

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2017

CORAM:

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.9979 of 2004

S.Manoharan

... Petitioner

vs.

1. Hindustan Petroleum Corporation Ltd.,
17, Jamshedji Tata Road,
Mumbai 400 020.

2. The Regional Manager,
Hindustan Petroleum Corporation Ltd.,
Madurai Regional Office,
Plot Nos.167 to 172,
SIDCO Industrial Estate,
South Phase, Kappalur,
Madurai 625 008.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus, directing the 2nd respondent to deliver possession of the property in T.S.No.3338/2B/2, New Ward No.18, Door No.17, Palayamkottai Road, Tuticorin, covering an extent of 8.43 cents consequent to the expiry of the lease on 30.09.2001.

For Petitioner : Mr.J.Antony Jesus
For 1st Respondent : No appearance
For 2nd Respondent : Mr.K.T.Sankara Subramanian
for M/s.King & Patridge

O R D E R

The petitioner has come up with this Writ Petition seeking a direction to the 2nd respondent to deliver possession of the property in T.S.No.3338/2B/2, New Ward No.18, Door No.17, Palayamkottai Road, Tuticorin, covering an extent of 8.43 cents, consequent to the expiry of the lease on 30.09.2001, to him.

2. Heard the learned counsel on either side and perused the material documents available on record.

3. Today, when the matter is taken up for hearing, learned counsel appearing for the 2nd respondent produced a sworn

affidavit, dated 30.01.2014 filed by the petitioner, viz. S.Manoharan as regards the property in question. He also produced a Declaration dated 10.02.2014, duly attested by a Notary Public as regards withdrawal of the present Writ Petition by the petitioner.

4. For better understanding, the contents of the affidavit, dated 30.01.2014 as also the Declaration, dated 10.02.2014 of the petitioner as regards withdrawal of the present case, are extracted hereunder:

"AFFIDAVIT

I, S.Manoharan, S/o.AMS.Sonamuthu Nadar, Partner, M/s.Arasan Service Station, HPC Retail Outlet, Tuticorin, solemnly affirm and declare as hereunder:

1. Pursuant to family settlement, I had purchased the property bearing T.S.No.3338/2B2, Town Survey Ward 4, Block No.17, Palayamkottai Road, 38 Ward, Tuticorin Town, Tuticorin, Joint 2nd SRO - an area of 3734 sq. ft. (admeasuring: 75'.9" x 56'.3" x 52'.0" x 61'.0") vide Sale Deed Doc.No.1246/1993 from my brother and his family, Shri.S.Bharathi, where HPCL's Retail Outlet M/s.Arasan Service Station is being operated.

2. I was well aware while purchasing the site, that the demised premises was already under the lease hold of M/s.Hindustan Petroleum Corporation Ltd. from 01.10.1961 and the Lessee has exercised the option to renew the lease for further period upto 2001 on the same terms and conditions vested with the Caltex Take Over Act.

3. Upon final expiry of the lease in the year 2001, I had requested the Lessee to hand over the site and also filed a W.P.No.9979 of 2004 - for eviction and damages which is presently pending at High Court, Chennai.

4. Meanwhile, I have sold the subject property measuring an area of 3515 sq. ft. (admeasuring: 74'.3" x 55'.9" x 49'.0" x 58'.0") out of 3734 sq.ft. held by me, to one Shri.M.Balasubramanian executing Sale Deed registered as Doc.No.290/2009, dated 23.03.2009. Thus, I have retained an area of 256 sq. ft. which is also already under the lease hold of HPCL.

5. I understand that Mr.Balasubramanian has offered his site to the Lessee, HPCL for further renewal at a mutually agreed terms and conditions and they are registering the lease at Tuticorin on 30.01.2014.

6. Since I do not have any right over the property already sold, I have agreed to withdraw the said W.P.No.9979 of 2004 filed against HPCL for eviction, immediately upon registration of lease or latest by 28.02.2014 of the said property which is subject matter of the said W.P. Accordingly, I would give necessary instructions to my Advocate at Chennai for withdrawal of the said W.P.

7. I have also no objection in HPCL's paying the rental arrears to Shri.M.Balasubramanian from April 2009 upto January 2014 @ a monthly rental of Rs.150/- payable as per the existing Lease Deed, dated 01.10.1961.

8. I am also agreeable to accept and receive the same rental arrears if any directly payable to me upto the date of selling the said property to Shri.Balasubramanian.

I hereby confirm, agree and record that this Affidavit has been given by me on my own volition and free will in favour of Hindustan Petroleum Corporation as such the same is unconditional and irrevocable and shall be binding on my heirs, executors, administrators and legal representatives.

In witness whereof, I, S.Manoharan, the deponent/Executant have set my hands on this day of 30th January 2014, at Tuticorin.

Due to my old age, I am unable to make signature, I put my left hand thumb impression. "

"TO WHOMSOEVER IT MAY CONCERN

Sub: Withdrawal of court case W.P.No.9979 of 2004 - Regarding

This is to advise on the day of 10th February 2014 that Mr.S.Manoharan, S/o.A.M.S.Sonamuthu Nadar, residing at 31, Chidambaram Nagar I Street, Tuticorin had filed a Writ Petition W.P.No.9979 of 2004 against

M/s.Hindustan Petroleum Corporation Limited for vacating my land bearing Survey No.T.S.No.3338/2B2, Ward 4, Block No.17, Palayamkottai Road, 38 Ward, Tuticorin, since I had sold the subject property to Mr.M.Balasubramanian in the year March 2009 vide Document No.290/2009 registered as Sub-Registrar Office, Joint II, Tuticorin, dated 23.03.2009. I am also aware that Mr.Balasubramanian had entered into a fresh lease agreement with HPCL on 30.01.2014 vide Document No.80/2014.

Further, my Advocate Mr.Srinivasan, who was conducting the case has passed away and no further proceedings happened in this case.

In view of this, I hereby withdraw the Writ Petition W.P.No.9979 of 2004 with immediate effect and I have no objection in moving the court for withdrawing the case by my opponent Advocate, M/s.King & Patridge, to take it up further.

Due to my old age, I am unable to make signature, I had put my left hand thumb impression on 10.02.2014. "

5. Taking the above Affidavit and Declaration of the petitioner on record, this Writ Petition is closed. No costs. Consequently, connected W.P.M.P.No.11647 of 2004 is closed.

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

True Copy

Sub-Assistant Registrar
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To:

1. Hindustan Petroleum Corporation Ltd.,
17, Jamshedji Tata Road,
Mumbai 400 020.

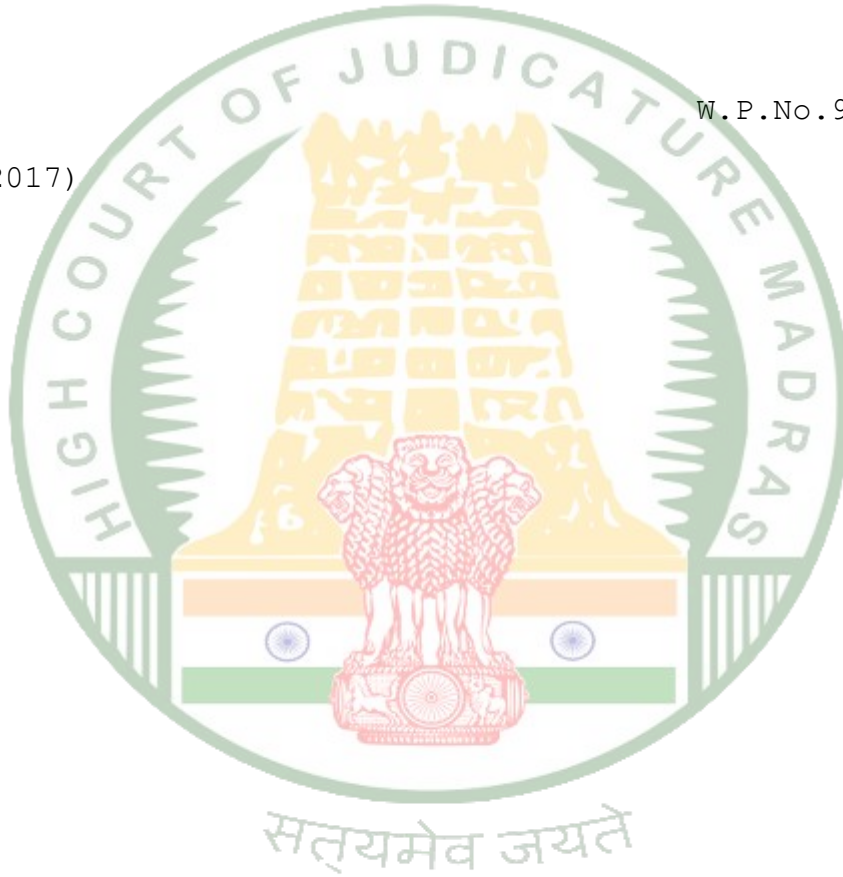
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2. The Regional Manager,
Hindustan Petroleum Corporation Ltd.,
Madurai Regional Office,
Plot Nos.167 to 172,
SIDCO Industrial Estate,
South Phase, Kappalur,
Madurai 625 008.

+1 CC to King and Patridge, Advocate sr 48740

W.P.No.9979 of 2004

SP(29/08/2017)



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