

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED : 29.08.2017

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THE HONOURABLE MR. JUSTICE K. KALYANASUNDARAM

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W.P (MD) No.16571 of 2016**and****W.M.P (MD) No.12078 of 2016**

Dr.B.S.Ayyappan

: Petitioner

Vs.

1. Hindustan Petroleum Corporation Ltd.,
Rep. by its Senior Regional Manager,
No.17, Jamshedgi Tata Road, Mumbai-400 020.
2. Hindustan Petroleum Corporation Ltd.,
Rep. by its Senior Regional Manager,
Regional Office,
Plot No.167-172, Sidco Industrial Estate,
Kappalur, Madurai 625 008.
3. The Commissioner of Police, Madurai City.
4. The Joint Chief Controller of Explosive,
Shastri Bhavan, Chennai.
5. T.Vel Shankar,
Dealer,
Hindustan Petroleum Corporation Ltd.,
R-16/2, Melur Main Road,
Opposite to District Court,
K.K.Nagar, Madurai.

: Respondents

PRAYER: Petitions filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records from the file of the 4th respondent in Proceedings Nos.P/SC/TN/14/2447(P36576), dated 17.03.2016 and 26.04.2016 and quash the same and further direct the 3rd and 4th respondents to cancel the "No Objection Certificate" and the Explosive Licence granted to the 2nd respondent and further directing the respondents 1, 2 and 5 to vacate and hand over the peaceful possession of the site in Survey No.R.S.164/2 (Part), Tallakulam Village, Madurai to the petitioner.

For Petitioner

<https://hcservices.ecourts.gov.in/hcservices/>

: Mr.B.S.Gnanadesikan
Senior counsel
for Mr.K.K.Senthil



For R1 and R2 : Mr.M.Sridhar
For 3rd Respondent : Mr.C.Selvaraj
Special Government Pleader
For 4th Respondent : Mr.D.Saravanan
For 5th Respondent : No appearance

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ORDER

The petitioner has come up with the present writ petition, challenging the order of the 4th respondent, passed in his proceedings Nos.P/SC/TN/14/2447 (P36576), dated 17.03.2016 and 26.04.2016 and for a direction to the respondents 3 and 4 to cancel the No Objection Certificate and the Explosive Licence granted to the 2nd respondent and for a further direction to the respondents 1, 2 and 5 to vacate and hand over the possession of the site in R.S.No.164/2 (Part), Tallakulam Village, Madurai to the petitioner.

2.The brief facts of the case are that the property in R.S.No.164/2 (Part), Tallakulam Village, Madurai absolutely belonged to the petitioner. Originally Caltex (India) Ltd., has entered into a lease agreement in the year 1972 for a period of 20 years to run a petrol bunk on this site. After expiry of the lease, on 30.11.1992 the lease was renewed by exercising the statutory provision for a period of 20 years from 01.12.1992 to 30.11.2012. In the meantime, by an Ordinance, the right, title and interest of the original licensee namely M/s.Caltex (India) Ltd., vested with the Government of India and Hindustan Petroleum Corporation became a lessee in respect of the site.

3.According to the petitioner, even in the year 1992, he objected for the renewal of the licence and requested the respondents 1 and 2 to vacate and hand over the possession. However, in a meeting held on 04.03.2005, the rent was increased and the period was extended upto November 2012 on a specific condition that the lease will not be further renewed. The petitioner sent a letter, dated 28.11.2011 nearly one year ahead of expiry of the lease period stating that he will not extend or renew the lease and requested the respondents to vacate and hand over the possession. Since, the respondents claimed protection under Tamil Nadu City Tenants Protection Act [herein-after called as 'Act'], in his reply, the petitioner instituted a suit in O.S.No.203 of 2013 before the Sub Court, Madurai, for eviction, in which the respondents filed O.P.No.1 of 2013 under section 9 of the Act. The learned Judge dismissed the O.P.No.1 of 2013, by order, dated 24.06.2015 and the same was confirmed in CMA No.1 of 2015 by the District Judge, Madurai.

<https://hcservices.hcourtsgov.in/hcservices> 4.The petitioner would state that grant of licence for storing petroleum is regulated under the Petroleum Act 1934 and the Rules framed thereunder in the year 2002. Chapter 7 deals with



grant of licence and as per Rule 143, an application has to be submitted before the authority empowered to grant licence. Under Rule 144, the District Authority has to give 'No Objection' to the applicant for renewing the licence and the District Authority has to forward the same to the licensing authority. Rule 150 deals with cancellation of 'No Objection Certificate' granted under Rule 144.

5.The case of the petitioner is that if the licensee ceased to have any right to the site for storing petroleum, the 'No Objection Certificate' issued by the District Authority or the State Government has to be cancelled. Since, the lease period expired on 30.11.2012 and the respondent was directed to vacate and hand over the site, the licensee ceased to have any right to use the site for storing petroleum, after 30.11.2012. The respondents 1 and 2 are not entitled to be in possession and they should be treated as trespassers. Hence, the petitioner submitted application to the 3rd respondent to cancel 'No Objection Certificate' and another application to the 4th respondent for cancellation of the license.

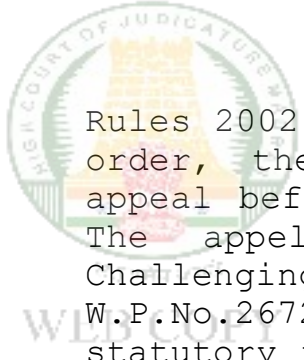
6.The grievance of the petitioner is that when the application given to the 3rd respondent was pending consideration, the 4th respondent without providing opportunity of hearing, rejected the application, by letter, dated 17.03.2016 and 27.04.2016.

7.I have heard Mr.B.S.Gnanadesikan, learned Senior counsel appearing for the petitioner and Mr.M.Sridhar, learned counsel for the respondents 1 and 2, Mr.C.Selvaraj, learned Special Government Pleader for the 3rd respondent, Mr.D.Saravanan, learned counsel for the 4th respondent and perused the materials available on record.

8.Learned Senior counsel for the petitioner would submit that though the writ petition has been filed for issuance of Certiorarified mandamus, for a direction to hand over possession of the site to the petitioner, it would suffice, if a direction is given to the 3rd respondent to consider the application of the petitioner for cancellation of 'No Objection Certificate'.

9.The learned Senior counsel, placing reliance on the decision of the Hon'ble Apex Court in the decision reported in 2006(1) SCC 228, would submit that after expiry of the lease period, 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 and they shall be treated as trespassers.

10.It is further contended that in similar facts, the <https://hccresour.in.gov.in/authorities> the Commissioner of Police, Salem, cancelled the 'No Objection Certificate' relying on the above referred judgment of the Supreme court, under Rule 150(1) of the Petroleum



Rules 2002 by his order, dated 31.01.2015. Aggrieved by the above order, the Bharat Petroleum Corporation Limited, preferred an appeal before the Additional Director General of Police, Chennai. The appellate authority rejected the same on 20.06.2015. Challenging the order, the Bharat Petroleum Corporation filed W.P.No.26729 of 2015 raising the plea that in view of the statutory protection under section 9 of the Act, cancellation was illegal. However, this court, rejected the plea of the Petroleum Corporation and dismissed the writ petition, which was confirmed by the Division Bench in W.A.No.988 of 2016.

11. According to the learned Senior counsel, the decision of the Supreme Court referred and the orders passed by this court squarely apply to the issue involved in this writ petition and therefore, by following the principles, the 3rd respondent has to cancel the 'No Objection Certificate'.

12. The learned Senior counsel would further submit that the application filed under section 9 of the Act was dismissed by the Sub Court, which was also confirmed by the First Additional District Judge, Madurai, in CMA No.1 of 2016 and the revision filed against the order before this court in CRP PD(MD) No.2616 of 2016 was also dismissed on 02.06.2017. Since, the order reached finality, the respondents cannot now claim protection under the Act.

13. On the other hand, Mr.M,.Sridhar, learned counsel for the 2nd respondent, by referring to the counter, would submit that the right to invoke the protection of the Act is a statutory right and their possession and enjoyment over the demised premises is legal and not that of trespasser as alleged by the petitioner. The writ petition is an abuse of process of this court and the petitioner is no enforceable right to seek issuance of writ of mandamus.

14. The orders impugned in the writ petition are attacked mainly contending that they were passed in violation of the principles of natural justice.

15. A perusal of the impugned orders would reveal that the 4th respondent without affording an opportunity of hearing rejected the application of the petitioner. In such circumstances, I opine that the impugned orders are liable to be set aside and the matter requires reconsideration by the 4th respondent.

16. It is represented that the petitioner submitted application before the 3rd respondent under section 150(1) of the Petroleum Rules 2002 seeking cancellation of 'No Objection Certificate' in the month of June 2016, but no order is passed yet.

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17. In view of my above finding, this writ petition is allowed and the impugned orders are set aside and the matter is remitted back to the 4th respondent for consideration afresh. The 4th



respondent shall pass orders on merits and as per law, after providing opportunity to the petitioner as well as to the necessary parties, if any.

18. Considering the above facts, this court directs the petitioner to give a fresh representation/application to the 3rd respondent enclosing the copy of this order, within a period of two weeks from the date of receipt of the order copy. On such compliance, the 3rd respondent shall consider the same and pass orders after hearing the necessary parties, in the light of the decision cited above, within a period of 10 weeks therefrom and communicate the decision to the petitioner. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar()

/True Copy/

Sub Assistant Registrar

To

1. Hindustan Petroleum Corporation Ltd.,
Rep. by its Senior Regional Manager,
No.17, Jamshedgi Tata Road,
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2. Hindustan Petroleum Corporation Ltd.,
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Regional Office,
Plot No.167-172, Sidco Industrial Estate,
Kappalur, Madurai 625 008.
3. The Commissioner of Police,
Madurai City.
4. The Joint Chief Controller of Explosive,
Shastri Bhavan,
Chennai.

+1cc to M/S. K.K.SENTHIL, Advocate, SR.No.75238.

+1cc to M/S. M.SRIDHAR, Advocate, SR.No.75426.

+1cc to M/S. D.SARAVANAN, Advocate, SR.No.74369.

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