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W.P.No.12928 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 07.08.2023

Pronounced on : 11.08.2023

CORAM : JUSTICE N.SESHASAYEE

W.P.No.12928 of 2023
and WMP.Nos.12798 & 12800 of 2023

Fortis Health Management Limited
Represented by its Authorised Signatory
Ms.Deepa Nair
Escorts Heart Institute and Research Centre
Okhla Road, New Delhi - 110 025.

... Petitioner

Vs.

1.The Joint Chief Controller of Explosives
South Circle Office, Chennai
A and D Wing, Block 18
2nd Floor, Shastri Bhavan
No.26, Haddows Road
Nungambakkam
Chennai - 600 006.

2.The District Collector
Rajaji Salai, 4th Floor
62, Beach Road
George Town, Chennai - 600 001.

3.The District Fire Officer / Station Master
Tamil Nadu Fire and Rescue Services Department
Teynampet, Chennai - 600 018.



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4.Bharat Petroleum Corporation Limited
Door No.55-L, [Old Door No.1-A (Part)
in Plot No.164/N-2 164/N-3]
I Main Road, Gandhi Nagar, Adyar
Chennai - 600 020.

5.M/s.Sarathy Agencies
Door No.55-L
[Old Door No.1-A (Part)
in Plot No.164/N-2 164/N-3]
I Main Road, Gandhi Nagar, Adyar
Chennai - 600 020.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Mandamus directing the fourth respondent to hand over peaceful and vacant possession of the property situated at Door No. 55-L (Old Door No.1-A (Part) in Plot No.164/N-2 164/N-3), First Main Road, Gandhi Nagar, Adyar, Madras - 600 020, to the petitioner herein within a time frame fixed by this Court.

For Petitioner : Mr.Rahul Balaji

For Respondents : Mr.V.T.Balaji for R1
Central Govn Standing Counsel for R1

Mr.V.Manoharan,
Additional Govt Pleader for R2 &R3

Mr.A.K.Sriram, Senior Counsel
Assisted by Mr.O.S.Karthikeyan for R4

Mr.B.Kumar, Senior Counsel
Assisted by Mr.C.T.Murugappan for R5



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ORDER

The petitioner herein claims termination of licence granted to the fourth respondent to run a petroleum outlet in the property of the petitioner, and also for handing over the possession of the property belonging to the petitioner.

2. The case has a backdrop-facts, and they are as below:

- (a) The petitioner is a corporate hospital. Earlier the site on which the hospital is, was owned by a certain S.K.Ramachandran. On 12.06.1961, Ramachandran entered into a lease agreement with M/s.Burma Shell Oil Storage and Distribution Company of India Limited. This lease was to expire on 30.09.1990. The extent covered by this lease deed is 3 grounds and 1,618 sq.ft., (whereas as per patta, it is stated to be 4 grounds and 245 sq.ft.)
- (b) In course of time, the property devolved on certain S.P.Dhanasekaran and others. Soon after the expiry of the lease term originally provided, Dhanasekaran had laid O.S.No.8892/1990 against the fourth respondent for delivery of



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possession. This suit was resisted by the fourth respondent on the ground that in terms of Section 5(1) and Section 5(2) of the Burma Shell (Acquisition of Undertaking in India) Act, 1976 (hereinafter after would be referred to as '**Burma Shell Acquisition Act**'), and that it is entitled to a statutory extension of the lease period. Even as this litigation was pending, the fourth respondent on its part has laid O.S.No.2588/1991 for renewal of lease from 01.10.1990.

(c) It is in this circumstance, on 29.09.1992, Dhanasekaran and others sold the property to M/s.Malar Hospitals Limited. Malar Hospitals would now institute a suit in O.S.No.10873 of 1992 for bare injunction against the fourth respondent that the latter shall not put up any additional construction. While things stood thus, on 08.08.1993, the suit in O.S.No.8892/1990 came to be dismissed for default.

(d) Now Malar Hospitals would institute C.S.No.1136 of 1996 for recovery of possession based on its title. This suit was later transferred to the City Civil Court owing to change in pecuniary jurisdiction of this court, where it was taken on record as O.S.No.10498 of 1996. The same was dismissed on the ground



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that statutorily extended lease term has not expired under the Burma Shall Acquisition Act by then.

(e) In due course, both O.S.No.2588/1991, which the fourth respondent had laid for renewal of lease, and O.S.No.10873 of 1992 which Malar Hospitals had laid for injunction were transferred to this Court and were taken along with C.S.No.1136 of 1996. The decision in these proceedings went against the Malar Hospitals, since the statutorily extended lease period had not expired by then. Indeed, this extended lease term was to end only in September 2020.

(f) In the meantime, the petitioner company acquired Malar Hospitals' share in February 2008. Now the petitioner would institute C.S.No.309/2011 again for possession of the suit property and for damages etc., Due to change in pecuniary jurisdiction, this case now stands transferred to the City Civil Court, where it is pending in O.S.No.7914 of 2019 on the file of XV Additional City Civil Court.

3. It is in this setting, the petitioner has come forward with this writ petition,



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wherein it seeks a direction to the 4th respondent to deliver vacant possession of the property. Its contention is that the statutorily extended lease period in terms of the Burma Shell Acquisition Act has ended on 30.09.2020, that this was even acknowledged by the 4th respondent vide its letter dated 05.08.2020 whereunder it sought renewal of lease. The 5th respondent is the dealer of the 4th respondent. Since, the lease period has expired, the petitioner seeks direction against respondents 1 to 3 restraining them from providing NOC or licence under the Explosives Act etc. It has also directed the 4th respondent to deliver vacant possession.

4. In the counter of the 4th respondent it is alleged that inasmuch as the petitioner had laid O.S.7914 of 2019, the present writ petition for the same relief cannot be maintained. That the petition is hit by laches, and that the petitioner is now seeking a writ of mandamus without a formal demand for the said purpose. The 5th respondent's counter runs substantially along the same lines as the 4th respondent.

5. Mr.Rahul Balaji, the learned counsel for the petitioner submitted that the petitioner has since filed a memo and also an application before the XV City



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Civil Court for withdrawing the prayer for recovery of possession in

O.S.No.7914 of 2019, and that no orders have been passed on the same. The

learned counsel argued that even going by the stands of the 4th respondent

the lease period would expire on 30.09.2020, after the expiry of one time

statutory extension of lease term under the Burma Shell Acquisition Act,

and hence there is no justification for the 4th respondent and the 5th

respondent to squat on the property of the petitioner without payment of any

rent for the last more than three decades. It is true that the petitioner has

laid O.S. No.7914 of 2019, but it was laid prior to September, 2020. In

O.S.7914 of 2019, the petitioner has sought two reliefs: (a) for recovery of

possession and (b) for damages for wrongful occupation of the property.

The learned counsel submitted that the petitioner has filed a memo and also

an application for withdrawal of the prayer for possession and the court has

not acted on the same since it was not sitting on the date the case was

posted. He submitted that the cause of action for the present proceedings is

that the state of affairs after September, 2020. Indeed, this precisely was the

reason why the petitioner lost its suit in O.S. No.10873 of 1992 and also

10498 of 1996. he placed reliance on the ratio in ***Bharat Petroleum***

Corporation Limited Vs Rama Chandrashekhar Vaidya and Another



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[(2014) 1 SCC 657]; *National Company Vs Territory Manager, Bharat Petroleum Corporation Limited & another* [(2021) 13 SCC 121], and *Bharat Petroleum Corporation Limited Vs R.Chandramouleeswaran & others* [(2020) 11 SCC 718].

6. Mr.B.Kumar, learned senior counsel appearing for the 5th respondent submitted that the petitioner is pursuing two remedies before two forums for the same relief, one before the City Civil Court and the other in this proceedings. Inasmuch as the civil suit was instituted earlier to the writ petition, the present writ petition cannot be entertained; and (b) no prayer is sought against the fifth respondent.

7. Mr.A.K.Sriram, the learned Senior Counsel appearing for the fourth respondent made the following submissions :

- (a) It is an admitted fact that the petitioner had filed C.S.No.309/2011 before this Court, which later came to be transferred to City Civil Court and is now pending in O.S.No.7914/2019 for the eviction of the fourth respondent. The contention which the petitioner had taken is that suit was that, notwithstanding the statutory extension



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of the lease period, there never was an execution of a formal lease deed for renewing the lease, and hence, the 4th respondent has no right to stay in possession. The stands the petitioner now takes in this writ petition however, not only runs tangential to its earlier stands but it diametrically opposes it, in that, the petitioner would now claim that the statutory lease period has expired in September 2020. Indeed, there is no basis for the cause of action in O.S.No.7914/2019, since in terms of the judgment reported in ***Bharat Petroleum Corporation Ltd., Vs P.Kesavan*** [(2004) 9 SCC 772], there is no need for entering into a formal lease deed in view of the statutory extension of the lease under the Burma Shell Acquisition Act.

- (b) The petitioner has laid a petition for issuance of mandamus, but without any notice demanding the fourth respondent to perform a statutory duty. Going by the set of documents he has filed, it is seen that the petitioner has issued notice only to respondents 1 and 2, and not to the fourth respondent;
- (c) Turning to the prayer for a writ of mandamus, even if the Courts were to direct delivery of possession by the fourth respondent, yet



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it is not in a position to comply with the same, since the 5th respondent is in actual physical possession as the dealer of the fourth respondent. When the fourth respondent is not in a position to deliver anything in terms of the order, then a mandamus cannot be issued.

(d) One of the facts, according to the petitioner provides cause for its current action is that it came to know about the status of the 5th respondent only during the cross-examination of D.W.1 in O.S.No.7914 of 2019. However, the same petitioner has preferred an application under RTI even in September 2020, seeking certain particulars about the commercial relationship between the 4th and the 5th respondents. In other words, the petitioner knew well that the 5th respondent is the dealer of the 4th respondent and that the former is in physical possession, and yet it makes a statement in this writ petition with an appearance of innocence that it came to know about the role of the 5th respondent only recently. Indeed, the petitioner is known to buy fuel for its vehicles from the outlet which 5th respondent runs.

(e) The petitioner has not produced the list of correspondences



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between it and the fourth respondent. On 05.08.2020, the 4th respondent has written to the petitioner seeking renewal of lease beyond 01.10.2020. On 24.09.2020, the petitioner has responded to the same and it declined to renew it. This implies the cause of action for the present writ has arisen even on 01.10.2020. However, the petitioner waited for another two years instituted the present writ petition, hence it is hit by latches.

The Discussion & the Decision:

8. The bottom line of the whole issue is, irrespective of which Court decides the issue, whether the 4th respondent has a right to be in possession of the property after September, 2020, when the lease in its favour was not extended. This Court considers that the defence offered by the respondents are far too hyper-technical, and they cannot be sustained, and the reasons are :

- (a) So far as the cause of action in O.S.No.7914/2019 is concerned, it is premised on an allegation that there was no lease formal lease deed extending the term under the Burma shall Acquisition Act, (which is adequately taken care of by the ratio in ***Bharat***



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Petroleum Corporation Ltd., Vs P.Kesavan [(2004) 9 SCC 772]

At all times the 4th respondent has taken a consistent stands that its lease term was extended by 30 years statutorily under Sections 5(1) and 5(2) of Burma Shell Acquisition Act, 1976. Indeed, this formed the basis for it to succeed in O.S.No.10873 of 1992. The cause of action of the petitioner in O.S.No.7914/2019, is but an ingenious way to out manoeuvre this position. So far as the present case is concerned, the cause of action is founded on the 4th respondent's stated position. To repeat, according to the 4th respondent, it was entitled to be in possession of the property of the petitioner till 30.09.2020. Therefore, what the petitioner now seeks is akin to a decree on admitted position based on passage of time since the institution of the suit in C.S.No.309/2011.

(b) The second contention of the 4th respondent that inasmuch as the petitioner knew that the 5th respondent is a dealer under the 4th respondent, and that the latter respondent may not be in a position to comply with the directions of this Court, also appears fallacious. At the end of the day, there is *privity* of contract



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between the owner of the land or his successors-in-interest and that the petroleum company and its successor. Now, both the petitioner and the 4th respondent are the successors of the original owner and the lessee. And, there is no privity of contract between the petitioner and the 5th respondent. Therefore, if the 4th respondent is liable to delivery vacant possession if it has to, if it has no no legal basis for overstaying in the property beyond the statutorily extended lease term, necessarily the 5th respondent also needs to join the process, since the 5th respondent derives its right to stay in the property only under the 4th respondent. To state it differently, inasmuch as the 5th respondent derives a right of occupancy under the 4th respondent, it cannot have a right independent of the 4th respondent to stay in the property when 4th respondent's time has arrived to delivery vacant possession.

(c) That a mandamus cannot lie without a demand is the next line of defence. This appears as a desperate plea. Here is a situation where the 4th respondent knew what its legal status from 01.10.2020. Unlike the 4th respondent, which falls within the



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definition of the State within the meaning of Article 12 of the Constitution, a fair tenant is only expected abide by the rule of law. But the 4th respondent seems to be setting its own Rule and its own Law. It has already stayed in the property for thirty years thanks to the statutory backing. But it has not paid any rent for the last 33 years, something it admits shamelessly, for which this Court could not find any statutory support. It contends that 33 years ago, the then lessor was unwilling to receive the rent. Even if it were true, the 4th respondent could have deposited the rent in Court in any of the many suits that it either filed or defended. And reverting to the core aspect, if the 4th respondent knew what its status would be from 01.10.2020 (more so when the petitioner refused to renew the lease vide its communication dated 24.09.2020), and knew what its duties are, there is hardly any need to remind the fourth respondent with a demand. After all it knows only too well that the petitioner or its predecessor-in-title, as the case may be, have been desperately trying its ejection from the property through multiple litigations.



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(d) Lastly to the plea of latches. Nothing can express the desperation of the 4th respondent more than this line of defence. The petitioner's right to seek eviction arose from 01.10.2020, and this petition is filed within two years.

(e) Turning to the contention of the counsel for the 5th respondent, the pendency of O.S.No.7914/2019 will have little impact, since the cause of action for the same was founded on the perception or an understanding of the petitioner that there is a need for an execution of document for formally renewing the lease, whereas the present petition is based on the stated position /case of the fourth respondent.

9.To conclude, this Court finds every merit to direct the fourth respondent and all those who claim right under it, should deliver vacant possession to the petitioner. The petitioner's right to obtain its arrears of rent or damages is directed to be worked out separately.

10. In the result, this writ petition is allowed and this Court directs the



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fourth respondent and all those who claim under it, to hand over peaceful and vacant possession of the property to the petitioner herein, within a period of three months from the date of receipt of a copy of this order. Any NOC or licence under the Explosives Act granted by any of the authorities / respondents 1 to 3, they are directed to be cancelled on the expiry of the three months period herein above stated. Consequently, connected miscellaneous petition is closed.

11.08.2023

Index : Yes / No
Speaking order / Non-speaking order
asr/ds



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To:

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1. The Government of India
Represented by its Secretary
Ministry of Shipping
Transport Bhawan,
Sansad Marg
New Delhi - 110 001.
2. The Directorate General of Shipping
Represented by the Assistant Director
General of Shipping
9th Floor, Beta Building,
I-Think Techno Campus
Kanjurmarg (East),
Mumbai - 400 042.



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N.SESHASAYEE.J.,

ds

Pre-delivery order in
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