*** THE HON'BLE SRI JUSTICE A. RAJASHEKER REDDY**

+ **WRIT PETITION Nos.11817 OF 2012**
AND 12501 & 23676 OF 2011

% Date 23-02-2016

W.P.No.11817 of 2012

P. Hariprakash Reddy and others

... Petitioners

V.

$ M/s. Hindustan Petroleum Corporation Limited

...Respondent

! Counsel for the petitioners : Sri P. Veera Reddy
For Sri S.V. Ramana

^ Counsel for Respondent : Sri B. Mayur Reddy

< **GIST :**

> **HEAD NOTE:**

? CASES REFERRED:

1. (2006) 1 SCC 228
2. (1999) 4 SCC 450
3. (2004) 3 SCC 553
4. (1974) 1 SCC 48

C/15

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

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WRIT PETITION Nos. 11817 OF 2012 AND 12501 & 23676 OF 2011

W.P.No.11817 of 2012

Between:

P. Hariprakash Reddy and others .. Petitioners

and

M/s. Hindustan Petroleum Corporation Limited .. Respondent

JUDGMENT PRONOUNCED ON : February 23, 2016

HON'BLE SRI JUSTICE : A. RAJASHEKER REDDY

1. Whether Reporters of Local Newspapers may be allowed to see the Judgments? :

2. Whether the copies of judgment may be marked to Law Reporters/Journals? :

3. Whether their Ladyship/Lordship wish to see the fair copy of the :

Judgment?

THE HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

WRIT PETITION Nos.11817 OF 2012 AND 12501 & 23676 OF 2011

COMMON ORDER:

W.P.No.11817 of 2012

This Writ Petition is filed seeking to declare the action of respondent in not vacating the site admeasuring 192'6" x 93' x 136' x 100' i.e., approximately 1700 Square Yards covered by T.S.No.4073 situated at T.P. Area, Tirupati, Chittoor District, as illegal and arbitrary and consequently, to direct the respondent to vacate the subject premises.

2. The case of the petitioners is that their grandfather is the owner of the subject premises and in the year 1953, he has given the subject premises on lease in favour of M/s. Caltex (India) Limited for a period of ten years. After his demise, petitioners' father has extended the lease for a further period of ten years in the year 1960 and after expiry of the said lease period, a fresh lease was entered into for a further period of 20 years and by efflux of time, the same expired by 16.11.1990. Thereafter, since their father refused to extend the lease further, the respondent – Corporation by invoking the provisions of Section 7 (3) of Central Act 17 of 1977 (for short, 'the Act, 1977') got statutory renewal for a further period of 20 years, which

expired by 17.11.2010, and continued in the subject premises as a lessee. In the subject premises, the respondent – Corporation has established a retail outlet in the name and style ‘M/s. Vijaya Service Station, Tirupati’ for sale of petroleum products by appointing a dealer. Thereafter, the petitioners made a representation to the Joint Collector, Chittoor District, stating that the respondent - Corporation is in unlawful possession of the subject premises and hence, the Corporation is not entitled to renewal of licence as per the provisions of Petroleum Rules, 1976, and A.P. Petroleum Products (Licensing and Regulation of Supplies) Order, 1980 (for short, ‘Order, 1980’). The Joint Collector, vide proceedings Roc.B2/250/2010, dated 25.02.2011, rejected the application of the dealer for renewal of ‘B’-Form licence and vide proceedings, dated 15.04.2011, after issuing notice to the respondent, cancelled the ‘No Objection Certificate’ (NOC) issued in favour of the respondent. Aggrieved by the order, dated 25.02.2011, the dealer has filed an appeal, which was dismissed by the Commissioner of Civil Supplies vide proceedings, dated 01.07.2011. The Joint Chief Controller of Explosives, South Circle Office, Chennai, also cancelled the licence granted in favour of the respondent under the Petroleum Act. It is stated that against the order of Joint Collector rejecting the request of the dealer for renewal of ‘B’-Form licence, as confirmed by the order of Commissioner of Civil Supplies, the dealer has filed W.P.No.23676 of 2011 and against the order of cancelling the NOC, the respondent – Corporation has filed W.P.No.12501 of 2011. It is also asserted that the respondent being a 'State' within the meaning of Article 12 of the Constitution of India, ought to have vacated the subject premises after expiry of the lease period, but is continuing as a trespasser, in spite of not conducting any business. It is also asserted that opposite to the subject premises, the respondent has taken another site on lease and is running a retail outlet. The respondent is paying a paltry sum of Rs.200/- per month as rent for the subject premises admeasuring approximately 1700 Square Yards, in spite of leasing a portion of the subject premises to two SBI ATMs and deriving rent at Rs.20,000/- per month. The respondent is not vacating the subject premises, even after lease period is over. Hence, the present Writ Petition.

3. Respondent – Corporation filed counter admitting the lease of subject premises, its renewal from time to time and ultimately, its expiry on 17.11.2010. It is stated that the outlet is being run by appointing a dealer as per the dealership agreement, dated 11.09.1985, and when the application of the dealer for renewal of 'B'-Form licence was rejected, the dealer has filed W.P.No.558 of 2011, which was allowed with a direction to the Joint Collector to

give an opportunity of hearing to the dealer and then pass fresh order. Pursuant to the same, the Joint Collector confirmed the cancellation of ‘B’-Form licence vide order, dated 25.02.2011, and thereafter, the respondent - Corporation, in terms of the provisions of Order, 1980, started operating the retail outlet on its own, since it does not require to obtain any ‘B’-Form licence to run the outlet. However, such operation of retail outlet was closed as per the directions of the District Supply Officer, Chittoor. It is also stated that the respondent – Corporation is in possession and enjoyment of the subject premises as a tenant holding over and as such, the only remedy available to the petitioners is to approach the civil Court for eviction. It is also stated that the lease agreement between the petitioners and the respondent is governed by the provisions of Transfer of Property Act, more particularly as the respondent is a tenant governed by the Contract Act. It is also stated that when the petitioners tried to evict the respondent from the subject premises, it has filed O.S.No.480 of 1991 before the I Additional District Munsif, Tirupati, for grant of permanent injunction restraining the petitioners from interfering with its peaceful possession and enjoyment of the subject premises and the same was decreed by judgment and decree, dated 06.11.1996, and the appeal filed by the petitioners against the same was dismissed and as such, the permanent injunction granted by the trial Court has become final. It is also stated that the respondent – Corporation is a public sector undertaking dealing with refining and marketing of petroleum products, which are essential commodities, and closing of the same will cause lot of inconvenience to the motoring public at large and hence, sought to dismiss the Writ Petition.

4. Sri P. Veera Reddy, learned Senior Counsel for the petitioners, submits that, admittedly, the lease between the petitioners and respondent – Corporation expired by 17.11.2010 and as such, the respondent – Corporation cannot squat on the subject premises beyond the said period and there is no justification for the respondent – Corporation to continue as tenant beyond the lease period. He also submits that since the NOC granted in favour of the respondent – Corporation and the ‘B’-Form licence granted in favour of the dealer stood cancelled, neither the respondent nor its dealer is doing business in supplying petroleum products in the subject premises. He also submits that, in fact, the respondent – Corporation has sub-leased part of the subject premises for running SBI ATMs and though it is deriving rent at the rate of Rs.20,000/- per month, it is not even paying the paltry sum of Rs.200/- per month as rent to the subject premises, which is illegal and arbitrary. He further submits that the respondent – Corporation filed suit only on the apprehension that it would be evicted before the expiry of lease period i.e., 17.11.2010, which it was entitled to

continue by virtue of

Section 7 (3) of the Act, 1977. He also submits that the Joint Collector has rightly cancelled the NOC granted in favour of the respondent and the ‘B’-Form licence granted in favour of the dealer, since the respondent is in litigious possession of the subject premises. He also submits that the respondent, except stating that the petitioners have to approach the civil Court, has not shown any justification for continuing in the subject premises beyond the expiry of lease period. In support of his contention, he has placed reliance on a judgment of the Honourable Supreme Court in **C. Albert Morris v.**

K. Chandrasekaran and others[1] and also on an unreported judgment of this Court in W.P.No.10428 of 2008, dated 06.01.2012.

5. On the other hand, Sri B. Mayur Reddy, learned Standing Counsel for the respondent – Corporation, submits that the Writ Petition is not maintainable, more so in view of the fact that the respondent – Corporation has filed a suit and obtained permanent injunction, which has become final and by virtue of the same, they are in lawful possession and can only be evicted by following due process of law. He submits that cancellation of NOC and ‘B’-Form licence is also illegal. He also submits that the judgments cited by the learned Senior Counsel appearing for the petitioners have no relevance to the facts of the

case, since the lessees therein have continued for several years beyond the lease period and the respondent herein continued only for five years beyond the lease period.

6. The only question involved in this Writ Petition is whether the respondent – Corporation can continue in occupation of leased premises as lessee beyond 17.11.2010 by which date lease in its favour expired.

7. The facts are not in dispute. According to the parties, the lease expired by 17.11.1990. In the suit filed by the respondent – Corporation, the assertion of the Corporation is that by virtue of the Act, 1977, it is conferred right to continue in occupation of the subject premises for a further period of 20 years i.e., from 17.11.1990 to 16.11.2010 and as such, it has exercised its right to renew the lease for a further period of 20 years vide letter, dated 25.06.1990, but as the petitioners were trying to take possession of the subject premises, it has filed the suit and basing on the averments, the suit was decreed granting permanent injunction in its favour. But, the respondent – Corporation has not shown any justification whatsoever for continuing in the subject premises even after expiry of the lease period i.e., beyond 16.11.2010. The Honourable Apex Court in similar circumstances in **Albert Morris**'s case (supra), relied on by the learned Senior Counsel for the petitioners, held:

> "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 *M.C. Chockalingam. V. V. Manickavasagam*, 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 V. Himatlal Jamnadas Dani* wherein this Court held that the act of holding over after the expiration of the term does not create a tenancy of any kind."

8. Following the above judgment of Honourable Apex Court and **Hindustan Petroleum Corporation Ltd. and another v. Dolly Das**[2], and the order of this Court in W.P.No.22721 of 1998 and batch, dated 25.07.2001, the learned single Judge of this Court in W.P.No.10428 of 2008, at paragraph No.21, held thus:

> "21. Applying the ratio laid down by the Hon'ble Supreme Court in the above said judgments, to the facts of the case on hand, this Court is of the view that there is no basis to defend the possession of respondents over the site in

question. Admittedly, there is no lease in favour of respondents after availing the Statutory option of lease for a period of eight years, which has come to an end on 24th of October 1990, and thereafter, admittedly, there is no lease executed either by the legal heirs of the original owner or by the petitioner, who is the purchaser of the site. As much as the title of the petitioner pursuant to registered sale deeds, dated 29th December 2001, is not in dispute, this Court is of the view that there is no basis for defending the possession of respondents. The 1st respondent-Corporation, being a Government of India Company, should be a role model for the other litigants, but it cannot resort to unnecessary litigation by squatting on the site without paying rents, and that too, without using the same for the purpose, for which it was originally leased out. Such an action on the part of respondents is arbitrary and totally irrational. Though the petitioner is a bona fide purchaser of the site in question for valuable consideration, which was purchased for making constructions, he is unduly deprived of the benefit of purchase for several years. By applying the ratio laid down in the judgments relied on by the learned counsel for petitioner, and in view of cancellation of NOC by order, dated 28.05.2007, by the District Revenue Officer-cum-Additional District Magistrate, Nellore, vide proceedings in Rc.No.C2(M)565/2006 in view of expiry of lease, there is no reason to relegate the petitioner at this point of time for any civil suit. In view of the judgments of the Hon'ble Supreme Court as referred above, in the absence of absolute bar, this Court can grant relief to the petitioner, in this writ petition filed under Article 226 of the Constitution of India, particularly, in the absence of any

> semblance of defence to retain possession by the respondents for any further period. For the aforesaid reasons, this writ petition deserves to be allowed.”

9. The learned single Judge also held that the Writ Petition is maintainable in view of the ratio laid down by the Honourable Supreme Court in **ABL International Ltd. and another v. Export Credit Guarantee Corporation of India Ltd. and others**[3], wherein it is held:

> “19. Therefore, it is clear from the above enunciation of law that merely because one of the parties to the litigation raises a dispute in regard to the facts of the case, the court entertaining such petition under Article 226 of the Constitution is not always bound to relegate the parties to a suit. In the above case of
> Smt. Gunwat Kaur (supra), this Court even went to the extent of holding that in a writ petition, if facts required, even oral evidence can be taken. This clearly shows that in an appropriate case, the writ court has the jurisdiction to entertain a writ petition involving disputed questions of fact and there is no absolute bar for entertaining a writ petition even if the same arises out of a contractual obligation and or involves some disputed questions of fact."

10. The facts in the present case and in the cases cited above are almost similar and the ratio laid down in the above decisions squarely applies to the facts of this case. Though a civil suit was filed on the ground that the lease would continue up to 17.11.2010, that period already

expired and being a State within the meaning of Article 12 of the Constitution of India, it is unfair on the part of the respondent – Corporation to continue even after expiry of the lease period. The attitude of the respondent – Corporation is reprehensible and condemnable because the assertion of the petitioners that the respondent – Corporation is getting Rs.20,000/- per month as rent from SBI ATMs run in the subject land and that it is running petroleum outlet opposite to the subject premises is not denied in the counter affidavit. Having taken the subject premises on lease from the petitioners' grandfather and having enjoyed the same, the

respondent – Corporation cannot squat on the property now by taking technical plea and this attitude cannot be encouraged. What is astonishing is that the respondent – Corporation is paying Rs.200/- per month as rent for the subject premises to the petitioners, though it has sub-leased a part of the subject premises to SBI at Rs.20,000/- per month, which is unfair on the part of the respondent – Corporation. There is absolutely no justification whatsoever for the respondent – Corporation to continue in the subject premises. In view of the same, the Writ Petition deserves to be allowed with exemplary costs of Rs.50,000/-, but as the learned Standing Counsel for the respondent – Corporation has persuaded and pleaded to reduce the costs, the same is reduced to Rs.25,000/-.

11. Accordingly, the Writ Petition is allowed with costs of Rs.25,000/-.

W.P.No.12501 of 2011

12. This Writ Petition is filed seeking to declare the action of respondent No.2 in cancelling the No Objection Certificate vide proceedings, dated 15.04.2011, as illegal and arbitrary.

13. Since W.P.No.11817 of 2012 filed by respondent Nos.3 to 5 is allowed directing the petitioner – Corporation to vacate the subject premises, the question of grant of NOC in favour of the petitioner – Corporation does not arise.

14. Hence, the Writ Petition is dismissed following the judgment in W.P.No.11817 of 2012 and for the reasons recorded therein. No costs.

W.P.No.23676 OF 2011

15. This Writ Petition is filed seeking to declare the proceedings in ROC.No.B2/250/210, dated 25.02.2011, issued by respondent No.2, as confirmed by proceedings No.E2/269/2011, dated 01.07.2011, of respondent No.1, wherein respondent No.2 has rejected the application of the petitioner for renewal of 'B'-Form licence granted under the provisions of the A.P. Petroleum Products (Licensing

and Regulation of Supplies) Order, 1980, as illegal and arbitrary and consequently, to direct respondent No.2 to renew the licence.

16. Since W.P.No.11817 of 2012 filed by respondent Nos.3 to 5 is allowed directing respondent No.6 – Corporation to vacate the premises, the question of issuing 'B'-Form licence in favour of the petitioner does not arise and even as on date, petitioner herein is not in lawful possession as per law laid down in **M.C. Chockalingam and others v. V. Manickavasagam**[4]. Further, respondent No.7 claims right over the subject premises, but the *lis* in the Writ Petition is whether the 'B'-Form licence can be granted in favour of the petitioner. If respondent No.7 is having any right over the subject premises, he can agitate his right in appropriate forum, as the *lis* between respondent No.7 and the petitioner cannot be adjudicated in this Writ Petition.

17. Hence, the Writ Petition is dismissed following the judgment in W.P.No.11817 of 2012 and for the reasons recorded therein. No costs.

18. Miscellaneous Petitions, if any, pending in these Writ Petitions, shall stand closed.

A. RAJASHEKER

REDDY, J
February 23, 2016

Note: L.R. copy to be marked.
B/o.MD

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[1] (2006) 1 SCC 228

[2] (1999) 4 SCC 450

[3] (2004) 3 SCC 553

[4] (1974) 1 SCC 48