



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19..11..2019

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THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Writ Petition No.30967 of 2006

1.N.K.Jinna

2.Mrs.J.Banu

... Petitioners

-Versus-

- 1.The Regional Manager,
M/s.Bharat Petroleum Corporation Ltd.,
Southern Regional Office,
No.1, Ranganathan Gardens,
Anna Nagar, Chennai 600040.
- 2.The Joint Chief Controller of Explosives,
Department of Explosives,
No.140, Rukmani Lakshmipathy Salai,
Marshals Road,
Egmore, Chennai 600008.
- 3.The District Collector,
Collectorate,
Thirunelveli District,
Thirunelveli.
- 4.The District Revenue Officer,
Thirunelveli District,
Collectorate,
Thirunelveli.

... Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus directing the respondents 2 to 4 to revoke and cancel the explosive licence as well as the No Objection Certificate issued under The Petroleum Rules to enable the 1st respondent, their subordinates, agents or dealers to carry on petroleum business in the petitioners' property at Plot No.17, T.S.No.36, O.S.Nos.862/1A and 862/1B, Vannarapettai, Tirunelveli situated at Tiruvanandapuram High Road and to consequently direct the 1st respondent to vacate the



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said premises and handover the vacant possession of the same to the petitioners within a time frame to be fixed by this court.

For Petitioner : Mr.S.Thanka Sivan
For Respondent(s) : Mr.O.Santhanakrishnan
for R1
Mr.I.Sathish,
AGP for RR3 & 4
No Appearance for R2

ORDER

This writ petition has been filed seeking a direction to the respondents 2 to 4 to cancel the 'Explosives Licence' and to withdraw the "No Objection Certificate" issued to the 1st respondent.

2. According to the petitioner, he is the owner of the landed property measuring 36 cents comprised in Plot No.17, T.S.No.36, O.S.Nos.862/1A and 862/1B, Vannarapettai, Tirunelveli situated off Tiruvanandapuram High Road. The above said property was originally leased out to Burmah-Shell Oil Storage and Distributing Company of India Ltd., which had been subsequently, on taking over by the Government of India to form Bharath Refineries Limited, it was renamed as M/s.Bharath Petroleum Corporation Limited. The lease entered into with the 1st respondent was expired as early as on 30.11.2004 and lease was not renewed thereafter. Right from the date of expiry of the lease, the petitioner has been requesting the 1st respondent to vacate and handover the vacant possession of the property. But, so far, possession has not been handed over to them. That apart, the 1st respondent has been paying only a meager sum of Rs.1,000/- for 36 cents of land in Tirunelveli Town. According to the petitioner, once the lease got expired, the 1st respondent lost his right to the site. When the 1st respondent had lost his right to stie, the 'no objection certificate' issued in favour of the petitioner under Rule 144 of the Petroleum Rules is also liable to be cancelled under Rule 152 of the Rules. Though several representations were made to the authorities, so far no action is taken. Hence, this writ petition.

3. The 1st respondent corporation filed counter affidavit inter alia contending that although the lease period got



expired, being statutory tenant, the 1st respondent is entitled for protection under The Tamil Nadu City Tenants' Protection Act and the petitioner cannot seek for possession of the leased premises. The explosives licence granted in favour of the 1st respondent cannot be cancelled on the ground that it had lost its right to site.

4. The learned counsel appearing for the petitioner would contend that once the lease got expired and the same was not renewed subsequently, the 1st respondent had lost his right to hold the site under the lease agreement and the possession of the 1st respondent after the expiry of lease period is unlawful possession. Once the 1st respondent had lost its right to site, the explosives license granted in favour of the 1st respondent is liable to be cancelled under Section 152 of the Petroleum Rules. The learned counsel in support of his contention relied on the judgement of the Hon'ble Supreme Court in Yogesh Kumar v. Bharat Petroleum Corporation Ltd, (1990) 4 SCC 49 and C. Albert Morris v. K. Chandrasekaran, (2006) 1 SCC 228 and also a judgement of a learned single Judge of this Court in Mrs. K. Mitchell v. The Joint Controller of Explosives, Ministry of Commerce and Industry, Petroleum and Explosives Safety Organization, Egmore, Chennai 600 008 [W.P.No.25423 of 2017 dated 19.02.2010]

5. Per contra, the learned counsel appearing for the 1st respondent would contend that even though the lease period got expired as early as in the month of November, 2004, the 1st respondent continues to be a statutory tenant and therefore, the 1st respondent cannot be evicted without due process of law. Placing reliance on a judgement of a Division Bench of this court would contend that a lessee can be dispossessed only by following due process of law.

6. The learned counsel for the respondent would further submit that since the 1st respondent corporation being a statutory tenant, it cannot be said that the 1st respondent had lost his right to site. That apart, the learned counsel would further add that this court cannot pass an order cancelling the explosives license granted in favour of the 1st respondent corporation and it is for the authorities concerned to decide the issue and therefore, the writ petition is not maintainable and the same is liable only to be dismissed.

7. I have considered the rival submissions carefully.



8. Admittedly, the period of lease had come to an end as early as on 30.11.2004. After the expiry of lease period, the petitioner had been making several representations to the 1st respondent corporation seeking to vacate the premises and handover the vacant possession of the same. But, so far possession has not been handed over by the 1st respondent corporation. While so, the respondents 2 to 4 have issued a no objection certificate and explosives certificate to the 1st respondent respondent to run petrol station. According to the petitioner, once the lease period got expired, the 1st respondent had virtually lost its right to site. Once, the 1st respondent lost its right to site and he cannot have any authority to hold the licence and therefore, the explosives license and the no objection certificate issued to the 1st respondent corporation are liable to be cancelled under Rule 152 of the Petroleum Rules.

9. In the judgement relied on by the learned counsel for the petitioner reported in Yogesh Kumar and others, (1990) 4 SCC 49, the Hon'ble Supreme Court has held as follows:-

3. Rule 144 of the said Rules deals with the issue of a 'No Objection Certificate' for a new licence for running a petrol pump. Rule 151 deals with the cancellation of the 'No Objection Certificate' and the said rule reads as follows:

151.(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 petrol:

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."

10. In another judgement relied on by the learned counsel for the petitioner in C.Albert Morris v. K.Chandrasekaran, (2006) 1 SCC 228, the Hon'ble Supreme Court after considering the issue of right of a lessee after the expiry of the lease



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period has held as follows:-

"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 v. V. Manickavasagam* [(1974) 1 SCC 48] 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 v. Himatlal Jamnadas Dani* [(1972) 1 SCC 388 : (1972) 2 SCR 890] 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. The contention of Mr L.N. Rao that the landlord's assent should be inferred from the conduct of the landlord who had filed the suit for ejectment, but did not pursue the same, has no force. This suit was withdrawn with liberty to file a fresh suit on the same cause of action, liberty for which the Court has granted. The possession of this site by the erstwhile lessee does not ripen into a lawful possession merely because the landlord did not proceed with the suit for ejectment at that time, but reserved the right to bring such a suit at a later point of time. That cannot amount to an assent on his part to the continued occupation of the land under cover of a right asserted by the erstwhile lessee. The words "right to the site" in Rule 153(1)(i) must, therefore, in our opinion, be given their full meaning and the effect that unless the person seeking a licence is in a position to establish a right to the site, he would not be entitled to hold



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or have his licence renewed. We have already rejected the contention of Mr L.N. Rao that the appellant tenant is a statutory tenant for the reasons recorded earlier. The lease deed is very clear as to what was leased. The lease was of vacant land. That is evident from the recitals in the plaint, legal notice, lease deed, etc. It is, therefore, not in dispute that the lease of land is not covered by the statute, the Pondicherry Buildings (Lease and Rent Control) Act, 1969 in force extending protection to the tenants. "

11. Following the above said two judgements of the Hon'ble Supreme Court, a learned single Judge of this court in K.Mitchell v. Joint Controller of Explosives has held that once the corporation ceased to have any right to use site for storing petrol, no objection certificate issued to the petitioner is liable to be cancelled. The relevant portion of the order reads as follows:-

"21. Thus the irresistible conclusion that could be arrived at considering the entire facts and circumstances of the case, and the law laid down by the Hon'ble Supreme is that the third respondent cannot endlessly proceed on the assumption that their licence has been deemed to have been granted. It is true that this Court should not encroach into the domain of the executive more so with their power to grant licences. However, when a statutory authority fails to exercise its jurisdiction or fails to perform a statutory function, the arms of this Court are long enough to direct such authority to perform their statutory duty. In such circumstances, I am of the clear view that this is a fit case in which the respondents 1 and 2 should be directed to proceed further, based on the representation given by the petitioners' through their counsels on 10.05.2006 and 01.02.2007. As regards the No Objection Certificate, which had been granted by the second respondent, it is needless to state that if the third respondent ceases to have any right to use the site for storing petroleum, which right will accrue to the third respondent only if he has a right to the site then the No Objection Certificate is also required to be cancelled. This view is supported by the decision of the Hon'ble Supreme Court in the case of Yogesh Kumar and others,



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(2) Notwithstanding anything contained in sub-rule (1), an opportunity of being heard may not be given to the holder of a licence before his licence is suspended or cancelled in cases— (a) where the licence is suspended by a licensing authority as an interim measure for violation of any of the provisions of the Act or these rules, or of any conditions contained in such licence and in his opinion such violations is likely to cause imminent danger to the public: Provided that where a licence is so suspended, the licensing authority shall give the holder of the licence an opportunity of being heard before the order of suspension is confirmed; or

(b) where the licence is suspended or cancelled by the Central Government, if that Government considers that in the public interest or in the interest of the security of the State, such opportunity should not be given.

(3) A licensing authority or the Central Government suspending or cancelling a licence under sub-rule (1), shall record its reason for so doing in writing."

13. Considering the fact that the representations of the petitioner have been pending with the respondents 2 to 4 for consideration and the respondents 2 to 4, who are public authority and duty bound to act upon the representations given by the petitioner have not so far passed any orders thereof, this court is inclined to direct the respondents to consider the representations of the petitioner and pass suitable orders thereof. It is needless to state that before passing any such orders, the respondents 2 to 4 will afford an opportunity to the 1st respondent.

In the result, The petitioner is directed to submit copies of the representations, which had already been given by him to the respondents 2 to 4 within a period of two weeks from the date of receipt of a copy of this order so as to enable them to consider the grievance of the petitioner for revocation and cancellation of the explosive licence and no objection certificate issued to the 1st respondent corporation. On such representation, the respondents 2 to 4 are directed to consider the representation of the petitioner and pass suitable orders in the light of the above observations within a period of eight



weeks from the date of receipt of a copy of this order. This writ petition is disposed of accordingly with the above directions. No costs.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kmk

To

1.The Joint Chief Controller of Explosives, Department of Explosives, No.140, Rukmani Lakshmipathy Salai, Marshals Road, Egmore, Chennai 600008.

2.The District Collector, Collectorate, Thirunelveli District, Thirunelveli.

3.The District Revenue Officer, Thirunelveli District, Collectorate, Thirunelveli.

+1cc to Mr.O.Santhanakrishnan, Advocate sr.96288

+1cc to Government Pleader SR.NO. 96545

+1cc to M/s.S.Thankasivan, Advocate sr.96234

Writ Petition No.30967 of 2006

rr(co)
nr 23/01/2020