

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 5310 OF 2015

1. Madhukar Savlaram Hisvankar
Age: 76 years, Occu.: Agri.,
2. Ashok Savlaram Hisvankar
Age: 65 years, Occu.: Agri.,
3. Chandrakant Savalaram Hisvankar
Age: 56 years, Occu.: Agri.,
4. Ratnakar Savlaram Hisvankar
Age: 51 years, Occu.: Agri.,
5. Subhash Savlaram Hisvankar
Age: 66 years, Occu.: Agri.,
6. Prakash Prabhakar Hisvankar
(Dead) Through L.R.
- 6A. Parimal Prakash Hiswankar
Age: 31 years, Occu.: Business.

Petitioner Nos. 1 to 5 are R/o Mohala Navi Galli,
Kadradbad, Jalna, Taluka and Dist. Jalna.

Petitioner No. 6A is R/o Near Dhoka Oil Mill,
Murgi Talav, Devalgaon Raja Road, Jalna.

..PETITIONERS

VERSUS

1. The Territory Manager,
Bharat Petroleum Corporation Limited,
Bharat Bhavan, 4-6, Karimbhai Road,
Bellar Estate, Mumbai – 400 001.

2. Bharat Petroleum Corporation Ltd.,
Through : Territory Manager,
At Manmad, Dist. Nashik.
3. Bharat Petroleum Corporation Ltd.,
Deolgaon Raja Road,
Jalna.
4. Laxmichand Bechardas
Dealer, Bharat Petroleum Corporation Ltd.,
Jalna.
5. Regional Manager,
Bharat Petroleum Corporation Ltd.,
(Retail) At Post : Akole,
Tq. and Dist. Ahmednagar.
6. Divisional Commissioner,
Aurangabad.

..RESPONDENTS

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Mr. A.S. Bajaj, Advocate for petitioners.
Mr. S.D. Kulkarni, Advocate for Respondent Nos. 1, 3, 4 and 5.

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CORAM : T.V. NALAWADE, J.
DATED : 07th DECEMBER, 2016

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. By consent heard both sides for final disposal.

2. The petition is filed to challenge the order made by the Divisional Commissioner, Aurangabad in Appeal No. 2014/SA-PRO-PETROLEUM ACT/POL-1/CR. By this order the Divisional Commissioner

has set aside the order made by District Magistrate in proceeding no. 2014/RB-DESK-1/POL-1/CR-47. By this order, the District Magistrate had allowed the application given by present petitioners to allow them to withdraw the No Objection given under the provisions of Petroleum Rules, 2002 and for cancellation of permission granted to store petroleum products which was in favour of respondent – Bharat Petroleum Corporation.

3. The petitioners are the owners of land Survey No. 215/1, Deolgaon Raja Road, Jalna. Under agreement of lease dated 21st May, 1973, this land was given to Burmah Shell Company for running the petrol pump and period of ten years was fixed as initial period of lease. It is the case of the petitioners that due to the provisions made in Burmah Shell (Acquisition of Undertaking in India) Act, 1976, respondents got statutory period of twenty years as lease period and so the lease period came to an end on 20th May, 2013. It is contended that the lease was not renewed or continued by petitioners and on the other hand in writing it was informed to respondent – Bharat Petroleum Corporation on 02nd June, 2014 that there was no intention of the petitioners to renew the lease period or allow the respondents to continue the possession as lessee. It is contended that petitioners had asked the respondents to hand over

the possession and it was also informed that No Objection given by petitioner for getting permission of District Magistrate would be canceled.

4. It is the case of the petitioners that the respondents did not hand over the possession and so civil suit was required to be filed for possession and the suit is still pending. Respondent No.4 is a dealer appointed by respondent – Bharat Petroleum Corporation and he is running the petrol pump and so he was made party respondent before the District Magistrate.

5. The District Magistrate found that the lease period had come to an end on 20th May, 2013 and so the present petitioners – lessor had right to withdraw the No Objection given in respect of Bharat Petroleum Corporation. The District Magistrate held that the petroleum corporation has no authority to store petroleum products over the property of the petitioners and so the previous permission granted is canceled.

6. The Divisional Commissioner relied on some observations made in one proceeding by this Court when similar point was involved and held that till suit is decided, the permission cannot be cancelled.

Learned Counsel for petitioners submitted that only the provisions of Petroleum Rules, 1976 (in particular Rule 153) can be used for deciding the present point. Learned Counsel submitted that in case reported as **(2006) 1 SCC 228 (C. Albert Moriss Vs. Chandrasekharan and Others)** the Apex Court has interpreted the rules and it is laid down that when right of dealer is over to keep the possession due to expiry of the lease period and the landlord declines to renew the lease, the lessee can no longer assert that he has any right to the site and so he would not be entitled to hold the license. The relevant paragraphs are as under:

“42. The argument of Mr. L.N. Rao, learned senior counsel appearing for the appellant that the words "right to site" appearing in Rule 153(1) of the Petroleum rules must be given liberal interpretation having regard to the public interest sub-served by the Petrol bunks which are essential for the smooth flow of goods and services as also for the movement of persons. Rule 153(1) (i) of the Petroleum Rules is "right to the site" for storing petroleum. It is not the right for storing petroleum on the site. That is so because that aspect is dealt with specifically in sub-clause (ii) of Rule 153(1) which refers to a no objection certificate, which the District authority or the State Government is required to give. No Objection Certificate which is granted under Rule 144 is the one given by the concerned authority stating that it has

no objection for the storage of petroleum on the site after examining the site plan and other relevant factors. The words "right to the site" have, therefore, to be understood as referring to right to the site on which the petroleum is stored. A person can be said to have a right to something when it is possible to find a lawful origin for that right. A wrong cannot be a right of a person who trespasses on to another's land cannot be said to have a right to the land vis-a-vis the owner because he happens to be in possession of that land. Mere presence on the land by itself does not result in a right to the land. Such presence on the premises may ripen into a right by reason of possession having become adverse to the true owner by reason of the passage of time and possession being open uninterrupted, continuous and in one's own right.

43. *In our opinion, any right which the dealer has over his site was the right which he had acquired in terms of the lease. When that lease expired and when the landlord declined to renew the same and also called upon the erstwhile tenant to surrender possession, the erstwhile lessee could no longer assert that he had any right to the site. His continued occupation of something which he had no right to occupy cannot be regarded as source of a right to the land of which he himself was not in lawful possession. As observed by this Court in the case of [M.C. Chockalingam & Ors. Vs. V. Manickavasagam & Ors.](#) (supra), litigious possession cannot be regarded as lawful possession. As rightly pointed out by the Division Bench of the High Court the right referred to in*

this Rule has necessarily to be regarded as right which is in accordance with law and the right to the site must be one which is capable of being regarded as lawful. We have already referred to Bhawanji Lakhamshi & Ors. Vs. Himatlal Jamnadas Dani & Ors. (supra) wherein this Court held that the act of holding over after the expiration of the term does not create a tenancy of any kind. A new tenancy is created only when the landlord assents to the continuance of the erstwhile tenant or the landlord agrees to accept rent for the continued possession of the land by the erstwhile tenant. The contention of Mr. L.N. Rao that the landlord's assent should be inferred from the conduct of the landlord who had filed the suit for ejectment, but did not pursue the same, has no force. This suit was withdrawn with liberty to file a fresh suit on the same cause of action, liberty which the Court has granted. The possession of this site by the erstwhile lessee does not ripen into a lawful possession merely because the landlord did not proceed with the suit for ejectment at that time, but reserved the right to bring such a suit at a later point of time. That cannot amount to an assent on his part to the continued occupation of the landlord under cover of a right asserted by the erstwhile lessee. The words "right to the site" in Rule 153(1) (i) must, therefore, in our opinion, be given their full meaning and the effect that unless the person seeking a licence is in a position to establish a right to the site, he would not be entitled to hold or have his licence renewed. We have already rejected the contention of Mr. L.N.

Rao that the appellant-tenant is a statutory tenant for the reasons recorded earlier. The lease deed is very clear as to what was leased. The lease was of vacant land. That is evident from the recitals in the plaint, legal notice, lease deed etc. It is, therefore, not in dispute that the lease of land is not covered by the statute, The Pondicherry Buildings (Lease and Rent Control) Act, 1969 in force extending protection to tenants.”

7. In view of aforesaid observations which are made with specific reference to Rules which need to be used in the present matter, this Court holds that rights of respondent – petroleum corporation which are discussed alongwith rights of the dealer by the Apex Court have come to an end and so the petitioners have right to withdraw the no objection given by them in favour of petroleum corporation and after that there is no other alternative before the authority like District Magistrate to cancel the permission.

8. Learned Counsel for respondents submitted that in paragraph no.44 there are more observations made by the Apex Court and they are as under:-

“44. We now come to the last contention of Mr. L.N. Rao that the first respondent is not entitled to maintain the

writ petition as the proceedings initiated by him before the Collector for cancellation of the No Objection Certificate is pending. The said submission cannot be accepted. While granting NOC, the Collector is not concerned about the ownership of the land. He is concerned about the location of the land and its suitability as a place for storage of petroleum. Rule 144 deals with the grant of NOC does not contemplate an enquiry into the ownership of the land nor does it require the Collector to enquire into the nature of the right claimed by the person who has applied for the NOC. We, therefore, uphold the judgment and final order passed by the Division Bench dated 7.10.2003 in Writ Appeal Nos. 1149 & 2140 of 2002 for the reasons given by us in this judgment.”

9. There is no dispute over the observations made in aforesaid paragraph. In that paragraph enquiry which is contemplated under Rule 144 is quoted and it is observed that once No Objection is granted, in the enquiry, Collector is not expected to ascertain the nature of right claimed by the person who has applied for No Objection. This observation shows that there must be some right to retain possession of the site in respect of which the permission is to be granted under these Rules by the District Magistrate. In the present matter, this Court has carefully gone through the lease documents and also provisions of Burmah Shell (Acquisition of

Undertaking in India) Act, 1976. Apparently, the right of Bharat Petroleum Corporation has come to an end to keep possession as lessee. In that regard steps were taken and now suit is pending for possession. The rights of the dealer cannot be more or different from the rights of Bharat Petroleum Corporation who could have been treated as lessee. In view of the provisions of the aforesaid Acquisition Act of the Central Government and as statutory period is also over, in such matters, the pendency of the suit for possession cannot make any difference as things about the rights are clear.

10. It is unfortunate that a corporation of Government is fighting like private litigant against the owners/lessor and indirectly it is supporting the dealer. Big piece of land having huge value was given on lease for the consideration of hardly Rs.1,500/- per year and for next period for Rs.1,800/- per year. It is unfair on the part of the Corporation that it is continuing the possession even after expiry of the lease period and in one way is helping the dealer to make money at the cost of the right of the owner / lessor. The corporations of the government are not expected to have such approach as image of the government itself gets damaged due to such approach of the corporation.

11. Learned Counsel for respondents relies on some observations made in some cases reported as *1992 Supp (2) 29 (East India Hotels Ltd. Vs. Syndicate Bank)* and *(2002) 2 SCC 50 (Vashu Deo Vs. Bal Kishan)*. In these cases rights of person keeping the possession after termination of tenancy or lease are discussed. The observations are not with regard to petroleum rules already quoted. Thus the observations can be of no use to the present respondents for giving decision in their favour.

12. This Court holds that the Divisional Commissioner has committed grave error in setting aside the order made by the District Magistrate. In the result following order:-

Petition is allowed. The order made by the Divisional Commissioner in the appeal is hereby set aside. Order made by the District Magistrate is restored. Rule is made absolute in those terms.

(T.V. NALAWADE, J.)

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