

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6923 OF 2016

Vimal Sudarshan Bafna
Age 53 years, Occ. Household
Through her Power of Attorney
Holder Sudarshan Zumbarlal
Bafna, age 57 years,
Occ. Trader, R/o Shrirampur,
District Ahmednagar.

..Petitioner

Versus

1. The State of Maharashtra
Through Principal Secretary
Revenue & Forest Department,
Mantralaya, Mumbai 400 032.

2. The Divisional Commissioner
(Revenue), Nashik Division,
Nashik.

3. The District Magistrate /
Collector, Ahmednagar.

4. Hindustan Petroleum
Corporation Limited, through
it's Senior Regional Manager,
Regional Office, Plot No.39,
Town Centre, G Sector,
Cidco, Aurangabad 431003.

5. Shrirampur Taluka Sahakari
Kharedi Vikri Sangh Limited,
Through Ashok Sahakari
Sakhar Karkhana Ltd.
Ashok Nagar, Tq. Shrirampur,
District Ahmednagar, through
Personal Manager
Shri Lav Shankarrao Shinde.

..Respondents

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Advocate for Petitioner : Shri Patil Pradip R.
AGP for Respondents 1 to 3 : Shri Tambe S.K.
Advocate for Respondent 4 : Smt. Bajpai Anjali

Advocate for Respondent 5 : Shri Karpe Rahul

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WITH
WRIT PETITION NO. 6924 OF 2016

Vimal Sudarshan Bafna
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Through her Power of Attorney
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Advocate for Respondent 4 : Smt. Bajpai Anjali

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CORAM : RAVINDRA V. GHUGE, J.
Dated: June 14, 2017

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ORAL JUDGMENT :-

1. Heard.
2. Rule.
3. By consent, Rule is made returnable forthwith and the petitions are taken up for final disposal.

WRIT PETITION NO. 6923 OF 2016

4. The petitioner is aggrieved by the order dated 30.1.2016 passed by respondent No.2 / Divisional Commissioner (Revenue), Nasik, by which Nasik Appeal No.24 of 2016 instituted at the behest of respondent No.5 and 25 of 2016 filed by respondent No.4 have been allowed and the order of the District Collector, dated 3.11.2015 has been set aside.

5. I have considered the extensive submissions of the learned Advocates for the respective sides.

6. The petitioner has placed reliance upon the following judgments:-

- (a) C. Albert Morris Vs. K. Chandrasekaran and others [(2006) 1 SCC 228] and
- (b) Baba and Company, Nellore Vs. Hindustan Petroleum Corporation Ltd. [ALT-2012-2-535]
- (c) S V Matha Prasad V/s Bharat Petroleum Corporation Ltd., Laws (Mad)-2011-3-120.

7. The undisputed factors that emerge from these proceedings in the light of the record and the submissions of the learned Advocates are as under:-

(i) The location of the site at issue is CTS No.1854-A, admeasuring 14850 sq. ft. within Municipal Council limits of Shrirampur, District Ahmendagar.

(ii) The original owner of the said property was Sagunabai Gopalrao Mokashi, who entered into a lease deed with Standard Vacuum Oil Co. on 23.6.1954. The lease period started from 1.2.1954 and lasted till 31.1.1984.

(iii) It was renewed for a further period of 30 years as is provided in the lease agreement by way of a voluntary extension clause, upto 31.1.2014.

(iv) A RCS No.553 of 1985 was filed by the original landlord

under the Bombay Rent Act seeking eviction and possession of the suit property.

(v) Original landlord, who had a lease deed with Standard Vacuum Oil Company, had sold the property to Kesharmal Kankariya during the pendency of the suit.

(vi) Shri Kankariya passed away on 16.1.2011. Prior to his death he bequeathed the property by a will deed to the petitioner.

(vii) The petitioner approached the District Collector of Ahmednagar under Rule 150 of the Petroleum Rules, 2002 for seeking revocation of the no objection granted to HPCL by the Collector, by proceeding dated 31.7.2014.

(viii) By order dated 3.11.2015, respondent No.3 / District Collector allowed the application of the petitioner and concluded that the no objection certificate deserves to be recalled.

(ix) Respondent Nos.4 and 5 approached respondent No.2 / Appellate Authority on 16.11.2015 by filing an appeal under

Section 154(2) of the Petroleum Act, 1934 and the Rules framed thereunder.

(x) By order dated 30.1.2016, the appellate authority has set aside the order of the District Collector and has restored the no objection certificate granted to respondent No.4 HPCL.

8. Shri Patil, learned Advocate for the petitioner submits that respondent No.4 could not have continued to store petroleum products in the concerned premises unless a lease existed between the landlord and respondent No.4. In the absence of a lease, respondent No.4 would not have the legal right to use the said premises for the purpose for which it was leased out for the first time in 1954. He specifically places reliance upon paragraph Nos.33 and 34 of the judgment of the Honourable Apex Court in the case of C. Albert Morris (supra). He also placed reliance upon paragraph Nos.6 to 8 of the judgment in the Baba and Company Case (supra) and S.V.Matha Prasad (supra).

9. The learned AGP appearing on behalf of respondent Nos.1 to 3 submits that the petitioner has not pointed out any error or perversity in the impugned order and hence, this petition be dismissed with costs.

10. The learned counsel for respondent No.4 / HPCL has strenuously contended that the location at issue has been surreptitiously sold out by the original landlord. Respondent No.4 could not be kept in the dark if the said property was to be sold out keeping in view the lease agreement between the two sides. The Civil Suit preferred by the original landlord has been dismissed in default on 5.4.2016, by virtue of which, the right, title or interest of the petitioner is not crystallized.

11. It is further submitted that once no objection certificate is issued by respondent No.3 / Collector, the said certificate cannot be withdrawn or recalled unless there are strong reasons and unless it is established that the grant of the no objection certificate was illegal. Without coming to such a conclusion, the Collector could not have withdrawn the NOC and hence, the appellate authority has rightly set aside the order of the Collector.

12. It is then submitted that once the suit has been dismissed in default, it needs to be presumed that the landlord or successor in interest does not have the desire of evicting respondent No.2. It is, therefore, contended that the observations of the appellate authority in paragraph No.12 do not call for any interference and cannot be termed as being perverse.

13. Respondent No.5 in this matter is a cooperative society, which is already in liquidation. Shri Karpe, learned Advocate has strenuously contended that since the said society is operating the petrol pump in the property at issue, certain civil rights under the law of contract have accrued to respondent No.5. The dispute would not halt at the end of respondent No.4 / HPCL. Respondent No.5 has an interest in the said dispute and hence has rightly preferred an appeal before the appellate authority. HPCL had also preferred an identical appeal and the appellate authority has therefore, concluded that the Collector had committed an error in withdrawing the NOC. He further submits that neither the Collector nor the appellate authority have any reason to go into the aspect as to who has the right, title or interest in the property at issue since it is beyond their jurisdiction. He, therefore, prays that this petition be dismissed with heavy costs.

14. While considering the above contentions of the litigating sides, it cannot be ignored that respondent No.5 / Society had filed its written statement in the Civil Suit filed by the original landlord Sagunabai Gopalrao Mokashi. It was specifically averred that respondent No.4 Society is unconcerned and unconnected with the dispute and as such has been unnecessarily arrayed as a defendant. So also, respondent No.4 / HPCL had submitted a say on the application for adding respondent No.5 / Society as a party and

contended that respondent No.5 was unconcerned and unconnected with the suit premises.

15. It is stated by the learned Advocate that respondent No.4 / HPCL was paying the rent through the petitioner to the original plaintiff by depositing the said amount in the trial Court. After the suit has been dismissed in default and since the petitioner is not accepting the rent, HPCL is no longer paying the rent of the property at issue, though the property is in its possession.

16. I find that the issue as to what are the factors that are to be taken into consideration by the Collector, while sustaining the NOC is no longer *res integra* in the light of the observations of the Honourable Supreme Court in paragraph Nos.43 and 44 of the judgment in the case of C. Albert Morris (supra). It would be apposite to reproduce the said conclusions hereunder:-

“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 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.

21. *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.”*

17. In the C. Albert case (supra), HPCL was a party to the proceedings. Issue was that the lease had expired and the landlord had declined to renew the same and had called upon the tenant to surrender the possession. It is concluded by the Honourable Apex Court that in such a situation, the erstwhile lessee would have no

right to assert it's possession and could not canvass a right to the site. The law laid down earlier in *M.C.Choklingam (supra)* and *Bhavanji (supra)* was also considered. It is, therefore, settled that a new tenancy would be created only if the landlord agrees to the continuance of the earlier lease with the erstwhile lessee and if the landlord consents to the same and commences acceptance of rent, during the continued possession of the erstwhile tenant, the said lessee would have a right to occupy the said premises.

18. The Honourable Apex Court further held that the District Collector was unconcerned as regards the ownership or title of the property at issue. He is not empowered to consider as to who is the actual owner of the property. If the lease agreement between the lessee and the landlord is not continued or is not extended, the lessee would lose the right to the site and would not be entitled to hold the site unless the license is renewed.

19. In the Baba and Company's case (*supra*), HPCL was a respondent in the proceeding. It was canvassed that as the NOC was granted by the Collector, HPCL would have a right to store petroleum products in the said premises. Rule 154 of the said Rules were taken into account. Rule 154 reads as under:-

“154. Appeals :- (1) An appeal shall lie against any order

refusing to grant, amend or renew a licence or cancelling or suspending a licence to-

(i) the Central Government, where the order is passed by the Chief Controller;

(ii) the Chief Controller, where the order is passed by a Controller;

(iii) the immediate official superior to the District Authority, where the order is passed by the District Authority;

(iv) the immediate official superior to officer appointed under rule 33 in the case of vessels licensed for the carriage of petroleum in bulk.

(2) An appeal against any order of the District Authority refusing to grant or cancelling a no-objection certificate shall lie to the authority which is immediately superior to the said District Authority.

(3) Every appeal shall be in writing and shall be accompanied by a copy of the order appealed against and shall be presented within sixty days of the order passed.

(4) The Appellate Authority shall dispose of the appeal within 60 days of the receipt of the appeal."

20. It is quite obvious that in the case in hand, the District Collector, while granting NOC, had not scrutinized as to whether the

lease agreement in between HPCL and the landlord was extended or continued. The NOC was granted apparently without having the knowledge as to whether the lease agreement is continued. The NOC granted could be cancelled under Rule 150 which reads as under:-

“ 150. Cancellation of no-objection certificate. - (1) A no-objection certificate granted under rule 144 shall be liable to be cancelled by the District Authority or the state Government, if the District Authority or the state Government is satisfied, that the licensee has ceased to have any right to use the site for storing petroleum:

Provided that before cancelling a no-objection certificate, the licensee shall be given a reasonable opportunity of being heard.

(2) A District Authority or a State Government cancelling a no-objection certificate shall record, in writing, the reasons for such cancellation and shall immediately furnish to the licensee and to the licensing authority concerned, copy of the order cancelling the no-objection certificate.”

21. To a pertinent query posed to the learned counsel for HPCL and respondent No.5 Society, as to whether HPCL can be said to have a right to use the site for storing petroleum products without any lease agreement, the learned counsel in fairness have stated that the law may not justify or recognize such a use.

22. The Andhra Pradesh High Court has observed in paragraph Nos.6 to 8 in the Baba and Company case (supra), as under:-

“6. In this writ petition, it is contended by Sri C.V. Mohan Reddy, learned Senior Counsel appearing for petitioner that originally, the site in question was leased out by the original owner Mrs. Nasimunnisa Begum for a period of 10 years from 1956 to 1966, and thereafter, it was extended from 1966 to 1974, pursuant to the lease deed executed on 12.07.1968. Further, the Statutory option was exercised by the 1st respondent-Corporation and leasee was extended from 01.11.1974 to 31.10.1982 on a monthly rent of Rs.300/-, and thereafter, though there was no lease deed, respondents have claimed lease pursuant to the option exercised under the provisions of ESSO (Acquisition of Undertakings in India) Act, 1974, pursuant to their letter, dated 25.10.1982. It is contended by the learned Senior Counsel that even according to the respondents, there is no lease for the period beyond 24th October 1990, and possession of respondents over the property in question is unlawful and illegal. It is submitted that in view of the death of original owner, said property was succeeded by her daughter in view of the gift settlement deeds executed by her brothers and the said piece of land was sold to the petitioner as early as on 29.12.2001 for valuable consideration by way of registered sale deeds. As much as there is no valid lease with effect from 24.10.1990, there is no reason for the respondents for not vacating the premises by handing over possession to the petitioner. It is submitted that the respondents have illegally continued in possession even without paying rents either to the vendor of the petitioner or to the petitioner. It is further submitted that

for storing the petroleum products, even the No Objection Certificate obtained by the respondents as contemplated under Rule 144 of the Petroleum Rules of 2002 framed under the Petroleum Act, 1934, is also cancelled on the application filed by the petitioner, and in that view of the matter, there appears no reason at all for not vacating the premises and handing over possession to the petitioner, who is a bona fide purchaser for valuable consideration. It is submitted by the learned counsel that though the possession claimed by the respondents is pursuant to initial contract of lease, in view of the undisputed facts, the petitioner can seek the relief even in this petition filed under Article 226 of the Constitution of India. The learned Senior Counsel, in support of his arguments, has placed reliance on the judgments of Supreme Court in the case of C. Albert Morris Vs. K. Chandrasekaran and others : (2006) 1 SCC 228, in Hindustan Petroleum Corporation Ltd & another Vs. Dolly Das : (1999) 4 SCC450, in ABL International Ltd & another Vs. Export Credit Guarantee Corporation of India Ltd & others and in Noble Resources Ltd. Vs. State of Orissa & another : (2006) 10 SCC 236, and also on a judgment of a learned Single Judge of this Court in W.P.No. 22721 of 1998 and batch, dated 25.07.2001.

On the other hand, it is argued by the learned counsel appearing for the 1st respondent-Hindustan Petroleum Corporation Ltd., and also the learned counsel appearing for the 4th respondent- M/s. Southern Trade Corporation, that the writ petition filed by the petitioner is not at all maintainable, having regard to the nature of relief sought for. It is submitted that the respondents came into possession pursuant to the contractual obligations by entering into lease

with the predecessor in title to the petitioner, and in that view of the matter, to seek delivery of possession, petitioner has to approach the common law court, but he cannot seek any relief in this writ petition filed under article 226 of the Constitution of India. It is submitted that in view of several factual disputes, the petitioner is not entitled for any relief in this writ petition.

At the outset, in this case, it is to be noticed that the petitioner's claim of succeeding to the title from Mrs. Nasimunnisa Begum, who is the initial lessor of respondents, is not in dispute. The respondents came into possession pursuant to a lease granted by the predecessor in title to the petitioner Mrs. Nasimunnisa Begum, initially for a period of ten years i.e. from 1956 to 1966, to run a retail petroleum outlet. Even as per the averments made in the counter affidavit, lease was renewed from 01.11.1966 to 31.10.1974 on a monthly rent of Rs.250. A, pursuant to the lease deed, dated 12.07.1968. It is further stated that as per the option clause in the lease deed, the lease period was further extended from 01.11.1974 to 31.10.1982 on a monthly rent of Rs.300/-. The Hindustan Petroleum Corporation Ltd. is a Statutory Corporation formed under the provisions of the ESSO (Acquisition of Undertakings in India) Act, 1974 and it is a Government Company. After the said enactment, in view of the Statutory option exercised by the respondents, they claim extension of lease pursuant to the letter, dated 25th October 1982, for a further period of eight years. In that view of the matter, even by extending the benefit of Statutory option also, the lease period for the land in question is expired by 24th of October 1990.

7. *The petitioner herein claims title from the daughter of the original lessor by name Mrs. Shaheen Altaf Pasha. As the original owner died leaving the vendor of the petitioner and other sons, the sons of original owner have executed registered gift deeds in favour of the only daughter of Mrs. Nasimunnisa Begum i.e. Mrs. Shaheen Altaf Pasha, and the petitioner has acquired title to the aforesaid land by registered sale deeds executed by the said daughter of the original owner.*

Undisputedly, there is no lease in force, in favour of respondents either from the predecessor in title to the petitioner or from the petitioner after his purchase, for any period beyond 24th of October 1990. It is also to be noticed that unless there is Statutory No Objection Certificate from competent authority, no licence can be granted to use any site for the purpose of storing petroleum products. In this case, pursuant to the original lease obtained by the respondents to run the retail outlet for petroleum products, licence was obtained by the respondents to run retail outlet for petroleum products, pursuant to the No Objection Certificate granted by the authority under the provisions of the Petroleum Rules, 2002, framed under the Petroleum Act of 1934. When the petitioner has filed an application for cancellation of such No Objection Certificate, the District Revenue Officer-cum-Additional District Magistrate, Nellore, vide proceedings in RC. No. C2(M)565/2006, dated 28.05.2007, has recorded a finding that in view of expiry of lease, the 1st respondent-licencee ceases the right to use the site for storing petroleum products, and accordingly, ordered for cancellation of NOC granted, in exercise of power under Rule

150 of the Petroleum Rules, 2002. In the counter affidavit filed by the respondents, they have disputed the findings recorded in the said order, but the fact remains that the order passed by the competent authority cancelling the NOC obtained by the respondents, has become final and is not subject matter of challenge before any other forum/any Court of law. In that view of the matter, it is to be taken that there is no 'No Objection Certificate' as contained under the Petroleum Rules, 2002, in favour of respondents nor there is existing licence in their favour to run the petroleum outlet. It is the specific case of the petitioner that in the very nearby place to the site in question, the 1st respondent-Corporation is already running another petroleum outlet, and the same is also not disputed in the counter affidavit filed on behalf of respondents.

7. As evident from the counter, mainly it is the defence of respondents that the original owner has sold the property to the petitioner in violation of the terms of lease. The said averment is with regard to Clause 3(e) of the lease agreement, which reads as under :

"....that the landlord will not sell or agree to sell his/her title and interest in the premises hereby demised until the expiration of 30 days after he/she have given to the tenant notice of his/her intention to sell which notice will state the price at which landlord shall intend to sell."

Even a perusal of the said clause in the agreement shows that there is absolutely no prohibition for sale of property to third parties. In any event, even having come to know about the purchase of the aforesaid property by the petitioner pursuant

to the registered sale deeds, at no point of time, respondents have taken any steps either to enforce such a condition in the agreement or to question the validity of sale in favour of the petitioner. In that view of the matter, it is too late in the day for the respondents to defend possession even after the expiry of lease on such a term in the original lease deed as referred above. Therefore, this Court is of the view that the respondents cannot continue to be in possession inspite of transfer of title in favour of the petitioner, on the ground that such a covenant is there in the original lease deed executed by the predecessor in title to the petitioner.”

23. The law is, therefore, trite that the District Collector was not required to consider the pendency of the suit nor the issue of the title in the suit property. It was concerned with taking into account whether there is an existing license in favour of HPCL to continue to occupy the site for storing petroleum products in the light of Rules 150 and 154. If this is the position in law, the appellate authority could not have turned a blind eye to there being no license in favour of HPCL to continue to occupy the site and use it for storage of petroleum products. The law that applies to the proceedings before the Collector would certainly apply *Mutatis-Mutandis* to the appeal proceedings before the appellate authority.

24. The Madras High Court in the matter of S.V. Matha Prasad (supra) has relied upon the judgment of the Hon'ble Apex Court in

the case of C.Albert Morris (supra) and concluded that once a lessee has lost the lease hold right after termination of the lease or its non renewal, it cannot be considered to be as a lawful tenant. It is quite unfortunate that an instrumentality of the Government, in blatant violation of law and equity, squatted on the petitioner's property and such a trend should not be allowed to continue any further.

25. The Madras High Court then relied upon the observations of the Hon'ble Apex Court in BPCL Vs. Dolly Das [1994(4) SCC 458], which read as under :-

"14. Before parting with this case, we think it appropriate to observe that the Hindustan Petroleum Corporation is a Government Company on whom the Central Government by notification vested the right, title and interest and the liabilities of the foreign company called the Caltex Petroleum Corporation. The said Government Company is not entitled to forcibly occupy the leasehold property of the petitioner in the garb of exercising a right under the Act which right the Company does not possess, as discussed earlier. The rights of a citizen to hold its property cannot be abridged or infringed in the manner in which the Corporation has been forcing itself in the pretended exercise of a power referable to an enactment which it does not possess. The Court cannot be a mute spectator when it is brought to the notice that a public sector undertaking is exercising a colourable power or an arbitrary power which on the face of the statute it does not possess. A Government Company like the Hindustan Petroleum Corporation is not expected of forcibly occupying the property

of a citizen."

26. The Division Bench of the Madras High Court relied upon the observations of the Hon'ble Apex Court in the matter of HPCL Vs. Devaraj [2005 2 CTC 401], which read as under :-

"3. We are deeply distressed by the facts of this case. The appellant is a Public Sector Corporation and therefore was expected to behave like an ideal person, but in this case we find that it has been illegally retaining possession of the property in dispute for 16 years after 1989 when its lease had admittedly come to an end. These days, unfortunately, some people are illegally holding on to the property over which they have no right to continue in possession once the period of the lease or grant ceases to exist. This is most improper and cannot be appreciated by this Court, particularly since the appellant which is a Public Sector Undertaking must know how to respect the law.

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9. One would have expected that after 1989 the appellant herein like an honourable person would have vacated the suit property since its leasehold right ceased to exist after 1989. However, unfortunately, in our country, what is often seen is that people continue to remain in illegal possession of a property even for several years after their right to occupy the same ceased to exist. This practice has now become rampant in our country and the time has come when it must be curbed. An honourable person should vacate the property over which

his lease or licence has expired and hand over possession of the same on the date of expiry of the lease or licence to the landlord/owner unless there is a fresh mutual agreement which permits him to continue in possession. It is to be noted with deep distress that the appellant which is a well known Public Sector Undertaking has blatantly violated the law and continued in possession of the suit property for 16 years beyond the term of its lease. We are indeed very sad to note that a Public Sector Undertaking has behaved in this manner. In this country the rule of law prevails and Public Sector Undertakings are subordinate to law and not above the law. In this case, the appellant which is a Public Sector Undertaking has taken the law into its own hands, which was most unfortunate and unjustified."

27. The Madras High Court then in S.V.Matha Prasad case (supra) relied upon the law laid down by the Constitution Bench of the Hon'ble Supreme Court in the matter of The Moon Mills Ltd., Vs. M.R.Meher [AIR 1967 SC 1450] and concluded that a systematic failure on the part of a public agency to act with fairness and probity and such an agency being adamant to wrongfully and unfairly retain the possession, requires the Court to interfere with such action and pass orders to do substantial justice. The stubborn attitude of the Public Sector Undertakings in refusing to part with such a property in the absence of continuation of any lease would, therefore, be a good ground for passing appropriate orders.

28. Considering the above, I find that the impugned order of the appellate authority, dated 30.1.2016, is perverse and erroneous for being against the law laid down by the Honourable Apex Court.

29. This petition is, therefore, allowed in terms of prayer clause (A), which reads as under:-

“(A) By a writ of certiorari, orders or directions in the nature of certiorari, impugned judgment and order dated 30.1.2016 passed by the respondent No.2 Divisional Commissioner (Revenue), Nashik Division Nashik in Appeal No.24 of 2015 be quashed and set aside. (Exhibit "A", Page 22) and the judgment and order dated 31.10.2015/ 03.211.2015 passed by respondent No.3 District Magistrate, Ahmednagar (Exhibit "U", Page 101) be restored.”

30. Rule is made absolute in the above terms.

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31. Consequentially, the Writ Petition No.6924 of 2016, which was filed with reference to the Second Appeal filed by respondent HPCL before respondent No.2, also stands allowed and Rule is made absolute in the above terms.

(RAVINDRA V. GHUGE, J.)

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