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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3438 OF 2022**

Scooter Service Station Pune Cantonment ...Petitioners
Versus
Indian Oil Corporation Ltd & Anr ...Respondents

Mr Prafulla Shah, i/b Kayval P Shah for the Petitioners.
Mr Kedar Dighe, AGP, for Union of India.
Mr Shrikant Seegarla, with Swapnil Shikhare, Shalaka
Chamboowala i/b RMG Law Associates for Respondent no.1.

BHALCHANDRA
GOPAL
DUSANE

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BHALCHANDRA
GOPAL DUSANE
Date: 2022.04.05
20:00:19 +0530

**CORAM G.S. Patel &
Madhav J. Jamdar, JJ.**
DATED: 29th March 2022

PC:-

1. Heard.
2. The Petitioners will amend the cause title by removing all prefixed. Amendments to be carried out without need of reverification by Monday, 4th April 2022.
3. The Petitioner claims that it is being unfairly evicted from a petrol station that it has been running in the Pune Cantonment area for over 50 years. It challenges a notice of 3rd March 2022 issued by

the Defence Estates Officer, Pune Circle Pune at page 34, Exhibit 'D'. A copy of this notice is reproduced below:

“DEFENCE ESTATES OFFICE, PUNE CIRCLE
(Govt of India, Ministry of Defence),
16, Rajendra Singhji Road, Pune Cantonment, Pune

File No.H/251/IX Date : 03.03.2022

The Senior Manager (Retail Sales)
Pune Division Office,
Indian Oil Corporation Ltd.
885/1, Millennium Tower
Bhandarka Institute Road,
Pune 411 001

**Sub. : Lease for use of permission for retail outlet of
Petrol Pump comprising an area of 4543 sq.ft in
GLR Sy No.634-A to Indian Oil Corporation
Limited for a Petrol Pump.**

Sir,

2. It is intimated that the issue of policy on leasing of Defendant land to Public Oil Companies for retail outlets for petrol pumps/ gas agencies/ kerosene oil agencies has been examined in the Ministry of Defence and the following decisions have been taken with the approval of the Competent Authority:-

- (i) The policy for leasing out of defence land to public sector oil companies for opening up of petrol pump outlets, Kerosene oil agencies/gas agencies has been discontinued.

(ii) Action may be initiated to take over sites from the present Lessees/occupant.

3. In this regard, the Govt of India, Ministry of Defence as well as Director General, Defence Estates, Min. of Defence, Delhi and Principal Director, Defence Estate, Min. of Defence, Southern Command, Pune have issued directions to initiate action for taking over of sites where the leases have expired and taking recourse to due process of law immediately, if necessary.

4. Further, it is intimated that as per records, the details of petrol pump leases, wherein leases have expired are as under:

Sr.No.	Sy.no. of outlet	Area in Sq.ft	Lease renewed upto
1	634-A, Pune Cantonment	4543 sq.ft.	30.09.2016

5. Since the Govt of India, Ministry of Defence has taken a decision to discontinue the leasing of defence land for petrol pumps necessary recovery of arrears of lease rent have to be collected and concerned sites have to be taken back immediately. The damage charges for the occupation of defence land with effect from the expiry of lease/licence, if arrears not paid, will be initiated subsequently.

6. You are therefore requested to stop the use of the said land for the retail outlet (i.e. petrol pump) immediately and vacate the site and handover the vacant site in GLR Sy No.634-A, Pune Cantt. immediately on or before 21/03/2022 failing which the matter shall be referred to Govt of India, Ministry of Defence giving wide publicity and also a public notice of default of the

Government directions shall be published in the local newspapers to this effect. In case the IOCL (Lessee) vacates the site without payment of due arrears or damages the recovery shall be done by following procedure prescribed under Section 14 of PPE Act, 1971 or under Section 324 of Cantonment Act, 2006.

7. The Rep of this office shall visit the site for inspection on 22/03/2022. Necessary arrangement may kindly be made to peacefully handover the vacant sites on that date. This is issued with prejudice to the Govt's rights and shall be strictly complied with.

Yours Sincerely

Sd/-

Vineet S Nair,

IDES

Defence Estates Officer,

Pune Circle, Pune

4. The notice makes it clear that the Defence Estates Office, i.e. the Government of India, through the Ministry of Defence owns the land in question. This is a plot of land on Survey No.634-A, Pune Cantonment of about 4543 sq. ft. It was leased to the Indian Oil Corporation by the Ministry of Defence. That lease was renewed periodically and the last extension was till 30th September 2016.

5. The Petitioners admit that they were only distributors and dealers of the 1st Respondent, the Indian Oil Corporation, a lessee of the Ministry of Defence and the Defence Estates Office. The

Petitioners were in possession as IOCL's licensees and in no other capacity.

6. The Affidavit-in-reply of Vineet S Nair, the Defence Estates Officer, makes the point that there is absolutely no privity between the petitioners and the Ministry of Defence. That seems to us to be abundantly clear on any reading of the facts.

7. Mr Shah would have it that merely because IOCL obtained renewals of its lease from the Defence Estates for 54 years and continued to renew the license of the Petitioners for that period of time, therefore the Petitioners have settled legal enforceable rights against the Ministry of Defence directly. Carrying this argument to its logical conclusion means that the petitioners can never be removed from this plot, for any attempt to do so would be 'arbitrary' and 'unfair' only on account of the Petitioner's longevity at site. In Mr Shah's formulation, the Court must impute a relationship of licensor and licensee or landlord and tenant between the Ministry of Defence/Union of India and the petitioners. That is impossible.

8. In any case, as we understand it, the Ministry of Defence has only directed the Southern Command, Pune to take steps to take over sites where leases have expired. The impugned notice demands that the Petitioners stop using the site as retail outlet and deliver possession. But, in default, it says that matter will be "referred to the Government of India by giving wide publicity, publishing a public notice of default" and will then specifically invoke Section 14 of the Public Premises Eviction Act, 1971 or

Section 324 of the Cantonment Act, 2006. This is a portion that Mr Shah cares not to read at all in the impugned notice.

9. What the Petitioners really seek is that even this action proposed under the PPE Act or the Cantonment Act should not be taken at all. Prayer (a) of the petition makes this abundantly clear, for what it seeks is a quashing and setting aside of this notice. It is not possible to grant the Petitioners any such relief.

10. We cannot and will not interrupt the due process of law as invoked by the Ministry of Defence. We find nothing exceptionable in the impugned notice.

11. The petition is without merit. It is rejected. There will be no order as to costs.

(Madhav J. Jamdar, J)

(G. S. Patel, J)

Note : This order is modified as per order dated 5th April 2022. The correction is shown in bold and italics.