.

Iii) Whether the lower appellate court had correctly interpreted the scope and ambit of Section 106 of the Kerala Land Reforms Act, 1963 in view of the legislative intent behind formulation of the same?

iv) Whether the lower appellate court had not erred in law when it chose finding that there needed to be followed a different set of rules for assignees who were so because of a statute and assignees to a

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contract who became so on the basis of a mutual contract?

v) Whether the lower appellate court was right and just in disregarding the findings of the Land Tribunal, Thiruvananthapuram and the decision of the Trial Court in this case, granting protection of Section 106 of the Kerala Land Reforms Act, 1963 as there was clear, unambiguous proof that the Defendant had constructed buildings, tank, compound wall and other permanent structures on the suit property for the purpose of facilitating its commercial interests?"

7. Heard the learned counsel appearing for the appellant-Company, learned counsel appearing for respondents 1 & 2 and the learned counsel appearing for the 3rd respondent.

8. Since all the substantial questions of law referred to above are interrelated they are being considered together.

9. As regards the findings of the lower appellate court, this Court is of the considered opinion that the lower appellate court is fully right in holding that the defendant-Company is neither a legal representative of the original lessee as envisaged under Sec.2(11) of the Code of Civil Procedure or an assignee of the original lessee, in terms of the provisions contained in the explanation under Sec.106 of the KLR Act. It will be profitable to make a reliance on Sec.106 of the KLR Act as the main issue is as to whether the defendant-Company is entitled for the benefit of permanent tenancy as envisaged in that provision. The said provision contained under Sec.106 of the KLR Act reads as follows:

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'Sec.106. Special provisions relating to leases for commercial or industrial purposes.-(1) Notwithstanding anything contained in this Act, or in any other law, or in any contract, or in any order or decree of Court, where on any land leased for commercial or industrial purpose, the lessee has constructed buildings for such commercial or industrial purpose before the 20th May, 1967, he shall not be liable to be evicted from such land, but shall be liable to pay rent under the contract of tenancy, and such rent shall be liable to be varied every twelve years.

Explanation.- For the purpose of this section,-

- (a) "lessee" includes a legal representative or an assignee of the lessee; and
- (b) "building" means a permanent or a temporary building and includes a shed.'

As per clause (a) appended to the explanation under Sec.106 of the KLR Act, "lessee" includes a legal representative or an assignee of the lessee. Section 2 (11) of the CPC provides that in that Act, unless there is anything repugnant in the subject or context "legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued and therefore, the aforesaid definition of "legal representative" comes into play only when there is death of the predecessor-in-interest of the person, who claims to be the legal representative. Hence the lower appellate court is right in holding that the defendant-company is not a legal representative of the original lessee company. Therefore, the next aspect to be examined is as to whether the defendant-company is an assignee of the original lessee

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company. On those aspect of the matter, it would be relevant to make advertence to the decision of the Division Bench of this Court in the case State Bank of Travancore v. K.P.Vasudevan Pillai reported in 1971 KLR 663 = 1971 KLT 978. Therein the appellant-decree holder-State Bank of India, obtained a decree from the Sub Court concerned for recovery of amount concerned with interest thereon and costs against respondents-judgment debtor. When, execution proceedings was initiated, the judgment debtor filed execution application, seeking the benefits under the provisions contained in the Act 11 of 1970 (Agricultural Debt Reliefs Act, 1970) praying for determination of the amount due from him and to allow him to pay the amount in instalments as envisaged in that enactment. The appellant-Bank objected to the reliefs claimed in that execution application on the ground that the debt is due to State Bank of Travancore, which is a subsidiary bank of the State Bank of India and therefore, it comes within the exemption engrafted under Sec.2(4)(a)(ii) of the aforestated Act 11 of 1970. Under Sec.2(4) of the said Act, "debt" has been defined as any liability in cash or kind, whether secured or unsecured, due from or incurred by an agriculturist on or before the commencement of the said Act 11 of 1970 whether payable under a contract or under a decree or

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order of any court or otherwise. Further under sub clause (a)(ii) of sub-section (4) of Sec.2 as well as the proviso thereto, the following class of debts have been excluded from the definition of debt. The said clause (a)(ii) of sub-section (4) of Sec.2 with its proviso reads as follows:

“2. Definitions.- In this Act, unless the context otherwise requires,-

(1)

(4)

(a) any sum payable to -

(i)

(ii) The Reserve Bank of India or the State Bank of India or any subsidiary bank within the meaning of clause (k) of S.2 of the State Bank of India (Subsidiary Banks) Act, 1959, or the Travancore Credit Bank (in liquidation) constituted under the Travancore Credit Bank Act, IV of 1113.

Provided that the right of the bank to recover the sum did not arise by reason of any assignment made subsequent to the 1st day of July, 1957.”

Therefore by virtue of the said exemption if the same is payable to the State Bank of India or any of its subsidiary banks and is the one which has not arisen by reason of any assignment made subsequent to 1.7.1957 then it would come within the zone of the exemption engrafted in the enactment and therefore the debtor could not claim the benefit of Act 11 of 1970 including the benefit of seeking instalments as envisaged in that Act. It is in relation to such aspects that the Division

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Bench of this Court considered the matter in State Bank of Travancore's case (supra). In the said case, the debt was owed by the judgment debtor to the Kottayam Orient Bank Ltd. The Kottayam Orient Bank was amalgamated with the State Bank of Travancore (which is a subsidiary of State Bank of India) as per the statutory provisions contained in Sec.45 of the Banking Companies Act, 1949, on the basis of the scheme framed by the Reserve Bank of India for amalgamation as envisaged under the said Banking Companies Act. The scheme for such amalgamation is as mandated in various sub sections of Sec.45 of the Banking Companies Act and the Division Bench held that amalgamation of Kottayam Orient Bank with the State Bank of Travancore was on account of operation of law as contained in Sec.45 of the Banking Companies Act, 1949 and as per the provisions of sub-section 9 of Sec.45 thereof the properties and assets and liabilities of the bank shall stand transferred to and vests in the transferee bank. In view of the provisions contained under Sec.45(9) of the Banking Companies Act, the Division Bench held therein that the transfer of assets and liabilities of the Kottayam Orient Bank to the State Bank of Travancore was by operation of law and not by voluntary act of the parties. Accordingly, it was held that there has been no voluntary transfer of assets by the

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Kottayam orient Bank Ltd., in which case there alone be an assignment. So, the question that was considered by the Division Bench was whether the right to recover the sum by the State bank of Travancore by reason of the amalgamation of the Kottayam Orient Bank with the appellant-bank was derived under an assignment as envisaged in that provision or under a transfer by operation of law and the Division Bench held that it was only on account of operation of law as contained in the provisions of Sec.45 of the Banking Companies Act, 1949 and that therefore there has been no voluntary transfer of assets from one entity to the other, could there be an assignment. On this basis the lower appellate court was right in holding that the defendant-Company is not an assignee of the original lessee-company (M/s.ESSO) inasmuch as there has been no voluntary transfer of assets by M/s. ESSO to the defendant-Company and transfer of assets and liabilities is only on account of the provisions contained in the Act of the Parliament regulating the ESSO (Acquisition of undertaking in India) Act. The further reasoning of the lower appellate court as if the defendant could succeed only if they establish that they are either 'legal representative' of the original lessee or 'assignee' of the original lessee, is not sustainable. Unlike the clause of exemption contained in (a)(ii) and its proviso in respect of sub-

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section (4) of Sec.2 of the Agricultural Debt Reliefs Act, 1970 considered by the Division Bench in State Bank of Travancore's case (supra), the relevant provisions of law that is applicable in this case as contained in clause (a) of the explanation under Sec.106 of the KLR Act is not an exhaustive clause but an inclusive one. The said clause in the explanation clause (a) under Sec.106 of the KLR Act explicitly and clearly provides that "lessee" includes a legal representative or an assignee of lessee and there is no exhaustive definition and but it is an inclusive one. True, the learned counsel for the defendant-Company has raised a contention based on the definition of assignee as contained in Black's Law Dictionary that an assignee can also be an assignee in law, the details in this regard need not be adverted to in the view that this Court proposes for the disposal of this matter. This Court is not going into those aspects as the counsel for the defendants could not cite any decision which has overruled the legal position contained in the Division Bench ruling in State Bank of Travancore's case (supra) with respect to assignment. Moreover, this Court is inclined to hold that the definition contained in explanation clause (a) under Sec.106 of the KLR Act, the definition of the lessee is an inclusive one and not an exhaustive one and also take in persons the status of lessee by virtue of operation of

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law. The Apex Court in the case Jugalkishore Saraf v. M/s. Raw Cotton Co. Ltd reported in AIR 1955 SC 376 has held that the transfers by operation of law were not intended to be confined to limited cases of death, devolution or succession and that there could be transfers by operation of law in various otherwise too. As instances, the Apex Court pointed out that when a person is adjudged insolvent, his properties vest in the Official Assignee and the transfer is brought about by operation of insolvency laws which have been codified and the court-sale of property in execution of a decree vests the right, title and interest of the judgment debtor in that property in the auction-purchaser thereby effecting a transfer by operation of law as embodied in the CPC, the Apex Court observed that "it is neither necessary nor profitable to try and enumerate exhaustively the instances of transfer by operation of law." To decide as to whether the transfer of rights, assets, liabilities and interest of M/s. ESSO has been transferred to the defendant-company (M/s. HPCL) by the operation of law, it would be necessary to advert to the provisions contained in Secs.3, 4, 5 & 7 of the ESSO (Acquisition of Undertakings in India) Act, 1974, which came into force on 13.3.1974. The Preamble to the said Act framed by the Parliament makes it clear that it is an Act provided for the acquisition and transfer

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of the right, title and interest of M/s.ESSO in relation to its undertakings in India with a view to ensuring co-ordinated distribution and utilisation of petroleum products distributed and marketed in India by ESSO Eastern Inc. and for matters connected therewith or incidental thereto, etc. Sec.3 of the ESSO (Acquisition of Undertakings in India) Act, 1974 provides as follows:

“Sec.3. Transfer and vesting in the Central Government of the undertakings of Esso in India.–On the appointed day, the right, title and interest of Esso, in relation to its undertakings in India, shall stand transferred to, and shall vest in, the Central Government.”

Sec.4 provides as follows:

“Sec.4.General effect of vesting.–(1) The undertakings referred to in Section 3 shall be deemed, save as otherwise provided in sub-section (2), to include all assets, rights, powers, authorities and privileges and all property, movable and immovable, cash balances, reserve funds, investments and all other rights and interests in, or arising out of, such property as were, immediately before the appointed day, in the ownership, possession, power or control of Esso, in relation to its undertakings in India, and all books of account, registers, records and all other documents of whatever nature relating thereto and shall also be deemed to include all borrowings, liabilities and obligations of whatever kind then subsisting of Esso in relation to its undertakings in India.

(2) The undertakings referred to in sub-section (1) shall not include the following, namely:--

(a) any share held by Esso in the equity capital of Esso Standard or Lube India;

(b) any trade mark, and any right of Esso to use any trade mark

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in India, specified in the First Schedule;

(c) all patents and designs registered in India in the name of Esso.

(3) Unless otherwise expressly provided by this Act, all deeds, bonds, agreements, powers of attorney, grants of legal representation and other instruments of whatever nature in relation to the undertakings of Esso in India, subsisting or having effect immediately before the appointed day, and to which Esso is a party or which are in favour of Esso shall be of as full force and effect against or in favour of the Central Government and may be enforced or acted upon as fully and effectually as if in the place of Esso the Central Government had been a party thereto or as if they had been issued in favour of the Central Government.

(4) If, on the appointed day, any suit, appeal or other proceeding of whatever nature, in relation to the undertakings of Esso in India, which have been transferred to and vested in the Central Government under section 3, is pending by or against Esso, the same shall not abate, be discontinued or be, in any way, prejudicially affected by reason of the transfer of the undertakings of Esso or of anything contained in this Act, but the suit, appeal or other proceeding may be continued, prosecuted and enforced by or against the Central Government, or, where any undertaking is directed under section 7 to vest in any Government company, by or against the concerned Government company."

Sec. 5 reads as follows:

SEC 5. Central Government to be lessee or tenant under certain circumstances.-(1) Where any property is held in India by Esso under any lease or under any right of tenancy the Central Government shall, on and from the appointed day, be deemed to have become the lessee or tenant, as the case may be, in respect of such property as if the lease or tenancy in relation to such property had been granted to the Central Government, and thereupon all the rights under such lease or tenancy shall be deemed to have been transferred to and vested in the Central Government.

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(2) On the expiry of the term of any lease or tenancy referred to in sub-section (1), such lease or tenancy shall, if so desired by the Central Government be renewed on the same terms and conditions on which the lease or tenancy was held by Esso immediately before the appointed day.”

Sec.7 reads as follows:

“Sec.7: Power of Central Government to direct vesting of the undertakings of Esso in a Government company .-(1) Notwithstanding anything contained in sections 3, 4 and 5, the Central Government may, if it is satisfied that a Government company is willing to comply, or has complied, with such terms and conditions as that Government may think fit to impose, direct, by notification, that the right, title and interest and the liabilities of Esso in relation to any undertaking in India shall, instead of continuing to vest in the Central Government, vest in the Government company either on the date of the notification or on such earlier or later date (not being a date earlier than the appointed day) as may be specified in the notification.

(2) Where the right, title and interest and the liabilities of Esso in relation to its undertakings in India vest in a Government company under sub-section (1) the Government company shall, on and from the date of such vesting, be deemed to have become the owner, tenant or lessee, as the case may be, in relation to such undertakings, and all the rights and liabilities of the Central Government in relation to such undertakings shall, on and from the date of such vesting, be deemed to have become the right and liabilities, respectively, of the Government company.

(3) The provisions of sub-section (2) of section 5 shall apply to a lease or tenancy, which vests in a Government company, as they apply to a lease or tenancy vested in the Central Government and reference therein to the "Central Government" shall be construed as a reference to the Government company.

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So by the operation of Secs.3 & 4 of the said Act, the rights and liabilities of M/s.ESSO including their assets, properties, etc., shall stand transferred to the Government of India. As per Sec.5, the Central Government will be the lessee or tenant under certain circumstances mentioned therein. However, it is to be noted that the defendant-Company (M/s.HPCL) is neither explicitly named or envisaged in any of the provisions contained in the above Act including Sec.7 thereof. Sec.7 (1) thereof only stipulates that notwithstanding anything contained in Secs.3, 4 & 5, the Central Government may, if it is satisfied that a Government company is willing to comply, or has complied, with such terms and conditions as that Government may think fit to impose, direct, by notification that the right, title and interest and the liabilities of Esso in relation to any undertaking in India shall, instead of continuing to vest in the Central Government, vest in the Government company either on the date of the notification or on such earlier or later date (not being a date earlier than the appointed day) as may be specified in the notification. Notification is defined under Sec.2(f) of the Act as a notification published in the Official Gazette. In Sec.7(2) of the ESSO Act, it was further held that the right, title, interest and liabilities of Esso in relation to its undertakings in India vest in a Government

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company under sub-section (1) of Sec.7, the Government Company shall, on and from the date of such vesting, be deemed to have become the owner, tenant or lessee, as the case may be, in relation to such undertakings, and all rights and liabilities of the Central Government in relation to such undertakings shall, on and from the date of such vesting, be deemed to have become the rights and liabilities, respectively, of the Government Company. Sub-section 3 of Sec.7 further provides that Sec.5(2) shall apply to a lease or tenancy, which vests in a Government company, as they apply to a lease or tenancy vested in the Central Government and reference therein to the "Central Government" shall be construed as a reference to the Government Company. Therefore, the defendant-Company in order to be such Government Company should have been explicitly named in the notification that was issued under Sec.7(1) of the above said Act. There is no pleading either in the written statement or any evidence adduced by the defendant that the defendant-company is a Government Company that has been named and included in the notification that has been issued by Government of India by virtue of Sec.7(1) and that such notification has been published in the Gazette of India as mandated under Sec.2(f) of the above said Act. Such pleading and proof was actually necessary. However, learned

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counsel for the defendant-Company submits that it has been held by the Apex Court in the case Hindusthan Petroleum Corporation Ltd. v. Shyam Co-operative Housing Society Ltd. And others reported in AIR 1989 SC 295, that HPCL, in fact, is a Government Company in terms of Sec.7(1) of the above said Act and that M/s. HPCL is a successor-in-interest of M/s. ESSO by virtue of the provisions contained in the above said Act regulating the acquisition of undertakings in India. If that be so, the defendant-Company is the successor-in-interest of the original lessee and it will stand in the shoe of the original lessee company by virtue of operation of law as envisaged in the aforesaid provisions contained in the ESSO (Acquisition of Undertakings in India) Act, 1974. Since the definition contained in clause (a) to explanation under Sec.106 of the KLR Act is inclusive and not exhaustive a person who becomes the successor to the original lessee by operation of law will also be a lessee as envisaged under Sec.106 of the KLR Act. Therefore, the next aspect to be examined meticulously is as to whether the trial court, based on the decision rendered by the Land Tribunal, was right in holding that the defendant-company was entitled for the benefit of permanent tenancy as envisaged under Sec.106 of the KLR Act.

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10. It is to be noted at the outset that the provisions contained under Sec.106 of the KLR Act is not a provision comes within the purview of agrarian reform or as a matter ancillary thereto or it only regulates the scheme of legislation as held by the Full Bench of this Court in Krishna Pillai Govinda Pillai v. Sankara Pillai Govinda Pillai reported in 1971 KLT 87 (FB). In the decisions as in cases Kunhi Madhavan Vazhunnayar v. Abdulla reported in 1966 KLT 515, Jacob v. Joseph reported in 1987 (1) KLT SN 7(Case No.16), Krishna Pillai Govinda Pillai v. Sankara Pillai Govinda Pillai reported in 1971 KLT 87, Chandi Varghese v. Abdul Khader reported in 2003 (3) KLT 553 (SC) this Court and the apex Court has considered the object and scope of Sec.106 of the KLR Act and it has been held that the construction of the building must have been done by the lessee and should have been completed before the appointed day, i.e., 20.5.1967 and that the building must have subsisted at the relevant time. It has been held that the object of the section is to protect the interest of lessees who have with permission constructed the building on other's land to carry on their commercial or industrial undertaking from being dislocated and disturbed in their business and courts have taken the view that the conditions for its applicability and the exceptions have to be sought in the legislation

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itself construing it strictly. Since it is not a piece of legislation made for advancing a case of agrarian rule as already held by the Full Bench in Krishna Pillai Govinda Pillai's case (supra), the applicability of its provision should be construed strictly. This is because if the plea of defence for getting the benefit of permanent tenancy as envisaged under Sec.106 of the KLR Act is allowed, it makes serious intrusions into the rights of the owner of the land and he is debarred from seeking recovery of possession of the property and only can seek rent which is only revisable once in 12 long years and therefore the previous right conferred on the property owner to enjoy the possession of the property in accordance with law is seriously denuded of its contents and substance by virtue of intrusion made into his right based on the claim for permanent tenancy as envisaged under Sec.106 of the KLR Act. It is also to be borne in mind that the Apex Court has held in cases as in State of Haryana v. Mukesh Kumar and Ors. reported in (2011) 10 SCC 404 has held that the right to property is not only a constitutional and statutory right but also a human right. That human rights have already been considered in the realm of individual rights such as the right to health, right to livelihood, right to shelter and employment, etc. But that now human rights are gaining a multifaceted dimension. Right to property is also considered very much a part of the

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new dimension. Therefore, even the claim of adverse possession has to be read in that context. But what is commendable is that the dimensions of human rights have widened so much that now property dispute issues are also being raised within the contours of human rights. With the expanding jurisprudence of the European Courts of Human Rights, the Court has taken an unkind view to the concept of adverse possession. The Apex Court has held therein in the context of considering the intrusions that are made on the proprietary right while considering the plea of adverse possession. The said view was taken by the Apex Court that the right to property should be viewed from the prism of human rights apart from its other characteristics as a constitutional right under Sec.300A of the constitution of India and a statutory right under the relevant provision of the Transfer of Property Act, etc., It has also been held by the Apex Court in cases as in Chandigarh Housing Board v. Major General Devindar Singh (Retd.) and Anr. reported in 2007 (9) SCC 67 = 2007 KHC 4152, para 11 and Karnataka State Financial Corporation v. Narasimahaiah & Ors. reported in 2008 (5) SCC 176 = 2008 KHC 6242 para 48 that right to property is also a human right, etc. These aspects have to be borne in mind in the instant case also while dealing with the plea of defence made by a lessee for permanent tenancy which makes a very serious inroad and intrusion into the proprietary right of the land owner inasmuch as he is barred from seeking the benefit of recovery of possession of the property and if the plea under Sec.106 of the KLR Act is allowed, then all he can seek is only the rent thereof and that

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too revisable only once in long 12 years. It is also to be noted as held by the Full Bench of this Court in Krishna Pillai Govinda Pillai 's case (supra), the benefit is available when lease of land is granted for commercial or industrial undertaking and such lessees who are running commercial or industrial undertaking belong to the upper echelons of the economic class and therefore the benefit that is conferred if the plea is allowed is not to downtrodden class, but to the upper classes. This should be borne in mind by the courts while considering the applicability of said provisions in Sec.106 of the KLR Act.

11. This Court in the aforestated ruling Jacob v. Joseph reported in 1987 (1) KLT SN 16 has also examined the issue as to whether the licensee who has put up the building can claim protection and this Court held that Sec.106 is applicable only if there was a lease of the land alone and the lease was for commercial or industrial purposes and that in the leased land the lessee must have constructed buildings for such commercial or industrial purposes before 20.5.1967 and that the said provision is intended to safeguard the interest of industrial or commercial undertakings in which constructions were made on the bona fide belief that they will be entitled to continue the same and therefore it is necessary that the person claiming protection must necessarily be a lessee and that a licensee cannot claim protection under

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Sec.106 of the KLR Act even if he has put up the buildings satisfying the requirements of Sec.106 of the KLR Act. Further the Apex court in the case Chandy Varghese v. Abdul Khader reported in 2003(3) KLT 553 (SC) has held that for claiming the benefit of Sec.106 of the KLR Act, a person in occupation of land has to prove that he had been granted lease of the land for commercial or industrial purposes and after the grant of such lease, he had raised a building or structure thereon for industrial or commercial purposes prior to 20.5.1967. The factual aspects has to be analysed with reference to the aforestated legal framework.

12. At the outset it is to be noted that it is for the defendant to put up a plea of defence on the basis of Sec.106 of the KLR Act seeking the benefit of permanent tenancy that he cannot be ousted from possession and it will be solely his burden to plead and clearly establish by letting in sufficient and convincing evidence that he is entitled for the benefit of Sec.106 of the KLR Act. That he has been granted lease of the land for commercial and industrial purposes and that he has actually constructed buildings, etc., before the appointed day i.e., 20.5.1967 and that such constructions were fully completed before the appointed day and that the said constructions were subsistence at the relevant time.

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All these aspects should be clearly pleaded with cogency and precision by the defendant and these aspects should also be proved by letting in sufficient and convincing evidence to that effect. Only then the defendant in a case like the instant one can claim that he cannot be ousted from possession as he is conferred with the benefit of permanent tenancy as per the provisions contained under Sec.106 of the KLR Act. True, that there is a pleading in paragraph 2 of written statement filed by the defendant-Company that the predecessor-in-interest of the defendant had constructed petrol bunk, buildings, compound walls, side ways and other structures in the property, etc. But the written statement is conspicuously silent as to when those constructions were allegedly made and there is no whisper of a pleading in the written statement that the predecessor-in-interest of the defendant-Company had actually made those constructions and completed those constructions before the appointed day i.e., 20.5.1967 and that such constructions were actually in subsistence at the relevant time. As regards the averment in the plaint that the predecessor in interest of the defendant-Company has not made any construction before 20.5.1967, there is only a bland denial in paragraph 4 of the written statement that it is false to have

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stated in the plaint that the defendants have not constructed any building before 20.5.1967. Again there is only a blank averment in paragraph 4 of the written statement that all the structures put up by the defendant-Company will come within the term building but there is no whisper of pleading anywhere therein that those constructions were actually made by the defendant-Company before 20.5.1967 and that those constructions were actually in subsistence at the relevant time.

13. From an entire scanning of the written statement there is no cogent or precise averment therein relating to these crucial aspects of the matter that the defendant-Company have put up a claim for the benefit of permanent tenancy as envisaged under Sec.106 of the KLR Act. Even in the absence of any proper pleadings in the written statement, the land Tribunal has proceeded to consider the issue as to whether the defendant is entitled for the said benefit. The Land Tribunal has mainly relied on Ext.A1 document produced by the plaintiff to come to a finding that there is sufficient evidence available therefrom to conclude that necessary buildings and constructions were actually put up by the predecessor-in-interest of the defendant-

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Company before the appointed day of 20.5.1967 and that such constructions were actually in subsistence at the relevant time, etc. True that as per clause (1) of Ext.A1 agreement that the land owner has agreed therein to permit M/s. ESSO to instal, erect and maintain in and upon the said land, roadways and pathways and underground tanks(s) and delivery pump(s) connected with the said tank(s) and shelter for the attending and any other building, erection or equipment whether of a permanent or temporary nature or for the purpose of running petroleum dealership undertaking. It is also to be noted that as per clause 4(a) of Ext.A1 agreement, it has been agreed that tenant shall be at liberty to under-let the demised premises or any part thereof to any local dealer or agent for the use for all or any of the purpose aforesaid without any consent of the landlord. Therefore, M/s. ESSO was fully at liberty to under-let and permit the local dealer (licensee) to use the demised premises without the consent of the landlord. However, it is to be noted that there is no averment or recital in Ext.A1 that constructions have actually been put in place by M/s. ESSO. Though Ext.A1 agreement is bearing the date 24.7.1958, it is clearly stated in clause (1) thereof that M/s. ESSO was permitted to use the

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demised premises on 1.2.1957. So, if there had been any construction actually made between 1.2.1957 and 24.7.1958 (date of Ext.A1 agreement) there would have been recitals and averments to that effect in Ext.A1 agreement. No such averments or recitals are referred to anywhere in Ext.A1 agreement. Merely because Ext.A1 agreement contains a clause, whereby the owner has permitted the lessee to make necessary constructions or erections, etc., it does not necessarily mean that it can be safely concluded that there is evidence in this case that the lessee has actually made constructions or put up buildings, etc., before 20.5.1967 and that such buildings and constructions were actually in subsistence at the relevant time, etc. It is to be noted that M/s. ESSO is a Multi National US Based Company, which had operations in various parts of the world. Therefore, the possibility of such a Company inducting a local dealer or local agency is very much within the zone of real possibility. It could be that licensee was inducted and the licensee could have made some construction before the appointed day. But no benefit can accrue to the

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lessee on the basis of such construction put up by the licensee as held by the various rulings mentioned above. In order to aid the civil court to come to a safe and substantial conclusion that the lessee had actually made construction before the appointed day as stated above, the lessee should have not only cogent and precise pleadings to that effect but they should have also let in substantial sufficient evidence to that effect which could unerringly point to the clear and irresistible conclusion that such constructions and buildings have been put up by the lessee before the appointed day and were actually in subsistence at the relevant time. Except Ext.A1 (which is produced by the plaintiff and not by the defendant), no other materials are available before this Court to decide whether or not any such construction or buildings have been actually put up by M/s. ESSO before 20.5.1967, etc. Therefore, in the absence of any such precise pleadings and cogent evidence, it is absolutely improper for the civil court concerned to countenance such a plea put up by the defendant claiming the benefit of permanent tenancy as against the land owner.

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14. The only 3 documents produced by the defendant-company before the Land Tribunal are (1) photocopy of Ext.A1 agreement dated 24.7.1958 (2) photocopy of the lay out plan of the petrol pump and its premise dated 15.5.1956 and (3) photocopy of the licence No. KL 424 dated 1.1.1977 renewed up to 31.12.1991 for storing petrol. Document No.2 made available before the Land Tribunal is said to be the copy of the lay out plan of the petrol pump and its premises dated 15.5.1956. The said document appears to be the one appended to Ext.A1 agreement. It is to be noted that Ext.A1 agreement was executed on 24.7.1958 and it was agreed that the lessee given permission since 1.2.1957. Since the original lessee has been permitted to use the the same only from 1.2.1957, it is not known as to what is relevance of a sketch prepared on 15.5.1956. True that the said plan/sketch shows the proposed lay out of the new proposal of the lessee. Since the indisputable plea of the defendant is that the original lessee permitted to use the demised premised from 1.2.1957, the sketch prepared on 15.5.1956 cannot be said to have any relevance or aid in determining the factual issue as to whether or not any constructions of buildings have been actually put up by the original lessee before the cut off date of 20.5.1967. The 3rd document relied on by the Land Tribunal

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is a petrol pump licence dated 1.1.1977 and renewed up to 31.12.1991. The mere fact that the defendant-company has acquired a petrol pump licence before 1.1.1977 will not be of any relevance to determine the issue as to whether the predecessor-in-interest of the defendant-Company had actually made any constructions in the land in question before 20.5.1967. In the light of these aspects, it is not discernible to this Court as to how the Land Tribunal has blandly stated in the 3rd paragraph on page 5 of its order that according to the defendant-company they have constructed the building before 20.5.1967. There was not even any pleading in the written statement of the defendant-company that the predecessor-in-interest of the company have actually made any construction before 20.5.1967 and therefore it is not known as to how the Land Tribunal has so stated. Equally it is not understandable as to how the Land Tribunal has held in page 6 of its proceedings that the possession of the properties and construction of the buildings for commercial purpose was before 20.5.1967 as revealed from Ext.A1 agreement. Therefore, it is without any proper pleadings and without any proper and sufficient evidence that the Land Tribunal has blandly come to the conclusion that the defendant-Company is entitled for the benefit of Sec.106 of the KLR Act . Therefore this Court

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has no other option but to hold conclusively in the absence of proper pleadings and evidence that the defendant-Company cannot claim the benefit of permanent tenancy as envisaged under Sec.106 of the KLR Act.

15. This Court is totally reinforced in taking a view in the light of the conclusive view taken by this Court in the case Sathiyadevan P.C v. Indian oil Corporation Ltd., reported in 2010 KHC 6234 wherein this Court held that even if the absence of proper pleadings is excused, the court should strictly look into the issue that there has been proper and sufficient evidence adduced by the defendant to justify the claim for permanent tenancy as envisaged under Sec.106 of the KLR Act. This Court held in similar circumstances in that case that in view of the facts and attendant circumstances therein, it is only to be concluded that it is not a case that the lessee had adduced evidence in support of his case under Sec.106 of the KLR Act and therefore it was held that the plea of the defendant is to be repelled and that the relief is to be granted to the plaintiff in that case. Accordingly, a decree was passed therein directing the defendants to give vacant possession of the plaint schedule property to the plaintiff therein. Therefore, this Court is of the considered opinion that though the reasoning of the lower appellate

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court in holding that the claim under Sec.106 of the KLR Act can be considered only if the person concerned is either a legal representative or an assignee of the lessee, is not correct, the conclusions of the lower appellate court in the impugned judgment does not deserve any interference in view of the detailed reasons stated by this Court in the above paragraphs. In the light of these aspects, it has to be held as follows as regards the various questions of law formulated in this case:

(i) As regards question No.1, it is only to be held that the lower appellate court is right in coming to the conclusion that the defendants are not entitled for protection under Sec.106 of the KLR Act.

(ii) As regards question No.2 it is to be held that the defendant-Company as successor-in-interest of the original lessee could claim the benefit of Sec.106 of the KLR Act. But, in the facts and circumstances of the case, the defendant-Company has neither properly pleaded about such claim nor they have let in sufficient and proper evidence for coming to the conclusion that they are entitled for such benefit.

(iii) As regards question No.3, it is to be held that the lower appellate court was not fully correct in interpreting the provisions of Sec.106 of the KLR Act and that even a person who can establish that he is the successor-in-interest of the original lessee by operation of law

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would come within the provisions of Sec.106 of the KLR Act. But, in the facts of this case, the defendant-Company is not entitled to get the benefit of Sec.106 of the KLR Act in view of the aspects stated herein above.

(iv) Consequently, as regards question No.4 also it is to be held that even a person who can claim that he is the successor-in-interest of the original lessee by operation of law could also claim the benefit of Sec.106 of the KLR Act, but, in the facts and circumstances, the defendant-Company is not entitled for the said benefit in view of the aforestated aspects.

(v) As regards question No.5 it is to be held that there is no proper pleadings on the part of the defendants for getting the benefit of Sec.106 of the KLR Act and at any rate, there is no proper and sufficient evidence let in by the defendant to prove his case and therefore the question is to be answered accordingly.

16. Though the defendant had raised an alternate plea under Indian Easement Act, the courts below were right in holding that Ext.A1 agreement is a lease and not a licence and therefore the issue as to whether the defendant-Company is entitled to get the benefit of Indian Easement Act does not arise for consideration in the facts of this case.

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Moreover the said issue has not been raised as a question of law in the Second Appeal.

17. Before parting with the case, this Court would like to refer a judgment of the Division Bench of the Madras High Court rendered by Chief Justice Markandey Katju and Justice F.M.Ibrahim Kalifulla (as their Lordships then were) in the case M/s. HPCL v. Devraj Chordia and Ors. in Second Appeal No.268/2005 rendered on 6.4.2005 and reported in (2005) RD-TN 270. Therein, their Lordships in the Division Bench of Madras High Court has observed in paragraph 3 that the appellant HPCL is a Public Sector Corporation and therefore was expected to behave like an ideal person, and in that case the court has found that they were illegally retaining the possession of the property in dispute for 16 years from 1989, etc. In that context, their Lordships of the Madras High Court has also held that in the facts of that case based on earlier case in HPCL v. Dolly Das reported in (1999) 4 SCC 450 in paragraph 9 as follows:

“9. One would have expected that after 1989 the appellant herein like an honourable person would have vacated the suit property since its leasehold right ceased to exist after 1989. However, unfortunately, in our country, what is often seen is that people continue to remain in illegal possession of a property even for several years after their right to occupy the same ceased to exist. This practice has now

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become rampant in our country and the time has come when it must be curbed. An honourable person should vacate the property over which his lease or licence has expired and hand over possession of the same on the date of expiry of the lease or licence to the landlord/owner unless there is a fresh mutual agreement which permits him to continue in possession. It is to be noted with deep distress that the appellant which is a well known Public Sector Undertaking has blatantly violated the law and continued in possession of the suit property for 16 years beyond the term of its lease. We are indeed very sad to note that a Public Sector Undertaking has behaved in this manner. In this country rule of law prevails and Public Section Undertakings are subordinate to law and not above the law. In this case, the appellant which is a Public Sector Undertaking has taken the law into its own hands, which was most unfortunate and unjustified.”

Thereafter, the HPCL had filed Civil Appeal (C.A.No.3466/2005) before the Apex Court to impugn the judgment dated 6.4.2005 of the Madras High Court in S.A.No.268/2005. The Apex Court as per judgment dated 20.10.2010 dismissed the Civil Appeal finding that there is no merit in the said appeal but however, granted time till 31.12.2010 to the appellant-company to vacate the suit premises.

18. In the instant case also, Ext.A1 agreement for lease was executed on 24.7.1958 and it has now come out that the arrangement of the lease ended on 31.1.1987. The defendant-Company and predecessor-in-interest of the company have been enjoying the property on lease from 1.2.1957 onwards. It is hoped and expected that as a model public sector undertaking the appellant-company would at

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least now voluntarily vacate the plaint schedule property in compliance with the impugned judgment without forcing the respondent-land owners to initiate any execution proceedings.

19. In view of these aspects, it is only to be held that the conclusion and decretal portion of lower appellate court does not warrant any interference. In this view of the matter the Second Appeal stands dismissed. However, there will be no order as to costs.

ALEXANDER THOMAS,
Judge.

bkn/-