IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 10.02.2017

CORAM

THE HONOURABLE MR. JUSTICE B.RAJENDRAN

W.P.No.7496 of 2015

1.G.Bhuvaneswari
2.J.Adilakshmi
3.R.Jawahar
4.R.Muthukrishnan .. Petitioners

Versus

The Senior Manager, Retail Sales,
Indian Oil Corporation Ltd.,
No.500, Anna Salai, Teynampet,
Chennai 600 018. .. Respondent

Petition has been filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondent to vacate and hand over the vacant possession of the property situated in S.No.274/4 Part of Velacherry Village, Mambalam-Guindy Taluk, Chennai (at present Door No.4, Tharamani-Velacheri Link Road, Velacherry, Chennai 42) to the extent of 6080 sq.ft.to the petitioners.

For Petitioners: Mr.Sathish Parasaran, Senior Counsel for Mr. M. Aravind Subramanian

For Respondent : Mr. R. Krishnamurthy, Senior Counsel for Mr.Abdul Saleem

O R D E R

The writ petition has been filed to issue a Writ of Mandamus directing the respondent to vacate and hand over the vacant possession of the property situated in S.No.274/4 Part of Velacherry Village, Mambalam-Guindy Taluk, Chennai (at present Door No.4, Tharamani-Velacheri Link Road, Velacherry, Chennai 42) to the extent of 6080 sq.ft.to the petitioners.

2. According to the petitioners, the respondent entered into a lease agreement with them in the year 2000 for running a petroleum retail outlet on the promise that dealership will be awarded to the petitioners and till such time they will be given the maintenance and handling (M & H) contract to the petitioners or their nominee. In view of such promise given by the

respondent, the petitioners have agreed to give the lease hold right of the land at a lower price. According to the petitioners, the lease agreement was executed on 23.02.2000 for fifteen years commencing from 1st March 2000 till 28.02.2015. On execution of such lease agreement, the respondent appointed a nominee of the petitioner as M & H Contractor to run the above retail unit. As a contractor, the petitioners also spent a sum of Rs.25 lakhs for establishing the retail outlet. While so, on 23.07.2014, the respondent issued an order terminating the M & H contract awarded to the petitioners. Challenging the same, the petitioners have filed WP No. 21685 of 2014 before this Court and by order dated 13.08.2014, this Court granted an order of status-quo.

3. It is the contention of the petitioners that in the lease agreement dated 23.02.2000 it was mutually agreed that if for any reason the lessee is not able to maintain the demised premises the lease would become null and void. Further, on the expiry of the lease period, the respondent shall remove the leasehold property and the petitioners are entitled to take back their properties. Thus, on the expiry of the lease period, the respondent has to handover the lese hold property and there was no provision for renewal. As per the lease agreement, the fifteen years period expired on 28.02.2015. Therefore, the respondent was bound to remove the entire materials from the lease hold property and to handover the vacant site to the petitioners. However, as the respondent did not honour the terms of the agreement, on 10.12.2014, the petitioners sent a notice to the respondent to remove the structures, pumps, vessels and other installations etc. on the expiry of the lease. The petitioners also filed a Original Suit in O.S.No.938 of 2015 on the file of XVI Assistant City Civil Court, Chennai seeking permanent injunction. While so, the respondent filed a Original Suit in O.S.No.1039 of 2015 before the City Civil Court, Chennai seeking mandatory injunction to renew the lease with effect from 01.03.2015. In the suit filed by the respondent, there was no interim order granted and it was pending. During the pendency of the suits, negotiations had taken place between the petitioners and the respondent in the office of the respondent regarding further renewal, however, the petitioners have not agreed for extending and/or renewing the lease. Thereafter, once again, by letter dated 28.01.2015, the petitioners asked the respondent to vacate and hand over possession. Inspite of the same, the petitioners failed and neglected to honour the terms of the lease agreement and therefore the present writ petition is filed.

4. The learned Senior counsel for the petitioners submitted that the respondent cannot, as a matter of right, insist the petitioners to renew the lease for a further period and such a discretion is vested with the petitioners. When the leasehold agreement clearly indicates the period of lease as

fifteen years, on it's expiry, the respondent is bound to handover the vacant possession of the premises in question. In this context, the learned Senior counsel for the petitioners relied on a decision of the Hon'ble Apex Court in the case of Hindustan Petroleum Corporation Ltd., and another V. Dolly Das reported in JT 1999 (3) SC 61 wherein it was held that without the consent of the landlord, the tenant is not entitled for renewal of lease period. It was further held that renewal of the lease could only be for one term and no more. Relying on this decision, the learned Senior counsel for the petitioners would contend that in the case on hand, the period of licence has come to an end on 28.02.2015 and therefore the respondent is bound to hand over possession.

5. The learned Senior counsel for the petitioners also relied on the Judgment of the Hon'ble Supreme Court in Bharat Petroleum Corporation Limited vs. N.R. Vairamani reported in 2004 8 SCC 579 to contend that when once the period of lease has come to an end, the possession of the corporation over the premises in question is unauthorised and illegal. By placing reliance on this decision, the learned Senior counsel for the petitioners would contend that the respondent is not entitled to continue in possession after expiry of the period of lease and the respondent is illegally squatting on the premises in question which can be termed as unauthorised and illegal.

6. The learned Senior counsel appearing for the petitioners have also relied on the decision of this Court in the case of (M. Ashrafunnisa and others vs. Bharat Petroleum Corporation Limited and others) reported in Manu/TN/2303/2016 (WP No. 29312 of 2014 dated 21.09.2016) wherein it was held that the respondent/corporation, being a statutory corporation, has failed to act fairly in not honouring the terms and conditions incorporated in the agreement of lease. The learned Senior counsel for the petitioners, by highlighting the observations made in the above case rendered by this Court, would submit that the respondent/corporation, being a statutory body, have to act fairly and reasonably without driving the owners of the premises from pillar to post to stake their legitimate claim.

7. Even though no counter has been filed by the respondent, the learned Senior counsel for the respondent would only contend that the corporation has been running the retail outlet for the past fifteen years by paying the agreed lease rent without any default. When the respondent sought for renewal, it was unreasonably denied by the petitioners and therefore the respondent has filed Civil Suit seeking for a mandatory injunction to renew the lease in their favour. When the civil suit is pending, the present writ petition is not maintainable.

8. I heard the learned Senior counsel for the petitioners as well as the respondent and perused the materials on record. It is seen from the records that in the suit filed by the respondent seeking injunction restraining the petitioners from taking possession, after hearing the arguments on merits, an order was passed dismissing the injunction application on 23.03.2016 by the learned VI Assistant Judge, City Civil Court, Chennai. Admittedly, the respondent has not preferred any appeal and the above order has become final. Therefore, there is no impediment to the landlord/petitioners to take possession of the premises. Further, in identical circumstances, in the order passed by this Court in W.P.No.29312 of 2014 dated 21.09.2016 mentioned supra, it was held as follows:

> 28. It is a settled position of law that after termination of tenancy, a tenant continued to be in possession of the property as a tenant of holding over and he is a trespasser and not a tenant and therefore, he/it becomes liable to pay mesne profits to the landlords.
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> 29. In Hindustan Petroleum Corporation Limikted v. Saroj Rajanikant reported in 2013 (4) CTC 365, the landlord had filed a suit for declaration against Hindustan Petroleum Corporation Limited that the lease entered into between her and the defendants is void and for delivering vacant possession and damages and the suit was dismissed and the appeal filed by the plaintiff was allowed and therefore, the Hindustan Petroleum Corporation Limited filed the Second Appeal and the said company pendency of the suit, had filed an interlocutory application claiming benefits under Section 9 of the Tamil Nadu City Tenants' Protection Act and it was allowed and the landlady filed a Civil Miscellaneous Appeal and it was allowed and challenging the same, a Civil Revision Petition was filed. The learned Single Bench of this Court heard the Second Appeal as well as the Civil Revision Petition together and rendered a common judgment dated 29.04.2013. It is relevant to extract paragraphs 27 to 30 hereunder:
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> > "27. In the judgment reported in Malini Parthasarathy v. Hindustan Petroleum Corporation Ltd., 2007 (1) CTC 67, the learned Single Judge of this Court had an occasion to deal with the similar Dealership Agreement and held that once Petroleum Corporation entered into a Dealership Agreement with a dealer, they are not in actual possession of the property and the dealer is in actual possession and therefore, they are not

entitled to invoke the provision of Section 9 of Tamil Nadu City Tenants' Protection Act.

28. In the judgment reported in Bharat Petroleum Corporation Ltd. v. R.Ravikrishnan, 2011 (5) CTC 437, the Hon'ble Division Bench of this Court, on a remand from the Hon'ble Supreme Court elaborately discussed the concept of legal possession and actual possession and held that when the Petroleum Corporation entered into a Dealership Agreement with a dealer, though they are in legal possession of the demised property, they are not in actual possession of the property and to invoke the Section 9 of the Tamil Nadu City Tenants' Protection Act, the tenant must be in actual possession of the property and as the Appellant was not in actual possession of the property, the Appellant was not entitled to invoke the provision of the Tamil Nadu City Tenants' Protection Act. The Hon'ble Division Bench followed the judgment reported in S.R.Radhakrishnan and others v. Neelamegam, 2003 (3) CTC 488 (SC) : 2003 (10) SCC 705, wherein the Hon'ble Supreme Court held that in order to claim the benefits under the Tamil Nadu City Tenants' Protection Act, the tenant must be in actual possession and it is not sufficient that if the Tenant is in legal possession.

29. Further, in the judgments reported in Hindustan Petroleum Corporation Limited v. K.M.Yakub (died) and others, 1994 (1) MLJ 189; Hindustan Petroleum Corporation Limited, Chennai v. Keyaram Hotels (P) Ltd., Chetpet, Chennai - 3, 2002 (2) CTC 21 : 2002 (2) LW 620; K.K.Janardhanam v. Thiruvalluvar Transport Corporation Limited, rep. by its Managing Director, Madras, 2006 (3) CTC 91 : 2006 (2) MLJ 109; Hindustan Petroleum Corporation Limited v. B.S.Ojeeha, 2011 (1) MWN (Civil) 387, the same principle has been reiterated."

30. In the light of the said judgment also, the respondents 1 and 2 are not entitled to the benefits under the Tamil Nadu City Tenants'

Protection Act for the reason that even as per their own admission, they are not in actual possession of the land/site in question, but they have granted licence in favour of Gowrishankar, who is running a Petroleum Outlet under the name and style of M/s.K.M.B.Agencies, Fuels & Oils, No.114, Omalur Main Road, Four Roads, Salem.

32. However, the facts projected before this Court would indicate that the respondents 1 and 2 herein/the petitioners in W.P.No.26729 of 2015 had suffered an adverse finding, namely, that they are not entitled to the benefits of the Tamil Nadu City Tenants' Protection Act and the said order dated 08.06.2016, is yet to be set aside.

33. The learned Judge while deciding the said judgment had also taken note of the judgment in Bharat Petroleum Corporation Limited v. N.R.Vairamani reported in (2004) 8 Supreme Court Cases 579 and distinguished the said judgment and it is the sheet anchor for the respondents 1 and 2 to sustain their claim as to the availability of alternative remedy to the petitioners herein in the form of a suit for eviction/ejectment.

39. In the result, this writ petition is allowed and the respondents 1 and 2 are directed to hand over the possession of the premises in S.Nos.46/1B and 46/2A1 at Four Roads, Salem Town, to the petitioners within a period of one month from the date of receipt of a copy of this order and pay the admitted arrears of rent with interest at the rate of 12% per annum, till full and final settlement. No costs. Consequently, the connected miscellaneous petition is closed.

9. As held in the above decision, after termination of tenancy, a tenant continued to be in possession of the property as a tenant of holding over and he is a trespasser and not a tenant and therefore, he/it becomes liable to pay mesne profits to the landlords. Further, in the given facts and circumstances of the case, the provisions of Section 9 of the Madras CityTenants Protection Act, 1921 does not apply to the respondent-corporation. When the Act itself does not apply, the Respondent-Corporation is not entitled to claim to be in possession beyond the period of contract. The Respondent-Corporation, which is owned by the Government of India, has come to the Court without clean hand. They have committed breach of

contract and now they seek for renewal of the contract as a matter of right when the clause in the lease agreement specifically provides that after the period of expiry, they are bound to hand over the possession.

10. Similarly, a Division Bench of this Court, in which I was one of the parties, has made comments on the attitude of the corporation like the petitioner in the case of M/s. Indian Oil Corporation Ltd. and another v. Lakshmi Subrahmanyam and others reported in (2011) 4 Law Weekly 937 wherein paragraph 20 of the judgment can usefully be extracted as under:

> "20. We find it very disheartening to note that the defendants 1 and 2/appellants, a mighty and gigantic oil corporation are not following their own contract/ agreement. Under law, a party is expected to abide by the terms and conditions of the contract entered into by themselves. Here, the defendants 1 and 2/appellants, knowing fully well that they are not entitled to the benefits under the Act, have contested the suit vociferously thereby subjected the plaintiffs/landlords to harassment. Such an attitude on the part of the defendants 1 and 2/appellants is not appreciable. If public Sector companies like the defendants 1 and 2/appellants do not follow the terms and conditions entered into by them with open eyes, other cannot be expected to follow the Rule of Law. The defendants 1 and 2/appellants, under the pretext of seeking certain benefits under the Act, which they are fully aware that it will not enure to their benefit have taken the landowners/plaintiffs/respondents 1 to 4 herein for a ride. We find that this is a fit case warranting us to make such an observation."

11. Even in the decision relied on by the learned Senior counsel appearing for the petitioner in the case of (Bharat Petroleum Corporation Limited and another vs. N.R. Vairamani and another) reported in (2004) 8 Supreme Court Cases 579 it was held by the Honourable Supreme Court that the right conferred on the tenant under Section 9 of the City Tenants Protection Act is not an absolute right and it is a relief to be granted by the Court by exercising it's discretion to permit the tenant to purchase the land. In this case, inasmuch as the petitioner/ Corporation has been successfully squatting on the property and refused to budge even without paying the admitted rent in the guise of seeking renewal of the lease by filing a suit, when the lease itself expired long back, this Court is inclined to exercise it's discretionary relief in favour of the petitioners to grant the relief as prayed for. However, having regard to

the facts and circumstances of the case and the submissions made by the counsel on either side, this Court deems it fit to give some reasonable time to remove the materials owned by the respondent/ Corporation from the petitioner premises and therefore, the respondent is granted four weeks' time to take and/or remove all the materials and hand over the vacant possession of the property situates in S.No.274/4 Part of Velacherry Village, Mambalam-Guindy Taluk, Chennai (at present Door No.4, Tharamani-Velacheri Link Road, Velacherry, Chennai 42) to the extent of 6080 sq.ft. to the petitioners.

12. With the above observations, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

+1 CC to Mr. M. Aravind Subramaniam, Advocate sr 9315
+1 CC to Mr. Abdul Saleem, Advocate sr 9131

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