

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order Reserved : on 20.07.2018

Order Delivered : on 10.09.2018

Coram:-

THE HONOURABLE MR. JUSTICE T.RAJA

Writ Petition No.23725 of 2017 and
W.M.P.Nos.24917, 24918 and 25970 of 2017

&

Writ Petition No.24821 of 2017
and W.M.P.No.26226 of 2017

M/s.Sri Renuga Agencies,
Partnership Firm,
Rep. By its Partner D.Mahesh
S/o.Late Devadoss
D.No.620, Near Theni Police Station,
Periyakulam Road,
Theni - 625 531.

... Petitioner in

W.P.No.23725/17

Hindustan Petroleum Corporation Ltd.,
Rep. By its Senior Regional Manager,
1st Floor, BSNL CMTS Bhavan,
Ellis Nagar Main Road,
Madurai.

... Petitioner in
W.P.No.24821/17

Vs.

1.The Transport Commissioner,
Chepauk, Chennai - 5.

2.The Chief Controller,
Department of Explosive,
No.140, Rukmani Lakshmipathy
Marshall Road,
Egmore, Chennai - 8.

3.The Joint Chief Controller of Explosives,
South Circle, Chennai,
Department of Explosive,
No.140, Rukmani Lakshmipathy Marshall Road,
Egmore, Chennai - 8.

4.The District Collector,
Theni District, Theni.

5.The District Revenue Officer,
Theni District.

... Respondents
in both Writ Petitions

6.Hindustan Petroleum Corporation Limited,
Rep. By its Senior Regional Manager,
Plot No.7, 3rd floor, Rakesh Towers,
Byepass Road, Madurai.

7.N.A.K.Gopalakrishna Raja ... 6th & 7th
Respondents in WP.24821/17
in W.P.No.23725/17

9.M/s.Sri Renuga Agencies,
Partnership Firm,
Rep. By its Partner D.Mahesh ... 7th Respondent
in W.P.No.24821/17

Prayer in W.P.No.23725/17:- Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorarified mandamus to call for the records pertaining to the impugned order passed by the first respondent in his proceedings R.No.30364/M2/2017, dated 24.08.2017 confirming the impugned order of the fifth respondent in Na.Ka.No.C4/35611/2011, dated 07.12.2015 and consequential impugned order of the 3rd respondent in No.P/SC/TN/14/204 (P30519), dated 22.12.2015 and quash the same and consequently forbear the respondents 1, 4 and 5 from interfering the running of the petitioner's petroleum outlet and pass such further orders.

Prayer in W.P.No.24821/17:- Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorari to call for the records pertaining to the impugned order passed by the first respondent in his proceedings R.No.30364/M2/2017, dated 24.08.2017 confirming the impugned order of the fifth respondent in Na.Ka.No.C4/35611/2011, dated 07.12.2015 and consequential impugned order of the 3rd respondent in No.P/SC/TN/14/204 (P30519), dated 22.12.2015 and quash the same.

For Petitioner
in W.P.No.23275 and
for R7 in W.P.No.24821/17 : Mr.Veera Kathiravan, SC
for M/s.K.K.Ramakrishnan

For Petitioner
in W.P.No.24821/17 and
for R6 in W.P.No.23275/17 : Mr.O.R.Santhanakrishnan

For R1, R4 & R5 : Mr.V.Jayapraksh
Narayanan
in both Writ Petitions Special Government
Pleader

For R2 & R3 in both WPs : Mr.N.Rajan, SCGSC

For R7 in W.P.No.23725/17
& for R6 in W.P.No.24821/17 : Mr.R.Thiagarajan, SC
for M/s.Aiyar & Dolia

COMMON ORDER

These two writ petitions filed by M/s.Sri Renuga Agencies, represented by its Partner Mr.D.Mahesh, Theni, and Hindustan Petroleum Corporation Limited (in brevity "the Corporation"), represented by its Senior Regional Manager, Madurai, are directed against the impugned order dated 24.08.2017 passed by the first respondent / the Transport Commissioner, Chennai, confirming the order dated 07.12.2015 passed by the fifth respondent / the District Revenue Officer, Theni, cancelling the No Objection Certificate (NOC) issued to the Corporation and its dealer, M/s.Sri Renuga Agency, and that consequential impugned order dated 22.12.2015 passed by the third respondent / the Joint Chief Controller of Explosives, South Circle, Chennai, cancelling the Explosive licence issued to M/s.Sri Renuga Agency.

2. Mr.O.R.Santhanakrishnan, learned counsel for the petitioner/Hindustan Petroleum Corporation Limited in W.P.No.24281 of 2017, submitted that the petitioner's predecessor in title, namely, ESSO Standard Vaccum Oil Company, had entered into a lease agreement on 16.06.1952 with the sixth respondent/ N.A.K.Gopalakrishna Raja for a period of 10 years leasing out a vacant land in Town Survey No.533, Theni Allinagaram Municipality, measuring an extent of 5400 sq.ft. Subsequent to the lease agreement, the petitioner's predecessor has put up the superstructure. The said lease was again renewed for period of 10 years by lease deed dated 01.05.1962 and it was once again further renewed with effect from 01.05.1972 by lease deed dated 27.09.1973. Thereafter, in view of nationalization of ESSO by Act 4 of 1974, the Corporation became the successor Company, known as Hindustan Petroleum Corporation Limited, which is a public sector undertaking under the administrative control of the Ministry of Petroleum and Natural Gas, hence, the

premises in question was devolved upon the petitioner Corporation.

3. It is further submitted that the lease was taken for running a petroleum outlet for retail sale and distribution of petroleum products to the motoring public, therefore, they have exercised the statutory option of renewal of the lease for 10 years as conferred under the provisions of the Act and the last renewal of lease was for a period of 10 years i.e. from 01.05.1982 to 31.05.1992. In the interregnum, although the landlord filed a Writ Petition No.9947 of 2001 seeking a direction to the Corporation to vacate and handover the possession of the retail outlet, this Court, in its order dated 07.02.2003, dismissed the said writ petition giving liberty to the sixth respondent/landlord to move before the appropriate Court. As against that, when Writ Appeal No.1197 of 2003 was filed, the same was also dismissed as withdrawn by the Hon'ble Division Bench of this Court on 07.06.2007. Subsequently, the landlord/sixth respondent filed a Civil Suit in O.S.No.4 of 2008 on the file of the District Munsif Court, Theni, seeking for recovery of possession of the land in question and in the said suit, the petitioner Corporation filed C.T.O.P.No.1 of 2008 seeking for purchase of the land in question invoking Section 6 of the Tamil Nadu City Tenants Protection Act. Immediately thereafter, the above said suit was withdrawn by the landlord on 05.06.2012, as a result, C.T.O.P.No.1 of 2008 filed by the petitioner Corporation for purchase of the land in question was also closed.

4. Subsequently, it is pleaded, invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, the landlord/sixth respondent had filed a Writ Petition (MD) No.10324/2011, seeking for a direction to the Chief Controller of Explosives, Joint Chief Controller of Explosives, District Revenue Officer, Theni District, to cancel the explosive licence and/or to cancel the NOC given to the petitioner Corporation for sales and distribution of petroleum products and also to handover the possession of the property in question. The said writ petition was disposed of by this Court on 27.02.2014 giving liberty to the landlord to submit comprehensive representation to the authorities concerned for cancellation of licence and No Objection Certificate, and on such representation, the statutory authorities were directed to consider the same on merits and in accordance with law after giving opportunity to both sides.

5. Pursuant to the order passed by this Court, when the landlord approached the District Revenue Officer, Theni, with a detailed representation requesting to cancel the NOC, the petitioner Corporation also submitted their written objections

to cancel the NOC on the ground that the landlord has to approach the Civil Court for recovery of possession. However, ignoring the plea of the petitioner Corporation, the District Revenue Officer, vide his impugned order dated 07.12.2015, cancelled the NOC issued to the Corporation holding that the lessee has lost the right to site after the expiry of the lease on 30.04.1992. Aggrieved by the same, the petitioner Corporation filed an appeal before the Transport Commissioner contending, inter alia, that

(a) the petitioner Corporation is a tenant as defined in Section 2(4) (i)(ii)(a) of the Tamil Nadu City Tenants Protection Act, 1922,

(b) since the landlord had failed to recover the vacant possession as per the order dated 07.02.2003 in W.P.No.9947/2001 and another order in W.A.No.1197/2003, dated 09.06.2007, it is not open to the District Revenue Officer to hold that the Corporation has lost its right to site, for, the right to possession has to be decided only by a competent Civil Court, without which, the petitioner Corporation cannot be forced to lose its statutory rights under the provision of the Tamil Nadu City Tenants Protection Act.

6. By citing the above said grounds raised by the petitioner Corporation, it is further submitted that the first respondent, without taking note of any of the grounds raised by the petitioner Corporation, passed the impugned order dated 24.08.2017, confirming the order passed by the fifth respondent District Revenue Officer cancelling the NOC issued to the petitioner Corporation. It is further submitted that even after the expiry of the lease period, the petitioner Corporation is still running its petroleum retail outlet through its dealer M/s.Sri Renuga Agencies, only as a tenant at sufferance. Therefore, it is unjustifiable on the part of the District Revenue Officer to hold that the petitioner corporation has no right to site. The said legal position has been ignored by the District Revenue Officer, therefore, the impugned order passed by the first respondent confirming the order passed by the fifth respondent is liable to be set aside.

7. Mr.Veera Kathiravan, learned Senior counsel for the petitioner / M/s.Sri Renuga Agencies, Theni, in W.P.No.23725 of 2017, heavily submitted that in law, the District Revenue Officer, Theni, has no jurisdiction to decide the issue of termination of lease usurping the powers and jurisdiction of the competent Civil Court. This was completely ignored by the Appellate Authority / Transport Commissioner, hence, the impugned orders are liable to be quashed, as they have violated the principles of natural justice.

8. Arguing further, learned Senior counsel submitted that the impugned orders passed by the respondents 1, 5 and 3

are perse illegal and against the directions issued by this Court in W.P.No.9947 of 2001, dated 07.02.2003 directing the landlord to approach the competent Civil Court for redressal of his grievance. It is further stated that in the appeal, the first respondent also without considering the written submission of the petitioner Corporation raising various legal aspects and without addressing the grievance of the petitioner, simply affirmed the order passed by the fifth respondent, therefore, they are bereft of any reason, hence, they are liable to be quashed.

9. Learned Senior counsel further submitted that as per Rule 150 of the Petroleum Rules, the District Revenue Officer has jurisdiction to cancel the licence/NOC only after the final verdict from the competent Civil Court regarding the termination of licence. Therefore, it is contended, while such being the admitted position, it is not known how the District Revenue Officer can acquire into the jurisdiction of the Civil Court to cancel the licence giving a finding that the petitioner Corporation has lost its right to site to run the petroleum outlet. Learned senior counsel further stated that even after the cancellation of NOC, the petitioner being a dealer continues to run the business as a tenant by sufferance, therefore, even if the lease is not renewed, the right to site is continuing in the land in question, hence, the contra finding given by the District Revenue Officer that the right to site is lost by the tenant is unacceptable.

10. By referring to Section 2(4)(i)(ii)(a) of the Tamil Nadu City Tenants Protection Act, 1922, learned Senior counsel stated that tenant in relation to any land means a person liable to pay rent in respect of such land under a tenancy agreement and that includes any such person as referred to in sub clause (1) who continues in possession of land after determination of tenancy agreement. Therefore, if the above said legal position is applied, in the present case, learned Senior counsel, pleaded, admittedly the tenancy of the Corporation was terminated by notice dated 21.04.2007 and immediately a reply was sent by the Corporation on 10.07.2017 claiming rights under the Tamil Nadu City Tenants Protection Act, 1922. Besides, the Corporation has been paying a sum of Rs.1,650/- towards annual rent and that has been accepted by the landlord without prejudice. While this being the legal position, the District Revenue Officer has no jurisdiction to hold that the Corporation has lost its right to site or that the NOC is liable to be cancelled.

11. Concluding his arguments, learned Senior counsel submitted that now the larger issue whether a tenant is entitled

to have the benefit of Section 9 of the Tamil Nadu City Tenant Protection Act is pending before the Hon'ble Apex Court in SLP.No.33430/11 etc., and that the determination of lease of the petitioner has not been made by any competent Civil Court, therefore, the impugned order passed by the first respondent confirming the order passed by the fifth respondent cancelling the NOC issued to the Corporation is wholly without jurisdiction and thereby the consequential order passed by the third respondent / the Joint Chief Controller of Explosives, Chennai, cancelling the licence granted to the petitioner is liable to be quashed.

12. Per contra, Mr.R.Thiagarajan, learned Senior counsel appearing for the 7th respondent in W.P.No.23725/17 / 6th respondent in W.P.No.24821/17 / landlord, submitted that the 6th respondent landlord is an absolute owner of the property in question comprised in Survey No.533, situated in a prime locality at Periyakulam Road, near Theni Town Police Station, Theni Town. The said property as a vacant site was leased out to ESSO Standard Inc in 1952 to run the petrol retail outlet. Subsequently, the leasehold right was devolved upon the Corporation as per the ESSO (Acquisition of Undertaking of India) Act, 1974, as a result, the Corporation became lessee and exercised statutory option of 10 years, hence, the lease was renewed for a period of 10 years i.e. from 01.05.1982 to 30.04.1992. Subsequently, as the property in question was required for landlord for his usage, the landlord declining to renew the lease sent a eviction notice dated 19.03.2001, however, the tenant had refused to receive the said notice. Unfortunately, the petitioner has been paying a mere sum of Rs.1650/- per annum towards rent for a huge land measuring an extent of 5400 sq.ft. situated in a prime locality of Theni Town. It is also an admitted case of the Corporation that they are running the petrol outlet through its dealer M/s.Sri Renuga Agencies and the said dealer is in actual physical possession of the said property, not the Corporation. Moreover, when the lease was not renewed and that the company is a tenant by sufferance, the Corporation has lost its right to site. On this basis, an application was filed by the landlord before the District Revenue Officer, Theni, to cancel the NOC given under Rule 144 of the Petroleum Rules. As his application was not considered, he had filed a Writ Petition No.10324 of 2011 seeking a direction to the respondents 1 and 2 therein / the Chief Controller, Department of Explosive, Chennai, and the Joint Chief Controller of Explosives, South Circle, Chennai, to cancel the licence given to the petitioner Corporation, with a further direction to the District Revenue Officer to revoke the NOC given by him to M/s.Sri Renuga Agency for running the petroleum outlet. This Court, in its order dated 27.02.2014, had given liberty to the landlord to submit his comprehensive

representation to the respondents 1 to 3 therein indicating the reasons for cancellation of licence and NOC and on receipt of such representation, the concerned authorities were directed to consider the same on merits and in accordance with law after hearing both parties.

13. Subsequently, it is submitted, when a fresh application was made by the landlord, the District Revenue Officer, Theni, after receiving the written objections from the Corporation and also after hearing both the parties, cancelled the NOC given to the Corporation. Even after the cancellation of NOC and licence, the dealer M/s.Sri Renuga Agencies has continued to run the business in a clandestine manner by selling petroleum products, hence, the landlord preferred a Writ Petition No.23617 of 2015 seeking to restrain the petitioners from running the petrol bunk in the property in question in view of cancellation of NOC by the District Revenue Officer, Theni. During the course of argument in the above said case, it was submitted by the learned counsel for the Corporation therein that in view of the cancellation of NOC they have suspended the sale of petrol and other fuel and as against that, an appeal preferred before the District Collector, Theni, is pending for consideration. Therefore, this Court, by recording the said submission, disposed of the said writ petition on 04.01.2016. Subsequently, when appeal was preferred, the Transport Commissioner, vide his proceedings dated 06.03.2017, upheld the order passed by the District Revenue Officer cancelling the NOC granted to the Corporation.

14. Aggrieved by the same, the Corporation has filed a Writ Petition Nos.14657 and 11769 of 2017, whereby, this Court, in its order dated 17.07.2017, has set aside the order passed by the Transport Commissioner and has remitted the matter back for fresh consideration holding that without giving a finding the Transport Commissioner has passed the order. Only in compliance to the order passed by this Court, a notice was issued to all the parties and finally, the Transport Commissioner, vide impugned order dated 24.08.2017, by taking note of the fact that the rental agreement between the parties to this case expired long time ago i.e. on 30.04.1992 and hence, the law right to carry on trade and hold valid explosive licence would accrue only if the Corporation has a legal right to site, finding that there was no valid legal rental agreement between parties and that as per Section 4 of the Madras City Tenants Protection Act, 1921, tenants do not include sub-tenant or his legal heirs, agreeing with the findings of the District Revenue Officer that the Corporation has lots its right to site, confirmed the order passed by the District Revenue Officer, Theni.

15. With regard to the writ petition No.24821 of 2017 filed by the Corporation, learned Senior counsel submitted that once the Corporation has also appeared before this Court and made a statement that the NOC was cancelled and they have also suspended the fuel and petrol from 28.12.2015, then the present writ petition filed by them seeking a similar prayer as that of M/s. Sri Renuga Agencies is liable to be dismissed as devoid of any merit.

16. In support of his submissions, learned Senior counsel placing reliance on the judgment of the Hon'ble Apex Court in C.Albert Morris Vs. K.Chandrasekaran and others [(2006) 1 SCC 228], pleaded that a mere acceptance of amount equivalent to rent or the standard rent would not attract Section 116 of the Transfer of Property Act, 1882, because a wrong cannot be a right of a person who trespasses on to another's land and a trespasser cannot be said to have a right to the land vis-a-vis the owner because he happens to be in possession of that land. Mere presence on the land by itself does not result in a right to the land and this is simply for the reason that when a lease stood expired and the landlord declined to renew the same, the erstwhile lessee could not longer assert that he had any right to the site and his continued occupation of something which he had no right to occupy cannot be regarded as source of a right to the land which he himself was not in lawful possession. In the present case, this position was accepted by the District Revenue Officer and the Transport Commissioner giving a finding that the Corporation had lost its right to site and therefore, the NOC was also rightly cancelled.

17. Finally, concluding his arguments, learned Senior counsel submitted that the seventh respondent / landlord is aged about 73 years and not keeping good health. Although the tenancy of the Corporation got terminated in the year 1992 itself, which is 25 years ago, the dealer/M/s.Sri Renuga Agency has been continuing in unauthorized occupation of the land in question, as a result, the legal and valuable property rights of the landlord have been completely snatched away by the writ petitioners. In view of pendency of the case for a long time, three of his children are unable to enjoy the property in question which is located in a prime location. With these submissions, learned Senior counsel prayed for the dismissal of the writ petitions.

18. Heard the learned counsel appearing on either side and perused the materials available before this Court.

19. The seventh respondent / Mr.N.A.K.Gopalakrishna Raja, in W.P.No.23275 of 2017, is the owner of the property

measuring an extent of 5400 sq.ft. comprised in Town Survey No.533, Theni Allinagaram Municipality. The said property was originally belonged to the 7th respondent's mother, Ramammal, who had leased out the said property to M/s.ESSO Standard Inc for running petrol retail outlet through the lease agreement dated 16.06.1952. Subsequently, the leasehold right was devolved upon the Corporation after the nationalization of ESSO by Act 4 of 1974 and thereafter, the Corporation became the lessee. It is also not in dispute that the Corporation had entered the last renewal of the lease with the landlord for a period of 10 years from 01.05.1982 to 30.04.1992. Thereafter, since the property was required for the landlord's usage, he had declined to renew the lease and thereby sent an eviction notice dated 19.03.2001, however, the said notice was declined to be received by them and till date, the Company, as a tenant by sufferance, has been paying a paltry sum of Rs.1650/- per annum towards rent. When the prime land situated at Periyakulam Road, near Theni Town Police Station, Theni Town, having an extent of 5400 sq.ft. is in enjoyment of the petitioners by running petroleum retail outlet, this Court is at a loss to see how from the year 2001 onwards, the petitioners can pay a humiliating paltry sum of Rs.1650/-, that too, not as a monthly rent, but, as an annual rent.

20. It is also an admitted fact that when the lease was not renewed and that the company, as a tenant by sufferance, was reluctant to vacate the property in question, an application was filed before the District Revenue Officer to cancel the NOC given under Rule 144 of the Petroleum Rules, however, the said application was not considered, hence, the landlord had approached this Court by filing a Writ Petition (MD) No.10324 of 2011 seeking a direction to the Chief Controller, Department of Explosive, Chennai, and the Joint Chief Controller of Explosives, South Circle, Chennai / respondents 1 and 2 therein to cancel the licence given by them to M/s.Sri Renuga Agencies for importing and selling of petroleum products, and also to direct the District Revenue Officer, Theni, to revoke the NOC given to M/s.Sri Renuga Agencies. This Court, in its order dated 27.02.2014, gave liberty to the landlord to submit a comprehensive representation to the respondents 1 to 3 therein indicating the reasons for cancellation of licence and NOC, and on receipt of such representation, the respondents 1 to 3 therein were directed to consider the same on merits and in accordance with law after giving an opportunity of personal hearing to the parties concerned.

21. In compliance to the order passed by this Court, when the landlord preferred a fresh application dated 02.11.2014, the District Revenue Officer, Theni, after receiving the written objections from the Corporation and also satisfying

himself that they had suffered termination of lease on the land, passed an order dated 07.12.2015, cancelling the NOC given to the Corporation and its dealer/M/s.Sri Renuga Agencies for storing the petroleum products in the land in question. Consequently, the Chief Controller, Department of Explosives, Chennai, has cancelled the licence given to them to run the petroleum retain outlet, vide his proceedings dated 22.12.2015.

22. Aggrieved by the order passed by the District Revenue Officer, Theni, dated 07.12.2015 in proceedings vide Na.Ka.No.C4/35611/2011, an appeal was filed before the Transport Commissioner, who also affirming the same, dismissed the appeal in his order vide R.No.24676/M5/2016, dated 06.03.2017. Against the orders of the Transport Commissioner and the District Revenue Officer, the Hindustan Petroleum Corporation Limited and M/s.Renuga Agencies moved Writ Petition Nos.14657 and 11769 of 2017 respectively, before this Court assailing the order passed by the Transport Commissioner, inter alia, that it was a non-speaking and unreasoned order and that ousting the jurisdiction of civil Court, an erroneous finding has been given that the Hindustan Petroleum Corporation Limited lost its right to site. This Court setting aside the orders passed by the Transport Commissioner in R.No.M5/24675/2016, dated 06.03.2017 remitted the matter to the file of the Transport Commissioner. Finally, complying with the directions issued by this Court on 17.07.2017, the Transport Commissioner, vide order in R.No.30364/M2/2017, dated 24.08.2017, again confirmed the order passed by the District Revenue Officer, Theni, dated 07.12.2015 vividly holding that the right to carry on trade and hold valid explosive licence would accrue only if the Hindustan Petroleum Corporation Limited has a legal right to the site which they had lost in the year 1992 itself.

23. The reasons assigned by the District Revenue Officer, Theni for cancelling the No Objection Certificate that the petitioners have lost their right to site, are in order, hence, it becomes unassailable and unimpeachable, therefore, the Transport Commissioner also has affirmed the same restating his own reasons that since the lease stood extinguished in the year 1992, the petitioners' right to site was lost. These concurrent findings are legally valid, hence, I am also bound to approve the same.

24. The District Revenue Officer, Theni, being the competent authority under Rules 150 and 152 of the Petroleum Rules to grant No Objection Certificate to store the petroleum products in the land in question, fully satisfying with vital aspects that (a) the lease got expired on 31.05.1992 and (b) the Hindustan Petroleum Corporation Limited has lost their right to site, rightly cancelled the No Objection Certificate. On further appeal, the Transport Commissioner also has affirmed the same.

Besides, the Explosives Department also cancelled the licence in the order dated 22.12.2015. Hence, I do not find any merit in these writ petitions.

25. Apart from the above, the landlord has also moved one more Writ Petition in W.P.No.23617 of 2015, seeking a writ of Mandamus directing the respondents 1 to 4 therein to forbear the respondents 7 and 8 therein/writ petitioners herein from running the petrol bulk in view of cancellation of NOC and explosives licence. During the course of arguments, learned counsel for the Corporation submitted that they have suspended the sale of petrol and fuel from 28.12.2015 onwards, since NOC granted was cancelled by the District Revenue Officer, Theni, and against which, they have also preferred an appeal before the District Collector. For better appreciation, the said submission of the learned counsel for the Corporation recorded in the order dated 04.01.2016 passed by this Court in the above said writ petition is quoted below:-

"2. After notice, the learned counsel appearing for the seventh respondent submitted that they have suspended the sale of petrol and other fuel from 28.12.2015 onwards since 'No Objection Certificate' granted was cancelled by the District Revenue Officer and they have preferred an appeal against such order before the District Collector on 28.12.2015."

Recording the above said submission, this Court, in its order dated 04.01.2016, disposed of the said writ petition without expressing any view on the merits of the matter. Thus, from the above said judgment, it is crystal clear that the Corporation has already suspended the sale of petroleum and other fuel products from 28.12.2015 onwards in view of cancellation of NOC granted to the Corporation and its dealer and the said order of the District Revenue Officer was also affirmed by the Transport Commissioner / first respondent in the appeal. Therefore, in my view, the petitioners have no locus-standi to continue their business contrary to the statement made before this Court cited supra.

26. One of the contentions of Mr.Veera Kathiravan, learned Senior counsel for the petitioner in W.P.No.23275 of 2017 is that the District Revenue Officer, Theni, has no authority to hold that the Corporation has lost its right to site without there-being any finding from the competent Civil Court, since the larger issue whether a tenant is entitled to have the right to purchase the land in question under the provisions of the Tamil Nadu City Tenant Protection Act is pending consideration before the Hon'ble Apex Court. In my view, the said contention cannot be sustained, as the said issue

has already been decided by the Hon'ble Apex Court in C.Albert Morris's case (cited supra), whereby, the Hon'ble Apex Court, while dealing with a similar and identical issue under Rules 153 (1)(i)&(ii) and 144, held that the right to site can exist only when the tenant is in lawful possession of the land in question. For better appreciation, paragraph Nos.42 and 43 thereof are extracted below:-

"42. The argument of Mr. L.N. Rao, learned senior counsel appearing for the appellant that the words "right to site" appearing in Rule 153(1) of the Petroleum rules must be given liberal interpretation having regard to the public interest subserved by the Petrol bunks which are essential for the smooth flow of goods and services as also for the movement of persons. Rule 153(1) (i) of the Petroleum Rules is "right to the site" for storing petroleum. It is not the right for storing petroleum on the site. That is so because that aspect is dealt with specifically in sub-clause (ii) of Rule 153(1) which refers to a no objection certificate, which the District authority or the State Government is required to give. No Objection Certificate which is granted under Rule 144 is the one given by the concerned authority stating that it has no objection for the storage of petroleum on the site after examining the site plan and other relevant factors. The words "right to the site" have, therefore, to be understood as referring to right to the site on which the petroleum is stored. A person can be said to have a right to something when it is possible to find a lawful origin for that right. A wrong cannot be a right of a person who trespasses on to another's land cannot be said to have a right to the land vis-a-vis the owner because he happens to be in possession of that land. Mere presence on the land by itself does not result in a right to the land. Such presence on the premises may ripen into a right by reason of possession having become adverse to the true owner by reason of the passage of time and possession being open uninterrupted, continuous and in one's own right.

43. In our opinion, any right which the dealer has over his site was the right which he had acquired in terms of the lease.

When that lease expired and 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. His continued occupation of something which he had no right to occupy cannot be regarded as source of a right to the land of which he himself was not in lawful possession. As observed by this Court in the case of M.C. Chockalingam & Ors. Vs. V. Manickavasagam & Ors. (supra), litigious possession cannot be regarded as lawful possession. As rightly pointed out by the Division Bench of the High Court the right referred to in this Rule has necessarily to be regarded as right which is in accordance with law and the right to the site must be one which is capable of being regarded as lawful."

In the light of the above, since, in the case on hand, the lease stood expired on 30.04.1992 itself, which is 25 years ago, and that the termination notice was also served on the petitioners on 19.03.2001 itself, the Corporation, without there-being any NOC or licence to run the petroleum outlet, could no longer assert that they have any right to the site, therefore, they do not have any right to run the petroleum outlet in the land in question.

27. It is also opt to take note of another vital fact that the Corporation has not even come forward to vacate and hand over the land in question to the landlord for the past 25 years i.e. from 19.03.2001, the date of termination notice, besides, they have been paying only a paltry sum of Rs.1650/- per annum towards the rent for their usage of the land in question having an extent 5400 sqft., situated in a prime locality at Periyakulam Road, near Theni Town Police Station, Theni Town. It is a matter of common knowledge that price of land, especially in the urban areas has escalated to a great extent and therefore, it would be unfair to deprive the rights of the landlord and to allow the tenants to enrich themselves at the landlord's expense. Moreover, as stated above, both the petitioners have not paid any reasonable rent to the landlord for the past 25 years, as they have been paying only a paltry sum of Rs.1650/- per annum from 1972 onwards.

28. Besides, the right to acquire the property has already been concluded by the Hon'ble Apex Court in Bharat Petroleum Corporation Limited and another Vs. N.R.Vairamani and another [(2004) 8SCC 579], whereby it is held that Section 9 of

the Madras City Tenants' Protection Act, 1921, confers an additional statutory right on a tenant against whom suit for ejectment 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 right conferred by Section 9 is a statutory right to purchase land and it does not create any interest or right to the property, instead it is a privilege granted to him by the statute which is equitable in nature. In the present case, when the landlord has not even filed a suit and in the interregnum the lease stood expired on 30.04.1992 itself and that the NOC and licence granted to the Corporation and its dealer also stood cancelled by the respondents 1, 5 and 3, besides, the Corporation has also suspended the sale of petroleum products from 28.12.2015 to M/s.Sri Renuga Agencies, it is not open to M/s.Sri Renuga Agencies to argue on behalf of the Corporation that they have got a right under Section 9 of the Act, when they have no locus-standi to continue to operate the petroleum retail outlet in the land in question.

29. Thus, in view of the hardship meted out to the landlord for the past 25 years and since the Hindustan Petroleum Corporation Ltd., is paying a meagre amount of Rs.1,650/- (Rupees One Thousand Six Hundred and Fifty only) from the year 1972 for the land measuring 5,400 sq. ft., in the prime locality at Periyakulam road, near Theni Town Police Station in Theni Town, this Court is inclined to impose a cost of Rs.50,000/- (Rupees Fifty Thousand only) on the petitioner in W.P.No.24821 of 2017, viz., Hindustan Petroleum Corporation Ltd., Rep. By its Senior Regional Manager, 1st Floor, BSNL CMTS Bhavan, Ellis Nagar Main Road, Madurai, payable to the landlord/N.A.K.Gopalakrishna Raja within a period of two weeks from the date of receipt of a copy of this order.

30. In the result,

(i) W.P(MD)No.24821 of 2017 is dismissed as devoid of any merit, however, with costs, as above. Consequently, the connected writ miscellaneous petitions are dismissed; and

(ii) W.P(MD)No.23725 of 2017 is also dismissed as devoid of any merit. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is dismissed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1.The Transport Commissioner,
Chepauk, Chennai - 5.

2.The Chief Controller,
Department of Explosive,
No.140, Rukmani Lakshmipathy
Marshall Road,
Egmore, Chennai - 8.

3.The Joint Chief Controller of Explosives,
South Circle, Chennai,
Department of Explosive,
No.140, Rukmani Lakshmipathy Marshall Road,
Egmore, Chennai - 8.

4.The District Collector,
Theni District, Theni.

5.The District Revenue Officer,
Theni District.

+2cc to Mr.K.K.Ramakrishnan, Advocate, S.R.No.62839

+1cc to Mr.Aiyar & Dolia, Advocate, S.R.No.62523

+1cc to Mr.O.R.Santhanakrishnan, Advocate, S.R.No.62475

Writ Petition No.23725 of 2017 and
W.M.P.Nos.24917, 24918 and 25970 of 2017
&

Writ Petition No.24821 of 2017
and W.M.P.No.26226 of 2017

PP (CO)
GSP (14/09/2018)

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