IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED : 26.02.2020

ORDER PRONOUNCED: 10.03.2020

CORAM :

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.NOS.31055 OF 2012 & 24058 OF 2019
AND
M.P.NO.2 OF 2012 & W.M.P.NO.23884 OF 2019

National Company
represented by its Managing Director,
Dr.Arun A Raja
No.9, Kandasamy Street, Mylapore,
Chennai 600 004.

... Petitioner in both W.Ps.,

Vs.

1. Joint Chief Controller of Explosives
Ministry of Commerce and Industry,
Petroleum and Explosives Safety Organization (PESO),
(Formerly Department of Explosives),
No.140, Rukmini Laxmipathi Road,
Egmore, Chennai 600 008.

2. Bharath Petroleum Corporation Limited,
No.39, Vaidyanatha Mudali Street,
Chennai 600 081.

3. M/S.Vijaya Auto Services,
New No.320, Old No.467,
Anna Salai, Nandanam,
Chennai 35.

... Respondents in W.P.No.31055 of 2012

1. The Director General of Police,
Dr.Radhakrishnan Salai, Chennai 600 004.

2. The Commissioner of Police/District Authority,
Vepery, Chennai 600 007.

3. Bharath Petroleum Corporation Limited,
No.35, Vaidyanatha Mudali Street,
Tondiarpet, Chennai 600 081.

4. M/S.Vijaya Auto Services,
New No.320, Old No.467,
Anna Salai, Nandanam,
Chennai 35.

... Respondents in W.P.No.24058 of 2019

PRAYER in W.P.No.31055 of 2012:

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records on the file of the first respondent with respect to the impugned license No.P/SC/TN/14/645 (P31758) renewed up to 31.12.2012 or any further period in favour of the second respondent, quash the same and consequently direct the second respondent to forebear from storing petroleum at New No.320, Old No.469, Anna Salai, Nandanam, Chennai - 35.

[Prayer has been amended vide order dated 11.02.2020.]

PRAYER in W.P.No.24058 of 2019:

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the second respondent to cancel the No Objection Certificate No.2660/E4/60 dated 09.12.1960 as per law.

In W.P.No.31055 of 2012

For Petitioner : Mr.ARL.Sundaresan senior counsel for Mrs.R.Maheswari

For R1 : Mr.T.V.Krishnamachari

For R2 : Mr.OR.Santhanakrishnan

For R3 : Mr.S.Saravanakumar

In W.P.No.24058 of 2019

For Petitioner: Mr.ARL.Sundaresan senior counsel for Mrs.R.Maheswari

For R1 & R2 : Mr.Inbanathan
Additional Government Pleader

For R3 : Mr.OR.Santhanakrishnan

For R4 : Mr.S.Saravanakumar

COMMON ORDER

W.P.(MD) No.31055 is filed in the nature of Writ of Certiorarified Mandamus to call for the records on the file of the first respondent, the Joint Chief Controller of Explosives, Ministry of Commerce and Industry Petroleum and Explosives Safety Organization (PESO), Chennai, with respect to the impugned license No.P/SC/TN/14/645 (P31758) renewed up to 31.12.2012 in favour of the second respondent, Bharath Petroleum Corporation Limited, Chennai and quash the same and consequently to direct the second respondent to forebear from storing petroleum at New No.320, Old No.469, Anna Salai, Nandanam, Chennai - 35.

2.It must be pointed out that the relief was amended by an order of this Court dated 11.02.2020 in W.M.P.(MD) No.24461 of 2019.

3.In the affidavit filed by the petitioner, National Company, represented by its Managing Partner, Chennai 600 004, it had been stated that the property to an extent of 6107 sq.ft., situated at Old No.320, New No.469, Anna Salai, Nandanam, Chennai 600 035, was originally leased out to the second respondent, Bharath Petroleum Corporation Limited, Chennai, initially for a period of 20 years from 1960 and later, for another period of 20 years till 1999 and finally, renewed for a period of 10 years from 1999 till 2009.

4.It was claimed that the second respondent had continued to be in occupation of the property without renewal of lease till this date. The petitioner had sent a notice of termination as early as 14.08.2008, requesting the second respondent to vacate the property. Several notices to vacate the property were issued to the second respondent subsequently on several dates namely, 20.05.2009, 16.07.2009, 12.08.2009, 03.10.2009 and 01.03.2011. It had been claimed that the respondents 2 and 3 namely, Bharath Petroleum Corporation Limited, Chennai and M/S.Vijaya Auto Services, Anna Salai, Nandanam, Chenanai, however continued to be an unauthorized and illegal occupation of the property without paying any rent from January 2010 till this date.

5.The third respondent is in possession of a retail outlet selling petroleum products such as motor spirit, high speed diesel etc. It is run by the second respondent and the third respondent operates the retail outlet. It was claimed that under Clause 4 (ii) of the lease deed, the lease automatically expires by efflux of time. It was claimed that the respondents 2 and 3 are liable to pay damages for use and occupation and mesne profits. It was claimed that the respondents 2 and 3 are only in litigious possession. It was also stated under Rule 153 (1) (i) of the Petroleum Rules, 2002, the license granted in favour of the second respondent stood cancelled and the licensee ceases to have any right to the site for storing petroleum. It had been further stated that after the expiry of lease on 31.12.2009, the petitioner has declined to renew the lease and has, as stated above, called upon the second respondent to vacate the premises. It had been stated that the first respondent had granted license No.P/SC/TN/14/645 (P31758), which was renewed up to 31.12.2012 to the second respondent.

6.During the course of hearing the writ petition, the learned counsel for the second respondent pointed out Rule 148 (5) of the Petroleum Rules, 2002 and stated that the second respondent had been regularly applying for renewal of the said license and if the application is so made, the license shall be deemed to be in force until such date, an order was passed renewing the license or refusing to renew the license. Consequentially, the relief in the writ petition was amended to include the words "or any further period" and consequently, direct the second respondent to forebear from storing petroleum at New No.320, Old No.469, Anna Salai, Nandanam, Chennai - 35.

7.A counter affidavit had been filed by the Joint Chief Controller of Explosives Ministry of Commerce and Industry, Petroleum and Explosives Safety Organization (PESO), Chennai/ first respondent.

8.It had been stated that the petitioner had no locus standi to file the writ petition since the vacant land was originally belonged to Munusamy Mudaliar, who had leased out the property to the second respondent. It was claimed that Munusamy Mudaliar was not a party in the writ petition. It was stated that the license bearing No.2952 (New Computerised License No.P/SC/TN/14/645 (P31758)) was granted on 01.01.1977 to M/S.Bharath Petroleum Corporation Limited for petroleum class A and B outlet at Teynampet after obtaining all the relevant documents. It had been stated that the license had been renewed periodically. It also had been stated that under Rule 153 (1) (i) of Petroleum Rules, 2002, the license stands cancelled if the licensee ceases to have any right to the site for storing petroleum . It had been stated as per Rule 153 (1) (i) of Petroleum Rules, 2002, the words "right to site" is to be understood as "right to the site", on which the petroleum is stored.

9.The respondents claimed that the petitioner has not proved his ownership by producing documents. It had been stated that the license had been issued after obtaining a No Objection Certificate from the District Authority. It had been stated that representations dated 15.09.2010 and 01.12.2010 are not available in the office of the first respondent. It had been stated that a show cause notice had been issued to the second respondent vide letter No.P/SC/TN/14/645 (P31758) dated 27.08.2014 as to why the license shall not be suspended/cancelled since there is no renewal of the lease deed. It had been stated that the writ petition should be dismissed.

10.A counter affidavit had again been filed by Akin Nandi, the Joint Chief Controller of Explosives, Ministry of Commerce and Industry Controller of Explosives, Ministry of Commerce and Industry Petroleum and Explosives Safety on behalf of the first respondent.

11.It had been stated that there was no necessity to seek amendment, since the license has been renewed up to 31.12.2012. It had been stated that the second respondent had submitted the renewal documents periodically after 31.12.2012 and the renewal of license has been kept in abeyance as the same is sub-judice. Reference was also made to Rule 148 (5) of the Petroleum Rules, 2002. It had been stated that the writ petition has become infructuous and is not maintainable. It was stated that the writ petition should be dismissed.

12.A counter affidavit had been filed by Debashis Naik, Territory Manager (Retail) Chennai, Bharath Petroleum Corporation Limited on behalf of the second respondent.

13.It had been stated that the land had been initially leased for a period of 20 years from 01.01.1960 till 31.12.1979 for the purpose of carrying on sale and distribution of petroleum products. Thereafter, the lease stood statutorily vested for a period of 20 years from 01.01.1980 till 31.12.1998. Thereafter, it was renewed for a period of 11 years from 01.01.1999 till 31.12.2009. It was stated that the landlord has sent a notice dated 14.08.2008, terminating the lease of the second respondent. Another letter dated 16.07.2009 was sent again terminating the lease. It was stated that the landlord had offered to sell the land to the second respondent by letter dated 10.08.2010. It was stated that the Board had approved purchase of the land on 17.02.2012 for a value of Rs.10,500/- per sq.ft. It was stated that the landlord appeared for negotiations.

14.However, the landlord did not turn up for registration on 30.03.2012. It was claimed that the second respondent is a statutory tenant entitled for protection under the Tamilnadu City Tenants Protection Act as amended by Act 2 of 1980. The third respondent had been appointed as a Dealer of the second respondent for selling the petroleum products. It was denied that the possession by the second respondent was illegal. After the expiry of the lease period, it was again denied that the respondents 2 and 3 were liable to pay damages. It had been stated that the petitioner had been refusing to receive the rent and that the second respondent was always ready to pay the rent. It had been claimed that the second respondent has a right to site. It had been stated that the second respondent had been applying for renewal with the first respondent and the renewal is to be inferred. It had been claimed that the writ petition should be dismissed.

15.An additional counter affidavit had been filed by Gururaj Nagappa Sankh, after the amendment application was allowed by this Court. It had been stated that the explosive license had been renewed up to 31.12.2012. It had been stated that the relief had become redundant since the said period has expired. It had been stated that there is no patent error. It had been stated that the periodical renewal of explosive license have been made for the years 2013, 2014 and 2015 by letter dated 27.11.2012 and for the years 2016, 2017, 2018, 2019 and 2020 by letter dated 30.11.2015. It had been stated that the license shall be deemed to be in force until there has been a refusal to renew. It had been stated that the writ petition should be dismissed.

16.W.P.(MD) No.24058 of 2019 is filed by the National Company, represented by its Managing Partner, Dr.Arun A.Raja, No.9, Kandasamy Salai, Chennai 600 004, in the nature of mandamus, directing the second respondent, The Commissioner of Police/District Authority, Vepery, Chennai, to cancel the No Objection Certificate No.2660/E4/60 dated 09.12.1960.

17.In the affidavit filed by Dr.Arjun A Raja, Managing Partner of National Company, Kandasamy Salai, Chennai 600 004, it had been stated that the property at old No.320, New No.469, Anna Salai, Nandanam, Chennai 600 035, to an extent of 6107 sq ft., has been leased out to the third respondent, namely, Bharath Petroleum Corporation Limited, Chennai, initially for a period of 20 years from 1960 and later renewed for another period of 20 years till 1999 and further renewed for a period of 11 years from 01.11.1999 till 31.12.2009.

18.It had been stated that the petitioner had sent a notice of termination as early as on 14.08.2008, requesting the third respondent, Bharath Petroleum Corporation Limited, Chennai, to vacate the property. Several notices were sent on 20.05.2009, 16.07.2009, 03.10.2009 and 01.03.2011. It had been stated that the respondents 3 and 4 are in occupation of the land unauthorizedly. It had been stated that No Objection Certificate stood cancelled under Rule 150 (1) of the Petroleum Rules, 2002 and under Rule 152 (1) of the Petroleum Rules, 2002, the license stands cancelled, when the licensee ceases to have any right to the site. It had been stated that the petitioner had not renewed the lease on 31.12.2009. In spite of expiry of the lease, the second respondent had failed to cancel the No Objection

Certificate under Rule 144 of Petroleum Rules, 2002. It had been stated that the petitioner had sent a representation dated 08.08.201 for cancellation of the No Objection Certificate. Since no steps have been taken by the respondents, the writ petition has been filed seeking a mandamus in that regard.

19.The second respondent had filed a counter affidavit.

20.In the counter affidavit filed by Gururaj Nagappa Sankh, it had been stated that the second respondent had sent a letter dated 26.11.2019, inviting the landlord for negotiations. However, the said letter was returned as "Refused". It had been stated that the rentals tendered from 2016 have been returned as "Refused" by the landlord. It had been claimed that the second respondent has a right to site and had applied for renewal of license. It had been stated that the consent of the landlord is not necessary for renewing retail outlet. It had been stated that the landlord has no right to claim cancellation of No Objection Certificate. It had been stated that the writ petition should be dismissed.

21.The third respondent did not file any counter affidavit.

22.Heard arguments.

23.Since arguments were advanced with respect to the contention raised in both the writ petitions, a common order is to be passed.

24.The writ petitioner/National Company, represented by its Managing Partner, is the owner of the premises, where, the second respondent at present is running a retail outlet dispensing petroleum products and diesel products and the third respondent is the retail outletter of the products. The property is situated at Old No.320, New No.469, Anna Salai, Nandanam, Chennai 600 035 and measures to an extent of 6107 sq.ft. The period of lease originally commenced in the year 1960 and had been thereafter periodically renewed and the last renewal for a period of 11 years from 01.01.1999 till 31.12.2009. After 31.12.2009, there has been no renewal of the license or lease or permission to the second respondent to continue to be in occupation. This fact is admitted by both the petitioner and the second respondent.

25.The second respondent had made vain attempts to regularize possession and they claimed that they have invited the petitioner for negotiations for purchase of the property and also to determine the quantum of monthly rent payable, but though the petitioner had initially participated in the negotiations with respect to purchase of the property, they have not come forward to register or execute the sale deed and thereafter, there has been no contact between the petitioner and the second respondent over the issues relating to continuation of possession by the second respondent.

26.It is the claim of the petitioner that they had terminated the tenancy by notice dated 14.08.2008. By this document, which has been given the header 'notice for termination of lease agreement' and addressed to the territorial manager of the second respondent in Chennai, the petitioner had very categorically stated as follows:

> "As there are arrears of service tax, being part of lease rent from June 2007 onwards, as per clause 4 (iii) of the lease agreement referred to above, we are issuing the notice for termination of your lease for the outlet at Anna Salai, Chennai and give you three months notice on the expiry of which you shall hand over to us the vacant possession and peacefully give up possession of the demised premises."

27.The second respondent had not heeded to the said notice. The petitioner had thereafter issued further notices terminating the agreement, which existed between them and the second respondent. Notices were sent on 20.05.2009, 16.07.2009 and 03.10.2009, which notices were prior to the expiry of the lease agreement between the petitioner and the respondents. After the period of lease, the petitioner claims that the third respondent had stopped remitting the lease rent accepting the fact that the lease had expired on 31.12.2009. The petitioner thereafter made an application to the Fire and Rescue Services under Right to Information Act on 24.08.2012, enquiring if the third respondent had obtained clearance from the Fire and Rescue Services Department. A reply was received on 17.09.2012 that the license had not been issued by the Fire and Rescue Services Department to the third respondent. This effectively mean that even before the period of lease had expired and till this date, the respondents 2 and 3 are running a petrol/diesel outlet without any license from the Fire and Rescue Services Department.

28.The hazards which can be caused by any accident by an unauthorized outlet dispensing petrol/diesel which does not have any clearance/license from the Fire and Rescue Services Department can only be imagined. It is a wonder that till date no such accident is happened. This is all the more important because prior to issuing any such license, the Fire and Rescue Services Department officials would make a physical verification of the petrol/diesel outlet to verify whether all the safety measures are in place and whether the fire safety equipments are in order and also at times give training to the staff to react to any emergent situations. Thus, not only the respondents 2 and 3 are violating the rights of the petitioner to claim back the property, but on a day to day basis for more than 10 years, they have put the general public and their property too at risk and danger.

29.Quite apart from this, the petitioner had also applied to the Commissioner of Police/District Authority, Vepery, Chennai, who is the second respondent in W.P.(MD) No.24058 of 2019, by submitting an application under the Right to Information Act on 28.03.2019, enquiring whether the said official had granted No Objection Certificate for running the petrol/diesel outlet. A reply had been received from the Tamilnadu Information Officer/ Deputy Commissioner of Police (Headquarters) on behalf of the Commissioner of Police, dated 29.05.2019 in which, it is very specifically stated that No Objection Certificate was issued only for the first time and has not been renewed. It may be kept in mind that the first time when the No Objection Certificate was issued was in the year 1690! Thereafter, the second respondent in W.P.(MD) No.24058 of 2019 had not even bothered to enquire whether there is juridical, relation existing between the licensee and the owner of the property to issue no objection certificate. They have not even thought it fit to make a visit to the petrol/diesel outlet to ensure whether conditions requisite for giving No Objection Certificate are still in existence. This Court necessarily has to place its deep displeasure over the retrograde beauracratic attitude of the officials, namely, the Fire and Rescue Services Department and the Commissioner of Police, Chennai, who are meant to ensure safety, but who had not taken care to ensure whether safety measures are in place in the petrol/diesel outlet run by the second/third respondent.

30.Irrespective of all the above, which actually clearly establish that the respondents 2 and 3 are running a petrol/diesel outlet without any license either from the Fire and Rescue Services Department or had sought renewal of the No Objection Certificate from the Police Department, it is also seen that they have lost any and every right to the site in view of the fact that the lease has not been renewed and had been specifically terminated by the petitioner herein.

31.In short, the respondents 2 and 3 are trespassers and land grabbers squatting on the property without any right and causing direct danger to their own staff and to the general public. They have no manner and cannot lawfully claim any right or title or interest over the property.

32.The learned counsel for the second respondent stated that the second respondent had invited the petitioner for negotiations, originally, to purchase the property and later to pay the enhanced rent. I am not able to appreciate that line of argument. It belies all imagination as to how a trespasser with no right over the property can invite the actual owner for negotiations to regularize possession. A trespasser has no right to continue in possession and with knowledge of such fact that had the temerity to invite the landlord for negotiations. It is only proper to note that the petitioner had turned down such request. The said respondents have to be categorized as trespassers and land grabbers. That character of their possession cannot and will not change.

33.Further, the petitioner in W.P.No.31055 of 2012, had sought a certiorarified mandamus as against the first respondent with respect to license No.P/SC/TN/14/645 (P31758), which had been renewed up to 31.12.2012, and seeking to set aside any further renewal. The license issued by the first respondent, namely, the Joint Controller of Explosives, Ministry of Commerce and Industry Petroleum and Explosives Safety Organization (PESO), Chennai, is a license to run the petrol/diesel outlet.

34.In the counter affidavit of the first respondent, it had been stated that there is no obligation on the first respondent to examine whether the lessee has a right to continue to be in possession. They have also stated that they and the second respondent place reliance on Rule 148 (5) of the Petroleum Rules, 2002 that the formal order is renewal is not required and mere filing of application is sufficient and the license would then be deemed to have been renewed. In this connection, the second respondent had filed the renewal application dated 27.11.2012, by which, they sought renewal for the years 2013, 2014 and 2015 and the application dated 30.11.2015, seeking renewal for the years 2016, 2017, 2018, 2019 and 2020. I hold that the entire stand of the respondents have to be rejected.

35.The writ petition had been filed and is pending before this Court from the year 2012. The writ is regarding renewal of license. Consequently, any renewal or refusal of license is subject matter of this Court. Any renewal or refusal of license can be done only subject to the orders of this Court. There cannot be claim of deemed renewal of license under Section 148 (5) of the Petroleum Rules, 2002, since the writ is pending before this Court. The right to the first respondent to either grant or refuse to renew the license has been taken away and such right is subject to directions of this Court. There cannot be 'deemed' renewal. The first respondent has to be condemned for assuming such a stand.

36.Merely sending two applications, one in the year 2012 another in the year 2015 and claiming that there has been 'deemed' renewal till the year 2020, cannot be accepted and such a line of argument is rejected as not only having any illegal basis but also very foolish. It is this Court, which can pass any order with respect to grant or refusal of license.

37.A counter affidavit had been filed by the first respondent, namely, Dr.Anuj Kumar, who was working as Joint Controller of Explosives, PESO, Government of India, South Circle, Chennai, when he had filed the counter affidavit on 10.05.2016. The said official does not deserve to hold such post. In the counter affidavit, the said official has stated the law but also stated what he also "feels". A counter affidavit can contain only facts and it cannot contain an opinion. The said official cannot file a counter affidavit on the basis of presumptions and assumptions. It is no wonder that he justifies trespass and land grabbing as it is evident that he is of the same mettle. It is a shame. In view of the above reasons, the contention that there is 'deemed' renewal under 148 (5) of the Petroleum Rules, 2002, is totally rejected by me.

38.Rule 150 relates to cancel of No Objection Certificate. It reads as follows:

> "150. Cancellation of no-objection certificate.-
>
> 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.
>
> 1.
>
> (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, copy of the order cancelling the no-objection certificate."

39.Rule 152 is as follows:

> 152.Suspension and Cancellation of license:-Every licence granted under these rules shall—
>
> (i) stand cancelled, if the licensee ceases to have any right to the site for storing petroleum;
>
> (ii) stand cancelled, if the no-objection certificate is cancelled by the District Authority or the State Government in accordance with sub-rule (1) of rule 150;

(iii) be liable to be suspended or cancelled by an order of the licensing authority for any contravention of the Act or of any rule thereunder or of any condition contained in such licence, or by order of the Central Government, if it is satisfied that there are sufficient grounds for doing so:

Provided that:-

(a) before suspending or cancelling a licence under this rule, the holder of the licence shall be given an opportunity of being heard;

(b) the maximum period of suspension shall not exceed three months; and

(c) the suspension of a licence shall not debar the holder of the licence from applying for its renewal in accordance with the provisions of rule 148.

(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 and shall furnish to the licensee a copy of the order cancelling the licence.

40.Both the Rules quoted above provide that No Objection Certificate and license cannot be granted, if the licensee has lost the right to the site.

41.In the present case, once the agreement has been terminated and renewal has been refused, it is clear that the respondents 2 and 3 have lost all rights to continue to be in possession.

42.The learned counsel for the respondents relied on a judgment reported in 2005 3 CTC 580 (Tamilnadu State Transport Corporation, represented by its Managing Director, Nagercoil, Vs. The Presiding Officer, Labour Court, Tirunelveli and others) for the contention that a writ of certiorari would lie only when there is an error of law apparent on the face of record and that it would not lie to interfere with the findings of fact, unless based on no evidence.

43.In the present case, it is a fact as admitted by both side that there has been no renewal of license after 31.12.2009 and a writ petition had been filed and is pending and therefore, the right of the first respondent to grant or refuse to grant license has been taken away and that right now vest only with the Court. Therefore, in the present case, I hold that a writ of certiorari will lie.

44.The learned counsel for the second respondent relied on an unreported judgment in W.P.No.44989 of 2002 (P.S.G.Ganga Naidu and Sons Charities, represented by its Managing Trustee, Vs. The Special Commissioner and Commissioner land Reforms/land Commissioner, Channai and others) and drew the attention of this Court to paragraph 29.1, where again it had been held that a writ of certiorari will lie only when there is a patent error.

45.In the present case, the assumption of the respondents 1 and 2 that there is 'deemed' renewal of license, when the possession is a litigious possession and it is for the Court to examine for granting or for renewal of license is an error apparent on the face of the arguments advanced by the respondents 1 and 2. Therefore, I hold that in the instant case, a writ of certiorari will lie.

46.The learned counsel for the second respondent also relied on the judgment reported in (2008) 9 Supreme Court Cases 161 (Bachan Singh Vs. Union of Indian and others) and relied on paragraph 15 of the said judgment, wherein, it had been stated that this Court under Article 226 of the Constitution of India cannot sit as a Court of appeal over the findings recorded. It had been stated that the judicial review can be directed only with the decision making process and not against the decision.

47.In the instant case, this Court has no quarrel with the renewal of license till 31.12.2009. Thereafter, to state that there is 'deemed' renewal of license owing to the decision making process of not refusing to grant is an error apparent on the face of record, since it is this Court, which can direct grant or refusal of the license. It is clear that this Court is not sitting as a Court of appeal to examine the stand of the respondents, the first respondent has not passed any order. The writ is pending before this Court only to examine whether renewal can be granted or should be rejected. Therefore, the present writ petition is maintainable.

48.The learned counsel for the respondents also relied on the judgment reported in (2008) 2 Supreme Court Cases 417 (Sarabjit Rick Singh Vs. Union of India), wherein, in paragraph number 49, it had been stated that while entertaining a writ petition, a limited jurisdiction of judicial review alone is exercised by this Court. In this case also, a limited exercise of jurisdiction is exercises only with respect to stating that there is no deemed renewal of license, once the right to site has been lost and the matter is pending judicial decision of this Court.

49.The learned counsel for the respondents also relied on the judgment reported in (1985) 3 Supreme Court Cases 131 (State of Uttarpradesh and another Vs. Raja Ram Jaiswal and another), wherein, in paragraph number 16, the Hon'ble Supreme Court had stated that the Court cannot supplant the licensing authority and take upon itself the functions of the licensing authority.

50.In the instant case, the Court has no intention to supplant itself as the authority to grant license or as the authority to grant No Objection Certificate. The Court is only examining whether the licensee has any right to seek renewal of license. The factors which entitle the licensee/the second respondent to seek renewal alone are discussed and it is made clear that the Court is not directing grant of license but rather stating that the second respondent has no right to seek renewal.

51.The learned counsel for the second respondent then relied on an unreported judgment in W.P.No.6422 of 2016 (Sankar Vs. The Chairman, Chennai Metropolitan Development Authority, Chennai), wherein, it had been stated that a mandamus cannot be sought within a short time from the date of representation.

52.In the instant case, when the second respondent in W.P.No.24058 of 2019 had himself stated that No Objection Certificate had not been renewed after 1960, certainly, the said writ petition has not been filed within a short time. It has been actually filed after 5 decades. The representation is only a reminder that the second respondent has lost the right to site since the lease has not been renewed, in fact renewal has been refused.

53.The learned counsel for the second respondent then relied on the judgment reported in (2009) 4 Supreme Court Cases 132 (State of West Bengal and another Vs. West Bengal Registration Copywriters Association and another) and in particular to paragraphs 75 and 76, wherein, the Hon'ble Supreme Court had stated that the writ petitioner has to stand on his own legs and radical changes in the prayers could not allowed by the Court.

54.In the instant case, W.P.No.31055 of 2012 was originally filed seeking a certiorari with respect to grant of renewal of license till 31.12.2012. The writ petition was filed in the year 2012 questioning the grant of renewal of license till 31.12.2012. Subsequently, when it transpired that further applications have been filed and that the respects placed reliance on 'deemed' renewal of license, the relief was amended to set aside any subsequent renewal of license. I find no infirmity in the amendment sought.

55.In view of the above discussion, it is therefore seen that the judgments relied on the learned counsel for the second respondent are not applicable to the facts of the present case.

56.In the present case, there has been no renewal of license after 31.12.2009. The respondents are in unlawful occupation. There cannot be 'deemed' renewal of license since the petitioner has approached this Court and it is for this Court to decide whether the license can be renewed or not. The respondents have lost the right to site. Consequently, they have lost their right to seek license and No Objection Certificate. The first respondent in W.P.No.31055 of 2012 and the second respondent in W.P.No.24058 of 2019 have unfortunately failed in their official duty to examine whether in the light of the representation given, No Objection Certificate is to be granted/renewed/refused.

57.In W.P.No.26729 of 2015 reported in MANU/TN/1108/2016 (Bharat Petroleum Corporation Limited Vs. The Additional Director General of Police (Law and Order) and others) decided on 08.06.2016, a learned Single Judge of this Court in similar circumstances, where, a tenancy has been terminated and lease has not been renewed and where, the landlord had filed a writ petition for mandamus to the Joint Controller of Explosives, Ministry of Commerce and Industry Petroleum and Explosives Safety Organization (PESO), Chennai, to consider the representation and pass an order and the Joint Controller of Explosives, after issuing notice, had cancelled the No Objection Certificate issued to the Bharath Petroleum Corporation Limited, held as follows:

> "14. The respondents 4 and 5 herein have filed WP No. 30458 of 2012 before this Court praying for issuing a Mandamus to the Joint Chief Controller of Explosion to

consider their representation dated 09.08.2012 and it was disposed of by this Court on 08.01.2013 with a direction to the said authority to consider their representation and to pass orders thereof. Pursuant to such direction issued by this Court on 08.01.2013, the Joint Chief Controller of Explosives issued notice to the petitioner and the respondents 4 and 5 for an enquiry and on 05.03.2013 an enquiry was conducted. In the meantime, on the basis of a representation dated 19.10.2013 submitted by the fourth respondent herein to the third respondent for cancellation of the No Objection Certificate issued to the corporation, an enquiry was conducted. Ultimately by an order dated 10.09.2014, the third respondent cancelled the No Objection Certificate as per Rule 150 (1) of The Petroleum Rules, 2002. Aggrieved by the same, the petitioner corporation has filed a statutory appeal before the first respondent. The first respondent, after hearing the petitioner and the respondents 4 and 5 herein upheld the order passed by the third respondent in his proceedings dated 20.06.2015. Challenging the said order dated 20.06.2015 passed by the first respondent, cancelling the No Objection Certificate issued in favour of the corporation, this writ petition has been filed.

15. The third respondent herein, after conducting an enquiry, cancelled the No Objection Certificate granted to the petitioner as has been contemplated under Rule 150 (1) of The Rules, which is extracted hereunder:-

> "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 hearing 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.

16. Thus, as per Rule 150 of The Rules, 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 the petroleum products, the No Objection Certificate

issued to such licensee shall be cancelled after affording an opportunity of hearing. In this case, undoubtedly, before passing the order cancelling the No Objection Certificate, the third respondent has conducted an enquiry in which the representative of the petitioner corporation has participated. Further, the third respondent has assigned reasons for cancelling the No Objection Certificate issued in favour of the petitioner. Therefore, the argument of the learned counsel for the petitioner that the third respondent has no jurisdiction to pass the impugned order deserves to be rejected.

17. The learned counsel for the petitioner corporation would contend that the petitioner is a statutory tenant and therefore they are entitled for the benefits of the protection conferred under The City Tenants Protection Act. It is further stated that the corporation was not aware of the death of Mr. Mehaboob Khan with whom they have been making all communication. Therefore, the non-payment of rent cannot be put against the corporation. This submission of the corporation has to be rejected. When the corporation claims itself to be a statutory tenant, it is their obligation and bounden duty to ensure that atleast the admitted rent is paid to the land owner. The attitude of the corporation is such that they blame the legal heirs of the land owner for not informing the death of the land owner to them. The corporation cannot be permitted to shift their responsibility to pay the rent on the legal heirs of the deceased land owner. This only shows that the corporation, by simply sending a letter to the original land owner claims that they have taken all diligent steps to renew the lease in their owner. The petitioner corporation has not taken any steps in this direction. In fact, the land owner has terminated the lease in favour of the corporation even as on 08.11.2004. This notice dated 08.11.2014 has not been questioned by the petitioner corporation in a manner known to law. Therefore, according to the learned counsel for the respondents 4 and 5, from 09.11.2014, the corporation can be construed as a ranked trespasser occupying and/or squatting the property of the land owner unauthorisedly. Even in my considered view, when the petitioner corporation claims protection under the City Tenant Protection Act, the petitioner has to first discharge their legal liability in atleast paying the statutory rent. Admittedly, the corporation stopped paying the paltry rent of Rs.360/- per quarter from 01.01.2005. Thereafter, even without paying the admitted rent, the petitioner corporation has been carrying on business through the sixth respondent for the past ten years. In this context, the respondents 4 and 5 have relied

on the decision of this Court in the case reported in (2001) (1) CTC 10 before the third respondent wherein it was held that the benefit of the City Tenant Protection Act can only be claimed by the tenants and not by the trespassers who squat on the property without even paying the admissible or statutory rent. By relying upon the above decision, the learned counsel for the respondents 4 and 5 would contend that when once the lease is terminated and/or not renewed in favour of the tenant, the tenant cannot be construed to be a tenant holding over and they can only be ranked as trespassers. In such event, none of the provisions or benefits conferred under the City Tenants Protection Act can be extended in favour of such tenant. Based on the said decision, the third respondent came to a conclusion that a tenant can be equated to a statutory tenant only if he or she has discharged their obligation as a tenant. Further, the benefit of the provisions of City Tenants Protection Act are meant only for those legitimate and legal tenants who fulfil their obligation as a tenant. In the present case, the petitioner corporation having failed to pay the admitted rent from 01.01.2005 for a period of more than ten years, cannot claim themselves as a statutory tenant. Therefore, it can be safely concluded that the petitioner cannot seek for the benefits of the City Tenants Protection Act and the arguments advanced by the counsel for the petitioner in this context has to be rejected.

18. This is a pathetic case where the petitioner corporation, a giant public sector undertaking, has driven the owners of the land from pillar to post to get possession of the land by not even paying the statutory rent which they are obliged to pay. Even according to the petitioner corporation, they have paid a paltry rent of Rs.360/- per quarter upto 31.12.2004. which was the rent fixed as on 03.10.2003. It is also an admitted fact that after 31.12.2004 viz., from 01.01.2005, the corporation has not paid the admitted rent and committed default in even paying the paltry sum of Rs.360/- per quarter. In such view of the matter, the claim of the petitioner corporation that they are statutory tenant and are entitled to the protection conferred under the City Tenants Protection Act cannot be considered by this Court especially when the petitioner has not fulfilled their obligation to even pay the admitted rent.

19. In this context, useful reference can be made to the decision of this Court rendered in a Second Appeal No. 616 of 2013 and Cross-Objection No. 6 of 2014 on 19.02.2015.

It is noteworthy to mention that Second Appeal was preferred by none other than the petitioner herein. Even in that case, the petitioner corporation failed to pay the admitted rent and therefore this Court has pulled down the Corporation for it's lethargy and improper attitude in driving the land owners from pillar to post. In para No.18 of the Judgment, this Court, while dismissing the second appeal imposed a cost of Rs.10,000/- on the corporation. Para No.18 of the judgment reads as follows:-

> "18. This Court is unable to agree with the submissions of the learned counsel for the Corporation/Respondents-1 and 2. A careful examination of the decision in BPCL v. Vairamani (cited supra) would show that, in the said case, the High Court did not consider the effect of various provisions of the Madras City Tenants Protection Act, 1921 (in short 'Tenants Act') more particularly Sections-3 and 9 thereof. Therefore, without taking recourse to the remedies available under the said Act, the Writ Petition could not have been filed in that case. But here, the facts and circumstances are different. The landlord actually had filed a writ petition in W.P. No.890 of 2009 which came to be disposed of citing the pendency of the civil suit filed by the Corporation in O.S. No.49 of 2005. The respondent/Corporation in this writ petition is none else than the plaintiff in the said suit. The trial court recorded a factual finding that respondents-1 & 2/Corporation are in illegal possession of the land in question. Both the courts on fact consistently found that the Corporation is not entitled for renewal of lease for further period as they have not come forward even to pay the paltry rent of Rs.450/- per quarter, thereby, they suffered the adverse finding of defaulter of rent which goes without saying that the Corporation did not play a fair role and therefore, they do not have any locus standi whatsoever to continue in possession. This Court is also aware of the position that the respondents/ Corporation are entitled to get, under normal circumstances, certain benefits under the Tenants' Act, in particular Sections-3 and 9 thereof. But, it would be an abhorrent practice to apply any such benefit in favour of the Corporation which, by assuming the shield of public sector undertaking, exhibited a very bad conduct of committing default in paying the paltry rent of Rs.450/- per quarter. To conceal such bad conduct, they resorted to unilateral deposit of the rent so as to slyly exhibit them as a prompt and unimpeachable tenant. From the affidavit of

> the petitioner, it is seen that he made an application before the Tahsildar, Krishnagiri, to know about the fair rent of the property in question and accordingly, such a Certificate was issued by the said Authority, enclosed at page No.51 of the Typed-set of Papers, which shows the monthly fair rent for the land in question is Rs.1,30,748/-. That is why, while pointing out that since 1979 even the rent @ Rs.450/- per quarter has not been paid by the Corporation, the petitioner stated that he is entitled for the rent as per the Government guidelines from the next day of expiry of lease viz., 01.01.2004. Apart from that, this Court has also endorsed the concurrent findings of the courts below as legally sustainable. Therefore, when the factual findings arrived at by the Courts below have been accepted by this Court, there cannot be any impediment to accede to the prayer sought for in this writ petition. Once again, it is highlighted that any concession to the Corporation by this court would only amount to adding premium to the act of illegal possession and unfair practise of the public Sector Undertaking as mentioned supra."

58.It is to be mentioned that a writ appeal filed against the said order in W.A.No.968 of 2016 had also been dismissed by order dated 21.11.2016. It is thus seen that as a trespasser to a land, the second respondent in the instant case also cannot claim any right under the City Tenants Protection Act.

59.The respondents 3 and 4 are rank trespassers and have also assumed the role of land grabbers. They have been squatting in the property without paying any rent. There is no extension of lease. Their possession has not been recognized by the landlord. They have been asked to vacate. They are still squatting in the property. They cannot claim any relief under the City Tenants Protection Act.

60.As held, the joint public sector undertaking has driven the petitioner from pillar to post without paying the statutory rent, which they are obliged to pay. The ratio laid down and the observations of the learned Single Judge is directly applicable in all force to the facts of the present writ petitions.

61.In W.A.Nos.590 & 698 of 2015 reported in CDJ 2015 MHC 7368 (Bharat Petroleum Corporation Limited and another Vs. K.T.Raja Kumaravel and others), a Division Bench of this Court while examining whether the writ petition filed for eviction is maintainable, had stated that in appropriate cases, the writ Court has jurisdiction to entertain the writ petition involving disputed questions of fact and there is absolutely no bar for entertaining the writ petition even if the matter arises out of a contractual obligation.

62.In the present case, there is no dispute on facts. Both side admitted that the tenancy had been terminated on 31.12.2009. Both side admitted that it had not been renewed after 31.12.2009. Both side admitted that the monthly rents payable has not been paid. It clearly shows that the third respondent is in unlawful occupation. In fact, the third respondent is in litigious occupation. Their possession is subject to the orders of this Court in the present writ petition. They cannot claim any right. In view of the ration as laid down by the Division Bench in its judgment as stated above, the third respondent has lost the right to site and a certiorari has to be issued, setting aside the renewal of the license granted by the first respondent in W.P.No.31055 of 2012. Similarly, a mandamus has to be issued to the second respondent/the Commissioner of Police, Vepery, Chennai, in W.P.No.24058 of 2019 to cancel the No Objection Certificate issued in the year 1960 to the petitioner herein, which certificate has admittedly not been renewed at any point of time after 1960.

63.In (2006) 1 Supreme Court Cases 228 (C.Albert Morris Vs. K.Chandrasekaran and others), the Hon'ble Supreme Court had examined a very similar case, wherein, the lease had been terminated and the lessee was in litigious possession. It was held that the litigious possession cannot be recognized as lawful possession. The provisions of the City Tenants Protection Act can be extended only to those tenants, who are in lawful possession. The respondents herein are not in lawful possession and as repeatedly pointed out, they are trespassers. They cannot claim any right. In the said judgment, it had been held as follows:

> "42.The argument of Mr. L.N. Rao, learned senior counsel appearing for the appellant that the words "right to site" appearing in Rule 153(1) of the Petroleum rules must be given liberal interpretation having regard to the public interest sub-served by the Petrol bunks which are essential for the smooth flow of goods and services as also for the movement of persons. Rule 153(1) (i) of the Petroleum Rules is "right to the site" for storing petroleum. It is not the right for storing petroleum on the site. That is so because that aspect is dealt with specifically in sub-clause (ii) of Rule 153(1) which refers to a no objection certificate, which the District authority or the State Government is required to give. No Objection Certificate which is granted under Rule 144 is the one given by the concerned authority stating that it has no objection for the storage of petroleum on the site after

examining the site plan and other relevant factors. The words "right to the site" have, therefore, to be understood as referring to 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 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 the case of cited supra 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.........”

64.In view of the above binding precedent, I have no hesitation in granting the reliefs as sought for in both the writ petitions.

65.W.P.No.31055 of 2012 is allowed and the order of the first respondent granting renewal of lease dated 31.12.2012 in license No. P/SC/TN/14/645 (P31758) is quashed and set aside and it is specifically held that there is no 'deemed' renewal of license after that date, since the second respondent is in litigious possession and grant or renewal of license can only be directed by this Court. It is therefore made clear that there can be no renewal of license and any deemed renewal is struck down and a consequential mandamus is also issued to the second respondent to forebear from storing petroleum at New No.320, Old No. 469, Anna Salai, Nandanam, Chennai 600 035 and vacate the premises on or before 31.03.2020.

66.W.P.No.24058 of 2019 is allowed and a mandamus is issued to the second respondent/the Commissioner of Police, Vepery, Chennai 600 007 to cancel the No Objection Certificate No.2660/E4/60 dated 09.12.1960 on or before 31.03.2020, since the second respondent is in litigious possession and is a trespasser with no right to the site in New No.320, Old No. 469, Anna Salai, Nandanam, Chennai 600 035.

67.The second respondent in W.P.No.31055 of 2012 namely, Bharath Petroleum Corporation Limited, Chennai, is directed to pay as costs a sum of Rs.25,000/- to the Cancer Institute of Adayar, Chennai and to pay as costs a sum of Rs.25,000/- to the Dean, Stanley Medical College, Chennai, for treatment of poor patients on or before 31.03.2020. The third respondent, in W.P.No.31055 of 2012, namely, M/S.Vijaya Auto Services, Chennai, who is the fourth respondent in W.P.No.24058 of 2019, is directed to pay as costs a sum of Rs.25,000/- to the Dean, Government Royapettah Hospital, Chennai, and to pay as costs a sum of Rs.25,000/- to the Dean, Government Kilpauk Medical College, Chennai, on or before 31.03.2020. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

mm

To

1. The Director General of Police,
   Dr.Radhakrishnan Salai,
   Chennai 600 004.

2. The Commissioner of Police/District Authority,
   Vepery, Chennai 600 007.

Copy to:

1. Joint Chief Controller of Explosives
   Ministry of Commerce and Industry,
   Petroleum and Explosives Safety Organization (PESO),
   (Formerly Department of Explosives),
   No.140, Rukmini Laxmipathi Road,
   Egmore, Chennai 600 008.

2. Bharath Petroleum Corporation Limited,
No.39, Vaidyanatha Mudali Street,
Chennai 600 081.

3. M/S.Vijaya Auto Services,
New No.320, Old No.467,
Anna Salai, Nandanam,
Chennai 35.

4. The Dean,
Cancer Institute of Adayar,
Chennai.

5. The Dean,
Standing Medical College,
Chennai.

6. The Dean,
Government Royapettah Hospital,
Chennai.

7. The Dean,
Government Kilpauk Medical College,
Chennai.

+2cc to Mrs.R.Maheswari, Advocate, S.R.No.21242 & 21243
+2cc to Mr.OR.Santhanakrishnan, Advocate, S.R.No.21499 & 21500

W.P.Nos.31055 of 2012 & 24058 of 2019

AD(CO)
CS/13/03/2020