BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 17.02.2020
CORAM
THE HONOURABLE **MR.JUSTICE S.S.SUNDAR**
W.P.(MD)No.4294 of 2018

1.G.Manimekalai
2.G.Das Prakash
3.G.Bhuvaneshwari ... Petitioners

Vs.

1.The Chief Controller of Explosives
Petroleum and Explosives and Safety Organisation
'A' -Block, 5th floor, CGO Complex,
Seminary Hills, Nagpur-440 006.

2.The Joint Chief Controller of Explosives
Petroleum and Explosives and Safety Organisation
A & D Wing, Block 1-B, IInd Floor, Shastri Bhavan,
No.26, Haddows Road, Nungambakkam,
Chennai-600 006.

3.The District Revenue Officer (DRO),
Dindigul Collectorate, Dindigul District.

4.The Territory Manager,
Bharat Petroleum Corporation Limited,
Retail Territory Office
37, Thirupparankundram Road,
Pasumalai, Madurai-625 004.

5.P.Jayabharathi ... Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, to direct the respondents 4 and 5 to vacate and hand over the property in S.No.13/1N, A.Vellodu Village, Dindigul Taluk to the petitioners after removing the petrol pump and its accessories in respect of property in S.No.13/1N, A.Vellodu Village, Dindigul Taluk and further direct them to jointly or severally pay a sum of Rs.75,000/- per month to the petitioners as damages for use and occupation of the property from 01.01.2017 till the property is handed over.

For Petitioners : Mr.H.Lakshmi Shankar
For R1 & R2 : Mr.S.Jeyasingh
For R3 : Mr.A.Thiyagarajan, Government Advocate.
For R4 : Mr.S.Nakesh Raja
For R5 : Mr.T.Lajapathy Roy

ORDER

This writ petition has been filed to direct the respondents 4 and 5 to vacate and hand over the property in S.No.13/1N, A.Vellodu Village, Dindigul Taluk to the petitioners after removing the petrol pump and its accessories from the property in S.No.13/1N, A.Vellodu Village, Dindigul Taluk and further to direct the respondents to jointly or severally pay a sum of Rs.75,000/- per month to the petitioners as damages for use and occupation of the property from 01.01.2017 till the property is handed over.

2.A lease agreement dated 01.01.1997 in respect of a vacant land, measuring an extent of 30972 sq.ft in S.No.13/1N in A.Vellodu Village, Dindigul Taluk was entered into between the first petitioner's husband by name T.Gopalakrishnan, who is also the father of second and third petitioners, with M/s.Bharat Petroleum Corporation Limited for a period of 20 years. As per the terms of the lease agreement, the period of lease came to an end on 31.12.2016. In respect of the vacant land in S.No.13/1N, lease amount was fixed at Rs.1,000/- per month for the first 5 years and Rs.1,500/- for the second 5 years and Rs.2,000/- for the third 5 years and Rs.2,500/- for the last five years. As per lease deed, the lease gets terminated by the end of 20 years and the lessee can also determine the tenancy by issuing 3 months notice. The lessee undertook to hand over possession of property upon determination of tendency.

3.It is admitted that originally the husband of the first petitioner himself was a dealer of M/s Bharat Petroleum Corporation Limited. Later, the said dealership agreement was terminated on the ground of sample failure. The termination was with effect from 20.12.2004. On 24.06.2008 the husband of the first petitioner died. Thereafter, there was a fresh dealership agreement entered into between M/S.BPCL and the fifth respondent on 17.07.2009. Though the petitioners filed a suit earlier questioning the dealership entered into between the M/s.Bharat Petroleum Corporation Limited and the fifth respondent, the suit was later dismissed as not-pressed on 12.09.2017.

4.In the meanwhile, the petitioners issued a legal notice to the fourth respondent terminating the lease agreement and calling upon the fourth respondent to vacate and hand over the property which was leased out to the fourth respondent earlier in January 1997.

5.In the said notice, it was made clear that the lease is terminated upon expiry of the lease which was granted for 20 years with effect from 01.01.1997. After the legal notice was issued by the petitioner, the fourth respondent sent a letter requesting renewal of the lease on 04.07.2016. In the reply sent by the petitioners, they rejected the request by stating that the lease cannot be renewed and that the petitioners are entitled to damages at the rate of Rs.75,000/- per month, if the fourth respondent do not hand over the vacant possession after the expiry of the lease period.

6.It is also to be noted that the fourth respondent has been requesting for renewal of the lease expressing their readiness to negotiate the monthly rental which may be agreeable to the petitioners. However, the petitioners by their reply rejected the request of the fourth respondent to extend the lease, on fresh terms regarding premium / rent. The petitioners also requested the DRO to cancel the no objection certificate for running business and to cancel the licence granted to the fourth respondent as per the Petroleum Rules 2002, after the expiry of the lease on 31.12.2016.

7.In the meanwhile, the fifth respondent, who is the dealer appointed by the fourth respondent, filed a suit in O.S.No.520 of 2016 before the learned Additional District Munsif Court, Dindigul against the petitioners and the fourth respondent and obtained an ex-parte order of injunction. However, an application was filed by the petitioners in I.A.No.173 of 2017 to reject the plaint in O.S.No.520 of 2016 on the file of the Additional District Munsif Court, Dindigul in January 2017. By order dated 11.07.2017, the plaint in O.S.No.520 of 2016 was rejected by the Additional District Munsif, Dindigul.

8.By an order dated24.04.2017, the second respondent suspended the explosive license granted to the fourth respondent, after finding that the explanation submitted by the fourth respondent, is not satisfactory and that the fourth respondent is not in lawful possession of the premises after the expiry of the lease.

9.The fifth respondent contends before this Court that the revocation of the subsequent explosive licence was without an intimation to the fifth respondent and that therefore it is void. However, it is admitted that the third respondent, after holding a detailed enquiry cancelled the no objection certificate granted to the fourth respondent under Petroleum Rules, 2002. The third respondent cancelled the no objection certificate after a detailed enquiry following the direction of this Court in a batch of writ petitions which were disposed of by a common order dated 14.03.2018.

10.It is admitted that the order passed in these petitions was also confirmed by the Division Bench of this Court in W.A.(MD)No.864 of 2018 by an order dated 27.06.2018.

11.Following the order cancelling no objection certificate, it is admitted that the licence granted to the fourth respondent was also cancelled. Thereafter, the fifth respondent filed a writ petition in W.P.(MD)No.15479 of 2018 challenging the order of the DRO cancelling no objection certificate issued earlier. The said writ petition was later withdrawn by the fifth respondent.

12.The petitioners thereafter issued a notice to the fourth respondent to remove their belongings from the property leased out to them originally and to allow them to run their business. Finding that the fourth respondent has not come forward to hand over the property leased out, the petitioners have filed the present writ petition.

13.Even after filing of this writ petition, the respondents submitted a reply to the earlier notice issued by the petitioners citing pendency of this writ petition before this Court as a reason for not vacating the property.

14.The facts narrated by the petitioner in the affidavit filed in support of this writ petition are not in dispute. Lease agreement, originally granted in 1997, expired on 31.12.2016 and hence possession and enjoyment of the fifth respondent as a sub lessee after expiry of lease is not lawful.

15.It is not the case of the any of the respondents that the lease was subsequently extended or that the fourth respondent was allowed to continue as lessee on fresh terms. Hence, this Court is of the view that the fourth and fifth respondents have no right to continue in possession and they may be treated as trespassers of the land even though their entry was lawful.

16.It is also admitted that the fifth respondent was only a dealer under the fourth respondent and that he did not run any business after the no objection certificate was cancelled by the third respondent. The fifth respondent admitted that he was not carrying on business after 29.06.2018. It is also admitted that the fifth respondent had removed all his materials on 29.06.2018 and that the premises, as on date is vacant.

17.It is further admitted that the fourth respondent has also removed pumps and equipments which are available above ground. However, underground tanks have been left in the premises. Apart from the underground tanks, building which is used for carrying retail business is also available in the premises and that the premises is now kept under lock and key and no other material is inside.

18.The learned counsel for the petitioners submitted that conduct of the fourth respondent refusing to surrender possession of the property, after expiry of the lease is a wilful act with ill motive. He further submitted that the petitioners were put to lot of inconvenience and hardship by the fourth respondent. Referring to the writ petition and the suit filed by the fifth respondent, the learned counsel submitted that a public sector undertaking like fourth respondent is expected to behave reasonably and cannot ignore their legal obligation to surrender the property after the expiry of the lease.

19.Stating that the provision of the City Tenants Protection Act is not applicable to this area in which the property is located, the learned counsel further submitted that the writ petition is maintainable to direct the state owned corporation / fourth respondent to hand over possession of the property to the petitioner.

20.The learned counsel for petitioner submitted that the petitioners were receiving a partly sum of Rs.2,500/- per month for the property worth about Rs.1.5 Crores.

21.It is further submitted by the learned counsel for the petitioners that the property leased out to the fourth respondent is located just about 1 KM out side of the municipal limits of Dindigul and that the market rent for the entire premises will be not less than Rs.1,50,000/- per month as on date.

22.It may not be proper to determine the market value or fair rent on the basis of the value of the property as projected by the petitioner. However, the fifth respondent has admitted that he has made an offer to the petitioner to lease out the property at the rate of Rs.75,000/- per month. Though the petitioners did not agree to fresh lease, the fact that the fifth respondent has agreed to pay a sum of Rs.75,000/- for the same premises, after the expiry of the lease agreement is indicative of a reasonable rent. Therefore, Rs.75,000/- can be fixed as market rent for the property.

23.Under Section 108 of the Transfer of Property Act, every tenant is required to hand over vacant possession to the land lord upon expiry or termination of the lease. Similarly, the lessee is also expected to pay damages for the use and occupation of the premises, after expiry of the lease period.

24.It is in the said circumstances, the petitioners are entitled to get back possession from the fourth respondent and the fifth respondent and the petitioners are also entitled to collect a sum of Rs.75,000/- per month towards damages for the use and occupation, after expiry of the lease. However, the fourth respondent has raised an issue regarding the maintainability of the writ petition.

25.In the counter affidavit of the fourth respondent, it is stated that the petitioners are estopped from challenging the quantum of rent as they have agreed to collect only a sum of Rs.2,500/- per month. It is the further argument of the learned counsel for the fourth respondent that the rent for any premises should be fixed with reference to the contract and that unless there is contract binding on the petitioners and the fourth respondent, the petitioners are not entitled to demand rent unilaterally.

26.It is also stated in the counter affidavit that the respondents have no objections to pay fair and reasonable rent as per the guidelines of the fourth respondent. It is further stated that the fourth respondent being a public sector undertaking cannot pay a huge amount of Rs.75,000/- as claimed by the petitioners towards fair rent. However, the fourth respondent contended that the fair rent will be fixed by the committee consisting 4 officers of the corporation, who will determine the fair rent taking into account various factors.

27.Except regarding the quantum of rent claimed by the petitioners, the fourth respondent has not raised any valid defence in the counter affidavit. The learned counsel for the fourth respondent also submitted that the writ petition seeking mandamus would not lie against the corporation, especially when the relief is in relation to a contract of lease.

28.This Court has held in several cases that the State owned oil corporations are instrumentalities of State and comes under the definition of State under Article 12 of the Constitution of India and that therefore, they are amenable to the jurisdiction of this Court under 226 of the Constitution of India.

29.After taking note of the defence that is available to the oil company to seek the benefits of city tenant protection Act, the Hon'ble Supreme Court had occasion to deal with a matter and held that the writ petition for issuing writ of mandamus to evict oil company from the rented premises, which was leased out to them is not maintainable. The said judgment is only to protect the right of tenant to seek benefits of Sections 3 and 9 of the City Tenants Protection Act.

30.The petitioner and the respondent admitted that Tamil Nadu City Tenant Protection Act is not applicable to the place where the property is located. When the City Tenants Protection Act is not applicable to the property, the fourth respondent in the present case is not entitled to get the benefits of City Tenants Protection Act. Even after the expiry of the lease, the fourth respondent is in possession for more than four years. As it is submitted by the learned counsel for the petitioner, the premises is kept vacant for the past 2 years and there is no business activity either by the fourth respondent or by the fifth respondent. The lease has expired in 2017. The fourth respondent is liable to pay damages for use and occupation of the properties after the expiry of the lease.

31.This Court asked earlier whether the fourth respondent is prepared to pay rent at the rate of Rs.75,000/- per month. The fourth respondent refused to pay rent at the rate of Rs.75,000/- per month, which the fifth respondent has agreed to pay to get the property on lease from the petitioners.

32.The learned counsel for the petitioner relied upon the judgment of this Court in a case of ***M.Ashrafunnisa and another Vs. Bharat Petroleum Corporation Limited, represented by its Manager*** in W.P.No.29312 of 2014 dated 21.09.2016. The learned Single Judge of this Court allowed similar writ petition filed by the landlord against the same corporation. After considering the judgement of the Hon'ble Supreme Court in Vairamani case and several judgments of this Court it was held that the writ petition against the fourth respondent is maintainable as the benefits conferred under the City Tenants Protection Act in that case cannot be extended in favour of the fourth respondent.

33.Similar issue was considered by a Division Bench of this Court in ***Bharat Petroleum Corporation Ltd. & Others Vs. K.T.Raja Kumaravel & Others*** reported in ***2015 (0) Supreme (Mad) 3274*** wherein the same corporation filed a suit for renewal of lease against the landlord and the said case was dismissed. The corporation filed a first appeal which was also dismissed. Then the second appeal filed by the corporation was also heard along with the writ petition filed by the landlord directing the corporation to surrender vacant possession of the land. The writ petition was allowed and the second appeal was dismissed by the learned Single Judge of this Court. Then the Writ Appeal filed by the corporation, the question of maintainability was raised as the core issue. The question whether it is open to this Court to direct the tenant to surrender vacant possession without filing a civil suit is answered by the Division Bench in the following lines:

> *"21.The facts are not in dispute in the subject case. The lease period expired by efflux of time on 31 December 2003. The Civil Court negatived the plea for renewal of lease. The decree has become final consequent to the dismissal of second appeal. The Corporation is now in unauthorized occupation of the premises. In view of the admitted position that there is no valid lease in favour of the Corporation, as on today, the filing of a suit for recovery of possession would be an empty formality. The suit filed by the Corporation in 2005 has attained finality on 19 February 2015. There is no point in directing the landlord at this point of time to file a suit for recovery of possession. We are therefore of the view that the Corporation has no case on facts and in law. The writ appeal is therefore an exercise in futility."*

The decision of Division Bench in the aforesaid case can be applied to the present case. Even in the present case there is no defence available to the Corporation if a suit is filed for ejectment. As pointed out earlier, the City Tenants Protection Act has no application as it is not extended to the place where the subject matter of lease is situated. The lease has been validly terminated and this position is not disputed. After enjoying the property as tenant by paying a meagre amount, it is not fair on the part of corporation to resist handing over possession after expiry of lease especially when it is admitted that there is no fresh lease or renewal of lease.

34.This Court considered the submissions of the fourth respondent. The learned counsel relied upon a judgment of Division Bench of this Court reported in ***2005 (2) CTC 401*** in ***Hindustan Petroleum Corporation Ltd., rep. by its Regional Manager Vs. Devaraj Chordia and others.*** The Division Bench of this Court has observed as follows:

> *"9.One would have expected that after 1989 the appellant herein like an honourable person would have vacated the suit property since its leasehold right ceased to exist after 1989. However, unfortunately, in our country, what is often seen is that people continue to remain in illegal possession of a property even for several years after their right to occupy the same ceased to exist. This practice has now become rampant in our country and the time has come when it must be curbed. An honourable person should vacate the property over which his lease or licence has expired and hand over possession of the same on the date of expiry of the lease or licence to the landlord/owner unless there is a fresh mutual agreement which permits him to continue in possession. It is to be noted with deep distress that the appellant which is a well known Public Sector Undertaking has blatantly violated the law and continued in possession of the suit property for 16 years beyond the term of its lease. We are indeed very sad to note that a 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 the law. In this case, the appellant which is a Public Sector Undertaking has taken the law into its own hands, which was most unfortunate and unjustified."*

35.From the facts narrated above and the principles that have been applied by this Court earlier, I am of the view that the petitioners are entitled to get a direction to get back the property from the fourth respondent. This Court is also of the view that the petitioners are entitled to get reasonable amount that can be taken as a market rent from the fourth respondent towards damages for use and occupation of the premises, after the expiry of the lease by 31.12.2016.

36.The learned counsel for the petitioners relied upon the commission that is payable to the dealer for retail outlet by calculating the volume of business. The learned counsel for the petitioners submitted that the fifth respondent is drawing not less than Rs.10,00,000/- as monthly income by way of commission. Though the dealer is also selling other products like lubricant oil and other items, it is stated that the income at the worse will not less than Rs.5,00,000/-, after deducting all expenses under all heads.

37.This Court cannot determine fair rent on the basis of the income earned by the dealer. The fifth respondent opted to take the lease from the petitioners and the fifth respondent himself has agreed to pay a sum of Rs.75,000/- per month by way of rent for the same premises on fresh terms. The petitioners are deprived of their legitimate income for about four years. From the offer that was made by the fifth respondent, a sum of Rs.75,000/- can be taken as a reasonable rent. Hence, the petitioners are entitled to collect even a sum of Rs.75,000/- per month towards damages for use and occupation.

38.Having regard to the facts narrated above, the amount offered by the fifth respondent can be fixed as an amount which the petitioner can earn by leasing out the property for similar purpose. Considering the fact that the fourth respondent corporation is a public sector undertaking, some indulgence can be shown. Having regard to the fact that the fourth respondent is not carrying on business for more than 2 years, this Court is inclined to fix a sum of Rs.50,000/- per month as damages for use and occupation of the premises by the fourth respondent.

39.Accordingly, this writ petition is allowed and the fourth respondent is directed to vacate premises and hand over the possession to the petitioner, within a period of three weeks from the date of receipt of a copy of this order. The fourth respondent is directed to pay a sum of Rs.50,000/- per month calculated from the date of expiry of lease i.e. from 01.01.2017 till possession is handed over to the petitioners. The entire amount shall be paid within a period of three weeks from the date of receipt of a copy of this order. It is open to the fourth respondent to collect any portion of amount or the entire amount from the fifth respondent as he was in enjoyment and carrying on business for some time. No costs.

Sd/-

Assistant Registrar (CS II)

// True Copy //

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Sub Assistant Registrar(CS)

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To

1.The Chief Controller of Explosives
Petroleum and Explosives and Safety Organisation
'A' -Block, 5th floor, CGO Complex,
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+1 CC to M/s.S.JEYASINGH, Advocate (SR-6695[F] dated 17/02/2020)

+1 CC to M/s.S.NATESHRAJA, Advocate (SR-6700[F] dated 17/02/2020)

+1 CC to M/s.H.LAKSHMI SANKAR, Advocate (SR-6728[F] dated 18/02/2020)

+1 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-6741[F] dated 18/02/2020)

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