



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

W.P.No.34780 of 2018

and

W.M.P.No. 40335 of 2018

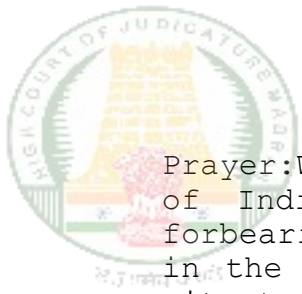
S.Maharaj,
S/o. M.K.Subramanian

...Petitioner

Vs.

1. The Bharath Petroleum Corporation,
rep. by its Territory Manager (Retail),
Revathur Post, Irugur,
Coimbatore-641 103.
2. The Joint Chief Controller (South Circle),
Department of Explosives,
Shastri Bhavan, Nungambakkam,
Chennai.
3. The District Revenue Officer,
Coimbatore District,
Coimbatore.
4. M.K.S.Sundararajan,
S/o. M.K.Subramanian
5. S.Rajamani,
W/o. Sugarajan
6. B.Padmashanthi,
W/o. Balakrishnan
7. D.Selvarajan,
S/o. R.Duraisamy
8. A.Thenmozhi,
D/o. R.Arumugam
9. A.Arulmozhi,
D/o. R.Arumugam
10. A.Amudha,
D/o. R.Arumugam

...Respondents



Prayer:Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, forbearing the 1st respondent from running petrol retail outlet in the property measuring about an extent of about 3645 sq.ft. situated at Old Survey No.206, Old S.R.No.6, presently T.S.No.187, Ward-B, Block 36, Chikkadasampalayam Village, Mettupalayam Municipal Limits, Coimbatore District belonging to the petitioner.

For Petitioner : Mr.A.E.Ravichandran

For Respondents: Mr.Krishna Srinivasan,
for M/s.Ramasubramaniam Associates,
for R1

Mr. G.Karthikeyan for R2

Mr.P.Baladhandayutham,
Special Govt. Pleader for R3

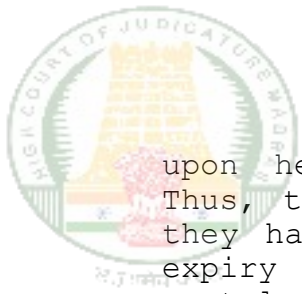
Mr.Ma.Pa. Thangavel for R4 to R10

O R D E R

This Writ Petition has been filed seeking a direction forbearing the 1st respondent from running petrol retail outlet in the property situated at Old Survey No.206, Old S.F.No.6, presently T.S.No.187, Ward-B, Block 36, Chikkadasampalayam Village, Mettupalayam Municipal Limit, Coimbatore District.

2. The grievance of the petitioner is that, he is the owner of property and earlier, the 1st respondent Corporation entered into a lease agreement with the petitioner's father and his sister for running petrol retail outlet for 20 years on 10.05.1961. Thereafter, the lease was renewed for another 28 years, which was also expired on 31.12.2008. Thereafter, the petitioner has approached the 1st respondent to vacate the premises and hand over possession, but they have refused to vacate the premises and not even paid a single rupee towards rent to the petitioner. In the said circumstances, the present Writ Petition has been filed.

3.The 1st respondent filed a counter affidavit stating that, the 1st respondent has entered into a lease agreement with the petitioner's father M.K.Subramaniam Chettiar and his sister Ponnuthaiyammal in the year 1961 for the period of 20 years. Thereafter, the lease was renewed upto 31.12.2008. During the period of lease, petitioner's father died and his father bequeathed his share in the property in favour of petitioner and his brother. His sister was also died and her share devolves



upon her two daughters viz., B.Padmashanthi and S.Rajamani. Thus, the respondents 4 to 6 are the legal heirs, accordingly, they have become co-owners of their respective portions. After expiry of lease period, the 1st respondent regularly paying rental amount to one of the lessor Mr.K.S.Sundarrajah, but he refused to receive the same. Thereafter, the co-owners of the property negotiated with the 1st respondent, however, the negotiation was not fructified due to non-submission of land documents. Thereafter, in the year 2017, another negotiation was held, in which, it is agreed that a sum of Rs.32 lakhs towards arrears of rent from 11.01.2009 to 31.10.2017 will be paid and they have also agreed to execute fresh lease at a monthly rental of Rs.2 lakhs with 15% escalation every five years. However, the said agreement was subject to the co-owners submission of documents pertaining to their portion, however, co-owners have not responded. They have also denied the facts that they have willfully refused to pay the rent. The additional counter affidavit was also filed by the 1st respondent regarding the arrears of rent payable to the petitioner from the year 2009-2021 comes to Rs.76,60,000/-.

4.Mr.A.E.Ravichandran, learned counsel appearing for petitioner would submit that, after expiry of lease period in the year 2008, in absence of subsequent renewal of lease, the 1st respondent has no right to have possession of the property and they should necessarily be evicted from the premises. He would also submit that, the 1st respondent is not in actual possession of the property and it has given a dealership to a third party. Hence, they cannot claim any right under the Tenancy Act, as they are not in actual possession. However, Mr.Krishna Srinivasan, learned counsel appearing for 1st respondent would submit that, even after expiry of lease period, if the petitioner and other co-owners come forward to renew the lease, and the 1st respondent is ready and willing to pay entire arrears of rent. Despite the same, as there is a dispute between the petitioner and other co-owners, they have not come forward to receive the rent and renew the lease, for that, the 1st respondent cannot be blamed that they are in arrears of rent. However, the 1st respondent has calculated arrears of rent as Rs.76,60,000/- and they are ready and willing to pay the amount. That apart, as per the earlier agreement between the 1st respondent and co-owners, if they are willing to execute a fresh lease, the 1st respondent corporation is ready to pay lease amount at the rate of Rs.2 lakhs per month. It is only the petitioner and other co-owners did not come forward to agree for the same. For that, they cannot blame the 1st respondent corporation.

5.Heard and considered rival submissions of learned counsel appearing for both sides and perused the records carefully.



6.It is an admitted fact that, the lease expired in the year 2008 itself. It is also an admitted fact that, the 1st respondent corporation is not running the petrol retail outlet directly and it has granted dealership to a third party. In view of same, they cannot claim any right under the Tenancy Act. It is also an admitted fact that, from the year 2009 to till date, the rent was not paid to the petitioner and other co-owners. However, according to the 1st respondent, even though the 1st respondent Corporation is ready and willing to pay the rent, the owners of the property refused to receive the rent.

7.Be that as it may. Considering the fact that, the lease has been expired in the year 2008 and the 1st respondent is not in actual possession of the property, they have no right to continue their possession after expiry of lease and they should necessarily be evicted. Mr. Krishna Srinivasan, learned counsel appearing for 1st respondent would submit that, since the 1st respondent is running a petrol retail outlet, which requires minimum 10 months to vacate the premises and they have also fairly submitted that, they are ready to pay arrears of rent to the tune of Rs.76,60,000/-.However, the learned counsel appearing for petitioner would content that, even though the arrears of rent calculated by the 1st respondent corporation much less, under protest, the petitioner and respondents 7 to 10, who are co-owners of the property willing to accept the amount fixed by the 1st respondent viz., Rs.76,60,000/-. Considering those circumstances, this Writ Petition is allowed and the 1st respondent is directed to vacate and hand over the possession to the petitioner on or before 31.12.2022. The 1st respondent is also directed to pay arrears of rent on or before 31.05.2022 and continue to pay rent at the rate of Rs.60,000/- till December 2022.

8.In the result, this Writ Petition stands allowed. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

rpp



To

1. The Territory Manager (Retail),
Bharath Petroleum Corporation,
Revathur Post, Irugur,
Coimbatore-641 103.

2. The Joint Chief Controller (South Circle),
Department of Explosives,
Shastri Bhavan, Nungambakkam,
Chennai.

3. The District Revenue Officer,
Coimbatore District,
Coimbatore.

+1cc to Mr.A.E.Ravichandran, Advocate, S.R.No.23762
+1cc to Mr.S.Ramasubramaniam & Associates,S.R.No.23364
+1cc to Mr.Ma.P.Thangavel, Advocate, S.R.No.23939
+1cc to the Government Pleader, S.R.No.24315

W.P.No.34780 of 2018

RSV(CO)
RGA(23/05/2022)