

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

WRIT PETITION NO. 7090 OF 2005

Hindustan Petroleum Corporation Ltd.,
17, Jamschetji Tata Road,
Bombay - 400 020
(A Govt. of India Enterprises),
through Vishwas s/o. Vasant Mandlekar,
Age 42 years, Occu. Service and
authorised signatory of H.P.C.L.
R/o. Town Centre, CIDCO, Aurangabad.

....Petitioner.

Versus

1. Fakruddin s/o. Hyderali Ambawalla,
(Deceased) through his L.Rs.

Mustafa s/o. Fakruddin Ambawalla,
Age 40 years, Occu. Service,
R/o. City Chowk, Aurangabad.
(Presently R/o. Eden (ARY), YEMEN.

2. Union of India,
Through : Secretary to Govt. of India,
Ministry of Petroleum,
New Delhi.

3. Shri. Abbas s/o. Abdul Hussain,
Age 77 years, Occu. Business,
Hindustan Petroleum Dealer,
Kranti Chowk, Aurangabad.
(Respondent No. 3 deleted vide
court order dated 11.10.2005)

....Respondents.

Mrs. C.S. Deshmukh, Advocate for petitioner.

Mr. S.P. Sonpawale, Advocate for respondent No. 1.

Mr. S.B. Deshpande, Advocate for respondent No. 2.

**CORAM : T.V. NALAWADE AND
SUNIL K. KOTWAL, JJ.
DATED : MARCH 19, 2018.**

JUDGMENT : [PER T.V. NALAWADE, J.]

1) The petition is filed for relief like giving directions to see that after making payment of Rs.5,000/- per month towards compensation/future mesne profits, the actual compensation/mesne profits may be waived. The main prayer was to stay the warrant of possession dated 14.9.2005 which was issued in Regular Darkhast No. 46/1992. Both the sides are heard.

2) It appears that present respondent No. 1, owner, had filed civil suit for relief of possession of land which was given to the petitioner for running petrol pump. The Trial Court had dismissed the suit, but the first appellate Court allowed the appeal and the suit for possession was decreed. Against the said decision, second appeal is pending. The decision was given by the District Court on 2.11.1991. It appears that in the year 1995 the land of respondent No. 1 came to be acquired and award came to be delivered. There was challenge to the acquisition proceeding from respondent No. 1, but he failed in the challenge.

3) It appears that due to the orders made by this Court in present proceeding, the petitioner went on depositing Rs.5,000/- per month. In ordinary course, this Court ought not to have entertained the present proceeding as whatever reliefs which are mentioned in

the present petition could have been claimed in the second appeal itself as that was substantive proceeding filed to challenge the decree of possession. In view of the aforesaid circumstances, in the second appeal the entitlement of both the sides with regard to the mesne profits or compensation can be considered. With these observations, the petition is disposed of as dismissed. Rule stands discharged. The amount is to be disbursed as per the decision of Second Appeal No. 134/1992.

[SUNIL K. KOTWAL, J.]

[T.V. NALAWADE, J.]

ssc/