

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT  
CHANDIGARH**

**CWP No.22957 of 2016  
Date of decision:07.11.2016**

M/s Bharat Petroleum Corporation Ltd. through its Constituted Attorney  
and Territory Manager (Retail), Hisar

...Petitioner

**Versus**

State of Haryana and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK**

**Present:** Mr.Anil Kshetarpal, Sr. Advocate with  
Mr.Saurabh Garg, Advocate for the petitioner.

**RAMESHWAR SINGH MALIK, J. (Oral)**

Feeling aggrieved against the impugned appellate order dated 14.9.2016 (Annexure P-23), passed by the Commissioner, Hisar Division, Hisar, whereby he upheld the ejectment order dated 24.4.2015 (Annexure P-21), passed by the Collector, Hisar, under the Haryana Public Premises and Land (Eviction and Rent Recovery) Act, 1972 (hereinafter called 'the Act'), petitioner Corporation has approached this Court, by way of instant writ petition under Articles 226/227 of the Constitution of India, seeking a writ in the nature of certiorari, for quashing the impugned orders.

This case has a chequered history. The Municipal Committee, Hisar, leased out the demised premises to Burmah Shell Oil Storage & Distributing Co. of India, predecessor-in-interest of the petitioner, vide lease-deed dated 14.4.1958 (Annexure P-1), for a period of 10 years @ Rs.1600/- per year. This lease-deed (Annexure P-1) was extended for another period of 10 years, by Annexure P-2 dated 1.10.1968 @ Rs.2400/- per year. The lease-deed (Annexure P-2) was to expire on 31.12.1977. In

the interregnum, the Burmah Shell (Acquisition of Undertakings in India) Act, 1976 [Annexure P-3] ('the Act of 1976' for short') came to be notified and the present petitioner stepped into the shoes of its predecessor-in-interest, i.e. Burmah Shell Oil Storage & Distributing Co. of India, from 24.1.1976. .

Placing reliance on the provisions contained in Sections 5 and 7 of the Act of 1976, petitioner applied to the Administrator, Municipal Committee, Hisar, vide its application dated 26.12.1977 (Annexure P-4), seeking further extension of the lease for another period of 10 years, w.e.f. 1.1.1978, as the above-said lease-deed (Annexure P-2) was to expire on 31.12.1977. However, the request made by the petitioner, seeking extension of lease, was not accepted by the lessor-Municipal Committee. Immediately after receipt of the request made by the petitioner vide Annexure P-4, the Administrator, Municipal Committee, Hisar, intimated the petitioner vide communication dated 29.12.1977 (Annexure P-5), to vacate the leased premises till 31.12.1977.

It is also not in dispute that petitioner did not challenge the order/communication dated 29.12.1977 (Annexure P-5) before any court of law. When the petitioner did not vacate the demised premises by handing over the vacant possession to the lessor, notice dated 21.7.1978 (Annexure P-6) was issued by the Municipal Committee, Hisar, through its Advocate, to the petitioner. A bare perusal of this notice would show that subject thereof was termination of the lease and handing over the vacant possession of the land, leaving no scope of any doubt in this regard. When the petitioner sought to pay the lease money, even without extension of the lease deed, its bank draft dated 9.2.1979 for Rs.2400/- was returned to the

petitioner, by the Municipal Committee, Hisar, vide memo No.134/G dated 16.4.1979 (Annexure P-7). Still petitioner did nothing, either challenging the communication (Annexure P-5), whereby petitioner was requested to hand over the vacant possession before 31.12.1977 or legal notice dated 21.7.1978 (Annexure P-6) or memo dated 16.4.1979 (Annexure P-7) returning the bank draft of the petitioner.

In view of the above, having been left with no other option, eviction petition was filed by the lessor, against the petitioner, vide Annexure P-8 dated 16.11.1979. Petitioner filed its written statement to the eviction petition vide Annexure P-9. Since the petitioner raised the objection to the entitlement of Municipal Committee, Hisar, in seeking the eviction of the petitioner, as the Municipal Committee, Hisar had transferred the demised premises in favour of Haryana Roadways, i.e. Transport Department of the State, an application under Order 1 Rule 10 of the Code of Civil Procedure (Annexure P-10), was moved on behalf of General Manager, Haryana Roadways, Hisar, through its legal advisor, seeking impleadment as plaintiff. The Municipal Committee, Hisar, supporting the prayer made in the application, filed its reply thereto vide Annexure P-11. However, petitioner opposed the application by filing its reply vide Annexure P-12.

After hearing the parties, learned Collector, Hisar, vide a self contained order dated 27.9.1989 (Annexure P-13), allowed the application under Order 1 Rule 10 of the Code of Civil Procedure, impleading Haryana Roadways as petitioner No.2, in the eviction petition. Accordingly, amended eviction petition was filed by the Municipal Committee as well as Haryana Roadways vide Annexure P-14. Thereafter, another application

under Order 1 Rule 10 CPC was filed vide Annexure P-15, seeking impleadment of State of Haryana through Collector, Hisar, as petitioner No.3. Once the eviction petition filed by the respondent authorities, was filed (closed) by Collector, Hisar vide order dated 21.6.1993 (Annexure P-16), as the evidence was not being produced. However, the order (Annexure P-16) was challenged by the respondent authorities by way of appeal, before the Commissioner, Hisar, Division, who allowed the said appeal and the case was remanded to the Collector, directing the parties to appear before the Collector, on 15.3.1996. This order was passed by the Commissioner, Hisar Division, Hisar on 6.2.1996 (Annexure P-17).

Since an inadvertent mistake crept in the order dated 27.9.1989 (Annexure P-13), whereby an application moved by Haryana Roadways was allowed under Order 1 Rule 10 CPC, correction in the said order was sought by moving an application under Sections 151, 152 and 153 of the Code of Civil Procedure, which was allowed by the Collector, Hisar, vide order dated 13.12.2004 (Annexure P-18) and State of Haryana through General Manager, Haryana Roadways, Hisar, was ordered to be made party as applicant No.2 in the ejectment application. The appeal filed by some of the private respondents against the above-said order dated 13.12.2004 (Annexure P-18), was dismissed by the Commissioner, Hisar Division, Hisar, vide his order dated 3.7.2006 (Annexure P-19).

After hearing the learned counsel for the parties, the Collector, Hisar, passed a self-contained and detailed impugned eviction order dated 24.4.2015 (Annexure P-21), directing the petitioner to hand over the vacant possession of the demised premises, to the official respondents and also to pay damages for unauthorised use and occupation of the land @ Rs.100/-

per day, from 31.12.1977 till handing over the vacant possession. Petitioner filed appeal under Section 9 of the Act of 1972, vide Annexure P-22. In fact, these were two executive revision petitions, bearing Executive Revision No.11791 of 2015 filed by the petitioner and Executive Revision No 11792 of 2015 filed by Virender Bhutani and others-private respondents, before the Commissioner, Hisar Division, Hisar. The above-said two executive revision petitions were treated as appeals by the Commissioner and same came to be dismissed, vide impugned order dated 14.9.2016 (Annexure P-23). Hence this writ petition.

Learned senior counsel for the petitioner raised four arguments and all of them are purely technical in nature. He did not raise any argument on the merits of the case, and rightly so because none was available. First argument of the learned senior counsel for the petitioner was that the respondent authorities did not seek eviction of the petitioner from the total area measuring 1217 sq. yards as per lease-deed dated 1.10.1968 (Annexure P-2). The area qua which eviction petition (Annexure P-8) was filed, was about 1200 sq. feet. The next argument raised by the learned senior counsel for the petitioner was that the Municipal Committee, Hisar, who filed the eviction petition, but was not the competent authority, because it had already transferred the suit property to the Transport Department, Haryana, on 22.5.1975 and mutation had already been sanctioned on 22.9.1976, whereas the eviction petition was filed by the Municipal Committee, Hisar, on 27.11.1979. The third argument raised by the learned senior counsel was that under Section 5(2) and (3) read with Section 7 (2) and (3) of the Act of 1976, the respondent authorities were duty bound to extend the lease in favour of the petitioner. In this regard, learned senior counsel submits that

even the communication dated 29.12.1977 (Annexure P-5), issued by the Municipal Committee, Hisar, terminating the lease, would be of no consequence. Fourth and last argument raised by the learned senior counsel for the petitioner was that the respondent authorities could not have invoked the provisions of the Act, but they should have invoked the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, ('Act of 1971' for short) which was the relevant statute. He prays for setting aside the impugned orders, by allowing the instant writ petition.

Having heard the learned senior counsel for the petitioner at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that since the present writ petition is without any merit and the petitioner is continuing in authorized possession for the last about four decades, instant writ petition is liable to be dismissed with costs. To say so, reasons are more than one, which are being recorded hereinafter.

Since learned senior counsel for the petitioner has placed reliance on Sections 5 and 7 of the Act of 1976, it would be appropriate to refer these two Sections and the same read as under:-

*“5. Central Government to be lessee or tenant under Certain circumstances. - (1) Where any property is held in India by Burmah Shell 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.*

*(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 Burmah Shell immediately before the appointed day.*

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*7. Power of Central Government to direct vesting of the undertakings of the Burmah Shell 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 Burmah Shell in relation to any of its undertakings 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 Burmah Shell 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 rights 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."*

Argument raised by the learned senior counsel for the petitioner on the basis of above-said provisions of law, contained in Sections 5 and 7 of the Act of 1976, has been found wholly misplaced and the same is not worth acceptance. It is so said, because the lessor was not under legal obligation to accept the application (Annexure P-4) moved by the petitioner, seeking extension of lease period for another 10 years, being the absolute owner of the demised premises. The argument does not appeal to reason.

Once the lease-deed dated 1.10.1968 (Annexure P-2) was not extended any further and petitioner was asked to hand over the vacant possession of the demised premises till 31.12.1977, vide communication dated 29.12.1977 (Annexure P-5), possession of the petitioner would become unauthorised w.e.f. 1.1.1978 and thereafter, the petitioner would be a tenant at sufferance. After termination of lease w.e.f. 1.1.1978, petitioner had been continuing in unauthorised possession and had rendered itself liable for eviction from the demised premises. Second limb of this argument raised by the learned senior counsel for the petitioner, that the order/communication (Annexure P-5), refusing to extend the lease would be of no consequence, has again been found without any merit and deserves rejection.

Next argument about the eviction petition, not seeking eviction from the total area of 1217 square yards, has also been found without any substance because neither there was any confusion in this regard nor any of the parties, particularly the petitioner herein was taken by surprise. Petitioner, as a matter of act, was fully aware about the total lease area in its possession and the lease had been terminated vide communication dated 29.12.1977 (Annexure P-5) and also by notice dated 21.7.1978 (Annexure

P-6) qua the total area under lease. No prejudice caused to the petitioner.

Similarly, the third argument raised by the learned senior counsel for the petitioner that Municipal Committee, Hisar, was not competent to file eviction petition, being no more the owner of demised premises after 22.5.1975, has already been taken care of by allowing the application under Order 1 Rule 10 CPC by the Collector, Hisar, vide his order dated 27.9.1989 (Annexure P-13), coupled with the order dated 13.12.2004 (Annexure P-18). These orders were not challenged by the petitioners any further and became final between the parties.

Coming to the last argument raised by the learned senior counsel for the petitioner that official respondents ought to have invoked the provisions of the Act of 1971 instead of the Haryana Act, it is held that since the land was situated in Hisar, the respondent authorities rightly invoked the provisions of the Haryana Act. Further no prejudice of any kind, whatsoever, has been shown, which might have been caused to the petitioner in this regard and the impugned orders deserve to be upheld.

It is also not in dispute that right from 1.1.1978, petitioner did not pay anything to the true owners. The attempt made by the petitioner to pay the lease money proved futile, when the Municipal Committee, Hisar, returned back the bank draft dated 9.2.1979 for Rs.2400/- to the petitioner, vide communication dated 16.4.1979 (Annexure P-7). It is also pertinent to note here that the true owners of the land in question never consented, qua the continuation of possession of the petitioner, over the demised premises. Once the petitioner was continuing in possession without consent of the true owner and also after termination of the lease, its possession was not a lawful possession and the same has to be treated as unauthorised occupation by the

petitioner, thus, petitioner would be a tenant at sufferance and would be liable to pay damages for unauthorised use and occupation of the land.

The view that has been taken by this Court also finds support from three judgments of the Hon'ble Supreme Court in **R.V.Bhupal Prasad Vs. State of A.P. and others, (1995) 5 SCC 698, C.Albert Morris Vs. K.Chandrasekaran and others, (2006) 1 SCC 228 and Delhi Development Authority Vs. M/s Anant Raj Agencies Pvt. Ltd., 2016 (4) Scale 80**. In all these three judgments of the Hon'ble Supreme Court, somewhat similar questions of fact and law fell for consideration before the Hon'ble Supreme Court and matters were decided in favour of the owners.

The relevant observations made by the Hon'ble Supreme Court in paras 26, 29, 32, 37 and 43 of its judgment in **C.Albert Morris's** case (supra), which can be gainfully followed in the present case, read as under:-

*“Though the arguments of the learned senior counsel appearing for the appellant are attractive on the first blush yet on a careful reconsideration of the same, it has no merits. The judgments cited by the learned senior counsel appearing for the appellant are not only distinguishable on facts but also on law. Much argument was advanced on the receipt of the rent by the landlord after the cancellation of the lease. The consensus of judicial opinion in this country is that a mere continuance in occupation of the demised premises after the expiry of the lease, notwithstanding the receipt of an amount by the quondam landlord would not create a tenancy so as to confer on the erstwhile tenant the status of tenant or a right to be in possession. In this context, we may refer to judgment of this Court in **Raptakos Brett and Co. Ltd. v. Ganesh Property, 1998(2) RCR(Rent) 353 : 1998(4) RCR(Civil) 208 (SC), (1998) 7 SCC 184.** In paragraph 13 of the said judgment, this Court held as under :*

*"In view of the aforesaid settled legal position, it must be held that on the expiry of the period of lease, the erstwhile lessee continues in possession because of the law of the land, namely that the original landlord cannot physically throw out such an erstwhile tenant by force. He must get his claim for possession adjudicated by a competent Court as per the relevant provisions of law. The status of an erstwhile tenant has to be treated as a tenant at sufferance akin to a trespasser having no independent right to continue in possession."*

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*In the case of **R.V. Bhupal Prasad v. State of A.P. and Ors., 1995(2) RCR(Rent) 448 : 1995(3) RRR 310 (SC) : (1995)5 SCC 698**, in paragraphs 8 and 9 this Court observed as under :*

*"Para 8 - Tenant at sufferance is one who comes into possession of land by lawful title, but who holds it by wrong after the termination of the term or expiry of the lease by efflux of time. The tenant at sufferance is, therefore, one who wrongfully continues in possession after the extinction of a lawful title. There is little difference between him and a trespasser. In Mulla's Transfer of Property Act (7th Edn.) page 633, the position of tenancy at sufferance has been stated thus : A tenancy at sufferance is merely a fiction to avoid continuance in possession operating as a trespass. It has been described as the least and lowest interest which can subsist in reality. It, therefore, cannot be created by contract and arises only by implication of law when a person who has been in possession under a lawful title continues in possession after that title has been determined, without the consent of the person entitled. A tenancy at sufferance does not create the relationship of landlord and tenant. At page 769, it is stated regarding*

*the right of a tenant holding over thus: The Act of holding over after the expiration of the term does not necessarily create a tenancy of any kind. If the lessee remaining in possession after the determination of the term, the common law rule is that he is a tenant on sufferance. The expression "holding over" is used in the sense of retaining possession. A distinction should be drawn between a tenant continuing in possession after the determination of the lease, without the consent of the landlord and a tenant doing so with the landlord's consent. The former is called a tenant by sufferance in the language of the English law and the latter class of tenants is called a tenant holding over or a tenant at will. The lessee holding over with the consent of the lessor is in a better position than a mere tenant at will. The tenancy on sufferance is converted into a tenancy at will by the assent of the landlord, but the relationship of the landlord and tenant is not established until the rent was paid and accepted. The assent of the landlord to the continuance of the tenancy after the determination of the tenancy would create a new tenancy. The possession of a tenant who has ceased to be a tenant is protected by law. Although he may not have a right to continue in possession after the termination of the tenancy, his possession is juridical.*

*Para 9 - The question then is what is the meaning of the expression "lawful possession". This was considered by this Court in a leading decision on the right to grant licence under the Cinematographic Act and the Madras Cinemas Rules in **M.C. Chockalingam v. V. Manickavasagam**. Rule 13 of the Madras Rules required the licensee in lawful possession, when he had applied for renewal after the expiry of the lease of the licensee. The Court observed thus : (SCC p. 57, para 15)*

*"Turning to Rule 13, even in the first part if the applicant for the licence is the owner of the property he has to produce before the licensing authority the necessary records not only relating to his ownership but also regarding his possession. It is implicit, that the owner having a title to the property, if he can satisfy the licensing authority with regard to his possession also, will indeed be in 'lawful possession', although the word 'lawful' is not used in the first part. It is in that context that the word 'possession' is even not necessary to be qualified by 'lawful' in the first part of Rule 13. If, however, the applicant for the licence is not the owner, there is no question of his showing title to the property and the only requirement of the law is to produce to the satisfaction of the authority documentary evidence with regard to his lawful possession of the property. The word 'lawful', therefore, naturally assumes significance in the second part while it was not even necessary in the first part. The fact that after expiry of the lease the tenant will be able to continue in possession of the property by resisting a suit for eviction, does not establish a case in law to answer the requirement of lawful possession of the property within the meaning of Rule 13. Lawful possession cannot be established without the concomitant existence of a lawful relationship between the landlord and the tenant. This relationship cannot be established against the consent of the landlord unless, however, in view of a special law, his consent becomes irrelevant. Lawful possession is not litigious possession and must have some foundation in a legal right to possess the property which cannot be equated with a temporary right to enforce recovery of the property in case a person is wrongfully or forcibly dispossessed from it. This Court in Lallu Yeshwant Singh case had not to consider whether judicial possession in that case was*

*also lawful possession. We are clearly of opinion that juridical possession is possession protected by law against wrongful dispossession but cannot per se always be equated with lawful possession."*

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*It is also seen from Annexure R-6 (page 33 of the paper book Vol. II) which is a notice sent by the landlord's advocate to the tenant-the appellant herein on 21.2.1997 wherein it has been clearly stated in paragraphs 2, 3 and 4 which read as under :*

*"You were a tenant under my client in the property described in the schedule hereunder. My client states that as the period of lease expired on 30.9.1996 by agreement, my client had issued a notice dated 24.8.1996 determining the lease and directing you to vacate and handover possession of the schedule mentioned property. My client states that after the determination of lease your possession amounts to that of a trespasser and you are liable to pay compensation which is to be determined after your vacating the premises.*

*My client states that subsequent to the notice dated 24.8.1996, you have chosen to send three Banker's cheques dated 30.11.1996, 24.12.1996 and 29.1.1997, each for Rs. 4500/-. My client states that he had not consented for your continued possession of the schedule mentioned property in any manner. Hence my client apprehends that the banker's cheques being sent are a ruse to create the appearance of continuation of tenancy.*

*Hence take notice that my client will encash the banker's cheques already sent by you and any that might be sent in future under protest and that*

*the payments made by way of such cheques will be adjusted towards the compensation payable by you and take notice that encashments of any cheques already issued and that might be issued in future should not be treated or considered as consent from my client for your occupying the schedule mentioned property."*

*We are, therefore, of the opinion that mere acceptance of rent by the landlord, the first respondent herein, from the tenant in possession after the lease has been determined either by efflux of time or by notice to quit would not create a tenancy so as to confer on the erstwhile tenant the status of a tenant or a right to be in possession. We answer this issue accordingly.*

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*Interpretation of Rule 153 by the learned senior counsel appearing for the appellant, in our opinion, has no merits. The word "right" used in Rule 153(1) of the Petroleum Rules, 1976 only means a legal right to continue on the land. It is seen from the judgments referred to in this appeal by us clearly hold that the term "juridical possession" or "litigious possession" do not connote a valid legal right to continue in possession within the meaning of Rule 153 of the Petroleum Rules, 1976. We are, therefore, of the opinion that the occupation without consent is wrongful occupation. This Court had occasioned to interpret the expression lawful possession, its meaning, nature and significance in the case of M.C. Chockalingam and Ors. v. V. Manickavasagam and Ors., 1974 RCR(Rent) 242 (SC) : (1974)1 SCC 48. The special significance in the context of Section 5(1) of the Madras Cinemas (Regulations) Act, 1955 was also considered by this Court. The main question was whether a tenant, who is not a statutory tenant, is entitled to claim to be in lawful possession of the premises on determination of the tenancy, on expiry of the lease. This Court*

*interpreted Rule 13 in paragraph 15 of the judgment which is reproduced hereunder :*

*"Para 15 - Turning to Rule 13, even in the first part if the applicant for the licence is the owner of the property he has to produce before the licensing authority the necessary records not only relating to his ownership but also regarding his possession. It is implicit, that the owner having a title to the property, if he can satisfy the licensing authority with regard to his possession also, will indeed be in 'lawful possession', although the word 'lawful' is not used in the first part. It is in that context that the word 'possession' is even not necessary to be qualified by 'lawful' in the first part of Rule 13. If, however, the applicant for the licence is not the owner, there is no question of his showing title to the property and the only requirement of the law is to produce to the satisfaction of the authority documentary evidence with regard to his lawful possession of the property. The word 'lawful', therefore, naturally assumes significance in the second part while it was not even necessary in the first part. The fact that after expiry of the lease the tenant will be able to continue in possession of the property by resisting a suit for eviction, does not establish a case in law to answer the requirement of lawful possession of the property within the meaning of Rule 13. Lawful possession cannot be established without the concomitant existence of a lawful relationship between the landlord and the tenant. This relationship cannot be established against the consent of the landlord unless, however, in view of a special law, his consent becomes irrelevant. Lawful possession is not litigious possession and must have some foundation in a legal right to possess the property which cannot be equated with a temporary right to enforce recovery of the property in case a person is wrongfully or forcibly dispossessed*

*from it. This Court in Lalu Yeshwant Singh's case (supra) had not to consider whether juridical possession in that case was also lawful possession. We are clearly of opinion that juridical possession is possession protected by law against wrongful dispossession but cannot per se always be equated with lawful possession."*

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*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 and Ors. v. V. Manickavasagam and 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 and Ors. v. Himatlal Jamnadas Dani and 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."*

The Hon'ble Supreme Court reiterated the law laid down in **C.Albert Morris's case** (supra), while allowing the appeal of Delhi Development Authority by its recent judgment dated 12.4.2016 and the operative part of the judgment in the case of **Delhi Development Authority** (supra), which aptly applies to the facts of the case in hand, reads as under:-

*"For the aforesaid reasons this appeal is allowed, the impugned judgment and decree of the High Court affirming the judgments and decrees of the First Appellate Court and the Trial Court in RCA No. 75 of 1982 and OS No. 47 of 1975 respectively, is hereby set aside. Accordingly, We pass the following order-*

*A. The DDA is allowed to take the possession of the property in question immediately and dispose of the*

*same in accordance with the provisions of the DD Act read with the relevant Rules in favour of an eligible applicant by conducting public auction, if it intends to dispose of the property.*

*B. The DDA is entitled for the recovery of damages from both, the original lessee or his legal heirs and the respondent, for the period of their unauthorised occupation of the property at the market rate prevalent in the area.*

*C. The amount which has been deposited, with the DDA, by the respondent as conversion charges is to be adjusted towards the damages that may be determined by the DDA in accordance with law.*

*D. The costs of L 1 lakh is awarded to the DDA, payable by the respondent for these proceedings.”*

A bare perusal of the impugned order dated 24.4.2015 passed by the Collector, Hisar, would make it crystal clear that before ordering the eviction of the petitioner, learned Collector recorded very cogent findings, which have been found based on sound reasons and the impugned order of eviction deserves to be upheld. The relevant part of the impugned ejectment order (Annexure P-21), which deserves to be noticed here and available at page 114 of the paper-book, reads as under:-

*“From the perusal of the record available on file, it is clear that the respondents are in possession of the land in dispute beyond 31.12.1977 in context of the period mentioned in the lease deed No.2718 dated 21.11.1968 and they have not even paid lease money beyond 31.12.1977, therefore, the respondents come under the definition of encroachers being in illegal possession without any valid agreement. Besides this, the counsel for the respondents has not produced any cogent evidence in favour of the respondents but has prolonged the case by giving unnecessary applications and the respondents*

*remained fail to prove that as to under which agreement, they have been holding possession of the land beyond 31.12.1977. P.P. Act is a summary proceedings, the evidence of both the parties in this case has been completed. It is pertinent to mention here that the case is running since 35 years and the respondents have been possessing the land under Petrol Pump for 35 years illegally and have been earning huge profit by running Petrol Pump. Therefore, I, in exercise of the powers vested to me under sections 5(1) and 7 of the Haryana Public Premises and Lands (Eviction and Rent Recovery) Act, 1972, hereby order against the respondents to vacate the illegal possession of the land mentioned in registered lease deed No.2718 dated 21.11.1968 having measurement 136'-3", 84'-3", 120'-0", 54'-0", 32;-7" (North – Cremation Ground Road, South – Bus Stand, East – Bus Stand, West – Bus Stand) within a period of one month and to hand over the same to the applicant No.2 and also to pay damages for use and occupation of the land under illegal possession @ Rs.100/- per day from 31.12.1977 till handing over the vacant possession of the land to the applicant No.2. On failure of the respondents to do so or in case of denial or evasion from compliance of this order within stipulated period, the General Manager, Haryana Roadways, Hisar is fully empowered to get the possession of the land in dispute in terms of the instructions issued by the Government of Haryana, Revenue and Disaster Management Department vide Notification dated 12.08.2008. A copy of this order be affixed on the Public Premises or the land on which the Public Premises is situated so as to be conspicuously appeared. The case file be consigned to record room after due compliance."*

The case was reconsidered by the learned Commissioner, Hisar Division, Hisar, while dismissing the appeal filed by the petitioner, vide his impugned order dated 14.9.2016 (Annexure P-23). Each and every relevant aspect of the matter was not only discussed in detail but was also

appreciated in correct perspective. The relevant operative part of the impugned appellate order passed by the learned Commissioner, Hisar Division, Hisar, also deserves to be noticed and the same reads as under:-

*“Sixteenthly, the original lease document signed in October, 1968 clearly mentioned that in case of breach of any terms by the lessee, the lesser will have the site vacated at the cost of lessee without any refund. And as per para-3 of the said 1968 lease, it was clearly written that after expiration of lease period, the lessee shall deliver vacant possession of the site after removing all building structures and shall not claim any compensation thereof. However, in blanket violation of said terms and conditions, not only appellants refused to relinquish the possession, but they continued to occupy it for almost 4 decades without payment of any money to the government and they continued to commercially exploit it for their personal gains. As per principle of Jure Naturae Aequum Est Neminem Cum Alterius Detrimento Et Injuria Fieri Locupletiores, it is law of nature that no one should be enriched by causing loss or injury to another party. So, appellant is liable to be ejected solely on this ground also.*

*“In the light of discussion made from para-19 to para-65, there is no merit in any argument or any pleas of appellant. Suit land is public premises land and after expiry of lease, appellants and private respondents are in unauthorized possession as per section 3 of the Act. The defense of section-5 (2) of the Burmah Shell (Acquisition etc.) Act, 1976 is not available, as there is no specific desire of Government of India and even if Government of India expresses desire, then also it can be renewed only once. Appellants are seeking 4<sup>th</sup> time renewal after promulgation of Burmah Shell Act, 1976 and also seeking perpetual renewal thereafter. So, there is no question of perpetual tenancy. The Collector, Hisar had the jurisdiction under the Haryana Public Premises and Land (Eviction & Rent Recovery) Act. Appellants have only tried to*

*bombard this court by beyond pleading arguments and authorities beyond pleading as well as beyond argument. All of them are any way considered and rejected in above para-22 to 65. Nobody can be allowed to commercially exploit the government land perpetually for almost 4 decades without any payment, after expiry of lease.*

*Therefore, there is no merit in both the appeals and the same are dismissed.*

*The Collector has ordered only Rs.100/- per day as use and occupation charges, which is quite nominal money after 4 decades. So, in order to provide justice to both sides and balance the interest of both sides, 14% interest for commercial exploitation is also added from the date of expiry of lease to the date of payment, compounded on yearly basis for every year of use and occupation charges, although the use and occupation amount is not increased even after 4 decades of litigation. The file may be consigned to record room. Lower Court's record is returned.”*

A combined reading of both the above-said impugned orders would leave no manner of doubt that none of the respondent authorities have committed any error of law, while passing their respective orders. Petitioner had no case either on facts or in law. It had been illegally continuing in possession over the demised premises, for a long period of about four decades and had been using the demised premises for its commercial purposes.

During the course of hearing, learned senior counsel for the petitioner could not point out any patent illegality or perversity in either of the impugned orders. As a matter of fact, he did not raise any argument on the merits of the case, except the four above noted arguments which were based only on technicalities. Further, no prejudice of any kind, whatsoever, has been pointed out, which might have been caused to the petitioner by

passing the impugned orders, warranting interference, at the hands of this Court, while exercising its writ jurisdiction under Articles 226/227 of the Constitution of India.

Conduct of the parties to the litigation is also very important and relevant. In the instant case, conduct of the petitioner corporation, it being a Government Undertaking, was totally uncalled for, because of which, the present one has been found an avoidable litigation and the instant writ petition is liable to be dismissed with costs. Petitioner, with a view to continue in illegal possession, by way of this dishonest litigation, wasted enough judicial time for about 40 long years.

The above-said view taken by this Court for imposing costs is supported by the judgments of the Hon'ble Supreme Court in **Ramrameshwari Devi and others Vs. Nirmala Devi and others, 2011 (8) SCC 249, State of Haryana Vs. Mukesh Kumar and others, 2011 (10) SCC 404 and M/s P.G.F. Ltd. & Others Vs. Union of India and another, 2015 (13) SCC 50** as well as by the judgments of this Court in **Dr. Shyam Lal Thukral Vs. State of Punjab and others, 2014 (5) RCR (Civil) 912, M/s Sciemed Overseas Inc. Vs. BOC India Limited and others, 2016 (3) SCC 70 and Amanpreet Singh Vs. Chairman Punjab State Power Corporation Ltd. and others, 2014 (1) RCR (Civil) 694.**

The relevant observations made by the Hon'ble Supreme Court in paras 54 to 57 of its judgment in **Ramrameshwari Devi's** case (supra), read as under:-

*While imposing costs we have to take into consideration pragmatic realities and be realistic what the defendants or the respondents had to actually incur in contesting the litigation before different courts. We have to also broadly take into*

*consideration the prevalent fee structure of the lawyers and other miscellaneous expenses which have to be incurred towards drafting and filing of the counter affidavit, miscellaneous charges towards typing, photocopying, court fee etc.*

*The other factor which should not be forgotten while imposing costs is for how long the defendants or respondents were compelled to contest and defend the litigation in various courts. The appellants in the instant case have harassed the respondents to the hilt for four decades in a totally frivolous and dishonest litigation in various courts. The appellants have also wasted judicial time of the various courts for the last 40 years.*

*On consideration of totality of the facts and circumstances of this case, we do not find any infirmity in the well reasoned impugned order/judgment. These appeals are consequently dismissed with costs, which we quantify as Rs. 2,00,000/- (Rupees Two Lakhs only). We are imposing the costs not out of anguish but by following the fundamental principle that wrongdoers should not get benefit out of frivolous litigation.*

*The appellants are directed to pay the costs imposed by this court along with the costs imposed by the High Court to the respondents within six weeks from today.”*

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Neither any other argument was raised nor any contrary judgment was brought to the notice of this Court.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the instant writ petition is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

Keeping in view the peculiar facts and circumstances of the

case noticed hereinabove, present writ petition is liable to be dismissed with costs which are quantified at Rs.50,000/- (Rupees fifty thousand only). Any lesser amount of costs would be wholly unjustified, as the petitioner has been continuing in unauthorised possession over the demised premises, for an inordinate long period of about 40 years and had been using the land in question for commercial purposes.

Resultantly, with the above-said observations made, the present writ petition stands dismissed, with costs, as indicated above.

**07.11.2016**  
**mks**

**(RAMESHWAR SINGH MALIK)**  
**JUDGE**

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No