



WEB COPY



WP.No.8928 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.10.2022

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

WP.No.8928 of 2013

Dr.E.Chitra

... Petitioner

Vs

Bharat Petroleum Corporation Limited,
Represented by is Territory Manager,
Mr.Thangavel,
Karur Installation, Athur, Kataparai Village,
Karur – 639 002, Karur District.

... Respondent

Prayer:- This Writ Petition is filed, under the Article 226 of Constitution of India, to issue a Writ of Mandamus to direct the respondent and its men to hand over vacant possession of the premises at S.No.734/2, Old Bangalore Road, Near Gandhi Statute, Hosur Taluk, Krishnagiri District to the petitioner herein.

[Prayer amended vide Order dt.27.09.2022 made in W.M.P.
No.20521 of 2018 in W.P.No.8928 of 2013 by NSKJ]

For Petitioner : Mr.V.Raghavachari

For Respondent : Mr.O.S.Karthikeyan



WP.No.8928 of 2013

WEB COPY

ORDER

This Writ Petition has been filed to direct the respondent and its men to hand over vacant possession of the premises at S.No.734/2, Old Bangalore Road, Near Gandhi Statue, Hosur Taluk, Krishnagiri District to the petitioner herein.

2. It is the case of the petitioner that the subject property was purchased by her by virtue of a sale deed dated 15.11.2012. Prior to the purchase, the petitioner's predecessor has leased the property to the respondent on 28.02.1992 for a period extended upto 31.12.1998 and the said lease expired on 31.12.1998 and the same has not been renewed. The dealer appointed by the respondent has also died and the dealership got terminated due to the death of the dealer and no business activity is being carried out in the premises till date. Though the Writ Petition was originally filed seeking prohibitory Order, subsequently, the prayer in the Writ Petition has been amended for directing the respondent to hand over vacant possession of the property.



WP.No.8928 of 2013

WEB COPY

3. Counter has been filed by the respondent to the effect that the petitioner has not informed the purchase of the property to the respondent. Therefore, it is their contention that the rents have been paid to the previous owner. It is their further contention that the property was originally leased for a period of 10 years from 22.04.1964 by way of a registered lease deed. The Lease was renewed for a further period upto 25.07.1974 and again the lease was extended from 01.01.89 to 31.12.1998 on a monthly rent of Rs.1500/-. Thereafter, the predecessor of the petitioner had a discussion with the respondent to renew the lease. It is his further contention that in the meanwhile, the predecessor in title had died and his legal heirs also agreed to receive the rent. Further, there is no intimation to the respondent with regard to the sale of the property. Therefore, it is their contention that steps have been taken by the Corporation to get lease renewed on a monthly rent of Rs.16,000/ . Further the original lessor had expired. Therefore, it is their contention that at no point of time, the petitioner took possession of the property. Hence, opposed the Writ petition.

4. The learned counsel appearing for the petitioner would submit that



WP.No.8928 of 2013

though the respondent Corporation was inducted as a tenant from the year 1964 and thereafter, lease was extended up to 1998, subsequently, the lease has not been renewed and rents have not been paid. Once, the lease has not been renewed and rents have not been paid, the status of the respondent would only be a trespasser in the property. They have no right, whatsoever, to squat in the property. It is his further contention that lease was not in existence. Therefore, it is his contention that the Corporation has no legal right to squat in the property, the Writ Petition is very well maintainable for directing the respondent to hand over the vacant possession of the property. In support of his submissions he relied on the following judgments:

**“National Company Vs. Manager reported in 2019
SCC OnLine Mad 38941**

**National Company Territory Manager Vs. Bharath
Petroleum Corporation Limited & another reported in 2021
SCC OnLine SC 1042**

**National Company V Joint Chief Controller of
Explosives – W.P.No.31055 of 2012 batch dated 10.03.2020**

and submitted that the Writ Petition is maintainable as against the



WP.No.8928 of 2013

WEB COPY

Corporation when there is no disputed facts in the case.

5. Whereas the learned counsel appearing for the respondent would submit that the lease has been expired in the year 1998 and before the steps being taken to renew the lease, the original lessor expired. However, they continued to pay the rent. It is their further contention that now the third party has raised dispute stating that the property is a wakf property. Therefore, it is their contention that in the Writ Petition, the respondent cannot be vacated.

6. I have perused entire materials. With regard to the maintainability of the Writ Petition, in the Judgment of the this Court in **M.Ashrafunisa and another Vs. Bharat Petroleum Corporation represented by its Manager and another** reported in **2016 SCC OnLine Mad 26422**, this Court has held that when there is no disputed question of law or facts arose for consideration, the Writ Petition is maintainable and the Writ Petition has been filed as against Bharat Petroleum Corporation Limited, wherein this Court has held that continuous occupation of the premises without paying any rent, after the lease is terminated, taking note of the statutory



WP.No.8928 of 2013

WEB COPY

right of the petitioner under Article 226 of Constitution of India, directed the respondent to vacate the premises. The above view has been reiterated by the Division Bench of this Court in **Bharat Petroleum Corporation Ltd. V. R.Ravikrishnan** reported in **2011 [5] CTC 437**. Therefore, this Court holds that the Writ Petition is maintainable.

7. The only defence taken by the respondent in the entire counter is that after expiry of the lease in the year 1998, the Corporation has taken steps to renew the lease. However, before the same has been finalised, the original lessor died. Thereafter, they are continuing in possession. Though a stand has been taken by the respondent that they continue to pay the rent, absolutely, no materials have been placed before this Court in this regard. The other stand taken by the respondent is that the sale of the property has not been intimated and if they have been properly intimated, they would have attorned the tenancy to the purchaser.

8. Admittedly, from the year 1964 to 1998 Corporation was enjoying the property by paying a meagre rent. Therefore, once the property has been transferred and title has been passed to a third party, the Corporation



WP.No.8928 of 2013

WEB COPY

cannot insist that such a purchase has to be intimated to them. Registration of the sale deed itself is a public notice. Admittedly, in this case, without any materials, contentions have been raised as though they are continuously paying rent which has not been substantiated by any piece of evidence before this Court. In the absence of any evidence to show that the rents have been paid regularly, the status of the respondent would be nothing but a trespasser. In such view of the matter, being a Corporation, being state instrumentality and remaining in the property of the landlord without paying any rent, is akin to encroacher enjoying the property. As expiry of the lease in the year 1998, i.e., 31.12.1998 has not been disputed and the Corporation has not established that they are continuing as a tenant, they cannot remain in possession for ever in the property.

9. Now during the arguments, a stand has been taken by the respondent to the effect that somebody has raised an objection that the property belong to Wakf and therefore, the petitioner has no right over the property. Such a contention of the Corporation has no legs to stand for two reasons. Firstly, there is no plea raised in their counter to that effect and secondly, they are estopped from denying the title of the landlord as per



WP.No.8928 of 2013

WEB COPY

Section 116 of the Indian Evidence Act. Once they are inducted as a tenant by the landlord, they are estopped from denying the title of the landlord as per mandate of Section 116 of the Indian Evidence Act.

10. Further, it is not the case of the respondent that they have raised any construction and therefore, they are entitled to protection under section 9 of the City Tenant Protection Act. No such plea has been raised in the counter. It is an admitted case of the Corporation that they are not in actual possession of the property and infact they have given licence to some dealer. Once, the premises has been leased out by way of licence, it cannot be said that the corporation is in actual possession. Therefore, protection under section 9 of the City Tenants Protection Act also would enure any benefit to the respondent.

11. The Honourable Apex Court in **Jaspal Kaur Cheema Vs. Industrial Trade Links** reported in [2017] 8 SCC 592 has held that the tenant cannot approbate and reprobate at the same time after being put in possession of the premises and they cannot deny the title of the landlord. In this regard it is useful to refer the judgment of the Division Bench this



WP.No.8928 of 2013

WEB COPY

Court in **Bharat Petroleum Corporation Ltd. V. R.Ravikrishnan**

reported in **2011 [5] CTC 437**, wherein the Corporation took a plea under section 9 of the City Protection Act that since the Corporation entered into a dealership agreement with the dealer and the Corporation is not in actual possession of the property and it has been held that Corporation cannot invoke Section 9 of the City Tenants Protection Act. It is also relevant to note that the above judgment has been upheld by the Honourable Apex Court in the latest judgment in **National Company represented by its Managing Partner Vs. Territory Manager, Bharat Petroleum Corporation Ltd. and another** reported in **2021 SCC OnLine SC 1042** and the Honourable Supreme Court has directed the respondent to vacate and hand over the possession. As the respondent Corporation is squatting in the property without paying any rent after expiry of lease in the year 1998, they cannot continue in possession of the property as their possession is nothing but illegal as that of a trespasser and they are bound to vacate the premises. Considering the above position of law, now for the sake of defending their possession, the respondent corporation cannot take a different stand during the submissions that the property belong to wakf and that is also not permissible in law, since they are estopped from



WP.No.8928 of 2013

WEB COPY

denying the title of the landlord. Now it is stated that the licence issued to the dealer also has been suspended due to some irregularities and the same has been challenged.

12. Considering the above facts and circumstances, this Writ Petition is allowed and the respondent is directed to hand over vacant possession of the premises to the petitioner within a period of two months from the date of receipt of a copy of this Order. No costs.

14.10.2022

Index: Yes/No
Web: Yes/No
Speaking/Non Speaking
vrc

To,

Bharat Petroleum Corporation Limited,
Represented by its Territory Manager,
Mr. Thangavel,
Karur Installation, Athur, Kataparai Village,
Karur – 639 002, Karur District.



WEB COPY



WP.No.8928 of 2013

N.SATHISH KUMAR, J.

VTC

WP.No.8928 of 2013

14.10.2022