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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19/04/2022

CORAM:

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

W.P.NO.22021 OF 2014

AND

M.P.NO.1 OF 2014

1. Anita P.C.
2. Vikramsingh Chhabria

... Petitioners

Vs.

1. Bharat Petroleum Corporation Ltd.,
Represented by its Senior Manager Legal - South
1, Ranganathan Garden, 11th Main Road,
Anna Nagar, Post Bag No.1212,
Chennai - 600 040.
(Registered Office at Bharat Bhavan
4&6, Currimbhoy Road, P.B.No.688,
Mumbai - 400 001.)
2. Hari Singh N.Chhabria
3. Hon'ble Mr.Justice A.Ramamurthy (Retd.)
Judge Commissioner
Plot No.9, III Main Road,
Mogappair West Garden,
Chennai - 600 037.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus, directing the 1st respondent to handover peaceful and vacant possession of the property bearing Municipal No.24B, Anna Salai, Chennai - 600 015, being land measuring about 13503 sq.ft., comprised in Survey No.36, Block No.7, Plot No.1, Patta No.16, situate in the Registration Sub-District of Saidapet, to the 3rd respondent herein, within a time frame.

For Petitioners	:	Mr.R.Parthasarathy
For Respondent-1	:	Mr.O.S.Karthikeyan
R2 & 3	:	NA



O R D E R

This writ petition has been preferred by the petitioners / lessors against the lessee Bharat Petroleum Corporation Ltd., with a prayer to hand over peaceful and vacant possession of their property, pursuant to lapse / termination of lease period.

2.The property in question in this writ petition originally belonged to the grandmother of the petitioners namely Eswari Bai, who has acquired the same by virtue of an absolute Sale Deed dated 20.10.1947, registered as Document No.2212/1947, at the Office of the Sub Registrar, Saidapet. She executed a Deed of Registered Lease dated 23.04.1955 in favour of M/s.Burmah - Shell Oil Storage and Distributing Company (India) Limited, permitting the said company to occupy the property as a Lessee for a period of ten years with effect from 01.01.1955, on quarterly rent of Rs.195/-, which is payable on or before the 10th day of the quarter succeeding. Upon expiry of the Lease on 31.12.1964, the said Eswari Bai and M/s.Burmah - Shell Oil Storage and Distributing Company (India) Limited, entered into a fresh Lease on 06.05.1965, registered as Document No.1139/1965 registered at the Office of the Sub Registrar, Saidapet. As per the terms of the Lease Deed, the Lessee was permitted to erect one or more Pumps or Filling Stations together with underground tank and other fittings, for storage of Petrol and High Speed Diesel Oil and to carry on business in such projects or allied accessories. As per the Lease Deed dated 06.05.1965, payment of quarterly rent on or before 10th of each quarter has been fixed as follows: -

- "(i) Rs.600/- per quarter for the period from 1.1.1965 to 31.12.1974 (10 yrs)
- (ii) Rs.1,200/- per quarter for the period from 1.1.1975 to 31.12.1984 (10 yrs)
- (iii) Rs.1,800/- per quarter for the period from 1.1.1985 to 31.12.1994 (10 yrs)
- (iv) Rs.2,400/- per quarter for the period from 1.1.1995 to 31.12.2004 (10 yrs) "

3.Clause 4(i) of the Lease Deed reads as under:

"4(i) If the rent hereby reserved or any part thereof shall be unpaid for twenty-one days after becoming payable and being formally demanded by Registered Letter or if any covenant on the lessee's part herein contained shall not be performed or observed it shall be lawful for the lessor at any time thereafter to re-enter upon the demised premises or



any part thereof in the name of the whole and thereupon this demise shall absolutely determine."

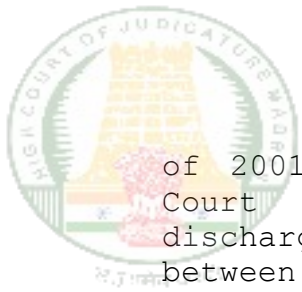
4.As per the above Clause, in case of default of payment of rent for any quarter remains unpaid for 21 days delay will automatically result in determination / termination of the Lease Deed dated 06.05.1965. Further, there was no provision for extension / renewal of lease beyond the period of 40 years, namely 31.12.2004.

5.Under the provisions of Burmah-Shell (Acquisition of Undertakings in India) Act, 1976 (Shortly "the Act") the Government of India took over the company viz., M/s.Burmah - Shell Oil Storage and Distributing Company (India) Limited, as on 24.01.1976. By virtue of the above Act, the entire assets and liabilities of M/s.Burmah - Shell Oil Storage and Distributing Company (India) Limited, stood vested with the Central Government. Under Section 7 of the Act, all the interests and liabilities of M/s.Burmah - Shell Oil Storage and Distributing Company (India) Limited, in relation to its undertakings in India, shall be vests with the Burmah - Shell Refineries Ltd., which is a Government of India Company.

6.While the matter stood thus, the property, which is the subject matter in this writ petition was transferred in favour of the first respondent herein, with effect from 01.08.1977. The first respondent thereafter entered into an Agreement with "Madras City Lorry Owners Association" and permitted the said Association to carry on the business of the first respondent, as a Licensee and handed over the physical possession of the property to a third party. As such, the first respondent is not in possession of the property as of today.

7.As per Section 5(2) of the Act, on expiry of the term lease, such lease or tenancy shall, if so desired by the Central Government, be renewed on the same terms and conditions, on which the lease or tenancy was held by Burmah-Shell, immediately before the appointed date.

8.While so, there was a dispute within the family of Eswari Bai, after her demise with regard to the properties, which culminated in filing of a Suit in C.S.No.1242 of 1992 by the second respondent herein. A Memorandum of Compromise was entered into between the petitioners and the legal heirs of Eswari Bai and a decree was passed in terms of the Memorandum of Compromise on 22.09.1997. The second respondent was appointed as a Party Receiver to collect the rent from various tenants. Being aggrieved by the appointment of the second respondent as a Party Receiver, the petitioners herein filed an appeal in O.S.A.No.358



of 2001. The appeal was allowed by a Division Bench of this Court on 02.09.2002, by which the second respondent was discharged as Party Receiver and final partition was ordered between the parties.

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9. Aggrieved over the judgment dated 02.09.2002, the second respondent approached the Hon'ble Supreme Court by filing SLP No.23525 of 2002, which was later on converted into Civil Appeal No.2003 of 2003 and the Hon'ble Supreme Court by its order dated 03.03.2003, appointed one Mr.V.Jagadeesan, Chartered Accountant as a Receiver to take charge and possession of all the movable and immovable properties and the matter was remanded back to the learned Single Judge of this Court, for fresh disposal.

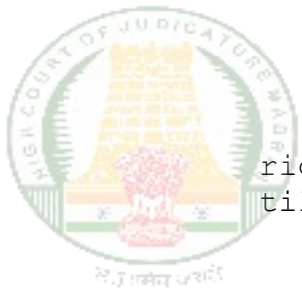
10. After taking charge as Official Receiver, the first respondent appears to have sent the quarterly rent for January to March 2003 (for Rs.2,400/-) and quarter for April to June 2003 (Rs.2,400/-) under two Pay Orders dated 02.01.2003 and 04.04.2003 respectively. The said Pay Orders were returned by the Receiver appointed by the Hon'ble Supreme Court with a direction to the respondents to issue cheque in favour of the Official Receiver. In that process, there was a delay.

11. The first respondent sent a letter dated 15.06.2004 to the Receiver appointed by the Hon'ble Supreme Court enclosing a Cheque dated 15.06.2004 for a sum of Rs.19,200/- towards the lease rentals for the period from 01.01.2003 till 31.12.2004. The said cheque was received and encashed by the Receiver under instructions from the petitioners as well as the second respondent. Since 01.01.2005, the lease was terminated and hence, the Receiver did not encash the cheques issued by the first respondent thereafter. Further, the first respondent has not acted on the same terms and conditions.

12. During the pendency of the Suit, a Division Bench of this Court, on 09.06.2007, appointed the third respondent herein as Judge Commissioner to effect partition and to sell the properties. The Judge Commissioner has issued paper publication to sell the properties on "as is where is condition" including the property in dispute in the present writ petition.

13. Against the said order, the first respondent filed three applications in C.S.No.1242 of 1992 as follows:

(a) Application No.4957 of 2011 for directing the third respondent to correct the publication dated 04.10.2011 made in Times of India and Dinamalar by stating that the sale will be subject to the leasehold



rights of the Bharat Petroleum Corporation Limited
till 01.12.1945

(b) Application No.4958 of 2011 to alternatively
direct the third respondent to modify the sale notice
dated 04.10.2011 by incorporating leasehold rights of
Bharat Petroleum Corporation Limited till 31.12.2045.

(c) Application No.4959 of 2011 for interim stay
of sale notice dated 04.10.2011.

14.All the prayers made by the first respondent was rejected by an order dated 08.08.2012. Against which, the first respondent preferred appeals in O.S.A.Nos.354 to 356 of 2012. A Division Bench of this Court, by its order dated 21.11.2012, directed the third respondent to incorporate the fact that the first respondent is stated to have exercised its option for renewal of lease for a further period of forty years. Since the first respondent has committed breach of all the terms and conditions of the contract, the petitioners have come forward with the present writ petition seeking for a direction to the first respondent to hand over peaceful and vacant possession of the property, which is the subject matter in the writ petition.

15.Resisting the contentions, the first respondent would state that the writ petition is not maintainable in as much as the petitioners are having an alternative remedy under Section 5 of the Specific Relief Act, 1963, to file a Suit. The Corporation / first respondent is entitled to protection under the provisions of the Tamil Nadu City Tenants Protection Act, as the property situated within the City of Chennai. In terms of Section 5(2) and Section 7(3) of the Act, the petitioners exercised their statutory option to renew the lease for a further period of 40 years commencing from 01.01.2005 on the same terms and conditions on which "Burmah-Shell Oil Storage and Distributing Company of India Limited" holds the lease before the appointed date viz., 24.01.1976. The notice sent regarding statutory renewal of the lease was acknowledged by the parties on 05.04.2004. The first respondent is entitled to automatic renewal of lease by virtue of operation of law. In so far as the contention with regard to the license granted in favour of the Madras City Lorry Owners Association by the first respondent Corporation is concerned, the possession of the property is always with the first respondent Corporation and the license to sell its products will not confer any right on the Licensee. In so far as the default in payment of rentals is concerned, the entire rent for the period from 01.01.2003 to 31.12.2004 @ Rs.19200/- was encashed by the Receiver. By which, the issue of delay has been done away and the petitioners cannot raise the



same issue at this point of time. The respondents were prompt in paying the rentals and the delay cannot be attributed on the part of the first respondent. On this terms, they would seek dismissal of the writ petition.

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16. Heard the submissions made on either side and perused the materials available on record.

17. It is relevant to note that the earliest lease was entered between Burmah-Shell Oil Storage and Distributing Company of India Limited and the petitioner's grandmother 23.04.1955. This lease was renewed with effect from 01.01.1965 for a period of forty years. For the period of 01.01.1965 to 31.12.1974 for ten years quarterly rent was Rs.600/-, from 01.01.1975 to 31.12.1984 for ten years quarterly rent was Rs.1,200/-, from 01.01.1985 to 31.12.1994 for ten years quarterly rent was Rs.1,800/-, and from 01.01.1995 to 31.12.2004 for ten years quarterly rent was Rs.2,400/-.

18. As per Section 5(2) of the Act, the lease is renewable on the same terms and conditions. Section 5(2) of the Act is extracted hereunder:

"5.(2) On the expiry of the term of any lease or tenancy referred to in sub-section (1), such lease or tenancy shall, if so desired by the Central Government, be renewed on the same terms and conditions on which the lease or tenancy was held by Burmah Shell immediately before the appointed day."

19. Section 7(3) of the Act reads as under:

"7. Power of Central Government to direct vesting of the undertakings of the Burmah Shell in a Government Company.-.....

(3) The provisions of sub-section (2) of section 5 shall apply to a lease or tenancy, which vests in a Government company, as they apply to a lease or tenancy vested in the Central Government and reference therein to the "Central Government" shall be construed as a reference to the Government company."

20. The learned counsel for the first respondent would vehemently contend that the Petroleum companies are entitled to



automatic renewal, as per the judgment of the Hon'ble Supreme Court in SUBHASH CHANDER AND OTHERS VS. BHARAT PETROLEUM CORPORATION LIMITED AND OTHERS [MANU/SC/0106/2022]. In para 24 of the said judgment, it is observed that by virtue of Section 5 (2) of the Act 1976, one extension was permissible in terms of the conditions of lease deed and Section 5(2) of the Act 1976 will not be available for a further renewal. It is beneficial to rely on the relevant portions of the said judgment as under:

"19. By virtue of the statutory enactment of Act 1976, the pre existing tenancy rights held by Burmah Shell with the appellants stood transferred and vested with the Central Government and thereafter by operation of [Section 7](#), the said rights in turn stood transposed and vested in the Government Company (Bharat Petroleum Corporation Ltd.) as the Government Company statutorily became the tenant of the appellants/plaintiffs. The Constitution Bench of this Court in V. Dhanapal Chettiar (supra) had an occasion to examine the controversy as to whether in order to get a decree/order of eviction against the tenant in the State Rent Control Act, it is necessary to give a notice under [Section 106](#) of the Transfer of Property Act, 1882 and taking note of various State enactments of the Act 1973, L.N. Untwalia, J., speaking for the Bench, observed in para 18 as under:

"Lastly our attention was drawn to the decision of this Court in [Firm Sardarilal Vishwanath v. Pritam Singh](#) [(1978) 4 SCC 1]. The lease in that case had come to an end by efflux of time. A tenant continued in possession and became a so-called statutory tenant. The argument put forward before this Court that a fresh notice under [Section 106](#) of the Transfer of Property Act was necessary was rejected on the ground: (SCC p. 10, para 18)

"Having examined the matter on authority and precedent it must be frankly confessed that no other conclusion is possible on the first principle. Lease of urban immovable property represents a contract between the lessor and the lessee. If the contract is to be put to an end it has to be terminated by a notice to quit as envisaged under [Section 106](#) of the Transfer of Property Act. But it is equally clear as provided by [Section 111](#) of the Transfer of Property Act that the lease of immovable property determines by various modes therein prescribed. Now, if the lease of immovable property determines in any one of the modes



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prescribed under [Section 111](#), the contract of lease comes to an end, and the landlord can exercise his right of reentry. The right of reentry is further restricted and fettered by the provisions of the Rent Restriction Act. Nonetheless the contract of lease had expired and the tenant lessee continues in possession under the protective wing of the Rent Restriction Act until the lessee loses protection. But there is no question of terminating the contract because the contract comes to an end once the lease determines in any one of the modes prescribed under [Section 111](#). There is, therefore, no question of giving a notice to quit to such a lessee who continued in possession after the determination of the lease i.e. after the contract came to an end under the protection of the Rent Restriction Act. If the contract once came to an end there was no question of terminating the contract over again by a fresh notice."

If we were to agree with the view that determination of lease in accordance with the [Transfer of Property Act](#) is a condition precedent to the starting of a proceeding under the State Rent Act for eviction of the tenant, we could have said so with respect that the view expressed in the above passage is quite correct because there was no question of determination of the lease again once it was determined by efflux of time. But on the first assumption we have taken a different view of the matter and have come to the conclusion that determination of a lease in accordance with the [Transfer of Property Act](#) is unnecessary and a mere surplusage because the landlord cannot get eviction of the tenant even after such determination. The tenant continues to be so even thereafter. That being so, making out a case under the [Rent Act](#) for eviction of the tenant by itself is sufficient and it is not obligatory to found the proceeding on the basis of the determination of the lease by issue of notice in accordance with [Section 106](#) of the Transfer of Property Act."

[Emphasis Supplied]

20. It has been held that even if the lease period is determined by forfeiture under the [Transfer of Property Act](#), 1882, still the tenant continues to be a tenant that is to say that there is no forfeiture in the eyes of law and the tenant becomes liable to be



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evicted and the forfeiture comes into play only if he has incurred a liability to be evicted under the State Rent Act and not otherwise and further held that even after the expiry of the period of contractual tenancy, the tenant can be evicted only in terms of provisions of the State Rent Act which is applicable in reference the subject property in question.

21. A perusal of the scheme of the Act 1976 would show that from the appointed day, right, title and interest of Burmah Shell with effect to [Section 5 \(1\)](#) stood transferred and vested with the Central Government and by virtue of [Section 7\(2\)](#), the vesting of tenancy rights with the Central Government stood further transposed and vested in Bharat Petroleum Corporation Ltd. and that became a statutory tenant by virtue of [Section 7\(3\)](#) of the Act. To that extent, [Section 11](#) of the Act has an overriding effect to the provisions of other laws. That being so, the jurisdiction indeed of a civil Court is impliedly barred from the field covered specifically by the provisions of the Act 1973 and that being the complete code determining the rights of a tenant/landlord to the exclusion of the other laws, we find no error in the view expressed by the High Court in the impugned judgment holding that the jurisdiction of the Civil Court is held to be barred and remedial mechanism for ejectment could be possible only under the provisions of the Act 1973.

.....

24. The counsel further placed reliance on Bharat Petroleum Corporation Limited (supra). The question under consideration was as to whether if one term of lease has been extended under the lease deed, whether automatic renewal of lease is permissible by virtue of [Section 5\(2\)](#) of the Act 1976 and it has been held by this Court that only one extension was permissible in terms of the conditions of lease deed and [Section 5 \(2\)](#) of the Act 1976 will not be available for a further renewal."

21.As per the above judgment, the statutory tenant will be entitled to only one renewal. In fact, it is to be noted that the first renewal was made in the year 1965. The total period of lease was for 50 years put together. It shall be construed as one renewal of 4 different rentals equal to four renewals. Even as per the judgment relied on by the learned counsel for the first respondent, the first respondent is entitled to only one



renewal and that renewal was already given in favour of the first respondent and therefore, the first respondent is not entitled to second renewal.

22.The learned counsel for the first respondent would also rely on an another judgment of the Hon'ble Supreme Court in BHARAT PETROLEUM CORPORATION LTD., VS. P.KESAVAN AND OTHERS [2004 (9) SCC 772] wherein it is observed as under:

"18.We, therefore, are of the opinion that the legislative scheme contained in the said Act leads to only one conclusion that if Government company expresses its desire to renew the lease, the same would stand renewed on the same terms and conditions.

19.Section 5(2) and Section 7(3) of the Act are required to be given its purposive meaning, having regard to the object and purport the statute seeks to achieve. The Central Government by reason of the provisions of the said Act acquired running business undertakings dealing in distribution and marketing of petroleum products. The leases or tenancy for outlets are, therefore, continued to be kept with the Central Government or the Government company, as the case may be, so that no let or hindrance is placed in the matter of distribution of the products from established retails outlets, unless alternate arrangements are made. Having regard to the object of the Act, as noticed hereinbefore, it is difficult to agree with the submission of the learned counsel for the respondents to the effect that the expression mere desire by the Central Government or the appellant was not enough and they were required to show something more, as for example existence of need for renewal of the lease. The central Government or the Government company is a state within the meaning of Article 12 of the Constitution of India. There are required to act fairly. It is not the case of the respondents herein that desire to get the lease renewed was actuated by any malice or ill-will or the same was otherwise unfair and unreasonable. In that view of the matter, it is difficult to construe Section 5(32) of the Act as not laying down a law not contemplating automatic renewal of the lease."

23.The contention of the learned counsel for the first respondent is that the legislative scheme contained in the said Act leads to only one conclusion that if Government company expresses its desire to renew the lease, the same would stand



renewed on the same terms and conditions. But the Hon'ble Supreme Court while discussing the purposive meaning, having regard to the object Act and purport of the statute in terms of Section 5(2) and 7(3) of the Act has held that mere desire by the Central Government or appellant was not enough and they were required to show something more, as for example existence of need for renewal of the lease. The Central Government or the Government company is a State within the meaning of Article 12 of the Constitution and therefore, they are required to act fairly. It is not the case of the respondents in the above referred judgment that desire to get the lease renewed was actuated by malice or ill-will or otherwise unfair and unreasonable. Therefore, it is difficult to construe Section 5 (32) of the Act as not laying down a law not contemplating automatic renewal of the lease.

24. Now that, it has to be seen as to whether the first respondent is entitled to automatic renewal of lease on the same terms and conditions or not ?

25. At the outset, as per the second lease running on four phases of 10 years does not stipulate any condition for renewal much less automatic renewal. As held by the Hon'ble Supreme Court, the first respondent, being a Government company, it is required to act fairly. As contended by the petitioners, the land leased out to the first respondent was around 13503 sq.ft. in the Heart of the City and the first respondent was paying a quarterly rent of Rs.2,400/-. The building situated in an arterial road in Chennai, namely Anna Salai, diagonally opposite to SPIC building, adjacent to Ashok Leyland Building and ITC Grand Chola, a Seven Star Hotel. The market value of one ground of land in that is more than Rs.6 Cores and the meager rent for that land would fetch a minimum of Rs.20,25,450/- per month, whereas, the first respondent is paying a sum of Rs.800/- only as monthly rent. The offer to pay a monthly rental of Rs.800/- per month for a property worth more than Rs.35 crores cannot be said to be fair and reasonable.

26. Secondly, as the first respondent claiming a statutory right of one renewable on the same terms and conditions, it is required to act fairly offering enhanced rent corresponding to the market value of land. Only because the statutes provide that it can be renewed at the same rent, as it was existing prior to the lapse of lease, it is not fair to pay a meager rent even after the lapse of 40 years. It can be construed that act of the respondent is actuated by malice and ill-will. Further, it is not that the first respondent is directly running its filling stations, but it has licensed the land to its licensee on a higher rent and is making profit out



to be noted that on the one hand, in violation of the terms and conditions of the lease deed, the lease rent was paid after a delay of 13 months and the renewal of the lease is sought after the letter dated 20.04.2004 setting out the serious jeopardy and serious hardship caused to the co-owners of the property and it cannot be an automatic renewal.

30.It is also relevant to note that even before the tender of arrears of rentals made by the first respondent on 05.04.2004, the first respondent expressed its intention to renew the lease for a further period. But it is strange to note that the expression of the co-owners was not addressed to the Official Receiver appointed by the Honble Supreme Court, but the co-owners whose right is not determined in the suit for partition. It appears that even in the previous instances even though the Receiver sought for payment of rentals to him as per the direction of the Hon'ble Supreme Court, the first respondent has sent cheques in favour of the discharged Receiver or in the names of the co-owners. This act of the first respondent does not appear to be fair and actuated by bonafides.

31.Secondly, as per Clause 4(i) of the lease deed, the first respondent has a bounden duty to pay the rentals in time. In spite of the demand made vide registered letter by the Receiver appointed by the Supreme Court on 15.04.2003, the first respondent failed to pay the rentals within a period of 21 days as agreed in the terms and conditions of the lease. Even though the first respondent acknowledged the receipt of the letter sent to the Receiver, has failed to perform his part within 21 days and therefore also, the lease deed stands terminated and the first respondent, having not acted fairly is not entitled to automatic renewal, as held by the Hon'ble Supreme Court.

32.The Hon'ble Supreme Court in HINDUSTAN PETROLEUM CORPORATION LTD., AND ANOTHER VS. DOLLY DAS [1999 (4) SCC 450] has observed as under:

"7.In the absence of constitutional or statutory rights being involved a writ proceeding would not lie to enforce contractual obligations even if it is sought to be enforced against the State or to avoid contractual liability arising thereto. In the absence of any statutory right [Article 226](#) cannot be availed to claim any money in respect of breach of contract or tort or otherwise. In the present case, the appellants have sought to exercise their powers under Section 7 of the Act and, therefore, though the other consequences may be contractual in nature, the exercise of the right being under a statute, it cannot



be said that the respondent could not approach the writ court.

.....

12. The lease had been granted with effect from October 1, 1969 in favour of M/s. Caltex (India) Ltd. and on coming into force of the Act on April 23, 1977 the appellant has stepped into its shoes and from that day onwards the appellant has been in possession of the same till now. The crucial question whether option for renewal either in terms of the lease deed or in terms of the Act had been availed of or not is the controversy between the parties now. Litigation between the parties has been going on from 1993 onwards. On expiry of the term the deed provides for renewal for two terms of 10 years each on the same terms and conditions except for enhancement of rent and execution of fresh deed modifying the clause relating to renewal. The appellant gave notice of renewal in terms of the provisions of (i) the deed in letter dated May 23, 1979, and (ii) the Act in the letter dated September 13, 1979. Now it is not necessary to examine the effect of renewal for the earlier period as even on appellant's own showing it is invoking the statute in the latter notice and not the terms of the deed. If that is so, the appellant could seek for renewal only in terms of Section 7 of the Act which enabled it to renew the deed for a period of one term as originally granted. Covenant for renewal is not treated as part of terms prescribing the period of lease but only entitles a lessee to obtain a fresh lease. Renewal of lease could only be for one term and no more, but nevertheless it could be contended that the covenant for renewal was also part of the lease and, therefore, stood incorporated in the renewed lease arising under the Act. However, in the peculiar facts of this case, we think that it is not necessary to enter upon the merits of the controversy regarding the effect of Clause 3(g) of the lease deed or the rights available under the Act for renewal of the lease period. We are of the opinion that ends of justice in this case will be met if we modify the order of the High Court in the following terms :-

(1) The appellant does not have power to claim exercise of option for any renewal of the lease beyond September 30, 1999;

(2) The appellant seeks for and is granted time to hand over vacant possession of the premises in question to the respondent on or before March 31, 2000, however, subject to filing of the usual



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undertaking in this Court within a period of four weeks from today;

(3) Rent payable is as per the terms of the lease deed, that is Rs. 1920/- per month which shall be paid till the date of handing over the vacant possession;

(4) If any arrears of rent, as stated above, has not been paid, the same shall be paid within a period of three months from today; and

(5) The order made by the High Court to the extent it is inconsistent with our order shall stand set aside."

33.The Hon'ble Supreme Court in M/S.DWARKADAS MARFATIA AND SONS VS. BOARD OF TRUSTEES OF THE PORT OF BOMBAY [1989 (3) SCC 293] has observed as under:

"22.Our attention was drawn to the observations of this Court in [Radhakrishna Agarwal & Ors. v. State of Bihar & Ors.](#), [1977] 3 SCR 249. Reliance was also placed on the observations of this Court in [Life Insurance Corpn. of India v. Escorts Ltd. & Ors.](#), [1985] 3 Suppl SCR 909, in support of the contention that the public corporations' dealing with tenants is a contractual dealing and it is not a matter for public law domain and is not subject to judicial review. However, it is not the correct position. The Escorts' decision reiterated that every action of the State 'or an instrumentality of the State, must be informed by reason. Indubitably, the respondent is an organ of the State under [Art. 12](#) of the Constitution. In appropriate cases, as was observed in the last mentioned decision, actions uninformed by reason may be questioned as arbitrary in proceedings under [Art. 226](#) or [Art. 32](#) of the Constitution. But it has to be remembered that [Art. 14](#) cannot be construed as a charter for judicial review of State action, to call upon the State to account for its actions in its manifold activities by stating reasons for such actions.

23.The contractual privileges are made immune from the protection of the [Rent Act](#) for the respondent because of the public position occupied by the respondent authority. Hence, its actions are amenable to judicial review only to the extent that the State must act validly for a discernible reason not whimsically for any ulterior purpose. Where any special right or privilege is granted to any public or statutory body on the presumption that it must act in



certain manner, such bodies must make good such presumption while acting by virtue of such privileges. Judicial review to oversee if such bodies are so acting is permissible.

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24. The field of letting and eviction of tenants is normally governed by the [Rent Act](#). The Port Trust is statutorily exempted from the operation of [Rent Act](#) on the basis of its public/Government character. The legislative assumption or expectation as noted in the observations of Chagla C.J. in Rampratap Jaidayal's case (supra) cannot make such conduct a matter of contract pure and simple. These corporations must act in accordance with certain constitutional conscience and whether they have so acted, must be discernible from the conduct of such corporations. In this connection, reference may be made on the observations of this Court in [S.P. Rekhi v. Union of India](#), [1981] 2 SCR 111, reiterated in [M.C. Mehta & Anr. v. Union of India & Ors.](#), [1987] 1 SCC 395, wherein at p. 148, this Court observed:

"It is dangerous to exonerate corporations from the need to have constitutional conscience; and so, that interpretation, language permitting, which makes governmental agencies, whatever their mien amenable to constitutional limitations must be adopted by the court as against the alternative of permitting them to flourish as an imperium in imperio."

25. Therefore, Mr Chinai was right in contending that every action activity of the Bombay Port Trust which constituted "State" within [Art. 12](#) of the Constitution in respect of any right conferred or privilege granted by any Statute is subject to [Art. 14](#) and must be reasonable and taken only upon lawful and relevant grounds of public interest. Reliance may be placed on the observations of this Court in [E.P. Royappa v. State of Tamil Nadu](#), [1974] 2 SCR 348; [Maneka Gandhi v. Union .of India](#), [1978] 2 SCR 621; [R.D. Shetty v. The International Airport Authority of India & Ors.](#), [1979] 3 SCR 1014; [Kasturi Lal Lakshmi Reddy v. State of J & K & Anr.](#), [1980] 3 SCR 1338 and [Ajay Hasia v. Khalid Mujib Sehravardi & Ors.](#) etc., [1981] 2 SCR 79. Where there is arbitrariness in State action, [Art. 14](#) springs in and judicial review strikes such an action down. Every action of the Executive Authority must be subject to rule of law and must be informed by reason. So,, whatever be the activity of the public authority, it



should meet the test of Art. 14. The observations in paras 101 & 102 of the Escorts' case (supra) read properly do not detract from the aforesaid principles."

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34. In the judgment in DIPAK BABARIA AND ANOTHER VS. STATE OF GUJARAT AND OTHERS [2014 (3) SCC 502] the Hon'ble Supreme Court has observed as under:

"72. In our view, considering the scheme of the act, the process of industrialization must take place in accordance therewith. As stated earlier if the law requires a particular thing should be done in a particular manner it must be done in that way and none other. The State cannot ignore the policy intent and the procedure contemplated by the statute....."

35. Therefore, in view of the above judgments of the Hon'ble Supreme Court, the first respondent cannot say that they have acted fairly. The first respondent, being a Government company is an organ of the State under Article 12 of the Constitution. As specifically defined in the Act, they are amenable to judicial review and the writ petition is maintainable.

36. In so far as the contention with regard to protection claimed by the first respondent under the provisions of the Tamil Nadu City Tenants Protection Act is concerned, the Hon'ble Supreme Court in its very recent judgment in NATIONAL COMPANY VS. TERRITORY MANAGER, BHARAT PETROLEUM CORPORATION LTD., AND ANOTHER [2021 SCC ONLINE SC 1042] has held as under:

"26. Perusal of the impugned judgment rendered by the Division Bench would reveal that though an objection with regard to maintainability of the writ petition on the ground of alternate remedy was seriously raised by the respondent No. 1 BPCL, the Division Bench was not impressed much with the said submission. As a matter of fact, the Division Bench not only referred to the judgment of this Court in the case of [ABL International Ltd. and another v. Export Credit Guarantee Corporation of India Ltd.](#) and others⁵ but also emboldened the following observations of this Court while reproducing paragraph 19 of the said judgment, which reads thus:

"19. Therefore, it is clear from the above enunciation of law that merely because one of the



parties to the litigation raises a dispute in regard to the facts of the case, the court entertaining such petition under [Article 226](#) of the Constitution is not always bound to relegate the parties to a suit."

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27. The Division Bench also referred to the judgment of this Court in the case of Dolly Das (supra), wherein this Court held that in similar facts, appellants therein were justified in approaching the writ Court under [Article 226](#) of the Constitution of India and directed the HPCL to handover vacant possession and pay the monthly rent.

28. It is to be noted, as has been noted by the High Court, that the Division Bench of the same High Court in its decision in the case of R. Ravikiran (supra) had held that oil company was in legal possession of the subject land, 5 (2004) 3 SCC 553 while the actual physical possession was with the dealers. The Division Bench specifically rejected the claim made by the oil company under Section 2(4) (ii) (a) of the Tenants Act, in view of the judgment of this Court in case of [S.R. Radhakrishnan and others v. Neelamegam](#)⁶.

29. Having noted that to get the benefit under Section 9 of the Tamil Nadu City Tenants Protection Act, 1972, the petroleum company should be in actual possession of the land and since they were not in actual possession, they were not entitled to protection under Section 9 of the Tenants Act, the Division Bench in the impugned judgment stopped at granting relief in favour of the appellant only on the ground that the view of the Division Bench in R. Ravikiran (supra) was subject matter of appeal in a batch of Special Leave Petitions/Appeals pending before this Court.

30. It could thus clearly be seen that the Division Bench itself did not find much favour with the arguments advanced on behalf of the respondent No.1BPCL with 6 (2003) 10 SCC 705 regard to non exercise of jurisdiction under [Article 226](#) of the Constitution of India on the ground of availability of alternate remedy and declined the relief only on the ground that the view taken by the other Division Bench in the case of R. Ravikiran (supra) and other matters, was pending consideration before this Court in a batch of appeals and Special Leave Petitions.



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40.In fine, the writ petition is allowed. No costs.
Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

TK

To

1. The Senior Manager Legal - South
Bharat Petroleum Corporation Ltd.,
1, Ranganathan Garden, 11th Main Road,
Anna Nagar, Post Bag No.1212,
Chennai - 600 040.

(Registered Office at Bharat Bhavan
4&6, Currimbhoy Road, P.B.No.688,
Mumbai - 400 001.)

2. Hon'ble Mr.Justice A.Ramamurthy (Retd.)
Judge Commissioner
Plot No.9, III Main Road,
Mogappair West Garden,
Chennai - 600 037.

+1cc to M/s.R.Parthasarathy, Petitioner, Advocate, S.R.No.27009

+4ccs to Mr.R.S.Ranganadham, 2nd Respondent, Advocate,
S.R.No.26461

+1cc to M/s.M.Balasubramaninan, 3rd Respondent, Advocate,
S.R.No.26270

W.P.No.22021 of 2014

NR(CO)
RLP(25/05/2022)