

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

WRIT PETITION NO.78 OF 2017

M/s. Wejays Enterprises, Jalgaon
Through its Partner,
Sanjay Jaykrishna Love,
Age:38 years, Occu.: Business,
R/o.: 'Swatik' 5/B,
Mahabal Housing Society,
Behind People's Co-operative Bank,
Mahabal Colony,
Jalgaon Tq.& Dist. Jalgaon.

...PETITIONER

VERSUS

1. The State of Maharashtra,
Through Secretary
Home Department
Mantralaya, Mumbai – 32,
2. Shri Panjarpol Sanstha, Jalgaon,
Through its President
Vijaykumar Ramchandra Kabra
Age: 60 years, Occu.: Business,
R/o. 570, Vitthal Peth, Jalgaon,
Tq. & Dist. Jalgaon,
3. Indian Oil Corporation Ltd.,
A Body corporate having
registered office,
Indian Oil Bhavan,
Bandra Kurla Complex,
Bandara West
Mumbai – 400 001,
Through its General Manager

...RESPONDENTS

Mr. Shailesh P. Brahme, Advocate for Petitioner/s

Mrs.AV Gondhalekar, AGP for Resp.No.1-State.;

Mr.GV Wani, Adv. For Resp.No.2;

Mr.Anand Bhandari, Adv. For Resp.No.3.

CORAM : R.M.BORDE &
P.R.BORA,JJ.

DATE : 14th MARCH,2017.

ORAL JUDGMENT (PER:-R.M.BORDE,J.)

1) Rule. Rule made returnable forthwith. With the consent of parties, the petition is taken up for final disposal at the admission stage.

2) The petitioner was operating the petrol pump allotted by Respondent No.3 – Indian Oil Corporation at Jalgaon, Tq. and District Jalgaon. Respondent No.3 is lessee whereas the plot allotted in favour of Respondent No.3 for setting up the retail petroleum sale unit is owned by Respondent No.2-society. There was proceeding initiated by Respondent No.2 against Respondent No.3 society for recovery of possession of the leasehold premises. The proceeding initiated by Respondent No.2 resulted in grant of decree for eviction directed against Respondent No.3 and in execution of the decree; the possession of the

premises has been taken over by Respondent No.2.

3) The petitioner contends that he was operating the petrol pump on behalf of Respondent No.3-Corporation and in execution proceeding initiated by Respondent No.2, the possession of the premises has been taken over together with the stock of petroleum products as well as other infrastructure erected on the plot in question.

4) The instant petition is only confined to the issue of handing over the stock of petroleum products stored at the plot/tenanted premises, which was let out in favour of Respondent No.3-Corporation. The petitioner further contends that at the time of recovery of the possession of the premises, there was a stock of approximately 2,121 liters of petrol and 4035 liters of diesel stored at the premises. As a result of taking over the possession of the premises by Respondent No.2, the petitioner is not in a position to sell the stock of petroleum products. The petroleum products being highly inflammable and it would be unsafe and hazardous to permit Respondent Nos. 2 and 3 to store the stock of the petroleum

products at the tenanted premises and there is every likelihood of occurrence of an accident or mishap, if the petroleum stock remained idle. It is, therefore, desirable to permit the petitioner to take possession of the petroleum stock and dispose of the same within specified time frame.

5) This Court while issuance of notice on 27.1.2017, issued directions to Respondent No.3 – Corporation to take sample of the petroleum products so as to ensure as to whether the stock is disposable and can be sold to the customers.

6) An affidavit in reply has been filed on behalf of Respondent No.3 Corporation, wherein it has been stated that the samples of petroleum products were taken and those were got tested in the laboratory and it was found that the samples of the petroleum products meet the requisite specifications. A copy of the Test report dated 2.3.2017 is also placed on record. It would, therefore, be permissible for the petitioner to sell the petroleum products in open market.

7) The counsel appearing for Respondent No.2 has no serious objection for permitting the petitioner to enter the subject premises owned by Respondent No.2 for a limited purpose of disposing the stock of petroleum products. Respondent No.3 – Corporation also does not have any objection if the petitioner is allowed to sell the stock of the petroleum products in open market through the retail outlet which was operating prior to taking over the possession of the premises.

8) In the circumstances, this Court deems it appropriate to permit the petitioner to dispose of the stock of petroleum products stored at the premises owned by Respondent No.3 by selling the same in open market through retail outlet which was operated prior to taking over of the possession by Respondent No.2, within two months from today and it is accordingly directed.

9) The petitioner shall ensure disposal of the stock of petroleum products stored at the premises owned by Respondent No.2 within two months from today.

10) The petitioner undertakes that he will enter the premises only for the purpose of selling the stock of the petroleum products and will not claim any other right or entitlement in respect of the premises in question.

11) The counsel appearing for Respondent No.3 contends that the petition/proceedings have been initiated before the Appellate forum, challenging the decision of the trial court, granting decree of eviction against the Respondent No.3-corporation. It would be open for Respondent No.3 to pursue the remedy already availed of by the concerned Respondent.

12) It is clarified that this Court has not considered the contentions of the respective parties touching the merits and it would be open for the Appellate forum to deal with the aspects arising before it in accordance with the provisions of law.

13) Rule is made absolute to the extent as specified above. There shall be no order as to

costs.

(P.R.BORA)
JUDGE

(R.M.BORDE)
JUDGE

bdv/