

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2019

CORAM

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

W.P. 24650 of 2015

R.Rangaraj,
M/s.Maruthi Service Station,
Hindustan Petroleum Corporation
Dealer,
No.66, Krishnaswamy Mudaliar Road,
Coimbatore-641 001. Petitioner

Versus

1. M/s.Hindustan Petroleum Corporation Ltd.,
rep. by its Chief Regional Manager,
No.17, Jamshedji Tata Road,
Mumbai-400 020.
2. The Senior Regional Manager,
M/s.Hindustan Petroleum Corporation Ltd., Coimbatore Regional Office,
No.18/3, Big Bazaar Street,
Coimbatore-641 001. ... Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the respondents herein to remove their fittings, fixtures, plant and machineries, equipments, motor pumps, under ground tanks, pipes etc. from the petitioner's premises at Old Survey No.8/581/1, New Survey No.8/1243, Krishnasamy Mudaliar Road, Coimbatore within a stipulated period.

For Petitioner : Mr.V.Ayyadurai,
Senior Counsel for
Mr.K.Govi Ganesan

For Respondents : Mr.O.R.Santhanakrishnan
for R1 & R2

O R D E R

This Writ Petition has been filed seeking a direction to the respondents to remove their fittings, fixtures, plant and machineries, equipments, motor pumps, under ground tanks, pipes etc. from the petitioner's premises at Old Survey No.8/581/1, New Survey No.8/1243, Krishnasamy Mudaliar Road, Coimbatore.

2. According to the petitioner, he is the absolute owner of the property in Old Survey No.8/581/1, New Survey No.8/1243, Krishnaswamy Mudaliar Road, Coimbatore, to an extent of 12000 sq.ft. of land. Earlier, the petitioner has entered into a Lease Agreement to lease out the property to M/s.Caltex (India) Limited, on 30.09.1963, initially for the period of 10 years for installing, erecting, maintaining a petroleum outlet. Thereafter, a memorandum of agreement was executed between petitioner's brother and M/s.Caltex (India) Limited on 01.08.1966, for constructing a building in the said premises for the purpose of running the outlet, and permission was also granted by M/s.Caltex (India) Limited, pursuant to the same, the construction was put up by the petitioner. Subsequently, the lease was renewed for a further period of 20 years from 09.12.1974. In the meantime, under the policy of the Government, M/s.Caltex (India) Limited was amalgamated with M/s.Hindustan Petroleum Corporation Limited. Thereafter, M/s.Hindustan Petroleum Corporation Limited has requested the petitioner to renew the lease for a further period of 20 years from 01.07.1993, but the petitioner has not conceded their request, and the lease period came to an end on 01.07.2013. After expiry of lease, on 29.07.2014, the petitioner has served a letter to the respondents that, they are not interested in renewing the license, and by a letter dated 27.10.2014 requested the respondents to remove the articles, but there is no response. Thereafter, a legal notice was issued on 04.05.2015, directing the respondents to remove their articles. Even after receipt of the same, the respondents have not taken any steps. In the above circumstances, the present Writ Petition has been filed seeking for the above said relief.

3. The respondents have filed a counter affidavit stating that, the Writ Petition seeking for possession of the property is not maintainable, and the remedy only lies in the civil court seeking for possession. It is further stated that the superstructure consisting of Sales building over the demised land has been put up by the Corporation's predecessor in interest viz., M/s.Caltex (India) Limited. The Municipal tax for the superstructure has been levied on M/s.Caltex (India) Limited, subsequently, on the respondent corporation. Hence, the Corporation is entitled for protection under the Tamil Nadu City

Tenants Protection Act, (hereinafter called as 'Act'). The respondents have further stated that, the petitioner along with his brother one Prabakaran, are carrying on the business of retail outlet for distribution of petroleum products, and they are doing the business in the name and style of M/s.Maruthi Service Station. As long as the petitioner is continuing to be a partner along Mr.Prabhakaran and carrying on business, he is estopped by his conduct to claim the relief sought for in the Writ Petition. The respondents Corporation has been in occupation of the retail outlet since 1963, valuable constructions like sales buildings, canopy, driveway, etc. have been put up by the Corporation predecessor in interest M/s.Caltex (India) Limited, and sought to dismiss the Writ Petition as it is not maintainable.

4. Mr.V.Ayyadurai, learned Senior Counsel appearing for the petitioner would contend that, once the lease period is expired, the respondents can only be treated as a unauthorised occupant, and they are not entitled to be in possession of leasehold land. Hence, the petitioner is entitled to get possession of the land. According to him, as per the agreement only the petitioner has put up a construction in the leased out site, and the respondents corporation is not the owner of the building. Hence, they cannot claim any right under the Act.

5. The learned counsel appearing for the petitioner would further submit that, the respondents are not entitled for protection under the Act. Sec.4(1) of the Act, only protects lawful tenant, and the respondents cannot be considered as a lawful tenant, and they are not entitled to get the protection under the Act. In support of his contentions, the learned senior counsel appearing for the petitioner has relied upon the judgment of Supreme Court of India reported in (1995) 5 SCC 698 [R.V.Bhupal Prasad vs. State of A.P., and others] and submitted that in absence of acquiescence by the lessor/petitioner, the respondents are only a tenant at sufferance, and their possession is not lawful possession. Hence, they are entitled to be vacated. The learned senior counsel also relied upon the judgment of Supreme Court of India reported in (2004) 8 SCC 579 [Bharat Petroleum Corporation Ltd., and another Vs. N.R.Vairamani and another] and submitted that the landlord need not file another Suit for possession and the Writ Petition is maintainable.

6. Per contra, Mr.O.R.Santhanakrishnan, learned counsel appearing for respondents corporation would submit that, the question arises in the present writ petition is as to whether on the expiry of lease period, the petitioner/landlord is having the right of possession of the property against the tenant, who have put up structure in a writ proceeding. According to the

learned counsel, since the construction has been put up by the Respondents Corporation, they have the right to receive compensation under Sec.3 of the Act and also have the right under Sec.9 of the Act seeking for sale of property, and the respondents can be evicted, after giving opportunity to them to exercise their right under the Act. Hence, the petitioner cannot maintain the present Writ Petition. To support his contentions, the learned counsel has relied upon the judgment of Division Bench of this Court dated 19.09.2019 in W.P. No.16228 of 2014 in the case of National Company, rep. by its Managing Partner vs. The Territory Manager, Bharat Petroleum Corporation Ltd. And another, wherein, the Division Bench, following the earlier decisions of the Honourable Supreme Court on this issue, held that the prayer sought by the landlord can be granted only by the Civil Court, not by a Writ Court, and it is a contractual liability.

7. I have heard and considered the rival submissions made by the learned senior counsel appearing for the petitioner as well as the learned counsel appearing for respondents and perused the records carefully.

8. The issue arises for consideration in this Writ Petition is that, whether the petitioner can maintain a Writ Petition seeking possession from the respondents after expiry of lease period. The above issue has been recently decided by a Division Bench of this Court by an order dated 19.09.2019 in W.P. No.16228 of 2014 in the case of National Company, rep. by its Managing Partner vs. The Territory Manager, Bharat Petroleum Corporation Ltd. And another, and held as follows :-

"72. The remedy that is sought to be obtained before us is a remedy, which can only be granted by a civil court or by the commercial courts as the arrangement between the petitioner and the respondent arises out of a private contract entered between them upto 31.12.1999.

75. Therefore, to ask the 1st respondent to vacate the property without giving the 1st respondent any remedy under the provisions of Madras City Tenants Protection Act, 1921 would amount to by passing the law and depriving the 1st respondent of the legal remedy available to it as per the dictum of the Hon'ble Supreme Court in Bharat Petroleum Corporation Ltd. Vs. Vairamani (2004) 8 SCC 579.

76. We are therefore of the view that in the present proceedings, the right of the 1st respondent under Section 9 of the Act cannot be ignored. Whether the 1st respondent to a tenant cannot be determined here. Since we are not conducting trial in a writ

proceedings, we cannot suo moto exercise power under Section 9 of the Act.

82. Having given our observation as above, we are of the view, that the petitioner has to evict the 1st respondent only in the manner known to law. We do not wish to give a conclusion as to whether the 1st respondent is a tenant or not as we are not equipped to deal with the right if the 1st respondent is held to be tenant under Section 9 of the said Act."

The Division Bench after surveying number of earlier judgments of this Court, and the Hon'ble Supreme Court has held that, such remedy can only be granted by a Civil Court. In view of the same, the prayer sought in this Writ Petition is not maintainable.

9. So far as the contentions of the learned Senior Counsel regarding the nature of possession of respondent corporation, whether the possession of the respondents corporation is a lawful possession or adverse possession, and whether the 1st respondent is a tenant holding over etc., all those disputed issues also cannot be decided in this Writ Petition.

10. In the above circumstances, in view of judgment of a Division Bench referred above, the Writ Petition filed by the petitioner is not maintainable. However, it is open for the petitioner to work out his remedy before the Civil Court in the manner known to law.

11. Accordingly, this Writ Petition stands dismissed with a liberty to the petitioner to approach the Civil Court to work out his remedy. No costs.

s/d-

Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

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To

1. The Chief Regional Manager,
M/s.Hindustan Petroleum
Corporation Ltd.,
No.17, Jamshedji Tata Road,
Mumbai-400 020.

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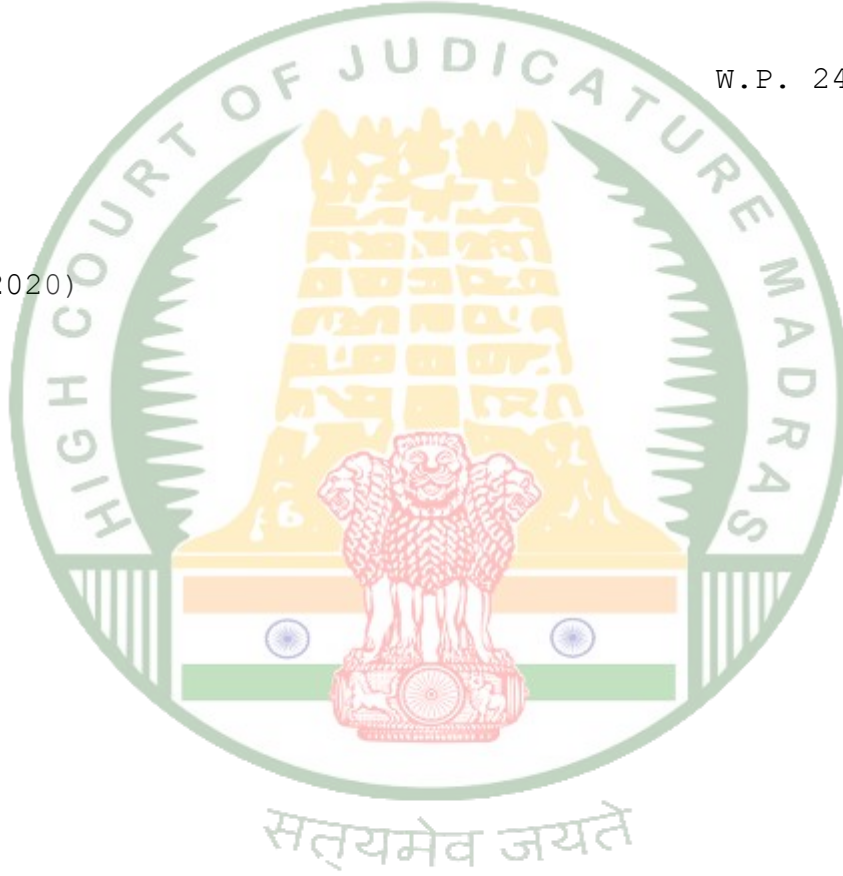
2. The Senior Regional Manager,
M/s.Hindustan Petroleum Corporation
Ltd., Coimbatore Regional Office,
No.18/3, Big Bazaar Street,
Coimbatore-641 001.

+1 CC to Mr.K.Govi Ganesan, Advocate sr 99647

+1 CC to Mr.O.R.Santhanakrishnan, Advocate sr 99304.

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MP (CO)
SP (25/02/2020)



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