

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 19.02.2015
(Reserved on 01.08.2014)

Coram:-

The Hon'ble Mr. Justice T.Raja

Second Appeal No.616 of 2013
and
Cross Objection No.6 of 2014
and
W.P. No.21778 of 2012
and MP Nos.1/12 & 1/14

S.A. No.616 of 2013:-

M/s.Bharat Petroleum Corporation Ltd
Represented by its Territory Manager
And its present Power of Attorney
T.Thangavelu,
Athur Post, Karur,
Karur District,
Tamil Nadu. ... Appellant

vs.

1. Muthumani
2. Madeswari
3. Rajakumaravel
4. P.Chinnappan
5. C.Malini
6. C.Shalini ... Respondents/Defendants.
(RR-1, 2 and 4 to 6 remained
absent in the lower court)

Cross Objection No.6 of 2014:-

Raja Kumaravel ... Cross Objector
vs.

1. M/s.Bharat Petroleum Corporation Ltd
Represented by its Territory Manager &
its Power Agent T.Thangavelu,
Office at Athur Post, Karur,
Karur District, Tamil Nadu.

2. Muthumani
3. Madeswari

4. P.Chinnappan

5. C.Malini

6. C.Shalini

... Respondents

(R2 to R6 - were set exparte
before courts below) hence
notice may be dispensed with.

W.P. No.21778 of 2012:-

K.T.Raja Kumaravel

... Petitioner

vs.

1.Bharat Petroleum Corporation Ltd.,
Bharat Bhavan,
4 & 6, Currimbhoy road,
Ballard Estate,
PB No.688,
Mumbai-400 001.

2.Bharat Petroleum Corporation Ltd.,
No.1, Ranganathan Gardens,
11th Main Road,
Chennai-600 040.

3.The Chief Controller,
Department of Explosive,
No.140, Rukmani Lakshmipathy
Marshall's Road,
Egmore, Chennai-600 008.

4.The Controller of Explosives,
No.3, 5th East Cross Road,
Gandhi Nagar,
Vellore 632 006.

5.The District Collector,
Krishnagiri.

... Respondents.

Second Appeal - Filed under Section 100 CPC as against the judgment and decree, dated 27.11.2012, passed by the Principal Subordinate Court, Krishnagiri, in A.S. No.31 of 2012, confirming the judgment and decree, dated 16.04.2012, of the District Munsif Court, Krishnagiri, in O.S. No.49 of 2005.

Cross Objection:- Filed under Order 41 Rule 22 CPC to expunge the remarks relating to the finding and decision that the respondent herein is not a defaulter in payment of rent in the judgment and

decree dated 27.11.2012 passed in A.S. No.31 of 2012 on the file of the Principal Sub Court, Krishnagiri.

Writ Petition: - Filed under Section 226 of the Constitution of India for the issuance of a writ of mandamus directing the respondent 1 and 2 to hand over the vacant possession of the properties in Old.S.No.695/1 and 695/2 of Boganapalli Village, Krishnagiri Taluk now the Town survey Nos.11/5 and 11/6B of Krishnagiri Town, consequently directing the respondents 3 and 4 to cancel the explosive licence, to run the Petrol Bunk by the respondents 1 and 2 and not to renew the same in future; further directing the 5th respondent to cancel the NOC granted to the respondents 1 and 2 to run the Petrol Bunk in the premises situated at No.128/253, Madras Road, Krishnagiri, in Old.S.No.695/1 and 695/2 of Boganapalli Village, Krishnagiri Taluk, now the Town Survey Nos.11/5 and 11/6B of Krishnagiri Town, consequently directing the respondents 1 and 2 to pay the rent as per the Government guidelines calculating from the period of 01.01.2004 to till the date of delivery of vacant possession and such further or other orders.

Mr.O.R.Santhanakarishnan
For Appellant in S.A.No.616 of 2013

For R1 in Cross Obj. No.6 of 2014
RR1 and 2 in W.P.No. 21778 of 2012.

Mr.A.K.Balaji
Petitioner in WP.No.21778 of 2012

For RR1, 3 & 6 in S.A.No.616 of 2013
Cross Objector in Cross Obj.No.6 of 2014.

*** Mr.S.Haja Mohideen Gisthi SCGSC
for Respondents 3 & 4 in W.P.No.21778 of 2012**

For R5 in the Writ Petition : Ms.Saraswathi
Shivram Iyer, Govt. Advocate (C.S.)

For R3 and R4 in the
Writ Petition : No Appearance.
RR-2, 4 & 5 in the S.A. 12344: Ex-parte.

COMMON JUDGMENT

All the three matters viz., Second Appeal, Cross Objection and Writ Petition, being interconnected, have been heard together and decided by this Common Judgment.

2. The Second Appeal has been filed by the appellant/plaintiff, questioning the correctness of the Judgment and decree, dated 27.11.2012, passed by the Principal Sub Court, Krishnagiri, in A.S. No.31 of 2012, whereby, the judgment and decree of the District Munsif Court, Krishnagiri, rendered in O.S. No.49 of 2005 on 16.04.2012, were confirmed.

3. One Thangavel Gounder, father of the defendants in the suit and the owner of the suit property, had executed a lease deed under Ex.A.1 dated 31.03.1964 in favour of Burma Shell Corporation and the lease period was for 40 years commencing from 01.01.1964. The said Burma Shell Corporation now stands in the name of M/s.Bharat Petroleum Corporation Limited (in short "Corporation"), the plaintiff/appellant herein by virtue of the Burmah Shell (Acquisition of Undertakings in India) Act, 1976 (in short "Act 2 of 1976"). After the expiry of the lease period of 40 years on 31.12.2003, the appellant, as plaintiff, laid the suit for renewal of lease on the ground that they had made a request to the landowner for renewal of lease by sending a legal notice under Ex.A3 dated 03.02.2005, but, the said letter was returned 'unclaimed'. It is the specific claim of the plaintiff/appellant that the renewal of lease is automatic by virtue of the provisions contained in Act 2 of 1976, more particularly Section 5(2) thereof, which mandates the lessor to renew the lease when the plaintiff-Corporation desires for renewal. It was further claimed that there was no default of rent and the Corporation had deposited the rent into the court since Thangavel Gounder requested the Corporation to pay the rent in lump sum instead of paying Rs.450/- per quarter.

On the other hand, the defendants/respondents herein opposed the prayer by contending that, after expiry of the forty year lease period on 31.12.2003, the plaintiff had no right to exercise the option to renew the lease since the status of the plaintiff Corporation in the suit property is like a trespasser. One of the main objections by the defendants was that the plaintiff was in default of rent towards the lease and they deposited the rent into court without even an order to that effect that too with bulk sum, therefore, as defaulter of rent, the plaintiff had no right whatsoever to claim renewal of lease and to seek for specific performance. Further, as per the lease deed, the rent was to be paid on or before 10th of each next quarter but it was not paid by the plaintiff as and when it fell due. The defendants issued legal notice on 09.01.2000 claiming the rent from the plaintiff, however, they did not come forward to comply with same, hence, the Corporation breached the terms of the lease and it is a defaulter in rent. Even by equity and fair play, the plaintiff-Corporation is not entitled for renewal of lease from the defendants.

4. In the above background, the trial court framed five issues for consideration and, on the question of default in payment of rent, it was found that the plaintiff committed default in payment of rent to the defendants. With regard to depositing the rent into court, it was held that there was no document produced to show that the plaintiff obtained the leave of the Court to deposit the rent. On the issue relating to renewal of lease, the trial court found that the plaintiff did not take any step to pay the rent to the defendants by person when they formally demanded the rent, hence, the plaintiff has not played a fair role as tenant and failed to establish the equity against the landlord. That apart, when the value of the suit property was increased enormously, the rent of Rs.450/- per quarter for the suit property was trivial and the conduct of the plaintiff in committing default ultimately tilted the scales to hold that it was not entitled for renewal. Consequently, the prayer of the plaintiff-Corporation for specific performance was negatived and the suit was dismissed with costs vide judgment of the trial court dated 16.04.2012 passed in O.S. No.49 of 2005.

5. Aggrieved by the dismissal of the suit, an Appeal in A.S. No.31 of 2012 was filed unsuccessfully before the Principal Sub Court, Krishnagiri, and the same was dismissed by Judgment dated 27.11.2012, ruling in favour of the defendants that the readiness of the plaintiff in performing their part of the contract was not made out as required under Section 16(c) of the Specific relief Act, hence, the plaintiff/appellant was not entitled for equitable relief of decree for specific performance.

6. Being aggrieved by the concurrent findings of the courts below, the present Second Appeal has been brought by the unsuccessful plaintiff.

7. At the time of admitting the Second Appeal, the following substantial questions of law have been framed:-

i) Whether the provisions of Section 11 of Act 2/1976 has got overriding effect on other laws like Specific Relief Act?

ii) Whether the provisions of Section 16 of Specific Relief Act 1963 have no application when transfer of property takes place by operation of law?

iii) Whether in view of the provisions of Central Act 2/1976, appellant is entitled for renewal of lease?

8. Aggrieved by one of the observations made by the first appellate court that the Corporation was paying the rental dues,

Rajakumaravel/R-3 in the Appeal has filed Cross Objection No.6 of 2014 seeking to expunge the remark relating to the observation that the Corporation is not a defaulter.

9. Learned counsel for the appellant would submit that the provisions of Act 2 of 1976 shall have overriding effect on other laws more particularly the provisions of the Specific Relief Act, therefore, the findings of the courts below that, due to non-payment of rent or default by the plaintiff-appellant, they are not entitled for renewal of lease and that the Corporation was not even vigilant enough to seek for renewal of lease before its expiry period, thereby, the readiness in performing their part of contract is not made out as per Section 16(c) of the Specific Relief Act, are not legally sustainable. According to him, by virtue of Act 2/1976, the Corporation has taken over all the Indian assets and liabilities and the same subsequently vested with the Central Government. The said assets will include leases and tenancy rights held by Burmah Shell, therefore, the provisions of Section 16 of the Specific Relief Act will have no application at all, and the adverse findings recorded by the First Appellate Court in that regard are bad in law.

10. In reply to the said submissions, learned counsel appearing for the respondents/defendants would submit that the suit property was leased out by Thangavel Gounder in favour of the plaintiff-Corporation for a period of 40 years commencing from 01.01.1964 and it got expired on 31.12.2003. Importantly, the lease terms did not contain a clause of renewal, however, as per the provisions of the Act, there is an option clause. But, in this case, such option for renewal of the lease was never exercised before the expiry of the lease period. Secondly, when the plaintiff had to pay the rent on or before the 10th of each quarter, at no point of time, they had paid the rent. Therefore, the defendant issued a legal notice to the plaintiff on 09.01.2000 claiming rent, but, the plaintiff did not pay the rent, as a result, the Corporation became defaulter in rent and breached the main term of the lease deed. Thus, even by equity and fair play, the plaintiff-Corporation was not entitled for renewal. During the pendency of the suit, without obtaining the leave of the Court, the Corporation clandestinely deposited the rent into Court. Rightly appreciating the bad conduct of the plaintiff that the said deposit of rent into court was without the leave of the court, it was concluded by the courts below that the plaintiff had no justification to ask for renewal of lease. It was further contended that, when there was no reasonableness in the conduct and approach of the plaintiff, in that, they never took the initiative to pay the rent to the defendant and that, only after filing the suit for renewal of lease, they unilaterally deposited the rent in an endeavour to conceal the default, such conduct was rightly reprimanded by the courts below by holding that they are not entitled for renewal of lease and, that apart, there was no readiness

from the plaintiff's side for performance of their part of the contract as required under Section 16(c) of the Specific Relief Act. Hence, the judgments of the courts below in rightly negating the plea of the plaintiff may have to be confirmed, he pleaded.

11. I find considerable force in the above submissions of the learned counsel for the respondents although the first question of law shall have to be answered against the respondents and in favour of the appellant/plaintiff in the light of Section-11 of Act 2/1976 which runs to the following effect:

"11. Effect of Act on other laws.-- The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act or in any decree or order of any court, tribunal or other authority."

In the light of the above provision and also by virtue of the general tenor of the Central Act, as per which, all the assets and liabilities of the Corporation are vested with the Central Government, the first question of law is answered in favour of the appellant/plaintiff.

12. Coming to questions of law Nos.2 and 3, no doubt, the lease deed did not contain a clause for renewal. However, Section 5 (2) of Act 2 of 1976 clearly says that on the expiry of the terms 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 Burmah Shell immediately before the appointed day. But, in the present case, before the appointed day of expiry, there is no document whatsoever produced either before the trial court or the first appellate court by the plaintiff to substantiate that they had taken steps to renew the lease, therefore, both the courts below concurrently held that the plaintiff had miserably failed to prove their readiness and willingness in performing their part of the contract as required under Section 16(c) of the Specific Relief Act. On this Score, it was held that the plaintiff was not entitled for the equitable relief of specific performance. Therefore, when the plaintiff filed the suit for specific performance to issue a direction against the defendants to renew the lease, having miserably failed to prove their readiness, they cannot now challenge the finding on fact that they have not made out their readiness as required by Section 16(c) of the Specific Relief Act. Further, the plaintiff exhibited a bad conduct in not even coming forward to pay the paltry sum of Rs.450/- per quarter for the huge and valuable property located in a posh area. During the pendency of the suit, with all smartness, the Corporation unilaterally deposited the rent into Court without any leave for the same. Unfortunately, though the

lower appellate court proceeded rightly in recording its findings, perhaps, by oversight, it recorded a different finding to the effect that the corporation was paying the rental dues. Therefore, while answering questions of law-2 and 3 against the appellant/plaintiff, the finding recorded by the lower appellate court to the effect that the appellant/Corporation was regularly paying the rent is expunged.

13. Coming to the Writ Petition filed by Mr.K.T.Raja Kumaravel/son of the land owner with a prayer for issuance of a writ of mandamus, directing R-1 and R-2/Corporation to hand over vacant possession of the properties in Old S.Nos.695/1 and 695/2 of Boganapalli Village, Krishnagiri Taluk - now Town Survey Nos.11/5 and 11/6B, and consequently directing respondents-3 and 4/authorities to cancel the explosive licence to run the petrol bunk by respondents-1 and 2 and not to renew the same in future, and further directing R-5/District Collector, Krishnagiri, to cancel the NOC granted to R-1 and R-2 to run the Petrol Bunk in the premises situated at No.128/253, Madras Road, Krishnagiri, and also directing R-1 and R-2 to pay the rent as per the Government guidelines calculating from 01.01.2004 till the date of delivery of vacant possession, the same was filed after the Corporation lost its case for renewal of lease before the trial court and during the pendency of the appeal in A.S. No.31 of 2012 on the file of the Principal Subordinate Judge, Krishnagiri.

14. Learned counsel for the petitioner, by pointing out that the landowner/father of the petitioner had leased out the property in question admeasuring 25496 sq.ft. in favour of the respondents/Corporation by executing a registered sale deed on 31.03.1964 with the lease commencing from 01.01.1964 for a period 40 years and the rent payable was Rs.450/- per quarter, would submit that the said lease period stood expired on 31.12.2003 and that, even during the lease period, the right, title and interest over the Burmah Shell Oil Storage and Distribution Corporation of India Ltd. was taken over by the Central Government and the same was transferred in favour of Burmah Shell refineries Limited, which subsequently came to be called as BPCL/R-1 and R-2. After the expiry of the lease period of 40 years on 31.12.2003, the Corporation laid the suit in O.S. No.49 of 2005 on the file of the District Munsif Court, Krishnagiri, for renewal of lease on the ground that they had made a request to the landlord/petitioner's father for renewal of lease by sending a legal notice dated 03.02.2005, but, the said notice was returned 'unclaimed' and that further, the renewal of lease is automatic by virtue of Act 2 of 1976, more particularly Section 5(2) thereof, which mandates the lessor to renew the lease when the Corporation desires for renewal. The said suit was resisted by the land-owner on the ground that, after expiry of 40 years period, the plaintiff/Corporation had no right to exercise the option to renew the lease. It was the specific claim of the landlord before

the trial court that the Corporation did not even come forward to pay the paltry rent of Rs.450/- per quarter when they were enjoying huge extent of land admeasuring 25496 sq. ft. in the Main Road of Boganapalli Village. The trial court, after exhaustively examining the factual aspects involved and carefully analysing the legal issues, ultimately dismissed the suit on 16.04.2012, negating the decree for specific performance. The appeal by the Corporation in A.S. No.31 of 2012 questioning the judgment of the trial court was also dismissed by the learned Principal Subordinate Judge, Krishnagiri, on 16.04.2012, by recording a factual finding that the readiness of the Corporation in performing their part of the contract was not made out as required under Section 16(c) of the Specific relief Act. Pausing here, learned counsel would add that, even during 2009, the petitioner had filed a Writ Petition in WP No.890 of 2009 almost for a similar relief, however, the said writ petition came to be disposed of with an observation that the issue in question cannot be gone into at that stage since the trial in O.S. No.49 of 2005 had already commenced then. Now, much light has been thrown by way of both factual findings and legal conclusions arrived at by the courts below for easily assessing the prayer in the writ petition. In fact, the bad conduct of the Corporation in not even bothering to pay the quarterly rent of Rs.450/- and in depositing the paltry rent only during the pendency of the first appeal to create an impression that they never committed default was very seriously viewed by both the courts on fact. A detailed representation, dated 26.06.2012, was sent by the petitioner to other respondents/authorities to cancel the licence granted to run the disputed petrol bunk, however, no step has been taken so far since the Corporation happens to be a public Sector Corporation.

15. Learned counsel referred to a Judgment of the Apex Court in 1999 (4) SCC 450 (Hindustan Petroleum Corporation Ltd. v. Dolly Das) where, relating to a similar and almost an identical prayer involved, by over-ruling the objections that the writ petition was not an appropriate remedy since it involved disputed questions of fact as to whether the original lease was renewed or not and in what manner the same had to be renewed, and that the invocation of the jurisdiction of the High Court in a contractual matter between two private parties though having a statutory flavour or adjudication of the rights thereto is clearly an abuse of the process of the court, it was categorically held in favour of the writ petitioner that if the facts pleaded before the court are of such nature which do not involve any complicated questions of fact needing elaborate investigation of the same, the High Court can exercise its writ jurisdiction under Article 226 of the Constitution since there can be no hard and fast rule in such matters. Ultimately, the Apex Court directed the Corporation to hand over vacant possession of the premises to the writ petitioner subject to filing of the usual undertaking in the Court and also to pay the rental dues. According

to the learned counsel for the petitioner, when the Corporation miserably lost its case before both the courts below, thereby, the present position is that the case does not involve any complicated questions of fact, the relief sought for may have to be granted. Reliance has also been placed upon the decision reported in 2005 (2) CTC 401 (Hindustan Petroleum Corporation Ltd. v. Devaraj Chordia).

16. Mr.O.R.Santhanakrishnan, learned counsel appearing for the Respondents/Corporation, would submit that the law is well settled that the writ jurisdiction of this Court cannot be exercised for handing over possession of the retail outlet run by the Corporation inasmuch as the petitioner has got an alternate remedy by filing a suit for recovery of possession. Equally, it is not the province of this Court to cancel the Explosive Licence or the No-Objection Certificate granted to the Corporation for running the retail outlet. According to him, a direction to the Corporation for payment of rent/rental dues as per the guideline from 01.01.2004 till the date of delivery of vacant possession cannot be enforced through writ proceedings. Continuing his submissions, Mr.O.R.Santhanakrishnan would state that before the lease could come to an end, in terms of the provisions under Act 2/1976, by letter dated 30.01.2004 addressed to land owner-Thangavel Gounder, the Corporation exercised the option to renew the lease for a further period of 40 years on the same terms and conditions as contained in the original lease deed; however, in the meanwhile, Thangavel Gounder passed away and his legal representatives failed to execute the lease deed in favour of the Corporation and therefore, the Corporation had filed O.S. No.49 of 2005 which was dismissed by the District Munsif Court, Krishnagiri, on 16.04.2012, resulting in filing of the first appeal in A.S. No.31 of 2012 on the file of the Principal Sub court, Krishnagiri. Even though the outcome of the First Appeal was also not in favour of the Corporation, in the event of the Corporation succeeding in the Second Appeal, the writ petition will be a wasteful exercise. In support of his submission, learned counsel relied on a decision of this Court reported in 2005 (3) L.W. 61 (Mrs.M.N.Vitto Bai & Others vs. HPCL and others) for the proposition that writ petition is not the proper remedy for a relief of this kind, for, suit for eviction before civil court is the appropriate remedy. For the same proposition, he referred to the decision in C.V.Thirugnanam Chettiar & 7 Others v. Union of India and others (2005-3-LW-758). He also heavily relied upon the decision reported in 2004 (8) SCC 579 (BPCL v. N.R.Vairamani) by highlighting the ratio therein that the landlord should only resort to rent control proceedings for eviction and requested this Court to follow the said ratio.

17. Heard the learned counsel appearing for R-5/District Collector, Krishnagiri.

18. This Court is unable to agree with the submissions of the learned counsel for the Corporation/Respondents-1 and 2. A careful examination of the decision in BPCL v. Vairamani (cited supra) would show that, in the said case, the High Court did not consider the effect of various provisions of the Madras City Tenants Protection Act, 1921 (in short 'Tenants Act') more particularly Sections-3 and 9 thereof. Therefore, without taking recourse to the remedies available under the said Act, the Writ Petition could not have been filed in that case. But here, the facts and circumstances are different. The landlord actually had filed a writ petition in W.P. No.890 of 2009 which came to be disposed of citing the pendency of the civil suit filed by the Corporation in O.S. No.49 of 2005. The respondent/Corporation in this writ petition is none else than the plaintiff in the said suit. The trial court recorded a factual finding that respondents-1 & 2/Corporation are in illegal possession of the land in question. Both the courts on fact consistently found that the Corporation is not entitled for renewal of lease for further period as they have not come forward even to pay the paltry rent of Rs.450/- per quarter, thereby, they suffered the adverse finding of defaulter of rent which goes without saying that the Corporation did not play a fair role and therefore, they do not have any locus standi whatsoever to continue in possession. This Court is also aware of the position that the respondents/Corporation are entitled to get, under normal circumstances, certain benefits under the 'Tenants' Act, in particular Sections-3 and 9 thereof. But, it would be an abhorrent practice to apply any such benefit in favour of the Corporation which, by assuming the shield of public sector undertaking, exhibited a very bad conduct of committing default in paying the paltry rent of Rs.450/- per quarter. To conceal such bad conduct, they resorted to unilateral deposit of the rent so as to slyly exhibit them as a prompt and unimpeachable tenant. From the affidavit of the petitioner, it is seen that he made an application before the Tahsildar, Krishnagiri, to know about the fair rent of the property in question and accordingly, such a Certificate was issued by the said Authority, enclosed at page No.51 of the Typed-set of Papers, which shows the monthly fair rent for the land in question is Rs.1,30,748/-. That is why, while pointing out that since 1979 even the rent @ Rs.450/- per quarter has not been paid by the Corporation, the petitioner stated that he is entitled for the rent as per the Government guidelines from the next day of expiry of lease viz., 01.01.2004. Apart from that, this Court has also endorsed the concurrent findings of the courts below as legally sustainable. Therefore, when the factual findings arrived at by the Courts below have been accepted by this Court, there cannot be any impediment to accede to the prayer sought for in this writ petition. Once again, it is highlighted that any concession to the Corporation by this court would only amount to adding premium to the act of illegal possession and unfair practise of the public Sector Undertaking as

mentioned supra.

19. Further, as already pointed out, in O.S. No.49 of 2005 filed by the corporation, seeking renewal of lease, the adverse finding recorded about the conduct of the plaintiff in paying the rent before court even after the title of the Thangavel Gounder was cleared by the court of law without taking efforts to tender the same to the landlord and about the non-offer of new rent, clearly depicted that the plaintiff was not fair and reasonable while claiming renewal. Also, a suit in O.S. No.274 of 1999 filed by Rajakumarvel (who is the 4th defendant in O.S. No.49 of 2005) before Sub Court, Krishnagiri, for the relief of permanent injunction not to carry out any construction in the suit property, came to be transferred and re-numbered as O.S. No.85 of 2004 on the file of the District Munsif, Krishnagiri, and the judgment and decree rendered therein, marked as Exs.A8 and A9 before the trial court, speak about the conduct of the Corporation that when Thangavel Gounder died on 25.02.1987 that is, even before the said suit was filed, and the said factum was also known to the Corporation, despite such knowledge about the death of Thangavel Gounder, the Corporation issued the renewal request letter under Ex.A2 to Thangavel Gounder on 30.01.2004, when he was no more on earth. That is why, the trial court proceeded to record a finding that the Corporation had no right at all to claim renewal of lease. Apart from that, the reprehensible conduct of the Public Sector Undertaking/Corporation in slyly depositing the paltry rent of Rs.450/- per quarter without any order or leave from court for the valuable property in respect of which the rent certificate issued by the Tahsildar shows the guideline monthly rent as Rs.1,30,748/- rather impelled this Court to hold that the Corporation has no right to purchase the business site in terms of Section-9 of the Tenants' Act. Now, in the above background, it is more relevant to refer to the observations made in BPCL vs. Vairamani (cited supra):-

"9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their

words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. V. Horton (1951 AC 737 at p.761), Lord Mac Dermot observed:

"The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge."

After so observing, on the Court's obligation to examine the factual details involved in each case vis-a-vis the decisions upon which reliance would be placed upon and as to what should be the approach of the Court while applying the observations in the precedents to fit the same into the factual aspects involved in a case under decision, very importantly, the Apex Court, in the aforesaid decision, emphasised upon the rubric as to what extent a precedent should be followed, by quoting the words of Lord Denning. It would be more beneficial to extract the same below, with the caption, YARDSTICK TO APPLY PRECEDENTS WHILE DECIDING CASES:-

" 12. The following words of Lord Denning in the matter of applying precedents have become locus classicus:

"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

*** *** *** "Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it."

A careful reading of the above decision, in particular paragraph-12 thereof, wherein, the Apex Court laid much emphasis on the words of Lord Denning, would show that each case depends on its own facts and a close similarity between one case and another is not enough because

even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases by matching the colour of one case against the colour of another. Going by the said logical principle in regard to the case on hand, it must be once again pointed out that the Corporation having taken the valuable property in question on lease about 50 years ago was not even prompt in paying the paltry rent of Rs.450/- per quarter. The very edifice of the Corporation's case viz., the cause of action to file the suit, arising from the letter dated 30.01.2004, based upon which, it was pleaded that, in spite of their exercising option to renew the licence through the said letter addressed to the landowner/Thangavel Gounder, he and his legal heirs failed to honour the same, has been rendered to dust not only in the light of the exhaustive discussion and consistent findings by the courts below but also in the light of the clear fact that, at that time, the land owner was no more since he passed away long back in the year 1987 and such fact was well known to the Corporation. Despite that, since the Corporation has been persistently contending falsely before all courts viz., trial court, lower appellate court and this Court as if they rightly and timely exercised the option of renewal by addressing the 'lessor-living landowner', who in fact died long-time prior to the letter in question, according to me, applying the advantageous observation from BPCL Vs. Vairamani pertaining to Section-9 of the Tenants' Act in favour of the Corporation, which knowingly approached the courts at the hierarchy with unclean hands and fraudulent designs, would definitely be seen as travesty of justice.

20. To further exhibit the bad conduct of the Corporation, it would be apt to discuss more on certain aspects with the heading -

WHETHER SEC.9 OF THE TENANTS' ACT IS ABSOLUTE EVEN IN RESPECT OF A DEFAULTER WITH UNCLEAN HANDS BEFORE COURTS:-

It could be plainly seen that, in order to cover the face of default, the Corporation did not restrain themselves from playing fraud even with Court, for, without any order or leave by Court, they surreptitiously deposited the rent before court to give an impression that they are promptly paying the quarterly rent. Having regard to such bad conduct on the part of the Corporation, both the courts below consistently found that the Corporation is not entitled to renewal of lease and this Court also, as discussed above while deciding the Second Appeal, does not see any good reason to interfere with the concurrent findings. On the one hand, while ruling that, in a writ petition, some benefits available to the tenant under the Tenants' Act could not have been diluted, very cautiously, the Apex Court, perhaps keeping in mind the simile of a case like the instant one involving aggravating factors, strongly spelt out on the other hand the proposition that the right under Section-9 of the Tenants' Act is not an 'absolute right' as the Court has discretion to grant

or refuse the relief for the purchase of the land. In the light of the aforementioned abundant aggravating factors which strongly militate against the Corporation, this Court, being the "Court of Equity", is of the view that it would be absolutely unfair to apply BPCL vs. Vairamani in favour of the Corporation to hold that the benefits under the Tenants Act should be made available to the Corporation and hence, has no hesitation to hold that the Corporation is not entitled to purchase the land. In fact, by squatting on the valuable land in question for about a decade after the 40 year lease period, with the initiation of court proceedings by using public money, the Corporation has, so far, successfully prevented the real owner from using and enjoying their own property. It is well settled that procedural law is the handmaid of justice and requirements of procedure should not be so technically construed as to defeat the substantive rights of the litigant. The courts, while applying law, should act with all caution to see that 'law breakers' are not profited with their fancy pleas, however invincible such pleas are, in usurping the valuable rights of the other side. In the light of the peculiar facts and special circumstances as repeatedly pointed out above, this is a fit case for granting the prayer sought for by the petitioner and, in spite of the same, if this Court relegates the party to file a suit for eviction now long-time after the initiation of legal battle, definitely, it would give an impression that this Court supports the case of the wrong-doer in getting an undeserved concession. In this view of the matter, I find no impediment whatsoever to order the writ petition by granting the relief sought for.

21. Consequently, the Writ Petition stands allowed by ordering thus:

a) The Corporation is hereby directed to hand over the property in question to the petitioner, within a period of two months from the date of receipt of a copy of this Order;

b) The authorities/other respondents are directed to pass appropriate orders for cancellation of Licence and NOC in terms of what is provided in the Petroleum Rules; and

c) Simultaneously, the petitioner is directed to re-submit the representation within a period of one week from ***the date of receipt of a copy of this order** enabling the aforementioned authorities to pass orders expeditiously.

Net result, Second Appeal is dismissed by confirming the concurrent judgments of the courts below, with costs of Rs.10,000/- (Rupees ten thousand only). Cross Objection is allowed as stated above. Writ Petition is ordered accordingly. Connected Miscellaneous Petitions stand closed.

19.02.2015

JI.

This matter having been listed under the Caption for being mentioned on 11.03.2015 pursuant to the order of this court dated 19.02.2015 and made herein in the presence of the aforesaid counsels on the either side, the court made the following order:

Today, the matter was taken up 'for Being Mentioned', at the request of Mr. A.K. Balaji, learned counsel for the petitioner in W.P. No.21778 of 2012. Mr. O.R. Santhanakrishnan, learned counsel appearing for the appellant in S.A. No.616 of 2013 was also present before this Court.

2. Learned counsel for the writ petitioner, drawing the attention of this Court to clause (c) in Paragraph 21 of the order passed by this Court on 19.02.2015 submitted that a direction is given to the petitioner to re-submit the representation within a period of one week from today, enabling the authorities concerned to pass appropriate orders and that the said direction may be corrected as 'within a period of one week from the date of receipt of a copy of this order', since the order copy has been made ready by the Registry only recently. Considering the submission, it is made clear that the relevant portion should be read as "within a period of one week from the date of receipt of a copy of this order".

2. Learned counsel also sought for a clarification with regard to payment of fair rent by the Corporation to the land owner/ writ petitioner. It is made clear that, even though an incidental discussion has been made on that issue in the order, a positive direction as sought for cannot be issued in the writ proceedings and it is for the petitioner to work out his remedy before appropriate forum, if he is legally entitled to.

3. Registry is also directed to print the name of Mr. S. Haja Mohideen Gisthi, SCGSC as the learned counsel appearing for respondents 3 & 4 in W.P. No. 21778 of 2012.

4. Issue fresh copy of the order, after carrying out the corrections as stated above.

Sd/-
Assistant Registrar(CO)
Dt:3/3/2015

***Corrected as per order
dated 11.03.2015 and made herein
Sd/- Assistant Registrar (CO)
Dated 25.03.2015**

True Copy

Sub-Assistant Registrar

To

- 1) The Principal Sub Judge, Krishnagiri.
- 2) The District Munsif, Krishnagiri.
- 3) The Chief Controller,
Department of Explosive,
No.140, Rukmani Lakshmipathy,
Marshalls Road, Chennai-8.
- 4) The Controller of Explosives,
No.3, 5th East Cross Road, Gandhi Nagar,
Vellore 632 006.
- 5) The District Collector,
Krishnagiri.

+ 1 cc to Mr.S.Haja Mohideen Gisthi SPC SR 14011

+ 2 ccs to Mr.O.R.Santhanakrishnan, Advocate SR 13665

+ 2 ccs to Mr.A.K.Balaji, Advocate SR 13760

S.A. No.616/2013
& Cross Objn. No.6
of 2014
and WP.21778/2012.

tej(Co)
prk3/3 PSI 25.03.2015