

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2018

CORAM

THE HON'BLE MR.JUSTICE M.VENUGOPAL  
AND  
THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.A. No.232 of 2018 and  
C.M.P.No.1831 of 2018

1. Vinoth
2. Babu

Appellants/Petitioner  
Vs.

1. The Transport Commissioner,  
Chepauk, Chennai
2. The District Collector,  
Thiruvannamalai,  
Thiruvannamalai District
3. Hindustan Petroleum Corporation Ltd.,  
rep. By its Chief Regional manager,  
chennai Retail Regional office,  
8, Gandhi Irwin road,  
Egmore, chennai - 600 008

4. R.Srinivasan
5. R.Vishnu
6. R.Satish
7. Jothi
8. Sridevi
9. Andal

Respondents/Respondent

Writ Appeal filed under Clause 15 of Letters Patent to set aside the order passed in W.P.No.2665 of 2017 dated 03/02/2017 on the file of this Court praying to issue a Writ of Certiorarified Mandamus, Calling for the records of the 1st respondent dated 21.12.2016 proceedings in R.No.24050/ M5/2016 quash the same and consequently direct the 3rd respondent to supply petrol/ diesel to the petitioner Petrol Bunk M/s.Karthikeyan Auto Service at No.266 Gandhi Road Arni Tiruvannamalai District pending resolution of dispute in respect of lease by competent Civil Court

For Appellants : Mr.Niranjan Rajagopalan for  
M/s G.R.Associates

For Respondents :Mr.A.N.Thambidurai for R1 and R2  
Special Government Pleader

## J U D G M E N T

(Judgment of the Court was pronounced by M.VENUGOPAL,J.,)

The Appellants / Petitioners have preferred the present intra-court Writ Appeal as against the Order dated 03.02.2017 in W.P.No.2665 of 2017 passed by the Learned Single Judge in dismissing the Writ Petition.

2. Heard the Learned Counsel for the Appellants / Petitioners and the Learned Special Government Pleader for the Respondents 1 and 2. In view of the fact that this Court is disposing of the present Writ Appeal at the admission stage itself, it is not ordering notice to the Respondents 3 to 9 and issuance of notice is dispensed with.

3.The Learned Counsel for the Appellants contends that the order of the Learned Single Judge in dismissing the Writ Petition is opposed to the well settled 'Principles of Law and Facts of the Case'. In this connection, it is the submission of the Learned Counsel for the Appellants that the reasons assigned in the impugned order passed by the Learned Single Judge in dismissing the Writ Petition suffers from fundamental flaw. Furthermore, the Learned Single Judge had failed to appreciate that the question of 'Lawful Possession' is for the Civil Court to consider and the same is not to be determined in the Writ Proceedings, as a 'Question of Fact' especially, when no pleadings were made in regard to the same and without evidence being adduced thereto.

4. The Learned Counsel for the Appellants projects an argument that the Learned Single Judge had failed to take note of a primordial fact that the 'Petroleum Rules' adopted the term 'Right to use the property and not lawful possession'.

5. The Learned Counsel for the Appellants also points out that applicability of the City Tenants Protection Act, 1921 was not considered by the Learned Single Judge and also not taken into consideration of the Judgement of the Hon'ble Supreme Court between Bharat Petroleum Corporation Ltd., and Another V. N.R.Vairamani and Another reported in 2004 (8) Supreme Court Cases 579.

6. The facts of the case are as follows:

(i) The 1<sup>st</sup> Appellant is operating a Retail outlet of Petrol / Diesel / Motor Oil etc., in the premises No.266, Gandhi Road, Arni, Thiruvannamalai District (on behalf of the Appellants' firm) along with his father, 2<sup>nd</sup> Appellant. In fact, the premises was originally leased out to 3<sup>rd</sup> Respondent / Hindustan Petroleum Corporation Ltd., Chennai by late Mr.Gnanasambhanda Chettiar acting as 'Power of Attorney' in the year 1977.

(ii) A Memorandum of Agreement dated 22.03.1977 was entered into between the 3<sup>rd</sup> Respondent and Karthikeyan Auto Services represented by its then partners.

(iii) After numerous family arrangements and partition, one A.S.Karthikeyan acquired right over the Appellants' firm, who thereafter in the year 1995, entered into a Partnership Deed with the 2<sup>nd</sup> Appellant by running the petrol outlet as 3<sup>rd</sup> Respondent's Dealer. After reconstitution of the Firm, Mrs.K.Padmini, wife of late A.S.Karthikeyan and the Appellants are partners.

7. The Learned Counsel for the Appellants brings it to the notice of this Court that the aforesaid Gnanasambhanda Chettiar made a representation before the 1<sup>st</sup> Respondent / Transport Commissioner, Chepauk, Chennai to cancel the No Objection Certificate granted to the 3<sup>rd</sup> Respondent, based on the reason that the 'Lease' with the 3<sup>rd</sup> Respondent / Hindustan Petroleum Corporation had expired. Under the circumstances, the said Gnanasambhanda Chettiar's Legal Heirs, who were impleaded as Respondents 4 to 9, filed a Writ Petition No.1232 of 2015 before this Court seeking to direct the 1<sup>st</sup> Respondent in the said Writ Petition to pass final orders on their representation dated 28.02.2014. The 1<sup>st</sup> Appellant's father, viz., the 2<sup>nd</sup> Appellant was shown as Respondent.

8. It transpires that this Court on 24.04.2015 in W.P.No.12302 of 2015 had passed an order directing the 1<sup>st</sup> Respondent therein to dispose of the representation dated 28.02.2014 after putting notice to his father (who was 2<sup>nd</sup> Respondent in the said Writ petition). Pursuant to the same, 2<sup>nd</sup> Respondent, the District Collector, Thiruvannamalai had passed an order in proceedings Na.Ka./C3/11970/2014 dated 29.04.2016 cancelling No Objection Certificate granted to the 3<sup>rd</sup> Respondent under Rule 150 of the Petroleum Rules, 2002. The copy of the order was not been served on the Appellants and the same was brought to their knowledge by the 3<sup>rd</sup> Respondent / Hindustan Petroleum Corporation. Citing aforesaid order, viz., cancelling the 'No Objection Certificate', dated 29.04.2016, the 3<sup>rd</sup> Respondent / Hindustan Petroleum Corporation had stopped the supply of Petrol/Diesel. Hence the office of the Petrol Bunk came to a stand still and the Appellants, assailing the correctness of the order of the 2<sup>nd</sup> Respondent, filed a

W.P.No.18160 of 2016 and this Court, on 28.06.2016, disposed of the said Writ Petition directing the 1<sup>st</sup> Respondent herein to entertain the Appeal preferred by the 3<sup>rd</sup> Respondent within a period of eight weeks from the date of receipt of copy of the order. Further, pursuant to the order passed by this Court, the 1<sup>st</sup> Respondent / Transport Commissioner conducted an enquiry and passed orders.

9. At this stage, the Learned Counsel for the Appellants contends that the 1<sup>st</sup> Respondent / Transport Commissioner, Chennai without even referring to the submissions raised by the Appellants / Writ Petitioners' Counsel had mechanically passed the impugned order on 21.12.2016 upholding the order passed by the 2<sup>nd</sup> Respondent and dismissed the Appeal without recording any reasons.

10. In fact, the W.P.No.2665 of 2017 preferred by the Appellants/ Writ Petitioners was dismissed at the admission stage itself and according to the Appellants, the dismissal order was passed by the Learned Single Judge without examining certain legal issues in regard to the applicability of The Chennai City Tenants' Protection Act, 1921.

11. In this connection, it is not out of place for this Court to make a significant mention that before the 1<sup>st</sup> Respondent / Transport Commissioner, 3<sup>rd</sup> Respondent / Hindustan Petroleum Corporation filed an Appeal by taking a plea that 'Lease Agreement' in respect of the land measuring 73'\*50' situated at No.266, Gandhi Street, Arani, Thiruvannamalai District was executed between the 3<sup>rd</sup> Respondent and one M.Gnanasambandam for a period of 5 years commencing from 01.01.1976. Further, as per terms of the Lease Deed, the 3<sup>rd</sup> Respondent constructed a superstructure, underground storage tanks, etc., and was running a petroleum Retail out let. Because of the fact that the building was constructed in the land taken on Lease, the stand of the 3<sup>rd</sup> Respondent / Petroleum Corporation was that the tenancy is squarely covered by the ingredients of the Chennai City Tenants' Protection Act, 1921.

12. It is to be noted that the suits in O.S.No.39 of 1984 and O.S.No.113 of 1997 filed by the Land Owners got dismissed and there is no quarrel in regard to the fact that 'Lease Period' had expired long time back. It is lucidly clear that after expiry of the Lease, the same was not renewed.

13. The Land Owner, Gnanasambhanda Chettiar (during his life time) filed W.P.No.41095 of 2016 and the 3<sup>rd</sup> Respondent / Hindustan Petroleum Corporation Limited was entitled to get protection under the Chennai City Tenants' Protection Act, 1921, this Court dismissed the said Writ Petition on 13.02.2014.

14. It is represented that the only remedy available to the land owner(s) is to file a suit for eviction, in which event, the 3<sup>rd</sup> Respondent / Hindustan Petroleum Corporation Limited as per provisions of the Chennai City Tenants' Protection Act is entitled to purchase the land for a market price by filing an application as per Section 9 of the said Act.

15. It cannot be lost sight of that seeking protection to file an Application by pressing into the service the necessary ingredients of Section 9 of the City Tenants Protection will enure to the benefit of the Appellant (3<sup>rd</sup> Respondent / Hindustan Petroleum Corporation), only when the suit is filed by the concerned Land owner. Because of the candid fact that these two suits, viz., O.S.No.39 of 1984 and O.S.No.113 of 1997 filed by the Land Owner ended in dismissal, then, the land owner, filed an application before the 2<sup>nd</sup> Respondent / District Collector, Thiruvannamalai to cancel the No Objection Certificate and ultimately, the same was cancelled by the 2<sup>nd</sup> Respondent / District Collector .

16. The Learned Counsel for the Appellants submits that the 3<sup>rd</sup> Respondent / Hindustan Petroleum Corporation, Chennai is a tenant within the meaning of City Tenants Protection Act, 1921. As per Section 2 Clause 4(ii)(a) of the Chennai City Tenants' Protection Act, 1921, the definition 'Tenants' reads as under:

" Any such person as is referred to in sub-clause (i) who continues in possession of land after the determination of the tenancy Agreement."

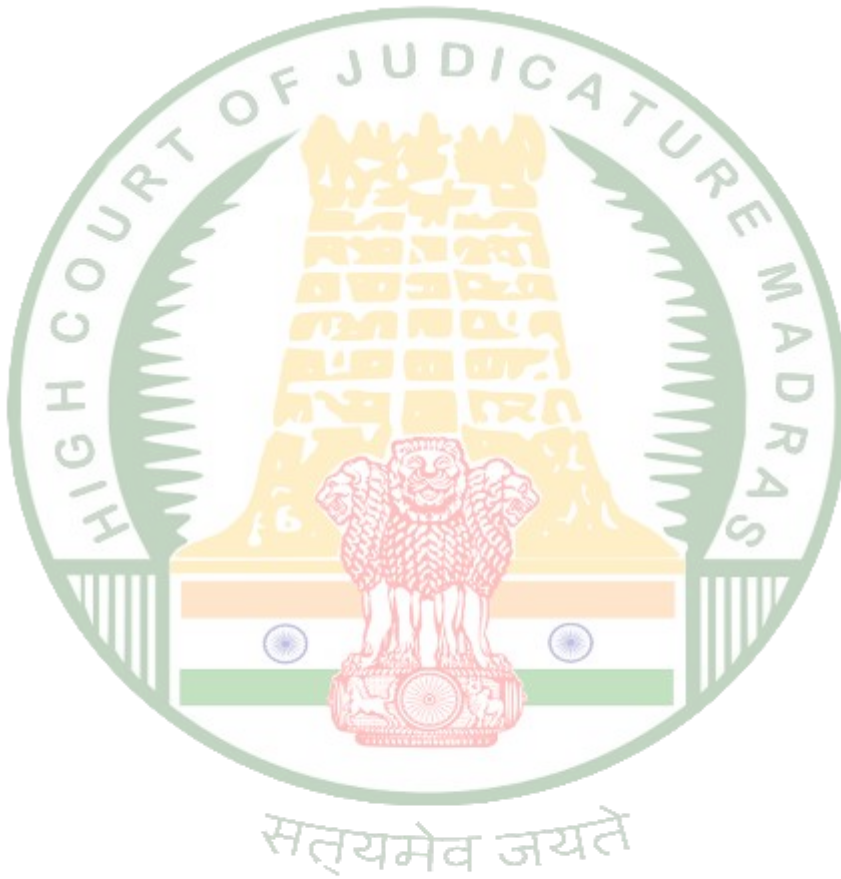
17. There is no two opinion of the fact that the 2<sup>nd</sup> Respondent / District Collector, Thiruvannamalai had passed orders cancelling the No Objection Certificate granted to the Corporation by adhering to the Rules, but, the fact of the matter is that the Corporation is not in actual possession of the property, but their dealer, M/s Karthikeyan Auto Service is running the out let and in actual possession of the property. In terms of ingredients of the Chennai City Tenants' Protection Act, the Appellants, who are in possession are entitled to seek the benefits flowing from the said Act.

18. The Learned Counsel for the Appellants invites the attention of this Court to Rule 150 of Petroleum Rules, 2002 and vehemently contends that the 2<sup>nd</sup> Respondent / District Collector is not empowered under Petroleum Rules to go into vital aspects / disputes between the respective parties and as such, the cancellation of No Objection Certificate on 29.04.2016 passed by the said District Collector / 2<sup>nd</sup> Respondent is not valid in the eye of Law.

19. The Learned Counsel for the Appellants cites the decision of Hon'ble Supreme Court between Bharat Petroleum

Corporation Limited and Another V. N.R.Vairamani and Another reported in (2004) 8 Supreme Court Cases 579 at Special Page 586, wherein at Paragraph Nos. 13,15 17 and 18, it is observed and laid down as under:

"13. In a writ petition some benefits available to the tenant under the Tenants Act could not have been diluted. There is some dispute about the entitlement of the tenant to get protection under the Tenants Act which can be more effectively decided in case action in terms of what is required under the Tenants Act is taken by the landlord.



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15. Section 9 confers a privilege on a tenant against whom a suit for eviction has been filed by the landlord but that privilege is not absolute. Section 9 itself imposes restriction on the tenant's right to secure conveyance of only such portion of the holding as would be necessary for his convenient enjoyment. It creates a statutory right to purchase land through the medium of court on the fulfillment of conditions specified in Section 9 of the Tenants Act. It is not an absolute right, as the court has discretion to grant or refuse the relief for the purchase of the land. In *Swami Motor Transport (P) Ltd. V. Sri Sankaraswamigal Mull* (1963 Supp (1) SCR 282) this Court considered the question whether the right of a tenant to apply to a court for an order directing the landlord to sell the land to him for a price to be fixed by it under Section 9 of the Tenants Act is a property right. The court held, that the law of India does not recognize equitable estates, a statutory right to purchase land does not confer any right or interest in the property. The right conferred by Section 9 is a statutory right to purchase land and it does not create any interest or right to the property. The tenant's right to secure only such portion of the holding as may be necessary for his convenient enjoyment is equitable in nature. Under the common law a tenant is liable to eviction and he has no right to purchase the land demised to him at any price as well as under the Transfer of Property Act. The only right of a tenant who may have put up structure on the demised land is to remove the structure at the time of delivery of possession on the determination of the lease. Section 9 confers an additional statutory right to a tenant against whom suit for ejection is filed to exercise an option to purchase the demised land to that extent only which he may require for convenient enjoyment of the property. The tenant has no vested right in the property instead; it is a privilege granted to him by the statute which is equitable in nature.

16. Whenever an application is made by a tenant before the court for issuance of direction to the landlord for the sale of the whole or part of the land to him, the court is under a mandatory duty to determine the minimum extent of the land which may be necessary for the convenient enjoyment by the tenant. This determination can obviously be made only after an enquiry is held by the court having regard to the area of the demised land and the extent of superstructure standing thereon, and the tenant's need for the land

for the beneficial enjoyment of the superstructure which he may have constructed thereon. The enquiry presupposes that the tenant making the application has been in the occupation of the land and the superstructure wherein he may be either residing or carrying on business, and on his eviction he would be adversely affected. The policy underlying Section 9 of the Tenants Act is directed to safeguard the eviction of those tenants who may have constructed superstructure on the demised land, so that they may continue to occupy the same for the purposes of their residence or business. Section 9(1)(b) ordains the court to first decide the minimum extent of the land which may be necessary for the convenient enjoyment by tenant, it therefore contemplates that the tenant requires the land for the convenient enjoyment of the property. If the tenant does not occupy the land or the superstructure or if he is not residing therein or carrying on any business, the question of convenient enjoyment of the land by him could not arise. The court has to consider the need of the tenant and if it finds that the tenant does not require any part of the land, it may reject the application and direct eviction of the tenant, in that event the landlord has to pay compensation to the tenant for the superstructure.

17. The above position was highlighted in P. Ananthakrishnan Nair and Anr. v. Dr. G. Ramakrishnan and Anr. (1987 (2) SCC 429).

18. In paragraphs 4 and 8 of Hindustan Petroleum Corporation v. Raja D.V. Appa Rao Bahadur (1995 Supp (3) SCC 397) the nature of right on the successor of a tenant has been indicated. The effect of the acquisition on the operation of the Transfer of Property Act, 1882 have been dealt with in detail by a three-Judge Bench of this Court in Bharat Petroleum Corporation Ltd. v. P. Kesavan and Anr. (2004 (9) SCC772). The application and relevance of these decisions shall be considered in case the landlord moves the appropriate Court and initiate proceedings as prescribed under the Tenants Act. The impugned judgment of the Division Bench of the High Court is indefensible and is set aside. It is made clear that what would be the position if the proceeding is taken under the Tenants Act, shall be decided by the appropriate Court."

20. For better appreciation, it is useful for this Court to quote the Rule 150 of the Petroleum Rules, 2002, which runs as

under and by adverting to the aforesaid Rule 150 of the Petroleum Rules, 2002 this Court pertinently points out that admittedly, the Appellants / Tenants cannot be permitted as licensee and when the original Lease/ licence period had expired they are not entitled to claim benefits as per Law.

"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, a copy of the order cancelling the no objection certificate."

21. It is to be borne in mind that ordinarily in summary proceedings (under Article 226 of the Constitution of India - in Writ Jurisdiction), the factual / legal disputes cannot be gone into by a Court of Law. Also that, when the disputed factual aspects / controversies do require letting in of oral and documentary evidence, the same also cannot be dealt with in Writ Proceedings, since they require oral and documentary evidence to be let in by the parties.

22. A cursory perusal of the said Judgment between Bharat Petroleum Corporation Limited and Another V. N.R.Vairamani and Another reported in (2004) 8 Supreme Court Cases 579 at Special Page 586, indicates that for adjudication of issues / points / questions arising between the parties, viz., Section 9 and 3 of the Chennai City Tenants' Act, 1921, these matters are not to be adjudicated under the Writ Proceedings under Article 226 of the Constitution of India. In fact, the Appellants, will have to work out / avail alternative remedies before the competent Court of Law.

23. As far as the present case is concerned, the grievance of the Appellants is that citing the order of cancelling the No Objection Certificate dated 29.4.2016, the 3<sup>rd</sup> Respondent had stopped supply Petrol / Diesel and therefore, operation of Petrol Bunk came to stand still. Challenging the order dated 29.04.2016 passed by the 2<sup>nd</sup> Respondent, the 1<sup>st</sup> Appellant / Petitioner filed W.P.No.18160 of 2016 and by an order dated 22.06.2016 the Writ Petition was disposed of, directing the 1<sup>st</sup>

Respondent to entertain the Appeal filed by the 3<sup>rd</sup> Respondent herein within a period of eight weeks from the date of receipt of copy of this order.

24. It is to be pointed out that under the General Rule and in cases where the Tenancy is governed only the provisions of Transfer of Property Act, 1882, once the tenancy comes to an end by determination of Lease, as per Section 111 of the Act, the Right of the tenant to remain in possession of the premises comes to an end and for any period thereafter, for which he continues to occupy the premises, is undoubtedly liable to pay damages for use and occupation at the rate of which the landlord could have let out the premises on being vacated by the tenant [Atma Ram Properties (P) Ltd. V. Federal Motors (P) Ltd., (2005) 1 SCC 705]. It cannot be gainsaid that the tenancy at will or tenancy at sufferance is decided by demand of possession or, by an entry made by the landlord without notice or, by the tenant quitting.

25. Legally speaking, a lessee cannot dispute the title of the lessor as a reason for refusing to part with possession at the expiry of the lease: for if he was let into possession by the Lessor, he cannot deny title under which, he entered initially, without first surrendering possession. If the lessee has not surrendered his possession, the estoppel continues even after determination of tenancy as per decision Krishna Rao V. Mungara Sanyasi reported in AIR 1932 Madras Page 298.

26. In Law, if the existing lease to and in favour of the party after the expiry of the said lease period cannot be extended, either as a matter of routine or as a matter of course.

27. The Appellants / Petitioners are only the dealers of Hindustan Petroleum Corporation Limited / 3<sup>rd</sup> Respondent and when the 3<sup>rd</sup> Respondent / HPCL has no right, the Appellants, who stand on the shoes of the HPCL cannot have a better claim than the HPCL. Also that original Lease, which was granted for the period of 5 years from the year 1976 came to an end in the year 1980 and when the 2<sup>nd</sup> Lease was requested to for a period of 10 years, the same was rejected by the Landlord. Therefore, it is quite evident that the 3<sup>rd</sup> Respondent / Hindustan Petroleum Corporation was able to squat in the premises for nearly 38 years. After the expiry of the Lease, a person remaining in possession or squatting on the property can only be characterised as an 'Unauthorised Occupant'.

28. Also, it cannot be brushed aside that the Land owners/ Respondents 4 to 7 had filed a suit and the 3<sup>rd</sup> Respondent is one of the parties to the said suit before the Civil Court and when

the issues are pending for adjudication before the competent Civil Court, in that event, the Appellants / Petitioners approached this Court and filed W.P.No.2665 of 2017 seeking necessary relief thereto, perse is not a correct one, in the considered opinion of this Court.

29. Only a person, who is considered / construed to be Lawful / legal tenant, can deal with the concerned property. After the expiry of Lease, which is admitted in the present case and when there is no tenancy agreement or an existing tenancy between the parties and more particularly, even the disposal of the civil suit in one way or other, may not heighten the case of the Appellants, for the simple reason it is not a mandatory one for the grant of licence and before that there is no vested right on the part of the concerned to take the consent of the Landlord. Looking at from any point of view and also this Court by looking into the ingredients of Rule 150 of Petroleum Rules and also taking note of the decision of the Hon'ble Supreme Court between Bharat Petroleum Corporation Limited and Another V. N.R.Vairamani and Another reported in (2004) 8 Supreme Court Cases 579 at Special Page 586, cited on behalf of the Appellants comes to an irresistible conclusion that it is not for the Appellants / Petitioners to approach the Writ Court and file the present Writ Appeal because of the reason that the Writ Court is not the proper forum of adjudication of disputed factual and legal questions / controversies concerning to parties. In any event, in the instant case, the Appellate as well as the Original Authorities had rejected the claim of the Appellants / Writ Petitioners and to grant a licence, undoubtedly, the consent of concerned landlord is very much essential and the same cannot be dispensed in any manner. Looking at from any angle, the view taken by the Learned Single Judge in dismissing the Writ Petition is free from any legal flaw. Resultantly, the Writ Appeal fails.

In fine, the Writ Appeal stands dismissed. Consequently connected Miscellaneous Petitions is closed. No costs.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

ssd

To

1. The Transport Commissioner,  
Chepauk, Chennai
2. The District Collector,  
Thiruvannamalai,  
Thiruvannamalai District

+1 cc to M/s.G.R.Associates sr 9883  
+1 cc to the Govt Pleader sr 10261

W.A. No.232 of 2018 and  
C.M.P.No.1831 of 2018

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