

HON'BLE SRI JUSTICE VILAS V. AFZULPURKAR

WRIT PETITION No.29623 of 2015

ORDER :

Alleging that the 1st respondent-Hindustan Petroleum Corporation Limited is trying to dispossess and disengage the petitioner from operating as a Caretaker of the Company Owned Contractor Operated Retail Outlet, situated at Veduruvada Village, Atchuthapuram Mandal, Visakhapatnam District, and the actions of the respondent are sought to be declared as arbitrary, illegal and unconstitutional and for a consequential direction to permit the petitioner to continue as a Caretaker of the said Outlet, this writ petition is filed.

2. When this writ petition came up for admission, it was noticed that from the reliefs noted above, the petitioner claims a legal right only on the basis as a Caretaker of the Petroleum Outlet. Obviously, the petitioner is neither a Lessee nor a Licensee and in order to appreciate as to whether any legal right exists in favour of the petitioner, I have heard Sri S. Niranjan Reddy, counsel representing Sri J. Krishna Dev, learned counsel for the petitioner, at length, as well as Sri B. Muyur Reddy, learned Standing Counsel for the 1st respondent-Corporation.

3. The petitioner's averments in the affidavit filed in support of the writ petition show that one Sri T. Kameswara Rao has applied for allotment of the said Outlet at Atchuthapuram, Visakhapatnam District, and he was granted a Letter of Intent by the 1st respondent-Corporation. It was alleged that the said T. Kameswara Rao and one Sri M. Rama Krishna, owners of land admeasuring Ac.0.70 cents at Sy.No.31 at Veduruvada Village, Atchuthapuram Mandal, Visakhapatnam District, had built the necessary infrastructure for setting up of a Retail Outlet. Subsequently, on 31.12.2001, two Lease Deeds were entered into with the 1st respondent-Corporation, apart from Dealership Agreement dated 17.05.2002. However, in view of the sales being a minimal, on the

recommendations of the officers of the 1st respondent-Corporation, the land owners identified a fresh location at Pedagantyada, Gajuwaka, Visakhapatnam District, and with the mutual consent, the 1st respondent-Corporation shifted the said Retail Outlet from Atchuthapuram to Pedagantyada. The 1st respondent-Corporation, however, opted to retain the Outlet at Atchuthapuram on a Company Owned Contractor Operated Outlet terms, which was agreed to by the owners, subject to the condition that the petitioner would be permitted to be a Caretaker. The petitioner, accordingly, became the Caretaker and he also stated to have furnished a Bank Guarantee of Rs.5,00,000/-. Eventually, the owners sought eviction of the 1st respondent-Corporation from the said Outlet at Atchuthapuram, by filing a suit being O.S.No.193 of 2005 before the Principal District Judge, Visakhapatnam.

4. By judgment and decree dated 13.01.2012, the aforesaid suit was decreed together with damages of Rs.5,000/- per month from 01.12.2005. The 1st respondent-Corporation preferred an appeal being A.S.No.239 of 2012 against the said judgment and decree dated 13.01.2012, which is pending before this Court, and interim stay of execution was granted, subject to the 1st respondent-Corporation paying the arrears of damages at the rate fixed by the decree. On a vacate stay petition filed by the owners, the said interim stay was modified by this Court on 30.04.2015, directing the 1st respondent to deposit Rs.25,000/- per month and the owners are permitted to withdraw the same.

5. While the aforesaid appeal is pending, on 20.06.2014, the 1st respondent-Corporation has addressed a letter requiring the petitioner to handover the said Outlet, which was duly replied to by the petitioner citing the pendency of appeal and the interim orders, as referred to above. The petitioner alleges that the officers of the 1st respondent-Corporation illegally tried to trespass and vandalism, on account of which, the petitioner filed a complaint on 06.09.2015 before the Superintendent of Police, Visakhapatnam (Rural). It is, in those circumstances, the present writ petition is filed with the reliefs as aforesaid.

6. Sri S. Niranjan Reddy, learned counsel appearing for the petitioner, contends that the actions of the 1st respondent-Corporation are neither just nor fair and their attempts to physically dispossess the petitioner from the Outlet cannot be

permitted. It is further submitted that the petitioner has a right to continue as an operator pending First Appeal referred to above and that the 1st respondent-Corporation, having not taken any action from the date of institution of the eviction suit, is not entitled to re-possess the Outlet by dispossessing the petitioner and such action of the 1st respondent-Corporation is liable to be reviewed judicially by this Court.

7. Learned counsel for the petitioner places reliance upon a decision of the Supreme Court in STATE OF U.P. v. MAHARAJA DHARMANDER PRASAD SINGH, particularly paragraphs-27 to 31. Paras-30 and 31 are stressed and, for the sake of convenience, the same are extracted hereunder:

“30. A lessor, with the best of title, has no right to resume possession extra-judicially by use of force, from a lessee, even after the expiry or earlier termination of the lease by forfeiture or otherwise. The use of the expression ‘re-entry’ in the lease deed does not authorise extra-judicial methods to resume possession. Under law, the possession of a lessee, even after the expiry or its earlier termination is juridical possession and forcible dispossession is prohibited; a lessee cannot be dispossessed otherwise than in due course of law. In the present case, the fact that the lessor is the State does not place it in any higher or better position. On the contrary, it is under an additional inhibition stemming from the requirement that all actions of government and governmental authorities should have a ‘legal pedigree’. In Bishan Das v. State of Punjab - (1962) 2 SCR 69 : AIR 1961 SC 1570, this Court said: (SCR pp. 79-80)

We must, therefore, repel the argument based on the contention that the petitioners were trespassers and could be removed by an executive order. The argument is not only specious but highly dangerous by reason of its implications and impact on law and order....

Before we part with this case, we feel it our duty to say that the executive action taken in this case by the State and its officers is destructive of the basic principle of the rule of law.

31. Therefore, there is no question in the present case of the government thinking of appropriating to itself an extra-judicial right of re-entry. Possession can be resumed by government only in a manner known to or recognised by law. It cannot resume possession otherwise than in accordance with law. Government is, accordingly, prohibited from taking possession otherwise than in due course of law.”

8. Learned counsel for the petitioner also relied upon another decision of the Supreme Court in *STATE OF W.B. v. VISHNUNARAYAN & ASSOCIATES (P) LTD.*, particularly paras-9 and 10 thereof are relied upon, which are extracted hereunder:

9. The question, which needs our consideration is whether the action of the State Government in taking possession of the suit premises by using force was lawful.

10. It is the settled position of law that the State or its executive officers cannot interfere with the rights of others unless they can point to some specific provision of law, which authorises their acts. A Constitution Bench of this Court in *Bishan Das v. State of Punjab* – AIR 1961 SC 1570 : (1962) 2 SCR 69 held that the State or its executive officers did not have any right to take law into their own hands and remove a person by an executive order. The Court further observed: (SCR p.80)

“Before we part with this case, we feel it our duty to say that executive action taken in this case by the State and its officers is destructive of the basic principle of the rule of law.”

9. *Per contra*, Sri B. Mayur Reddy, learned Standing Counsel for the 1st respondent-Corporation, contends that the petitioner is neither a Licensee much less a Lessee and he is only a Contractor/Operator, who was allowed to operate the Petroleum Outlet. He also contends that the pendency of appeal suit has no nexus with the present issue, as the said appeal deals with the rights of the 1st respondent-Corporation as a Lessee of the said Petroleum Outlet, whereas the claim of the petitioner is limited to run the Outlet on behalf of the 1st respondent-Corporation, in the capacity as a Contractor. It is also stated that so far as the Dealers of the 1st respondent-Corporation are concerned, they have already re-located the Outlet at Pedagantyada. It is, therefore, stated that no legal right of the petitioner, in the capacity as a Contractor, is violated when the 1st respondent-Corporation, which owned the said Petroleum Outlet, has decided to appoint another Contractor in place of the petitioner. It is also stated that on 04.09.2015, the new Operator has taken over

the said Outlet in the presence of senior officers of the 1st respondent-Corporation, who have made out a report in the presence of the representatives of the owners and the witnesses, after guaranty of the stock reconciliation, and have handed over the Retail Outlet to the new Operator. He also submits that the 1st respondent-Corporation has also lodged a complaint against the petitioner before the police concerned for unlawful interference, after the new Operator taken over the said Outlet.

10. The point for consideration, therefore, is, (1) whether the petitioner has any legal right to seek the reliefs, as prayed for and, if so, (2) whether the petitioner has made out any ground for issuance of a Writ, as prayed for?

Inre. to Point Nos.1 and 2 :

11. It is evident from the above and the prayer of the petitioner himself, that he is neither a Lessee nor a Licensee and merely seeks continuation of the Outlet in his capacity as an Operator/Contractor. The initial letter dated 08.04.2004 of the 1st respondent-Corporation, Ex.P-1, itself would show that the petitioner was appointed as a Contractor for operation of the Outlet for a period of one year with effect from the date of signing of the Agreement, for which a Bank Guarantee of Rs.5,00,000/- was required to be furnished by the petitioner, which was valid for two years. A detailed Agreement for operation of the Retail Outlet through the petitioner, as a Contractor, was stated to have been executed and the petitioner also furnished the Bank Guarantee, as required. The petitioner, however, continued as an Operator till 2015 though the initial appointment was only for one year. On 15.07.2015, the 1st respondent-Corporation required the petitioner to handover the said Outlet to the 1st respondent-Corporation by 31.07.2015, upon which, the petitioner gave a detailed reply on 27.07.2015, citing the orders of this Court, pending A.S.No.239 of 2012, as referred to above. Once again on 24.08.2015, the 1st respondent-Corporation has called upon the petitioner to handover the Outlet. Once again, the petitioner replied claiming that the appeal being sub-judice, he is entitled to continue as an Operator, under his reply dated 28.08.2015. Thereafter, criminal complaints by and against the petitioner and the 1st

respondent-Corporation, as stated above, were filed.

12. I am unable to see any legal right vested in the petitioner to sustain the prayer sought for in this writ petition as, even according to the petitioner, he was appointed as an Operator/Contractor for a period of one year only. It is well settled that the Dealers of Petroleum Outlets leased to a Petroleum Company are merely Licensees and cannot be equated to the status of a Lessee. In the present case, the petitioner does not fall in the capacity of either a Lessee or a Licensee and is only a Contractor/Operator of Lessee. Hence, the petitioner is not entitled for continuation of the contract beyond the period for which he was appointed and contrary to the 1st respondent's right to appoint any contractor of its choice to run the Outlet. The legal position on such question is already settled by a decision of Supreme Court in MD. SALIM v. MD. ALI. Para-2 thereof is extracted hereunder:

“2. One of the attesting witness to the .said agreement was Md. Ali, the respondent herein, who was at the relevant time landlord and is now represented by his legal representatives to this application. On a construction of the different clauses of the aforesaid document we are of the opinion that this was an agreement for management of the business of the tenant. It was not and cannot be construed as an agreement of sub-tenancy. There was no exclusive possession with the respondent. There was no parting of possession of the premises, there was only a right to "manage" the business, looking after the existing business with fixed monthly payments and this cannot be construed as an agreement of sub-tenancy. Therefore, though the landlord had knowledge of the document and as such can be said to have consented to the bargain it cannot be said to be consent to an agreement of sub-tenancy.”

13. The decision 1st cited by the learned counsel for petitioner was a case relating to the dispute between the Lessee and the Landlord relating to a Nazool land and the questions relating to the Lessee's right for renewal of lease etc., *vis-à-vis* landlord's right for termination of lease fell for consideration. Paras-30 and 31 extracted above deal with the rights and liabilities among the Lessor and the Lessee. Obviously, that has no application to the present case.

14. Similarly, the decision second cited also relates to a dispute between the landlord and the tenant with respect to the termination of lease and was decided

on the basis of a finding in para-15 in the following words:

“It is not disputed that there was a relationship of landlord and tenant between the erstwhile Company of the respondents. The rights and obligations of the landlord and tenant would be governed either by the Transfer of Property Act or by the rent law in force and the tenancy of the demised premises could be terminated by taking action under the provisions of either of these two Acts and possession thereof could be recovered in accordance with law.”

15. Evidently, the said decision also does not assist the learned counsel for the petitioner, as the petitioner is merely a Contractor/Operator.

16. To the extent of the contention of the learned counsel for petitioner that the actions of the 1st respondent-Corporation are unjust and unfair, the said aspect is disputed by the 1st respondent-Corporation and, in fact, the petitioner as well as the 1st respondent-Corporation have filed complaints alleging criminal trespass against each other. While the said complaints are pending investigation, it is neither just nor proper to record any finding in that regard.

17. Point Nos.1 and 2 are accordingly answered against the petitioner.

18. The writ petition, therefore, fails and is accordingly dismissed, at the admission stage. However, there shall be no order as to costs.

JUSTICE VILAS V. AFZULPURKAR

Date: 16.09.2015.

NOTE: L.R. Copy be marked.

(B/O)

Msr

HON'BLE SRI JUSTICE VILAS V. AFZULPURKAR

WRIT PETITION No.29623 of 2015

16.09.2015

Msr