

IN HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	19.08.2019
Pronounced On	19.09.2019

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.16228 of 2014
and
M.P.No.1 of 2014

National Company,
Represented by its Managing Partner,
Dr.Arjun A Raja,
No.9, Kandasamy Street, Mylapore,
Chennai - 600 004.

...Petitioner

vs

1.The Territory Manager,
Bharat Petroleum Corporation Ltd,
No.39, Vaidyanatha Mudali Street,
Chennai - 600 081.

2.M/s.Vijaya Auto Services,
New No.320, Old No.467,
Anna Salai, Nandanam,
Chennai - 600 035.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing the respondents herein to deliver the vacant possession of the schedule mentioned property along with the past rental arrears to the petitioner.

For Petitioner : Mrs.R.Maheswari
for Mr.N.Vijayakumar

For R1 : Mr.O.R.Santhanakrishnan
For R2 : No appearance

O R D E R
C.SARAVANAN, J.

The petitioner has filed the present writ petition for a writ of mandamus to direct the respondents to hand over the possession of schedule mentioned property along with the past rental arrears.

2.This Writ Petition was originally listed before the learned Single Judge. By an order dated 25.04.2019, the learned Single Judge expressed doubts regarding the maintainability of the present writ petition in the light of the conflicting views. The order of the learned Single Judge reads as under:-

With regard to maintainable of the writ petition, in so far as the relief prayed for in the writ petition, there is conflict of judgment passed by this Court reported in 2001(1) CTC 1 (W.A.No.2302 of 1999, dated 20.10.2000), 2001 (1) CTC 10 (W.P.No.20061 of 1998, dated 2.12.2000), CDJ 2016 MHC 5023 (W.P.No.29312 of 2014), CDJ 2018 MHC 1772 (W.P.No.14883 of 2015, dated 22.01.2018) and an unreported judgment in W.P.No.7432 of 2009, dated 22.10.2009 on the one hand held that writ petition is not maintainable, and the judgment passed by this Court reported in 2005(3) L.W.758 (W.P.No.8258 of 2001, dated 19.7.2005), 2005 (3) L.W.523 (W.P.No.44758 of 2002, dated 21.7.2005), 2011 (1) L.W.146 (W.A.No.1767 of 2003, dated 25.11.2010), 2014 (1) MLJ 385 (W.A.Nos.630 & 657 of 2011, dated 12.12.2013) and unreported judgments passed by this court in W.A.Nos.1796 & 1893 of 2014 dated 29.8.2008, W.P.No.13521 of 2002 dated 4.1.2011, W.A.No.44 of 2000 dated 21.7.2000 and W.A.No.779 of 2008 dated 23.10.2008 on the other hand, writ petition is maintainable.

Therefore, Registry is directed to place this writ petition before the Hon'ble Chief Justice for assigning the writ petition before the appropriate Division Bench, so as to decide the maintainability of the writ petition.

3.Pursuant to the above order, the case was listed for order before the Hon'ble Chief Justice and was thereafter listed before us.

4.The property in question was leased to the 1st respondents' predecessor for a period of 20 years in the year 1960. Thereafter, it was renewed for another 20 years and finally for another period of 10 years vide a registered lease deed dated 23.04.1999. The said lease period came to an end on 31st December, 2009. On the leased property, the 1st respondent had put up petrol bunk to be operated by its licensor namely the

2nd respondent herein.

5. Before the lease came to an end, the petitioner had issued a notice on 14.08.2008 to the 1st respondent to terminate the lease. Thereafter, on 20.05.2009, the petitioner issued another notice to the 1st respondent to vacate the leased premises.

6. On 16.07.2009, another notice was issued to the respondent reiterating termination of the lease. By letter dated 03.10.2009, the petitioner reiterated their stand and expressed their unwillingness to renew the lease.

7. The petitioner unequivocally informed the 1st respondent that they were no longer interested in renewing the lease and therefore requested the 1st respondent to vacate the property. The respondents however neither vacated the said premises nor took steps to formalize a fresh lease agreement. Instead, the 1st respondent tried to negotiate with the petitioner for an outright purchase of the said property.

8. After negotiations, it appears, an in principle oral agreement was reached between the parties whereby it was agreed that the petitioner would sell the property to the 1st respondent. The petitioner offered to sell the property at Rs.5249.38 per square feet. This was recorded in the minutes of meeting held between them on 20.04.2010. However, the talks remained inconclusive.

9. Though the offer was made by the petitioner as early as 10.08.2010, the 1st respondent did not act further perhaps on account of the nature of transaction involving purchase of an immovable property.

10. However, by the time the 1st respondent took a demand draft in favour of the petitioner for a sum of Rs.5,51,18,000/- on 30.03.2012, the petitioner lost interest in selling the property to the 1st respondent.

11. On the same date, the petitioner's solicitor from London advised the petitioner that there were flaws in the draft sale deed forwarded by the 1st respondent. Thus, the negotiation stitched between them fizzled out. The 1st respondent could not proceed with the purchase of the property of the petitioner.

12. The 1st respondent has however continued to in possession of the property through the 2nd respondent. It is under these circumstances, the petitioner has filed the present writ petition for the above relief.

13. All through the period when negotiations were taking

place, the 1st respondent neither took any steps to execute a binding sale agreement with the petitioner nor paid any advance towards sale of the property to bind the petitioner.

14.The 1st respondent has also not attempted to deposit money or mesne profit for possessing the property after the expiry of lease on 31.12.2009, though a feeble attempt was made by sending cheques for a period upto a point which in any event has not been encashed by the petitioner.

15.It is the case of the petitioner that the respondents are in illegal occupation of the property since the lease has expired on 31.12.2009. It is stated that despite the petitioner making it clear that they were neither interested in renewing the lease nor interested in selling the property to the 1st respondent, the 1st respondent stayed on the property without any legal basis.

16.It submitted that the 1st respondent was a trespasser of the property and their conduct did not auger well with their status of the "state" within the meaning of Art.12 of the Constitution of India.

17.It is the case of the petitioner that the 1st respondent being a state within the meaning of Article 12 of the Constitution of India, must act fairly and therefore cannot harass private citizens like the petitioner.

18.It is further stated that since the lease has expired w.e.f 31.12.2009 the respondents cannot claim any protection under the provisions of the Madras City Tenants Protection Act, 1921.

19.The respondents in the counter have stated that the writ petition is not maintainable as the subject matter of dispute arises out of a private arrangement and therefore no writ can be issued under article 226 of the Constitution of India.

20.It is submitted that the petitioner has alternate remedy under Section 5 of the Specific Relief Act. According to the 1st respondent, a person who is entitled to possession of immovable property can recover possession in the manner provided by Code of Civil Procedure, 1908.

21.It is further stated that the 1st respondent is entitled to protection under the provisions of the Madras City Tenants Protection Act, 1972 in case a suit is filed for ejectment.

22.It is stated that the 1st respondent cannot be evicted contrary to the provisions of the Madras City Tenants Protection Act, 1921. It is submitted that the 1st respondent is in possession of the property through its licensee namely the 2nd respondent. It is further stated that disputed questions of fact cannot be decided in a writ petition.

23.In the counter affidavit filed on 29.07.2019, the 1st respondent has stated that cheques issued after 31.12.2009 have not been en-cashed by the petitioner. During the course of the present writ petition, the 1st respondent also filed an affidavit dated 16.04.2019 to the effect that the 1st respondent has tendered rent for the period commencing from 01.06.2016 till 31.03.2019 through cheque but none of the cheques have been encashed by the petitioner.

24.Several decisions were cited by the learned counsel for the petitioner and the respondent. The petitioner relied on the following decisions:-

State : BPCL (R1) is state within the meaning of Article 12 of the Constitution of India.

- i. Hindustan Petroleum Corporation Ltd. vs Devaraj Chordia and Ors, 2005 (2) CTC 401.
- ii. R.Sivaprakasam & Another vs The Joint Chief Controller of Explosives South Circle Officer & Ors passed by this Court in W.P.No.14883 of 2015.
- iii. Ali Jafar and Ors vs Hindustan Petroleum Corporation Ltd. and Ors, 2004 (2) ALT 615.
- iv. Bharat Petroleum Corporation Ltd. vs Maddula Ratnavalli and Ors, (2007) 6 SCC 81.

No Disputed Question of Facts.

- i. Hindustan Petroleum Corporation Ltd. and Another vs Dolly das, (1994) 4 SCC 450.
- ii. ABL International Ltd. and Another vs Export Credit Guarantee Corporation of India Ltd. and Ors, (2004) 3 SCC 553.
- iii. Bharat Petroleum Corporation Ltd. vs K.T.Raja Kumaravel & Ors, 2015 SCC OnLine Mad 4069.
- iv. Bharat Petroleum Corporation Ltd. and Another vs K.T.Raja Kumaravel & Ors passed by this Court in W.A.Nos.590 & 698 of 2015 dated 30.10.2015.

Admitted Facts in the Counter Affidavit filed by 1st respondent:-

Hindustan Petroleum Corporation Ltd. and Another vs Dolly das, (1994) 4 SCC 450.

Violation of Constitutional Right & Fundamental Right (Natural Justice):-

- i. Hindustan Petroleum Corporation Ltd. and Another vs Dolly das, (1994) 4 SCC 450.
- ii. O.Hima Bindu vs Bharat Petroleum Corporation Ltd, and Another, 2009 SCC OnLine AP 219.
- iii. G.Mohamed Thajf and Another vs The Bharath Petroleum Corpn.Ltd., Chennai-40 and Another, 2001 (1) CTC 10.
- iv. Bharat Petroleum Corpn.Ltd. and Another vs N.R.Vairamani and Another, (2004) 8 SCC 579.

Cancellation of NOC and Cancellation of Explosive Licence:-

- i. Bharat Petroleum Corporation Ltd. and Another vs M.Ashrafunnisa and Ors passed by this Court in W.A.No.1433 of 2016 dated 27.06.2017.
- ii. Bharat Petroleum Corporation Ltd. vs The Additional Director General of Police and Ors passed by this Court in W.A.No.988 of 2016 dated 21.11.2016.
- iii. M.Ashrafunnisa & Another vs Bharat Petroleum Corporation Ltd., Chennai and Another passed by this Court in W.P.No.29312 of 2014 dated 21.09.2016.
- iv. Sri Renuga Agencies and Ors vs The Transport Commissioner, Chepauk and Ors passed by this Court in W.P.No.23725 of 2017 dated 10.09.2018.
- v. Hindustan Petroleum Corporation Ltd. vs The Transport Commissioner, Chepauk, Chennai - 5 and Ors passed by this Court in W.A.No.1893 of 2019 dated 17.07.2019.
- vi. Bharat Petroleum Corporation Ltd. vs Rama Chandrashekhar Vaidya and Another, (2014) 1 SCC 657.
- vii. Hindustan Petroleum Corporation Ltd. vs Sadiq Ali Abdulla Merchant and Ors, 2017 SCC OnLine Bom 9565.

Termination of lease by efflux of time - trespasser & lose right:-

C.Albert Morris vs K.Chandrasekaran and Ors, (2006) 1 SCC 228.

Actual Physical Possession:-

- i. R.Ravikrishnan vs Bharat Petroleum Corporation Ltd. and Another, 2007 (5) CTC 47.
- ii. Bharat Petroleum Corporation Ltd vs R.Ravikrishnan and Ors, 2011 (5) CTC 437.
- iii. Bharat Petroleum Corporation Ltd vs R.Ravikrishnan and Ors, passed by the Hon'ble Supreme Court in S.L.P.No.33430 of 2011 dated 08.08.2011.
- iv. Hindustan Petroleum Corporation Ltd. vs Sarjoj Rajanikant, 2013 SCC OnLine Mad 1513.
- v. Malini Parthasarathy vs Hindustan Petroleum Corporation Ltd., 2007 (1) CTC 67.
- vi. Hindustan Petroleum Corporation Ltd. and Another vs B.S.Ojeeha and Ors, 2011 (1) MWN (Civil) 387.

vii.Hindustan Petroleum Corporation Ltd. vs Keyaram Hotels (P) Ltd., 2002 (2) CTC 21.

Supporting Judgements:-

Whirlpool Corporation vs Registrar of Trade Marks, Mumbar and Ors, (1998) 8 SCC 1.

Others:-

- i. Bharat Petroleum Corporation Ltd. and Another vs K.T.Raja Kumaravel & Ors passed by the Hon'ble Supreme Court in S.L.P.No.5619 of 2016 dated 30.10.2015.
- ii. Bharat Petroleum Corporation Ltd. vs The Additional Director General of Police and Ors passed by this Court in W.P.No.26729 of 2015 dated 08.06.2016.
- iii. D.P.Francy Diana vs The Chief Engineer (Establishment) Tamil Nadu Electricity Board and Another, 2017 SCC OnLine Mad 10478.
- iv. Surya Constructions vs State of Uttar Pradesh and Ors, 2019 SCC OnLine SC 447.
- v. Harbanslal Sahnia and Another vs Indian Oil Corpn.Ltd., (2003) 2 SCC 107.
- vi. City Industrial Development Corporation vs Platinum Entertainment and Ors, (2015) 1 SCC 558.
- vii. Popcorn Entertainment and Another vs City Industrial Development Corpn. And Another, (2007) 9 SCC 593.

25.The learned counsel for the 1st respondent relied on the following decisions for dismissal of the present writ petition.:-

- i. Satya Pal Anand vs State of Madhya Pradesh and Ors, (2016) 10 SCC 767.
- ii. TamilNadu Electricity Board and Ors vs Aruppukottai Sri Jayavilas Ltd., (2003) 3 MLJ 754.
- iii. State of Rajasthan vs Bhawani Singh and Ors, 1993 Supp (1) SCC 306.
- iv. Union of India vs V.Krishnamurthy passed by this Court in W.A.No.608 of 1993 dated 08.07.1994.
- v. Bharat Petroleum Corporn.Ltd and Another vs N.R.Vairamani and Another, (2004) 8 SCC 579.
- vi. C.V.Thirugnanam Chettiar & 7 Ors vs Union Of India, 2005-3-L.W.758.
- vii. S.Jothi vs The District Collector-cum-Inspector of Village Panchayats, Namakkal and Ors, 2005-3-L.W.524.
- viii. The Hindustan Petroleum Corporation Ltd. vs R.Subramaniam, 2011-1-L.W.146.
- ix. Maruti Super Service vs N.Muthulakshmi and Ors passed by this Court in W.A.Nos.1796 and 1893 of 2004 dated 29.08.2008.
- x. P.Mothilal and Another vs Hindustan Petroleum Corporation Ltd. passed by this Court in W.P.No.13521 of 2002 dated 04.01.2011.
- xi. Ghan Shyam Das Gupta and Another vs Anant Kumar Sinha and

- Ors, (1991) 4 SCC 379.
- xii.Mohan Pandey and Another vs Usha Rani Rajgaria (Smt) And Ors, (1992) 4 SCC 61.
- xiii.Parvatibai Subhanrao Nalawade (smt) vs Anwarali Hasanali Makani and Ors, (1992) 1 SCC 414.
- xiv.Hindustan Petroleum Corpn.Ltd vs M.O.A.Rahman Sait and Ors passed by this Court in W.A.No.615 of 1996 dated 30.07.1997.
- xv.V.R.Varadharaj vs Hindustan Petroleum Corporation Ltd and Another passed by this Court in W.A.No.779 of 2008 dated 23.10.2008.
- xvi.S.V.R.Saroja and Ors vs S.V.Matha Prasad and Ors, (2104) 1 MLJ 385.
- xvii.The Madura Talkies Pvt. Ltd vs The District Collector, Madurai and Another, 2001 1 CTC 68.
- xviii.Ramias Foundation and Ors vs Union of India and Ors, 1993 Supp (2) SCC 20.
- xix.State of Orissa and Ors vs Md.Illiyas, (2006) 1 SCC 275.
- xx.Ramdas and Ors vs State of Maharashtra, (2007) 2 SCC 170.
- xxi.Bir Singh vs Mukesh Kumar, (2019) 4 SCC 197.
- xxii.Ahmed Aliyar Fublio Charitable and Educational Trust vs Union of India and Ors passed by this Court in W.P.6770 of 1988 dated 27.03.1997.

26.We have considered arguments of the learned counsel for the petitioner and the respondents. There are no disputed facts in the present case.

27.The petitioner's predecessor had leased vacant land to the 1st respondent's predecessor namely Burmah Shell Oil Storage and Distributing Company of India Ltd in the year 1960.

28.The said company was later nationalised by the Burmah Shell (Acquisition of Undertaking in India) Act, 1976 and therefore the 1st respondent stepped into their shoes. Thereafter, there were two renewal of lease between the petitioner and the 1st respondent.

29.The last mentioned lease came to an end on 31.12.2009. Prior to that the 1st respondent and its predecessor have been in occupation of the property for over a period of 50 years.

30.After the lease was determined, there were negotiations for outright purchase of the property by the 1st respondent as also request for renewal of the lease which was refused by the petitioner outright.

31.Though, negotiation was recorded in the Minutes of Meeting (MOM) dated 22.04.2010, the 1st respondent did not get ready with the sale consideration. The 1st respondent also did not pay any advance to the petitioner to bind the petitioner or

enter into a binding agreement for sale.

32.By the time, the 1st respondent finally got ready with the sale consideration only on 30.03.2012, after a lapse of almost 24 months after the aforesaid Minutes of Meeting (MOM) was recorded the petitioner appears to have got frustrated and wanted the 1st respondent to vacate the premises and demanded mense profit.

33.Even as per the admission of the 1st respondent, the petitioner has not been paid a single rupee after the lease came to an end on 31.12.2009. Almost 10 years have lapsed since then. The 1st respondent has also not taken any steps to legitimize their possession in a manner known to law.

34.Therefore, the issue for consideration in the present Writ Petition is whether the petitioner is entitled to enforce a civil remedy for evicting the 1st respondent by invoking the jurisdiction of this Court under Article 226 of the Constitution of India merely because the 1st respondent happens to be a "State" within the meaning of Article 12 of the Constitution of India?

35.The jurisdiction of the writ court under Article 226 of the Constitution of India is very wide. A writ can be issued against an instrumentality of a "state" when there are no disputed questions of facts. In fact, writs have been issued even against a private company if under a statute, they were obligated to perform certain public function. They were treated as "state" for the purpose of Article 12 of the Constitution of India. [See VST Industries Ltd vs VST Industries Workers' Union and Another (2001) 1 SCC 298].

36.It has been held that it is always not necessary to relegate parties to a civil suit in a writ petition where there are no disputed questions of facts particularly when the adversary is a state within the meaning of Art.12 of the Constitution of India.

37.However,wherever there are disputed questions of fact, the writ courts would not venture to pass any orders on merits. Similarly, where there are an alternative and efficacious remedy, normally a writ court would ask the party to approach the alternative forum to redress their grievance.

38.However, where there are violation of fundamental rights, or where there has been violation of principles of natural justice or where proceedings are without jurisdiction or where vires of an enactment is under challenge, writ court may entertain writ petition. [See Whirlpool Corporation vs Registrar

of Trade Marks, Mumbar and Ors, (1998) 8 SCC 1]

39. Even if the party against whom writ petition is filed, happens to be a state within the meaning of Article 12 of the Constitution of India, a writ would not lie unless it is to direct them to discharge their public duty or function or the act complained was the to discharge of their public duty or function. Precedents of the Court indicate that in appropriate case, writ has been issued against a State or an Instrumentality of a State in contractual matters also.

40. In ABL International Ltd vs Export Credit Guarantee Corporation of India (2004) 3 SCC 553, the Court held as follows:-

19. Therefore, it is clear from the above enunciation of law that merely because one of the parties to the litigation raises a dispute in regard to the facts of the case, the court entertaining such petition under Article 226 of the Constitution is not always bound to relegate the parties to a suit. In the above case of Gunwant Kaur [(1969) 3 SCC 769] this Court even went to the extent of holding that in a writ petition, if the facts require, even oral evidence can be taken. This clearly shows that in an appropriate case, the writ court has the jurisdiction to entertain a writ petition involving disputed questions of fact and there is no absolute bar for entertaining a writ petition even if the same arises out of a contractual obligation and/or involves some disputed questions of fact.

41. The test laid therein was as follows:-

In the instant case, as to the fact that the respondent is an instrumentality of a State, there is no dispute but the question is: was the first respondent discharging a public duty or a public function while repudiating the claim of the appellants arising out of a contract?

42. In paragraph 23, the Court held as follows:-

23. It is clear from the above observations of this Court, once the State or an instrumentality of the State is a party of the contract, it has an obligation in law to act fairly, justly and reasonably which is the requirement of Article 14 of the Constitution of India. Therefore, if by the impugned repudiation of the claim of the appellants the first respondent as an instrumentality of the State has acted in contravention of the abovesaid requirement of Article 14, then we have no hesitation in holding that a writ court can issue suitable directions to set right the arbitrary actions of the first respondent. In this context, we may note that though the first respondent is a company registered under the Companies Act, it is wholly owned by the Government of India. The total subscribed share capital of this Company is 2,50,000 shares out of which 2,49,998 shares

are held by the President of India while one share each is held by the Joint Secretary, Ministry of Commerce and Industry and Officer on Special Duty, Ministry of Commerce and Industry respectively. The objects enumerated in the memorandum of association of the first respondent at para 10 read:

"To undertake such functions as may be entrusted to it by the Government from time to time, including grant of credits and guarantees in foreign currency for the purpose of facilitating the import of raw materials and semi-finished goods for manufacture or processing goods for export."

Para 11 of the said object reads thus:

"To act as agent of the Government, or with the sanction of the Government on its own account, to give the guarantees, undertake such responsibilities and discharge such functions as are considered by the Government as necessary in national interest."

24. It is clear from the above two objects of the Company that apart from the fact that the Company is wholly a Government-owned company, it discharges the functions of the Government and acts as an agent of the Government even when it gives guarantees and it has a responsibility to discharge such functions in the national interest. In this background it will be futile to contend that the actions of the first respondent impugned in the writ petition do not have a touch of public function or discharge of a public duty. Therefore, this argument of the first respondent must also fail.

43. In C. Albert Morris vs K Chandrasekharan and others (2006) 1 SCC 228, the Hon'ble Supreme Court observed that once the lease has expired and the landlord has declined to renew the lease and where the owner calls upon the erstwhile tenant to surrender possession, he could no longer assert any right over the site. His continued occupation of something which he had no right to occupy cannot be regarded as a source of right to the land of which he himself was not in lawful possession.

44. The court there observed that possession of the site by the erstwhile lessee does not ripen into a lawful possession merely because the landlord did not proceed with the suit for the judgment at that time, but reserve the right to bring such suit at a later point of time.

45. In this decision, the Court was concerned with issue of "No objection certificate" under Rule 144(1) of the Petroleum Rules, 1976. The landlord had approached the authorities to have the no objection certificate issued to the respondent dealer cancelled.

46. There, the court observed that "The consensus of judicial opinion in this country is that a mere continuance in occupation of the demised premises after the expiry of lease, notwithstanding the receipt of an amount by the landlord, would not create a tenancy so as to confer on the erstwhile tenant the status of tenant or right to be in possession."

47. The case was not however examined from the prism of protection given to a tenant under enactments similar to the Madras City Tenants' Protection Act, 1921. Therefore, we cannot apply the said decision straight away to the facts of the case.

48. Similarly, the Honourable Supreme Court in Hindustan Petroleum Corporation Ltd vs Dolly Das (1999) 4 SCC 550 had allowed the relief in a writ proceedings under a somewhat similar circumstance. In paragraph 9, the Honourable Supreme Court concluded that if the facts pleaded before the court are of such nature which do not involve any complicated question of fact needing elaborate investigation of the same, the High Court could exercise writ jurisdiction under Article 226 of the Constitution of India in such matters.

49. The court further held that there are no hard and fast rules in such matters. The court further held that it cannot be said that exercise of such discretion by the High Court was wrong, after the High Court had chosen to exercise its power under article 226 of the Constitution of India. However, the said case arose from a decision of Orissa High Court, where again enactments similar to Madras City Tenants Protection Act, 1921 was not there.

50. While interpreting the provisions of the Tamil Nadu City Tenants Protection Act, 1972, this court in N.R.Vairamani vs Union of India 2001 (1) CTC 1 and in G Mohammed Thajf and another vs The Bharat Petroleum Corporation 2001 (1) CTC 10 had held that "tenant" is a person who is liable to pay rent and the tenancy agreement expressed or implied and continues to be in possession of the land after determination of the tenancy agreement under section 2 (4) of the aforesaid Act.

51. In these two cases the court held after the expiry of statutory period of the lease, the petroleum company (like the 1st respondent) cannot be considered to be a "tenant" and was therefore rank trespassers. The court there followed the decision of the Honourable Supreme Court in Hindustan Petroleum Corporation Ltd vs Dolly Das, (1999) 4 SCC 550.

52. However, the decision of this court in N.R.Vairamani vs Union of India 2001 (1) CTC 1 was later reversed by the Honourable Supreme Court in Bharat Petroleum Corporation Ltd vs

N.R.Vairamani (2004) 8 SCC 579.

53.The Honourable Supreme Court considered the scope of section 9 of the Madras City Tenants Protection Act, 1921 and observed that such a provision confers a statutory right to purchase the land and it does not create any interest or right to property. While reversing the decision of this court, the Hon'ble Supreme court held that a tenant has a right under Section 9 of the Madras City Tenants Protection Act, 1921 against whom the suit for eviction has been filed by the landlord.

54.It held that Section 9 of the Madras City Tenants Protection Act, 1921 itself imposes restriction on the tenants right to secure conveyance of only such portion of the holding as would be necessary for his convenient enjoyment. It creates a statutory right to purchase the land through the medium of court on fulfilment of conditions specified in section 9 of the aforesaid Act.

55.It was further held that in any event, "without taking recourse to the remedies available under the said Act a writ petition could not have been filed." In paragraph 13, the Court further held as under:-

13. In a writ petition, some benefits available to the tenant under the Tenants Act could not have been diluted. There is some dispute about the entitlement of the tenant to get protection under the Tenants Act which can be more effectively decided in case action in terms of what is required under the Tenants Act is taken by the landlord.

56.The Court further held a tenant has a right to secure only that portion of the holding as may be necessary for his convenient enjoyment of property and such a right is equitable in nature. The Court further observed that under common law, a tenant is liable for eviction and has no right to purchase the land demised to him at any price; as well as under the Transfer of Property Act. The only right of a tenant who may have superstructure on the demise land was to remove the structure at the time of delivery of possession on determination of the lease. However, Section 9 of the Tamil Nadu City Tenants Protection Act, 1972 confers an additional statutory right against whom suit for eviction is filed to exercise an option to purchase the demised land to that extent only which he may required for convenient enjoyment of the property. The tenant was held having no vested right over the property instead. It was a privilege granted to a tenant by the statute which is equitable in nature.

57.In Bharat petroleum Corporation Ltd vs R.Ravikiran 2011

(5) CTC 437, a division bench of this court while disposing CRP (NPD), OSA and CMA) held that oil company was in legal possession of the subject land. While the actual physical possession was with the dealers. The court rejected the claim of the Oil Companies under section 2(4) (ii) (a) in view of the decision of the Honourable Supreme Court in S.R Radhakrishnan vs Neelamegam (2003) 10 SCC 705.

58. In the aforesaid case it was held that actual physical possession was a sine qua non for claiming the benefit of section 9 of the Tamil Nadu City Tenants Protection Act, 1972. However, while concluding, the court observed that to come within the definition of section 2(4)(ii)(a) of the Act, the petroleum company should be in actual possession of the land and since they were not in actual possession, they were not entitled to protection under section 9 of the Act. Similar view has been taken in several other decisions.

59. This view of the Division Bench of this court is now subject matter of appeal in a batch of appeals and Special Leave Petitions/appeal before the Hon'ble Supreme Court.

60. In the context of renewal of explosive license, this court has repeatedly given relief to the land owners by directing the petroleum companies to deliver possession.

61. We are informed that the petitioner has also filed collateral proceeding to cancel no objection granted by the concerned authorities for running a petrol bunk on the land. Petitioner may work out its remedy in the aforesaid proceedings in the light of decisions cited by them in this Writ Petition.

62. By an order dated 08.06.2016 in W.P.No.26729 of 2015 in 1st respondent's own case, it was observed that the 1st respondent there had squatted over the property and refused to budge from the property without even paying admitted rent.

63. The court there declined the prayer for renewal of the explosive license. Further, appeal before a Division Bench of this court was also dismissed by an order dated 21.11.2016 in W.A 988 of 2016.

64. Under a somewhat similar circumstances in Bharat petroleum Corporation Ltd vs K.P.Raja Kumeravel and others, CDJ 2015MHC 7368 arising out of an order dated 19.12.2015 in W.P.No 1778 of 2012 the court followed the dicta ABL International Ltd vs Export Credit Guarantee Corporation of India, (2004) 3 SCC 553.

65.It was observed that the suit filed by the respondent Corporation for renewal of the lease was dismissed by the lower court and had attained finality. The Corporation was held to be in unauthorised occupation of the premises and therefore there was no valid reason for filing another suit for recovery of possession as it would be an empty formality. Therefore, it was held that there was no point in directing the landlord to file a fresh suit for a total possession. This view was upheld by the Hon'ble Supreme Court while dismissing the special leave petition on 04.03.2016.

66.In R.Sivaprakasam and another versus the joint Chief controller of Explosives CDJ 2018 MHC 1772, the court observed that "in the guise of renewal of the lease, the respondent therein was usurping the property. Though the issue arose out of refusal of the authorities to renew the explosive license to run a petrol and diesel outlet in the leased property, the court held that in absence of renewal of the explosive license, the respondent Bharat Petroleum Corporation cannot continue to do its business and that there should be a finality of litigation. Court further held that the petitioner should not be driven to approach the Civil Court for further help.

67.It further held that respondent being a "State" within the meaning of Article 12 was amenable to writ jurisdiction and hence was directed to hand over possession of the property within 45 days of receipt of the order copy. A similar view was taken in Sri Renuga Agencies and Ors vs The Transport Commissioner, Chepauk and Ors passed by this Court in W.P.No.23725 of 2017 dated 10.09.2018. The Hindustan Petroleum Corporation Ltd, was also ordered to pay cost.

68.In fact, the 1st Bench of this court in Hindustan petroleum Corporation Ltd versus Devaraj Chordia and others 2005 (2) CTC 401 has castigated the conduct of a public sector undertaking like the petitioner for having blatantly violated the law for continuing in possession of the suit property for over 16 years beyond the terms of its lease.

69.The court observed "We are indeed very sad to note that the Public Sector Undertaking has behaved in this manner. In this country, the rule of law prevails and Public Sector Undertakings are subordinate to law and not above rule of law."

70.The court there further held that one would have expected that after 1989, Hindustan petroleum Corporation Ltd (the appellant therein) like an honourable person would have vacated the suit property since its leasehold rights ceased to exist after 1989. However, unfortunately, in our country, what is often seen is that people continue to remain in illegal possession

of the property even for several years after the right to occupy the same ceases to exist. An honourable person should vacate the property over which lease or license has expired and hand over possession of the same on the date of expiry of the lease or license to the landlord/owner unless there is a fresh mutual agreement which permits him to continue in possession.

71.The above observation of the 1st Bench of this court squarely applies to be facts of the present case. However, the above observation was made in a Second Appeal before the Division Bench of this court while the petitioner is seeking for a relief under Art.226 of the Constitution of India.

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.

73.Under section 3 of the Madras City Tenants Protection Act, 1921, the 1st respondent has a right to receive compensation for the value for building which may have been erected by them or by their predecessor in interest and subject to the Agreement. This compensation is payable once eviction is ordered.

74.Likewise, under section 9, a tenant who is entitled to compensation under section 3 of the Act, against whom eviction proceeding has been instituted or proceedings under section 41 of the Presidency Small Causes Court Act, 1979 has a right to apply for an order of the court to direct the landlord to sell whole or part of land for his convenient enjoyment and the court shall thereafter fix the price of the minimum extent of the land to be sold.

75.Therefore, to ask the 1st respondent to vacate the property without giving the 1st respondent any remedy under the provisions of the 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 versus N.R.Vairamani (2004) 8 SCC 579.

76.We are therefore of the view that in the present proceeding, the rights of the 1st respondent under Section 9 of the Act, cannot be ignored. Whether the 1st respondent to a tenanat cannot be deteremined here. Since we are not conducting trial in a writ proceeding, we cannot suo moto exercise power under Section 9 of the Act.

77. At the same time, we would like to observe that in absence of renewal of a lease, the 1st respondent cannot justify continued possession over the property either by themselves or through their licensee namely the 2nd respondent.

78. In the facts of the present case, there has been no renewal of the lease and therefore the possession of the property is prima facie without any legal authority.

79. We are of the view that the decisions of the Honourable Supreme Court in Hindustan Petroleum Corporation Limited and Another vs Dolly Das and in C. Albert Morris vs K Chandrasekharan and others (2006) 1 SCC 228 under Article 226 of the Constitution of India cannot be applied to the facts of the present case particularly in the light of the fact that in Tamil Nadu particularly in the city of Chennai where there is a special law giving rights to a tenant under the provisions of the Madras City Tenants Protection Act, 1921.

80. The respondents cannot be seen trampling the rights of a private citizens by occupying the property without any formal arrangement. The conduct of the 1st respondent shows that they have abused their status as a "State" and a Public Sector undertaking for granted. The conduct of the 1st respondent ought to have been exemplary. Though we are perturbed by the conduct of the 1st respondent, we are unfortunate unable to come to the rescue of the petitioner in this writ petition in view of the above discussion.

81. The respondents are in possession of the property without any authority of law and have behaved like a private individual with no sense of modicum and, decency and responsibility. They have not compensated the petitioner for being in possession of the property taking advantage of the mistake committed by the petitioner in filing this writ petition.

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 the 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. .

83. Therefore, the question, whether the 1st respondent is entitled for protection in view of the recalcitrant conduct exhibited by them in occupying of the property without renewal of the lease and/or binding them with an agreement for sale and whether they were tenants within the meaning of Section 2 (4)

(ii) of the said Act is left open to be decided before the appropriate forum in an appropriate proceeding.

84.The rental value of the property would have increased by several times in these ten years. Therefore, the offer of the 1st respondent to pay a paltry rent of Rs.15,625/- per month for a property measuring 6107 sq.ft located in a prime location in the heart of the city to the petitioner for the last 10 years is unconscionable and is abysmally low. The 1st respondent has been unfair with the petitioner. It should not continue to squat over the property without payment of fair rent to the petitioner during the period of last 10 years.

85.Therefore, to prove their bonafide, the 1st respondent if advised may take steps to such deposit amounts towards the past rent commensurating with the market value of the property without prejudice of the rights of the petitioner.

86.The 1st respondent may also reach out to the petitioner and mitigate the hardship caused to the petitioner by offering to pay a fair rent to the petitioner in case they wish to continue with the possession over the property through the 2nd respondent.

87.The present Writ Petition is disposed with the above observation. No cost. Consequently, connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

jen
To

The Territory Manager,
Bharat Petroleum Corporation Ltd,
No.39, Vaidyanatha Mudali Street,
Chennai - 600 081.

+2 Ccs to M/s.R. Maheswari, Advocate sr 80788.

+1 CC to Mr.OR. Santhanakrishnan, Advocate sr 80953(14/11/2019)

W.P.No.16228 of 2014
and
M.P.No.1 of 2014

RV(CO)
SP(06/11/2019)