



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 11.10.2018

CORAM

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA
AND

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

W.A.(MD)No.715 of 2018,

C.M.P.(MD)No.6905 of 2018

and W.P.(MD)No.14883 of 2018

and W.M.P.(MD)No.13428 and 13429 of 2018

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The Chief Regional Manager,
Hindustan Petroleum Corporation Ltd.,
1st Floor, BSNL CMTS Bhavan,
Ellis Nagar,
Madurai-625 016.

.. Appellant/Petitioner

Vs.

1. The District Collector,
Collectorate Buildings,
Madurai-625 020.
2. The District Revenue Officer,
Collectorate Buildings,
Madurai-625 020.
3. The Commissioner of Police,
Madurai City,
Alagarkoil Road,
Madurai-625 002.
4. Joint Chief Controller of Explosives,
Petroleum and Explosives Safety Organization,
140, Rukmani Laxmipathi Road,
Egmore, chennai-600 008.
5. The Deputy Chief Controller of Explosives,
Sivakasi-626 123.

6. Dr.B.S.Aiyyappan

.. Respondents in WA/WP

Prayer in W.A.(MD)No.715 of 2018 : Writ Appeal filed under Clause 15 of Letters Patent against the order dated 27.03.2018 made in W.P.(MD)No.22749 of 2017.

Prayer in WP(MD)No. 22749 of 2017 :

<https://hcservices.ecourts.gov.in/hcservices/> Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Certiorari calling for records from the 3rd respondent in his



proceedings in No.C.No.32527/V2/2016 dated 05.12.2017 and quash the same as illegal.

Prayer in W.P.(MD)No.14883 of 2018 : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records from the 4th respondent in his proceedings No. P/SC/TN/14/3895/ (P36576) dated 02.01.2018 and quash the same as illegal.

For Appellant/Petitioner : Mr.M.Vallinayagam, Senior Counsel
for Mr.M.Sridher

For Respondents in : Mrs.J.Padmavathi Devi
Writ Appeal and Writ Special Government Pleader for
Petition RR1-3
Mr.S.Jeya Singh for RR4 and 5
Mr.K.Gnanadesikan, Senior Counsel
for Mr.K.K.Senthil for R6

C O M M O N J U D G M E N T

[Judgment of the Court was delivered by
PUSHPA SATHYANARAYANA, J.]

Hindustan Petroleum Corporation Limited preferred this appeal questioning the dismissal of its writ petition by the learned Single Judge via the impugned order dated 27.03.2018 made in W.P. (MD)No.22749 of 2017.

2. The brief facts of the case are as follows :

2.1. There was a lease agreement dated 28.02.1963 between CALTEX (INDIA) Limited, the predecessor-in-interest of the appellant - Hindustan Petroleum Corporation Limited (in short, "HPCL") and the father of the sixth respondent, for a period of ten years, which got extended for a period of twenty years with an option for renewal on 01.12.1972, i.e., till 30.11.1992. In the meanwhile, the predecessor-in-interest became Government Company and thereafter, got amalgamated with HPCL on 09.05.1978. Thus, the appellant became lessee.

2.2. The sixth respondent, after having become lessor and after the expiry of the lease period, requested the appellant vide the letter dated 18.05.1992 to handover the vacant possession. But the appellant exercising the option clause wanted to extend the lease for a period of thirty years. However, a lease deed was entered into, which was registered on 14.11.2005, for the period from 01.12.1992 to 30.11.2012.

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

2.3. The sixth respondent requested the appellant on 28.11.2011 to handover the possession, upon expiry of lease on



30.11.2012 and sent a number of letters to the appellant reiterating his request and also issued a legal notice on 24.11.2012 seeking to handover the vacant possession, after removing all the accessories. But the appellant requested the sixth respondent to extend the lease further.

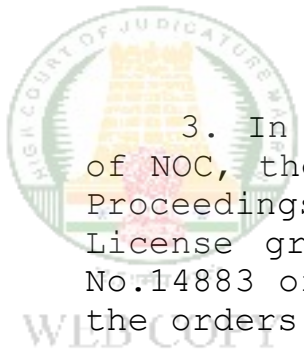
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2.4. Since the vacant possession was not handed over, the sixth respondent filed a suit in O.S.No.203 of 2012 seeking for a direction to the appellant to deliver the vacant possession and damages. In the suit, upon receipt of summons, within the stipulated time, the appellant filed a petition in C.T.O.P.No.1 of 2013 under section 9(3) of the Madras City Tenants Protection Act, 1922, seeking a direction to the sixth respondent to execute sale deed in favour of the appellant. The learned III Additional Subordinate Judge, Madurai, dismissed the said petition on 24.06.2015, which was questioned before the I Additional District Judge, Madurai, in C.M.A.No.1 of 2016. The said appeal was also dismissed on 17.09.2016 and the revision filed by the appellant against the said order before this Court in CRP(MD)No.2626 of 2016 also met with the same fate on 02.06.2017. The appellant took the matter to the Hon'ble Apex Court in SLP(C)No.32286 of 2017, wherein, an interim order of status quo on possession until further orders, was ordered on 14.12.2017. In the meantime, an ex-parte decree was passed in the suit filed by the sixth respondent against the appellant. A petition filed to set aside the said order was also dismissed.

2.5. While things stood so, the sixth respondent filed petitions before the third and fourth respondents to cancel the No Objection Certificates (NOC) issued in favour of the appellant. The fourth respondent rejected the petitions vide letters dated 17.03.2016 and 27.04.2016, which were questioned by the sixth respondent before this Court in W.P.(MD) No.16571 of 2016 and this Court vide order dated 29.08.2017, allowing the writ petition, set aside the impugned orders therein and remitted the matter back to the fourth respondent for fresh consideration. The sixth respondent was given liberty to approach the third respondent with a fresh petition.

2.6. Pursuant to the said order, a petition was filed before the third respondent seeking to cancel the NOC granted in favour of the appellant. The third respondent, after hearing the parties, relying upon the judgment of the Hon'ble Apex Court in **C.Albert Morris V. K.Chandrasekaran and others, (2006) 1 SCC 228**, passed the order dated 05.12.2017 cancelling the No Objection Certificate dated 10.11.1962.

2.7. Questioning the same, the appellant approached this Court in W.P.(MD)No.2749 of 2017. The writ court passed the impugned order dated 27.03.2018 rejecting the prayer of the appellant. Hence, the present appeal.



3. In the meanwhile, as a consequential order of cancellation of NOC, the fourth respondent passed the order dated 02.01.2018 in Proceedings No.P/SC/TN/14/3895/(P36576), cancelling the Explosive License granted to the appellant, which is impugned in W.P.(MD) No.14883 of 2018, and it was tagged along with this appeal, as per the orders of the Hon'ble Administrative Judge.

4. Heard the learned counsels on either side.

5. The question that arises for determination in the appeal is whether the order of third respondent dated 05.12.2017 cancelling the NOC granted in favour of the appellant for using the site in dispute for storing petroleum, as affirmed by the learned Single Judge, is correct ?

6. Admittedly, the father of the sixth respondent had leased out the site situated in Survey No.162/2, Melur Road, to the predecessor of the appellant. Originally, the lease was for a period of twenty years from 1962, when it is in subsistence, there was amalgamation of the Caltex (predecessor-in-interest) with the appellant-HPCL on 09.05.1978. Even thereafter, the lease was renewed for subsequent twenty years from 01.12.1992 to 30.11.2012, though there is no clause for automatic renewal in the lease agreement. Thus, the lease expired on 30.11.2012. However, the appellant refused to vacate and handover the vacant possession and was squatting over the property. Therefore, after the expiry of the lease, the tenant ceased to be a tenant and his possession would be that of a trespasser. There is no dispute with respect to the above facts that there is no renewal of the lease after it expired in the year 2012.

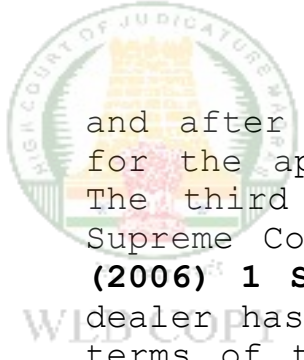
7. It is the contention of the owner of the property/sixth respondent that he never intended to renew the lease and the appellant has got no right to continue to squat over the property and carry on its business and as there was no valid lease in subsistence, the third respondent had passed the impugned order cancelling NOC for storing petroleum.

7.1. In this regard, the Petroleum Rules, 2002 (in short, "the Rules") assume relevance.

7.2. Rule 144 of the Rules refers to issuance of NOC by the Licensing Authority. Rule 150 refers to cancellation of NOC, as per which, a NOC 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.

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7.3. Admittedly, in this case, the third respondent, who is the Licensing Authority had conducted an enquiry, heard both sides



and after consideration of the objections raised by the counsel for the appellant, cancelled the NOC by order dated 05.12.2017. The third respondent also had referred to the judgment of the Supreme Court in **C.Albert Morris V. K.Chandrasekaran and others, (2006) 1 SCC 228**, wherein, it was held that any right which the dealer has over his site was the right which he had acquired in terms of the lease and when that lease expired and 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 be site and his continued occupation of something which he had no right to occupy cannot be regarded as a source of a right to the land, of which, he himself was not in lawful possession.

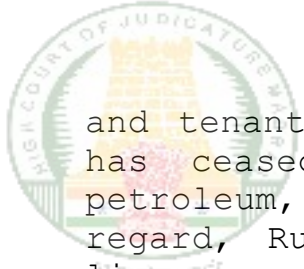
7.4. The learned Single Judge had considered all these aspects along with the relevant judgments including **M.C.Chockalingam and others V. V.Manickavasagam and others, (1974) 1 SCC 45** and also **C.Albert Morris case (cited supra)**. It is also found that the suit for ejectment filed by the sixth respondent for recovery of possession was also decreed. An application filed by the tenant under Section 9 of the Madras City Tenants' Protection Act 1922 was also dismissed and the matter was taken to the Hon'ble Supreme Court and an interim order was granted to maintain status quo on possession as on that date, which shall continue until further orders.

8. The order of the third respondent, as affirmed by the learned Single Judge, has to be confirmed for the following reasons :

8.1. Though it is claimed by the appellant that the ownership of the land was not decided by the third respondent, it is the duty of the Licensing Authority to only see that whether the appellant has the right use the place for storing petroleum. There is no lease in subsistence and the possession of the appellant is protected only by the interim order of status quo granted by the Hon'ble Apex Court from forceful dispossession.

8.2. Rule 150 of the Rules is very clear that for cancellation of NOC, the Licensing Authority has to satisfy that the licensee had ceased to have any right to use the site for storing petroleum.

8.3. Whether the appellant can take umbrage under the interim order granted by the Hon'ble Supreme Court, which is limited to maintain status quo only with respect to the possession, for the purpose of storing petroleum. The answer would be "no". Once, admittedly, lease is expired, the overstay of the tenant would not automatically entitle him to be a lawful lessee. The mere possession would not lead to the jural relationship of landlord



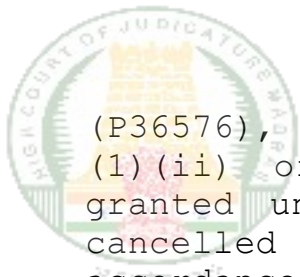
and tenant. In the absence of jural relationship, the licensee has ceased to have any right to use the site for storing petroleum, as contemplated under Rule 150 of the Rules. In this regard, Rule 152 is relevant. Rule 152(1)(i) says that every licence granted under the said Rule shall stand cancelled, if the licensee ceased to have any right to the site for storing petroleum.

9. In such circumstances, the right of the appellant to use the site for storing petroleum assumes importance, while granting NOC. It is not the continuance of the possession, as claimed by the appellant by virtue of the order of the Hon'ble Supreme Court, but its right to store petroleum. The third respondent, who is the Licensing Authority, has passed the impugned order, after due enquiry, cancelling the NOC only on the ground that the appellant had lost its right to store the petroleum, after expiration of the lease. Since the appellant did not vacate the premise that constrained the sixth respondent to go for a suit for ejectment, which is also decreed. So, the conduct of the parties categorically show that the sixth respondent never intended to renew the lease. Therefore, there is no landlord-tenant relationship between the parties. When the ownership of the property is admitted, the continuance of the appellant is only as a trespasser. His possession is only protected by law against the wrongful dispossession, but that will not make his possession a lawful one. Hence, the appellant cannot claim to have right to use the site for storing petroleum. If the appellant is disqualified from storing the petroleum in the site, over which, he has got no lawful possession, he is not entitled for the NOC from the Licensing Authority.

10. It was claimed by the appellant that it had been remitting the rent to the sixth respondent, which has been received by them and therefore, it should be deemed that a new tenancy has been created. This aspect was vehemently denied by the learned Senior Counsel for the sixth respondent that they never accepted any rent from the appellant. It is the voluntary deposit made by the appellant, which was returned to them with an intimation that no such amount in the name of the rent to be deposited in the sixth respondent's account.

11. Considering the said submission also, it can be easily held that the appellant does not have any valid right to the site in dispute to store petroleum, based on which, the third respondent has passed the impugned order and the same has been confirmed by the learned Single Judge. In view of the same, we are of the firm view that the order of the learned Single Judge has to be confirmed.

<https://hcservices.courts.gov.in/hcservices/> 12. As stated above, the writ petition has been filed by the appellant challenging the consequential order of the fourth respondent dated 02.01.2018 in Proceedings No.P/SC/TN/14/3895/



(P36576), cancelling the Explosive License granted it. Rule 152 (1)(ii) of the Rules categorically states that every licence granted under the Rules shall stand cancelled, if the NOC is cancelled by the District Authority or the State Government in accordance with sub-rule (1) of Rule 150. The relevant portion of Rule 152 reads as follows :

"152. Suspension and cancellation of license -

(1) Every license granted under these rules shall -

(i) stand cancelled, if the licensee ceases to have any right to the site for storing petroleum ;

(ii) stand cancelled, if the no objection certificate is cancelled by the District Authority or the State Government in accordance with sub-rule (1) of rule 150 ;

13. Though it is contended by the learned counsel for the appellant that no opportunity was given to the appellant before passing such an order, giving an opportunity to the appellant will enure no benefit to them for the simple reason that when the NOC is cancelled, it is automatic that the licence would be cancelled and on hearing the appellant, the authority cannot take a different decision, when the statute mandates cancellation of licence, once NOC is not in vogue.

14. No doubt it is the basic principle of law that no action shall be taken without providing a hearing to the affected party. However, this principle is 'flexible' according to the situations and need not be followed as an empty formality. It all depends upon the kind of function performed and to the extent to which a person is likely to be affected. Once the NOC is cancelled, every license granted under the Rules shall stand cancelled. Likewise, if the licensee ceases to have any right to the site for storing petroleum, the license granted under the rules shall stand cancelled.

15. In this regard, it is relevant to note that the Hon'ble Supreme Court in **Karnataka State Road Transport Corporation v. S.G. Kotturappa (2005) 3 Supreme Court Cases 409** has held as follows:-

"24. The question as to what extent, principles of natural justice are required to be complied with would depend upon the fact situation obtaining in each case. The principles of natural justice cannot be applied in vacuum. They cannot be put in any straitjacket formula. The principles of natural justice are furthermore not required to be complied with when it will lead to an empty formality."



16. In another judgment in **Municipal Committee, Hoshiarpur v. Punjab State Electricity Board, (2010) 13 Supreme Court Cases 216**, the Hon'ble Supreme Court has held as follows:-

32. The two rules of natural justice, namely, *nemo iudex in causa sua*, and *audi alteram partem* now have a definite meaning and connotation in law and their contents and implications are well understood and firmly established; they are nonetheless non-statutory. The court has to determine whether the observance of the principles of natural justice was necessary for a just decision in the facts of the particular case. (Vide *Board of Mining Examination and Chief Inspector of Mines v. Ramjee* [(1977) 2 SCC 256 : 1977 SCC (L&S) 226 : AIR 1977 SC 965] , SCC p. 262, para 13; *Union of India v. Tulsiram Patel* [(1985) 3 SCC 398 : 1985 SCC (L&S) 672 : AIR 1985 SC 1416] ; and *ECIL v. B. Karunakar* [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704: AIR 1994 SC 1074] .)

33. There may be cases where on admitted and undisputed facts, only one conclusion is possible. In such an eventuality, the application of the principles of natural justice would be a futile exercise and an empty formality. (Vide *State of U.P. v. Om Prakash Gupta* [(1969) 3 SCC 775 : AIR 1970 SC 679], *S.L. Kapoor v. Jagmohan* [(1980) 4 SCC 379 : AIR 1981 SC 136] and *U.P. Junior Doctors' Action Committee v. Dr. B. Sheetal Nandwani*, (1990) 4 SCC 633 : AIR 1991 SC 909."

17. In yet another judgment in **Dharampal Satyapal Ltd v. CCE, (2015) 8 SCC 519**, the Hon'ble Supreme Court, after having considered the earlier judgments, has held as follows:-

39. We are not concerned with these aspects in the present case as the issue relates to giving of notice before taking action. While emphasizing that the principles of natural justice cannot be applied in straitjacket formula, the aforesaid instances are given. We have highlighted the jurisprudential basis of adhering to the principles of natural justice which are grounded on the doctrine of procedural fairness, accuracy of outcome leading to general social goals, etc. Nevertheless, there may be situations wherein for some reason—perhaps because the evidence against the individual is thought to be utterly compelling—it is felt that a fair hearing "would make no difference"—meaning that a hearing would not change the ultimate conclusion reached by the decision-maker—then no legal duty to supply a hearing arises. Such an approach was endorsed by



Lord Wilberforce in *Malloch v. Aberdeen Corpn.* [(1971) 1 WLR 1578 : (1971) 2 All ER 1278 (HL)] , who said that: (WLR p. 1595 : All ER p. 1294)

"... A breach of procedure ... cannot give [rise to] a remedy in the courts, unless behind it there is something of substance which has been lost by the failure. The court does not act in vain."

Relying on these comments, Brandon L.J. opined in *Cinnamond v. British Airports Authority* [(1980) 1 WLR 582 : (1980) 2 All ER 368 (CA)] that: (WLR p. 593 : All ER p. 377)

"... no one can complain of not being given an opportunity to make representations if such an opportunity would have availed him nothing."

In such situations, fair procedures appear to serve no purpose since the "right" result can be secured without according such treatment to the individual."

18. Though the Hon'ble Supreme Court has observed that the applicability of the theory must be depend on the facts of a particular case, if the admitted or indisputable facts leading only to one conclusion, then, there is no bar to apply the theory. As mentioned above, the admitted facts, which are not in dispute, is analysed with the touchstone of the "useless formality theory", the irresistible conclusion would be that giving an opportunity of being heard to the appellant is an empty formality, as it would never lead to any other decision, but to cancel the license.

19. Hence, viewed from any angle, we are of the firm view that the order of the fourth respondent dated 02.01.2018 does not suffer from any illegality and the same needs no interference from this Court.

20. In the result, both the writ appeal and the writ petition are dismissed. However, there will be no order as to costs. Consequently, connected pending Miscellaneous Petitions are closed.

Sd/-

11.10.2018

After pronouncing judgment, the learned counsel appearing for the appellant represented that there are petrol and diesel in stock in the underground tank and sought permission of this Court to remove the same within a weeks time.

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2. The learned counsel appearing for the sixth respondent has got no objection for the same.



3. Accordingly, a weeks time from today is granted to remove the petrol and diesel from the underground tank in question.

Sd/-

Assistant Registrar(CO)

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/True Copy/

Sub Assistant Registrar(CS-IV)

To

1. The District Collector,
Collectorate Buildings, Madurai-625 020.
2. The District Revenue Officer,
Collectorate Buildings, Madurai-625 020.
3. The Commissioner of Police,
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140, Rukmani Laxmipathi Road,
Egmore, chennai-600 008.
5. The Deputy Chief Controller of Explosives,
Sivakasi-626 123.

+2cc to Mr.M.Sridher, Advocate Sr.No.90084,90085

+1cc to Mr.S.Jeya Singh, Advocate Sr.No.90102

+2cc to Mr.K.K.Senthil, Advocate Sr.No.90103,90104

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VB/SV/SAR4/12.11.2018/10P/11C

W.A. (MD) No.715 of 2018
& W.P. (MD) No.14883 of 2018
and connected Mps.
11.10.2018