

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION 8508 OF 2022

Vijay S/o. Harinarayan Choudhary,
Aged about 68 years, Occ.Business,
r/o. Plot No. 2, Pramila Regency,
Near Kalambe Flour Mill,
Rewati Nagar, Nagpur

.....PETITIONER

..V E R S U S..

1. M/s. Indian Oil Corporation Ltd.,
through its Director (Marketing),
having its registered office at
Indian Oil Bhavan, G-9,
Ali Yawar Jung Mrg, Bandra (East),
Mumbai 400 051

2. The Assistant Manager (Retail),
M/s. Indian Oil Corporation Ltd,
Nagpur Divisional Office,
“Akarshan Buxiplex”, 26,
Central Bazar Road,
Ramdaspath, Nagpur 440 010

3. Joint Chief Control of Explosives,
(West Circle), Mumbai, Petroleum
and Explosives Safety Organization (PESO),
C-1/A-2 Wing, C.B.D. Belapur,
Navi Mumbai 400 614

..RESPONDENTS

Mr. R.M. Sharma, counsel for petitioner.
Mr. A.V. Khare, counsel for respondents 1 & 2.
Mr. Vijay Bramhe, counsel for respondent 3.

CORAM:- ROHIT B. DEO & M.W. CHANDWANI, JJ.
DATE : 28.06.2023

JUDGMENT (Per: Rohit B. Deo, J.)

Heard.

2. The petitioner is assailing the order dated 1.11.2022, passed by respondent 3 – Joint Chief Controller of Explosives, refusing to suspend or cancel the license for storing, selling or carrying out business in petroleum, diesel and allied products and services issued to respondent 1.

3. Factual matrix :

3.1) Petitioner is the owner of plot 190, CTS 854, Mouza Harpur which is situated in Ayurved Layout, South Ridge Road, Nagpur admeasuring 6000 Sq.Ft. in area (subject plot).

3.2) Respondent 1 – Indian Oil Corporation Limited (IOCL) is a government company registered under the Companies Act, 1956.

3.3) The subject plot was leased in favour of respondent 1 for storing, selling or carrying out business in

petroleum, diesel and allied products and services vide registered deed of lease dated 30.4.2004.

3.4) The lease tenure of 11 years and 6 months expired on 29.10.2015.

3.5) Respondent 1 did not vacate the subject plot and the petitioner issued quit notice under Section 106 of the Transfer of Property Act, 1882 ("TP Act") on 10.12.2015. The notice went unheeded and the petitioner instituted Regular Civil Suit 30/2016 *inter alia* seeking decree of eviction, which suit is pending.

3.6) During the pendency of Regular Civil Suit 30/2016, respondents 1 and 2 instituted Special Civil Suit 664/2017, seeking specific performance of the condition of renewal of lease and in the alternate, compensation and damages.

3.7) The petitioner contends that during the

pendency of Regular Civil Suit 30/2016, he came across Circular dated 4.1.2012, issued by the Petroleum and Explosives Safety Organization (PESO) which articulates that litigious possession is not a legal possession. On 24.11.2018, the petitioner preferred an application to the concerned department seeking details of the license issued to respondents 1 and 2. In response, the petitioner received communication dated 11.12.2018 alongwith which was enclosed copy of the license dated 30.4.2004.

3.8) The petitioner addressed communication dated 31.12.2018 informing the respondent 3 that the lease had expired and suit for eviction is pending. Since no action was taken by the respondent 3, the petitioner approached the High Court in Writ Petition 7629/2009. The High Court partly allowed the Writ Petition vide order dated 11.12.2020 and directed respondent 3 to decide the representation of the petitioner within stipulated period. In view of the order of the High Court supra, respondent 3 passed order dated 6.1.2021 informing the petitioner that the license issued in

favour of respondent 1 cannot be suspended or cancelled.

3.9) Petitioner assailed the communication-cum-order dated 6.1.2021 in Writ Petition 2771/2021, which was disposed of vide order dated 11.8.2022. The High Court directed respondent 3 to consider the application preferred by respondent 1 seeking renewal of license, afresh. The petitioner preferred review application which was disposed of by the High Court observing that the grounds in review application can be urged in the proceedings post remand.

3.10) As noted supra, by order impugned, respondent 3 has refused to suspend or cancel the license observing that the issue will be revisited after the decision in Civil Suit 664/2017 instituted for decree of specific performance of the condition of renewal.

4. Submission of behalf of petitioner:

4.1) The learned counsel for the petitioner Mr. R.M. Sharma heavily relies on the decision of the Apex

Court in *C. Albert Morris vs. K. Chandrasekaran and Others*, (2006)1 SCC 228 (“*C. Albert Morris*”) which considers Rule 152(1)(i) of the Petroleum Rules, 2002 (“Petroleum Rules”), to buttress the submission that in view of the irrefutable position on record that the lease expired on 29.10.2015, respondents ceased to have right to the site, and in view of unambiguous statutory provisions, the respondent 3 was obligated to issue order of suspension or cancellation.

4.2) Mr. R.M. Sharma would submit that even if it is assumed *arguendo* that respondents 1 and 2 are in possession, the litigious possession cannot be equated with “right to site” within the meaning of Rule 152(1) of the Petroleum Rules.

5. Stand of respondents 1 & 2:

5.1) Respondents 1 and 2 do not dispute that the license tenure expired on 29.10.2005. Respondents 1 and 2 submit that during the course of the negotiations, the petitioner expressly agreed to extend the lease for a period of

30 years as is evident from the affidavit dated 21.1.2004.

5.2) Respondents 1 and 2 submit that relying on the assurance extended that the lease tenure shall be renewed, respondent 1 incurred substantial expenditure for setting up the petroleum retail outlet.

5.3) Respondents 1 and 2 further state that notice dated 21.1.2015 was issued calling upon the petitioner to renew the lease for further period of 30 years. Some negotiations ensued whereafter petitioner instituted Regular Civil Suit 30/2016 for eviction, during the pendency of which, respondent 1 filed Special Civil Suit 664/2017 seeking decree of specific performance of contract.

5.4) Respondents 1 and 2 state that both the suits are consolidated and are pending at the stage of evidence. It is submitted that the right to claim renewal is pending adjudication and respondent 3 committed no error in awaiting the outcome of the litigation.

5.5) Respondents 1 and 2 assert that the possession of respondent 1 is neither illegal nor unauthorized. It is submitted that since the petitioner cannot take possession of the subject plot till the suit for eviction is decreed, suspension or cancellation of the license shall serve no purpose and shall only result inconvenience to public.

6. We have heard learned counsel for petitioner Mr. R.M. Sharma, learned counsel for respondents 1 and 2 Mr. A.V. Khare and learned counsel Mr. Vijay Bramhe for respondent 3.

7. We have already noted the submissions canvassed by learned counsel Mr. R.M. Sharma.

8. Mr. A.V. Khare would submit that since the civil suit seeking decree of eviction which is instituted by the petitioner and the civil suit seeking decree of specific performance of condition of renewal are pending, the rights

of parties are not established, and therefore, the decision of the Apex Court in *C. Albert Morris* does not take the case of the petitioner any further.

9. We are not persuaded to accept the submission canvassed by Mr. A.V. Khare that in view of the pendency of the litigation, respondents 1 and 2 do have an existing right to the subject plot for storing the petroleum.

10. Rule 152 of the Petroleum Rules, 2002 reads thus:

152. Suspension and cancellation of license. - (1)

Every license granted under these rules shall -

(i) stand cancelled, if licensee ceases to have any right to the site for storing petroleum;

(ii) stand cancelled, if the no objection certificate is cancelled by the District Authority or the State Government in accordance with sub-rule(1) of rule 150;;

(iii) be liable to be suspended or cancelled by an order of the licensing authority for any contravention of the Act or of any rule thereunder or of any condition contained in such license, or by order of the Central Government, if it is satisfied that there are sufficient grounds for doing so:

Provided that -

(a) before suspending or cancelling a license under this rule, the holder of the license shall be given an opportunity of being heard;

(b) the maximum period of suspension shall not exceed three months; and

(c) the suspension of a license shall not debar the

holder of the license from applying for its renewal in accordance with the provisions of rule 148.

(2) Notwithstanding anything contained in sub-rule (1), an opportunity of being heard may not be given to the holder of a license before his license is suspended or cancelled in cases -

(a) where the license is suspended by a licensing authority as an interim measure for violation of any of the provisions of the Act or these rules, or of any conditions contained in such license and in his opinion such violation is likely to cause imminent danger to the public

Provided that where a license is so suspended, the licensing authority shall give the holder of the license an opportunity of being heard before the order of suspension is confirmed; or

(b) where the license is suspended or cancelled by the Central Government, if that Government considers that in the public interest or in the interest of the security of the State, such opportunity should not be given.

[(3) A licensing authority or the Central Government suspending or cancelling a license under sub-rule(1), shall record its reason for so doing in writing and shall furnish to the licensee a copy of the order cancelling the license.]

Rule 152 supra is considered by the Apex Court in

C. Albert Morris. It was argued on behalf of the licensee that the “right” mentioned in Rule 152(1)(i) of the Petroleum Rules will have to be interpreted in widest manner possible and it is synonymous to the mere right of possession. It was further submitted that the licensee is a tenant holding over

and has an existing right to the site. The licensee further argued that no mandamus could have been issued by the High Court not to renew the license. The plea that the licensee is a statutory tenant was also canvased on the touchstone of the lease deed.

The Apex Court held that mere acceptance of rent by the landlord from the tenant in possession after the lease has been determined either by efflux of time or by notice to quit would not create a tenancy so as to confer on the erstwhile tenant the status of a tenant or a right to be in possession.

The Apex Court then held that the licensee is not statutory tenant inasmuch as what was leased out was a vacant land and the provisions of the Pondicherry Buildings (Lease and Rent Control) Act, 1969 are not applicable. The Apex Court rejected the submission canvased on behalf of the licensee, that the word “right” used in Rule 152 of the Petroleum Rules only means legal right to continue on the land. It is further held that the term “juridical possession” or “litigious possession” does not connote a valid legal right to

continue in possession within the meaning of the said Rule and occupation without consent is wrongful occupation.

Considering the submission canvased on behalf of the licensee that the word “right to site” must be given liberal interpretation having regard to the public interest sub-served by the petrol outlets, the Apex Court observes thus:

“42 The argument of Mr. L.N. Rao, learned senior counsel appearing for the appellant is that the words "right to site" appearing in Rule 153(1) of the Petroleum rules must be given liberal interpretation having regard to the public interest sub-served by the Petrol bunks which are essential for the smooth flow of goods and services as also for the movement of persons. Rule 153(1) (i) of the Petroleum Rules is "right to the site" for storing petroleum. It is not the right for storing petroleum on the site. That is so because that aspect is dealt with specifically in sub-clause (ii) of Rule 153(1) which refers to a no objection certificate, which the District authority or the State Government is required to give. No Objection Certificate which is granted under Rule 144 is the one given by the authority concerned stating that it has no objection for the storage of petroleum on the site after examining the site plan and other relevant factors. The words "right to the site" have, therefore, to be understood as referring to right to the site on which the petroleum is stored. A person can be said to have a right to something when it is possible to find a lawful origin for that right. A wrong cannot be a right of a person who trespasses on to another's land the trespass cannot be said to have a right to the land vis-a-vis the owner because he happens to be in possession of that land. Mere presence on the land by itself does not result in a

right to the land. Such presence on the premises may ripen into a right by reason of possession having become adverse to the true owner by reason of the passage of time and possession being open uninterrupted, continuous and in one's own right”.

11. The Apex Court held that when the lease expired and the landlord declined to renew the same and called upon the erstwhile tenant to surrender possession, the erstwhile tenant did not have any right to the site. The continued occupation of land, which land the erstwhile tenant had no right to occupy, cannot be equated with lawful possession, and litigious possession cannot be regarded as lawful possession.

12. It is common ground that respondent 1 cannot claim the status of statutory tenant in view of the provisions of Section 3 (1)(b) of the Maharashtra Rent Control Act, 1999 which excludes the licensee from the protective umbrella of the said enactment. Admittedly, the lease tenure expired on 29.10.2015. The pendency of the civil suits would not confer upon the licensee “right to the site” within the meaning of Rule 152(1)(i). The possession of respondents 1

and 2 is litigious and not lawful.

13. In our considered view, the issue involved is clearly covered by the decision in *C. Albert Morris* supra. We therefore, quash the communication/order dated 1.11.2022 issued by respondent 3 and direct respondent 3 to suspend or cancel the License Number P/WC/MH/14/3088 granted for carrying out business in petroleum, diesel and allied products and services on the subject plot.

14. The petition is allowed in the aforestated terms.

15. The learned counsel for respondents 1 and 2 submits that the judgment be kept in abeyance for six weeks. The request is reasonable.

16. We direct that the license of respondents 1 and 2 shall not be cancelled for a period of six weeks from the date the judgment is uploaded on High Court website.

(M.W. Chandwani, J.)

(Rohit B. Deo, J.)

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