



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 13.03.2018
PRONOUNCED ON: 27 .03.2018

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CORAM :

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Writ Petition (MD) No.22749 of 2017
and
W.M.P (MD) Nos.19063 of 2017 and 901 of 2018

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

... 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. The Joint Chief Controller of Explosives,
Petroleum and Explosives Safety Organisation,
140, Rukmani Laxpati Road, Egmore,
Chennai 600 008.
5. The Deputy Chief Controller of Explosives,
Sivakasi 626 123.

6.B.S.Aiyyappan

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for records from the 3rd respondent in his proceedings in No.6.No.22527/12/2016 dated 05.12.2017 and quash the same as illegal.



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

For Respondents 1-3 : Mrs.J.Padmavathi Devi,
Special Government Pleader.

For Respondents 4&5 : Mr.S.Jeyasingh

For 6th Respondent : Mr.B.S.Gnanadesikan,
Senior Counsel for
M/s.Gnanadesikan Law Associates

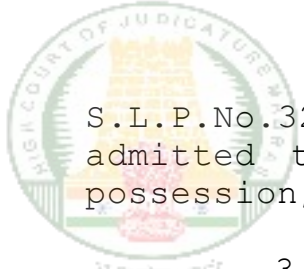
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ORDER

This writ petition has been filed by the Hindustan Petroleum Corporation Limited challenging the order passed by the Commissioner of Police, Madurai City, cancelling the No Objection Certificate granted in favour of the petitioner for storing petroleum products in the land belonged to the sixth respondent.

Admitted Facts:-

2.The sixth respondent is the owner of a vacant site in S.No.164/2 (Part), Thallakulam Village, Madurai District. The said land was leased out to the petitioner's predecessor-in-interest namely, M/s.Caltex (India) Limited in the year 1972 for a period of 20 years. During the year 1976, the right, title and interest of M/s.Caltex (India) Limited stood vested with the Central Government by virtue of Caltex [Acquisition of shares of Caltex Oil Refining (India) Limited and of the undertakings in India of Caltex (India) Limited] Ordinance, 1976. Subsequently, it was amalgamated with the Hindustan Petroleum Corporation Limited with effect from 09.05.1978. Thereafter, the petitioner became a lessee in respect of the above site. As per the provisions of the Act, the lease was further renewed for a further period of 20 years commencing from 01.12.1992 to 30.11.2012. Before expiry of the lease period, on 28.11.2011, the sixth respondent requested the petitioner to hand over the possession and sent a legal notice dated 24.11.2012 for which the petitioner had sent a reply claiming benefits under the Tamil Nadu City Tenants Protection Act (hereinafter called as 'the Act'). Thereafter, the sixth respondent filed a suit against the petitioner in O.S.No.203 of 2013, on the file of the III Additional Subordinate Judge, Madurai for recovery of possession and damages. After receipt of summons in the above suit, the petitioner filed an application in claiming benefit under the Act in C.T.O.P.No.1 of 2013. The above petition was dismissed by the trial Court. Against which the petitioner filed an appeal in C.M.A.No1 of 2016 before the I Additional District Munsif Court, Madurai. The same came to be dismissed on 17.09.2016. Thereafter, the petitioner preferred a revision before this Court in C.R.P(MD)No.2650 of 2016 and this Court, by an order dated 02.06.2017 dismissed the said revision. Against the order of dismissal of civil revision petition, the petitioner filed a special leave petition before the Hon'ble Supreme Court in



S.L.P.No.32286 of 2017. The Hon'ble Supreme Court on 14.12.2017, admitted the Special Leave Petition and ordered status quo on possession, as on 14.12.2017, until further orders.

3. In the meantime, the suit filed by the sixth respondent, an ex-parte decree was passed against the petitioner and the petition to set aside the said ex-parte decree was also dismissed. Thereafter, the sixth respondent filed an application before the respondents 3 and 4 herein to cancel the No Objection Certificate granted in favour of the petitioner and also to cancel the licence. When the application filed before the third respondent was pending consideration, the fourth respondent rejected his application. Challenging the above said order, the sixth respondent filed a writ petition before this Court in W.P. (MD)No.16571 of 2016 and this Court, by an order dated 29.08.2017 allowed the writ petition and set aside the order passed by the fourth respondent and remitted the matter back to the fourth respondent for fresh consideration and directed the fourth respondent to pass orders on merits and as per law, after providing opportunity to the petitioner as well as to the necessary parties. The sixth respondent was also directed to give fresh representation to the third respondent herein and the third respondent was directed to consider the same and pass orders, after hearing necessary parties in the light of the judgment of the Hon'ble Supreme Court, reported in **2006 (1) SCC 228 (Albert Moris Vs. K. Chandrasekaran and others)** within ten weeks. Thereafter, an enquiry was conducted by the third respondent as per the orders passed by this Court and passed the impugned order thereby cancelling the No objection Certificate granted in favour of the petitioner under Rule 150(1). Challenging the above said order, the present writ petition has been filed.

Contention of the Parties:-

4. Mr. M. Vallinayagam, learned Senior Counsel appearing for the petitioner would contend that the impugned order has been passed cancelling the No Objection Certificate mainly on the ground that after expiry of the lease and refusal of the sixth respondent to renew the lease further, the petitioner has lost his right to use the site for the purpose of storing petroleum. The petitioner being tenant and he continued to be in possession even after expiry of the tenancy agreement, the petitioner has the right of purchase the site under Section 9 of the Act and the petitioner's application is now pending adjudication before the Hon'ble Supreme Court and the Hon'ble Supreme Court has also granted an order of status-quo on possession, and in view of the said position, the petitioner is entitled to be in possession and use the property. Hence, the third respondent is totally wrong in holding that the petitioner has no right to use the site for the purpose of storing petroleum.

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5. Learned Senior Counsel further submitted that the question of tenancy and the right of the petitioner under the Act

can be decided only by the competent Civil Court as the petitioner being lawful tenant entitled to use the site and the third respondent is not competent to decide the above issue.

6. It is submitted that by virtue of the order of status-quo passed by the Hon'ble Supreme Court, the petitioner is entitled to use the land and his possession cannot be disturbed. Further, the landlord is still receiving rents from the petitioner till date and the petitioner is continued to be a tenant. Now, by cancelling the No Objection Certificate, the petitioner is wholly deprived of its statutory right under the provisions of the Act.

7. Learned Senior Counsel would further contend that the right to use the site for the purpose storing petroleum mentioned under Rule 150 and 153(1) of the Petroleum Rules only relates to right to possession and include right to carry on the business activities in the site and in view of the order passed by the Hon'ble Supreme Court granting status quo of possession of property, the petitioner is entitled to carry on business and store petroleum in the site. Hence, the finding of the third respondent that after expiry of the lease and the refusal of the landlord to renew the lease, the petitioner has no right to use the site is erroneous. By virtue of the order passed by the third respondent now the second and fourth respondents are likely to pass a consequential order cancelling the explosive licence also.

8. Per contra, Mr. B. S. Gnanadesikan, learned Senior Counsel appearing for the sixth respondent submitted that the lease period has already been expired, the sixth respondent also refused to renew the lease, also filed a suit for recovery of possession which was decreed in his favour, in that circumstances, the petitioner now lost his right to use the site for storing petroleum and considering the same, the third respondent has rightly cancelled the No Objection Certificate. The third respondent did not consider the ownership of the land and has only decided the suitability of the place for storage of petroleum. After expiry of the lease, the petitioner's right to storing petroleum in the site has ceased. Apart from that the petitioner's possession is only litigious possession and his possession and the petitioner has no valid legal right to site within the meaning of Section 150 of the Petroleum Rules. He would further contend that so far as the payment of rent is concerned, the sixth respondent never received any rent from the petitioner, after expiry of the lease period, the petitioner on their own deposited amount in the sixth respondent's bank account but the sixth respondent immediately returned it to the petitioner with a caution that the petitioner should not credit any rent through the ECS and the sixth respondent never received any rent from the petitioner as alleged by him and the contention of the petitioner regarding the payment of rent is not correct.



9. Learned Senior Counsel further submitted that the third respondent has elaborately considered the entire aspect and rightly come to the conclusion that the petitioner has no right to use the site for storing petroleum and passed the impugned order cancelling the NOC. The learned Senior Counsel further submitted that the order of status quo regarding the possession, only protected the petitioner from eviction from the land and by virtue of that the order, the petitioner cannot claim that the petitioner is in lawful possession of the property. In support of his contention, learned Senior Counsel relied upon the following judgments:-

(i) In **C. Albert Morris Vs. K. Chandrasekaran and others** reported in **(2006) 1 SCC 228**

(ii) In **M. C. Chokalingam and others Vs. V. Manickavasagam and others** reported in **(1974) 1 SCC 48**

(iii) In **S. V. R. Saroja and others Vs. S. V. Matha Prasad and others** reported in **(2014) 1 MLJ 385**

(iv) In **Hindustan Petroleum Corporation Ltd., Vs. Devaraj Chordia and others** reported in **2005 (2) CTC 401 and**

(v) In **Bharat Petroleum Corporation Ltd., Vs. Municipal Corporation of Greater Bombay and another** reported in **AIR 1985 Bombay 242**

10. Before considering the rival contentions, it is useful to refer various provisions under the Petroleum Rules, 2002 (hereinafter referred to as 'the Rules') regarding granting No Objection Certificate and cancellation of the same.

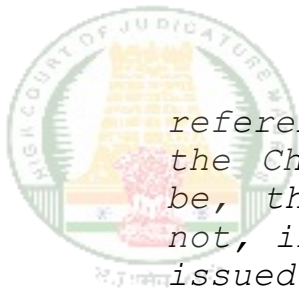
11. Rule 144 of the Rules deals with the granting of No objection Certificate which reads as follows:-

"144. No Objection Certificate:- (1) Where the licensing authority is the Chief Controller or the Controller, as the case may be, an applicant for a new license other than a license in Form III, IX, XVII, XVIII, or XIX shall apply to the District Authority with two copies of the site plan showing the location of the premises proposed to be licensed for a certificate to the effect that there is no objection to the applicant receiving a license for the site proposed and the District Authority shall, if he sees no objection, grant such certificate to the applicant who shall forward it to the licensing authority with his application in Form IX.

(2) Every certificate issued by the District Authority under sub-rule (1) shall be accompanied by a copy of the plan of the proposed site duly endorsed by him under his official seal.

(3) The Chief Controller or the Controller, as the case may be, may refer an application not accompanied by certificate granted under sub-rule (1) to the District Authority for his observations.

(4) If the District Authority, either on a



reference being made to him or otherwise, intimates, to the Chief Controller or the Controller, as the case may be, that any license which has been applied for should not, in his opinion, be granted, such license shall not be issued without the sanction of the Central Government.

(5) The District Authority shall complete his inquiry for issuing NO OBJECTION CERTIFICATE (NOC) under sub-rule (1) and shall complete the action for issue or refusal of the NOC, as the case may be, as expeditiously as possible but not later than three months from the date of receipt of application by him.

(6) Where the location of storage of petroleum is within the notified area of a Port or Airport under the control of the State, or establishment of Indian Space Research Organisation or Department of Atomic Energy, NO OBJECTION CERTIFICATE from the District Authority referred to in sub-rules (1) to (5) shall not be required.

Provided that consent for establishment of petroleum storage from the competent authority of concerned notified area or head of the establishment, as the case may be, is obtained).

12. Rule 150 of the Rules deals with cancellation of No Objection Certificate granted under Rule 144 of the Rules which reads as follows:-

"150. Cancellation of no objection certificate:-

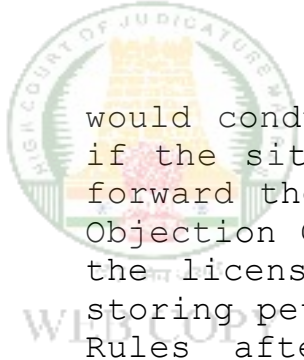
(1) A no objection certificate granted under rule 144 shall be liable to be cancelled by the District Authority or the State Government, if the District Authority or the State Government is satisfied that the licensee has ceased to have any right to use the site for storing petroleum:

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."

13. Rule 152 of the Rules gives power to Explosive Department to suspend or cancel the license.

14. As per Rule 144 of the Rules, the applicant should apply to the District Authority to get a certificate to the effect that there is no objection for storing petroleum in the site proposed by him. The Chief Controller of Explosive also may refer the application to the District Authority for his observation, the District Authority on receipt of such application on reference



would conduct an inquiry for issuing No Objection Certificate and if the site is found suitable he shall issue the certificate and forward the same to the licensing authority. After issuance of No Objection Certificate, if the District Authority is satisfied that the licensee has ceased to have any right to use the site for storing petroleum, he can cancel the licence under Rule 150 of the Rules after recording reasons for such cancellation and the authorities also empowered to suspend or cancel licence under Rule 152 (1) of the Rules, if the licensee ceased to have any right to site for storing petroleum or the no objection certificate is cancelled by the District Authority in accordance with sub-rule (1) of Rule 150. As per Rule 152 of the Rules, even during the currency of the no objection certificate, the Explosives Department is empowered to cancel the licence in the event of licensee ceases to have any right to the site for storing petroleum as per the Rule 152 (1) (2) of the Rules.

15. In the instant case, the Commissioner of Police, Madurai City, the third respondent herein is the District Authority and on an application made by the sixth respondent, after conducting a detailed enquiry has cancelled the No Objection Certificate on the ground that the petitioner has no right to use the site for the purpose of storing petroleum, the third respondent has come to the above conclusion based on the fact that the lease granted in favour of the petitioner had already expired and the sixth respondent also refused to renew the lease further to use the site for storing petroleum.

16. Now the above order has been assailed on the ground that even though the lease period has expired, the petitioner continued to be a statutory tenant apart from that his right to possession is also protected by the order of the Apex Court in favour of the petitioner.

17. It is settled law that possession of a tenant who ceases to be a tenant is protected by law. Although he may not have a right to continue possession after termination of his tenancy, his possession is protected by law against wrongful dispossession and his possession is juridical possession. It is also equally well settled that the juridical possession of a person cannot always be equated with a lawful possession.

18. The Hon'ble Supreme Court in **M.C. Chockalingam's** case (*supra*) has held as follows:-

"...Lawful possession cannot be established without the concomitant existence of a lawful relationship between the landlord and the tenant. This relationship cannot be established against the consent of the tenant. Lawful possession is not litigious possession and must have some foundation in a legal right to possess the property which cannot be equated with a



temporary right to enforce recovery of the property in case a person is wrongfully or forcibly dispossessed from it.."

Hence, the petitioner's possession cannot be considered as lawful possession. In the above circumstances, the right to use the site as per Rule 150 of the Rules only refers to a legal right to continue in the land and his litigious possession cannot be construed as a valid legal right to the site within the meaning of Rule 150 of the Rules.

19. In similar circumstances, the Hon'ble Supreme Court in **C. Albert Morris's** case (supra) has elaborately considered the scope of Rule 153 of the Rules, and held that when the lease expired and the landlord declined to renew the same and call upon the tenant to surrender possession, then the erstwhile lessee cannot assert that he had right to the site. The relevant portion of the said judgment reads as follows:-

"37. Interpretation of Rule 153 by the learned Senior Counsel appearing for the appellant, in our opinion, has no merits. The word "right" used in Rule 153 (1) of the Petroleum Rules, 1976 only means a legal right to continue on the land. It is seen from the judgments referred to in this appeal by us clearly hold that the term "juridical possession" or "litigious possession" does not connote a valid legal right to continue in possession within the meaning of Rule 153 of the Petroleum Rules, 1976. We are therefore, of the opinion that the occupation without consent is wrongful occupation.

42.....The words "right to the site" have therefore, to be understood as referring to the 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 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. 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 *M.C.Chockalingam Vs.V.Manickavasagam*, 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. We have already referred to *Bhawanji Lakhamshi Vs.Himatlal Jamnadas Dani* wherein this Court held that the act of holding over after the expiration of the term does not create a tenancy of any kind. A new tenancy is created only when the landlord assents to the continuance of the erstwhile tenant or the landlord agrees to accept rent for the continued possession of the land by the erstwhile tenant.

In the instant case, the application filed by the petitioner under Section 9 of the Act, has already dismissed and now an S.L.P is pending before the Hon'ble Supreme Court, and the Hon'ble Supreme Court has granted an interim order which reads as follows:-

"Status quo on possession, as on today, shall continue until further orders."

20.As rightly contended by the learned Senior Counsel appearing for the sixth respondent, the order of status quo on possession is only protect the petitioner from a forcible eviction from the property and that order does not give any right to the petitioner to use the site for storing petroleum. Hence, the petitioner cannot rely upon the order passed by the Hon'ble Supreme Court to support his case that he has right to use the site.

21.The next contention of the learned Senior Counsel appearing for the petitioner that the sixth respondent has continued to receive the rent thereby given an assent for continuance of tenancy and it also created new tenancy. But the above contention has been stoutly denied by the sixth respondent and it is also categorically stated that the sixth respondent never accepted any rent from the petitioner. The petitioner on his own deposited the rent in the bank and the amount was already returned to the petitioner with a prior caution not to deposit any amount. In the above circumstances, it cannot be held that the petitioner has received the amount after termination of tenancy.

22.Considering all those circumstances, the third respondent has rightly come to a conclusion that the petitioner has lost his right to use the site for the purpose of storing petroleum thereby cancelling the No Objection Certificate.

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23.I find no infirmity in the order passed by the third respondent. Hence, the writ petition deserves to be dismissed.



Accordingly,, the writ petition is dismissed. No costs. Consequently, W.M.P (MD) Nos.19063 of 2017 and 901 of 2018 are closed.

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Sd/-
Assistant Registrar (T&P)

/True Copy/

Sub Assistant Registrar

To

1. The District Collector,
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 2. The District Revenue Officer,
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- + 1 cc TO Mr.M.Sridhar , Advocate in SR No. 58503
+ 1 cc TO Mr.S.Jeyasingh , Advocate in SR No. 58202

sms

AE/KK/SAR1/12.04.2018/10P/8C

Order made in
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and
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