

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

WRIT PETITION NO.352 OF 2020
WITH
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Vijay s/o Shridhar Alsí,
 Aged about 79 years,
 Occupation-Retired,
 R/o. Gawati Bangla,
 Alsí Plots, Akola,
 Taluka and District-Akola.

.. Petitioner

.. Versus ..

1] The District Magistrate/District Collector,
 Akola.

2] Bharat Petroleum Corporation Ltd.,
 Government of India Undertaking,
 A Company Registered under the
 Companies Act having registered
 Office at Bharat Bhavan, 4 and 6,
 Currimbhoy Road, Ballard Estate,
 P.B. No.688, Mumbai-400001.

.. Respondents

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 Shri Rahul S. Kalangiwale, Advocate for the petitioner,
 Ms. Shamsi Haider, AGP for respondent no.1 -State,
 Shri Abhay Sambre, Advocate for respondent no.2.

WITH

WRIT PETITION NO.353 OF 2020

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Aged about 79 years,
Occupation-Retired,
R/o. Gawati Bangla,
Alsi Plots, Akola,
Taluka and District-Akola.

..

Petitioner

.. Versus ..

1] The District Magistrate/District Collector,
Akola.

2] Hindustan Petroleum Corporation
Ltd., having registered Office at 17,
Jamshedji Tata Road, Mumbai-400020
and Regional Office at 2nd Floor,
Oriental Building, S.V. Patel Marg,
Nagpur-440001.

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Respondents

.....

Shri Rahul S. Kalangiwale, Advocate for the petitioner,
Ms. Shamsi Haider, AGP for respondent no.1 -State,
None for respondent no.2 though served.

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CORAM : ANIL S. KILOR, J.

DATED : 12.07.2023.

COMMON JUDGMENT

ADMIT. Heard the learned counsel for the parties.

2) The order dated 22.02.2019 passed by the District Magistrate, Akola rejecting the application filed by the petitioner under Section 150 of the Petroleum Rules, 2002 for cancellation of No Objection Certificate given by the District Magistrate, Akola for storage of Petroleum Products on the site of Nazul Plot No.2, Nazul Sheet No.55 of Akola, Tahsil and District-Akola, is under challenge in these petitions.

3) The District Magistrate, Akola rejected the aforesaid application on the ground that Civil Suit for eviction is pending between the parties.

4) The Hon'ble Supreme Court of India in the case of **C. Albert Morris .vs. K. Chandrasekaran and others, (2006) 1 SCC 228**, has held thus :

42...“The words “right to the site” have, therefore, to be understood as referring to the 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 and a trespasser 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.

43. *In our opinion, any right which the dealer has over his site was the right which he had acquired in terms of the lease. When that lease expired and when the landlord declined to renew the same and also called upon the erstwhile tenant to surrender possession, the erstwhile lessee could no longer assert that he had any right to the site. His continued occupation of something which he had no right to occupy cannot be regarded as source of a right to the land of which he himself was not in lawful possession....”*

5) Apparently, the District Magistrate, Akola while rejecting the said application has not taken into consideration the above referred law laid down in the case of **Albert Morris (supra)**.

6) In the circumstances, I am of the opinion that as the District Magistrate, Akola failed to take into consideration the law laid down by the Hon'ble Supreme Court of India in the case of **C. Albert Morris (supra)**, the matter needs to be remanded back to the District Magistrate, Akola to decide the application under

Section 150 of the Petroleum Rules, 2002 afresh, after hearing both the parties.

7) Accordingly, I pass the following order :

ORDER

- (i) The writ petition is partly allowed.
- (ii) The order dated 22.02.2019 passed by the District Magistrate, Akola is hereby quashed and set aside.
- (iii) The matter is remanded back to the District Magistrate, Akola to decide the application afresh filed by the petitioner under Section 150 of the Petroleum Rules, 2002, after hearing both the parties.
- (iv) The parties shall appear before the District Magistrate, Akola on **28th July, 2023** at 11.00 am.
- (v) The District Magistrate, Akola shall decide the application afresh within fifteen days from the date of appearance of the parties.

[ANIL S. KILOR, J.]

Gulande