

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.12.2021

CORAM

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P.No.27278 of 2018
and
W.M.P.No.31735 of 2018

V.S.Kumaran

...Petitioner

Versus

- 1.The District Revenue Officer,
Vellore District,
Vellore.
- 2.Bharat Petroleum Corporation Limited,
Represented by its Territory Manager (Retail),
Chennai Territorial office,
No.35, Vaidyanathan Street,
Tondiarpet, Chennai - 600 081.
- 3.M/s.C.LAkshmi Narasimhan & Son,
Represented by its Managing Partner,
Ms.R.Sathya Priya,
No.107, Arani Road,
Sankarapalayam, Vellore - 1.

...Respondents

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Mandamus, directing the 2nd and 3rd respondents to handover the possession of property to an extent of 12,000 sq.ft. situated in S.No.197/1B in D.No.96 Allapuram Village, Vellore Taluk to the petitioner and consequently direct the 2nd and 3rd respondents to pay the arrears of rent from 01.05.2013 onwards as rent at the rate of Rs.25 per sq.ft. along with interest at the rate of 18% p.a. till date of handing over the same.

For Petitioner :	M/S.M.Raja Sekhar
For R1 :	Mrs.C.Meera Arumugam Additional Government Pleader
For R2 :	Mr.M.Vijayan for M/S.King & Partridge
For R3 :	Mr.S.Mohamed Uduman

O R D E R

This Writ Petition has been filed, seeking for a mandamus, to direct the 2nd and 3rd respondents to handover the possession of the property, measuring an extent of 12,000 sq.ft., comprised in S.No.197/1B, bearing D.No.96, situated at Allapuram Village, Vellore Taluk to the petitioner and further, to direct the 2nd and 3rd respondents to pay arrears of rent at the rate of Rs.25 per sq.ft. along with interest at the rate of 18% p.a. from 01.05.2013 till the date of handing over the said property.

2. The learned counsel for the petitioner submitted that the property, as described above, was leased out by the vendors of the petitioner in favour of the second respondent by virtue of a lease deed, dated 15.06.1963 for a period of 20 years, who (second respondent) inducted the third respondent into the property. Thereafter, the said lease was renewed for a further period of 20 years i.e., upto 14.06.2003. Considering the long association, the petitioner's vendor has offered to sell the property to the 2nd respondent-BPCL. However, they have not shown any willingness to purchase the property without paying the rent. Since 2003, the 2nd respondent has not even paid the rent to the vendor of the petitioner. While that be so, the petitioner purchased the said property in the year 2013 by virtue of a sale deed, vide Document No.5313/2013 dated 24.04.2013 and the same was also intimated to the respondents 2 and 3 and despite the same, they have not paid any rent to the petitioner. Therefore, the learned counsel submitted that, the petitioner, having left with no other option, has filed the present Writ Petition seeking for the aforesaid relief.

3. Mr.M.Vijayan, learned counsel for the second respondent-BPCL, though raised objection to the filing of this writ petition on the ground that, the petitioner has an efficacious remedy by way of filing a Petition under the provisions of the City Tenants' Protection Act before the Civil Court, the learned counsel fairly submitted that the present issue is squarely covered by decision of the Hon'ble Supreme Court in the case of National Company Vs. Territory Manager, Bharat Petroleum Corporation Ltd. and another reported in 2021 SCC online SC 1042.

4. In reply, the learned counsel appearing for the petitioner submits that, in view of the law laid down by the Hon'ble Supreme Court, the question of approaching the Civil Court for the purpose of eviction under the City Tenants Protection Act does not arise and the petitioner is entitled to file Petition only for eviction. Therefore, this Writ Petition is maintainable.

5. Heard the learned counsel appearing for the parties concerned and perused the materials available on records.

6. It is not in dispute that the petitioner is not owner of the property and the property was leased out by the vendor of the property, which expired as early as on 14.06.2003. The respondents were not able to produce any documents with regard to the continuation of the lease subsequent to the expiry of lease upto 14.06.2003. That apart, the respondents 2nd and 3rd are not able to produce any other document to show that they made payment of rent either to the petitioner or to the vendor of the petitioner from 14.06.2003. It is the contention of the respondents 2 and 3 that they have paid some rent, whereas, it is the case of the petitioner that they have not at all paid the rent from the year 2003. Therefore, these disputed questions of fact cannot be decided by this Court and this Court is of the view that, it would be appropriate to relegate the parties to agitate the same before the Civil Court with regard to payment of rent alone. However, insofar as the issue with regard to the maintainability of this Writ Petition is concerned, as per the law laid down by the Hon'ble Supreme Court, in the decision referred to supra, the writ petition is maintainable and in this connection, it would be beneficial to extract the relevant portion of the said judgment, which is as hereunder:-

'15. It could thus be seen that this Court in the case of R. Chandramouleeswaran (supra) has held that this Court in the case of Bharat Petroleum Corporation Ltd. v. Nirmala and other connected matters, while interpreting the expression "actual physical possession of land and building" would mean and require the tenant to be in actual physical possession and subclauses (b) would not apply if the tenant has sub-let the building or has given the premises on leave and licence basis. It further held that the aforesaid decision would operate as res judicata in the case of the appellant and the landlords who were parties to the said decision. It further held that in other cases, it would operate as a binding precedent under Article 141 of the Constitution of India. Not only that, but this Court made the position amply clear in the concluding paragraph 28, which reads thus:

"28. Recording the aforesaid position, we dismiss the present appeals by the appellant, that

is, the three petroleum companies, and uphold the orders passed by the High Court that the appellant tenants would not be entitled to the benefit and rights under the Act unless they are in actual physical possession of the building constructed by them. In other words, in case the appellants have let out or sub-let the building or given it to third parties, including dealers or licensees, they would not be entitled to protection and benefit under the Act.".''

6.1 Thus, in view of the law laid down by the Hon'ble Supreme Court, as referred to above, this Court is of the considered view that, the Writ Petition is maintainable insofar as the first limb of the prayer sought for, in this Writ Petition is concerned, viz. to handover the possession of property. Hence, this Court directs the 2nd and 3rd respondents to vacate the said premises and handover the peaceful possession of the property to the petitioner within a period of eight weeks from the date of receipt of a copy of this order.

6.2 Insofar as the second limb of the prayer sought herein, viz., to direct the 2nd and 3rd respondents is concerned, to pay the arrears of rent since the same remains to be disputed questions of fact, the petitioner is at liberty to approach the Civil Court seeking appropriate relief.

7. With the above directions, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

jd/sp
To

1.The District Revenue Officer,
Vellore District,
Vellore.

2.The Territory Manager (Retail),
Bharat Petroleum Corporation Limited,
Chennai Territorial office,
No.35, Vaidyanathan Street,
Tondiarpet, Chennai - 600 081.

Copy to

The Section Officer,
Writ Section,
High Court, Madras.
(Post this matter 'For reporting
compliance' on 07.03.2022)

+2cc to M/s.Mohamed Uduman, Advocate Sr.69860
+1cc to the Government Pleader Sr.69735
+1cc to M/s.M.Raja Sekhar, Advocate Sr.69425
+1cc ot M/s.King & Partridge, Advocate Sr.69382

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ssn[co]
srg 03/01/2022