



W.P(MD)No.10260 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 29.08.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.10260 of 2014

S.Gowri

... Petitioner

Vs.

1.The Bharat Petroleum Corporation Limited,
(A Government of India Enterprises)
Bharat Bhavan,
No.4 and 6 Currombhoy Road,
Balland Estate, P.B.No.688,
Mumbai 400 001.

2.The Bharat Petroleum Corporation Limited,
Rep. by its Authorised Officer,
11th Main Road, Annanagar,
Chennai.

3.The Territory Manager,
Territory Officer,
Bharat Petroleum Corporation Limited,
No.37, Thirupparankundram Main Road,
Pasumalai, Madurai – 600 004.

4.B.Srinivasan Deviah

*(R4 is impleaded vide order dated
14.10.2022 in W.M.P.(MD)No.17936 of
2022 in W.P.(MD)No.10260 of 2014 by RVJ)*

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5.The Tahsildar,
Taluk Office,
Nilakottai-624 208,
Dindigul District.

... Respondents

*(R5 is impleaded vide order dated 16.02.2023 in
W.M.P.(MD)No.2231 of 2023 in W.P.(MD)No.10260
of 2014 by KBJ)*

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondents to hand over the possession of the property situated at Sevugampatti Village in Pattiveeranpatti, Main Road of Batlagundu in Dindigul District comprised in Survey Nos.487B/2A, 448B/1A, 487B/2B total extent of 6042 $\frac{1}{4}$ feet (sq.mts 561.55) to the petitioner.

For Petitioner : Mr.H.Lakshmi Shankar

For Respondents : Mr.D.Gandiraj,
Spl. Government Pleader for R5.
Mr.S.Natesh Raja for R3.
Mr.N.Dilipkumar for R4.
No appearance for R1 & R2.

ORDER

The land measuring 11088 sq. ft. in S.Nos.488/B1 and 487/B2 in Sevugampatti Village, Pattiveeranpatti Main Road, Dindigul District was



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leased out in favour M/s.Burma Shell Oil Storage and Distributing Company Limited by one P.R.K.Joseph and others on 28.11.1956. The lease was for a period of 20 years. The rent was fixed at Rs.36/-. The site was leased out for the purpose of establishing a petrol bunk. The oil company eventually came to be taken over by Bharat Petroleum Corporation Limited, a Government of India undertaking. In the meanwhile, the property also changed hands. The lease was unilaterally renewed by BPCL upto 31.07.1976.

2.A portion of the leased out property fell to the share of the petitioner's vendor / M.S.N.P.D.Jayasankar. He conveyed 6042 ¼ sq. ft. in S.Nos.487B/2A, 488B/1A, 487B/2B in favour of the writ petitioner vide sale deed dated 24.10.2008. The fourth respondent herein has been running a petroleum outlet as the lessee of BPCL. The petitioner issued legal notice dated 24.01.2013 calling upon BPCL to hand over possession of the property set out in the schedule annexed to the notice. Correspondence ensued between parties. BPCL recognized the petitioner as their lessor. But the lease was neither extended nor the rent was paid. In these circumstances, treating the continued occupation of BPCL even



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after receipt of termination notice as illegal, the present writ petition came to be filed seeking issuance of Writ of Mandamus directing the respondents to hand over possession of the petition mentioned property measuring an extent of 6042 $\frac{1}{4}$ sq. ft.

3.The learned counsel for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to grant relief as prayed for.

4.BPCL, the lessee filed their counter affidavit and the learned standing counsel took me through its contents. The stand of the lessee is as follows:-

M/s.Burma Shell Oil Storage and Distributing Company Limited had taken 11088 sq. ft. in S.Nos.488/B1 and 487/B2 by way of lease. The lease was valid till 31.07.1976. There was statutory extension till 31.07.1996. BPCL had taken over the lease in the meanwhile. The lease property originally belonged to P.R.Karuppaiah Nadar. Following his demise, one of his sons purchased the shares of all other legal heirs and became the absolute owner. P.R.K.Augustin and M.S.N.Pandiya Nadar



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and his sons entered into exchange deed in the year 1977. The lease came to be vested with M.S.N.Pandiya Nadar and his sons. Following the demise of M.S.N.Pandiya Nadar, there was oral partition among the family members. The details of partition are as follows:-

487/B2A	67 ½ cents	Jeyasankar	Patta No.2921
487/B2B	21 ½ cents	Thilagamoorthy	Patta No.1233
488/B1A	7 ½ cents	Jeyasankar	Patta No.2921
488/B1B	6 ½ cents	Thilagamoorthy	Patta No.1233

The petitioner has purchased 6042 sq. feet in survey Nos.487/B2A, 487/B2B, 488/B1A, 488/B1B. Survey Nos.487/B2B and 488/B1B does not belong to Jayasankar. BPCL does not admit that Jayasankar is the lawful owner of the properties in S.Nos.488/B1B and 487/B2B. The land purchased by the petitioner is yet to be demarcated on ground. BPCL had earlier recognized Jayasankar as lessor on the belief that the leased land belonged to him. The learned standing counsel submitted that since the petitioner has not proved that she had stepped into the shoes of the lessor, the present writ petition is not maintainable. He pressed for dismissal of the writ petition.



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5.The licensee who is presently running the petroleum outlet was impleaded as the fourth respondent. He has filed a detailed counter affidavit and the learned counsel took me through its contents. The stand of the fourth respondent is as follows:-

The writ petitioner is barred from maintaining the writ petition because W.P.No.29992 of 2002 filed by her vendor seeking the very same relief now sought for was dismissed for non-prosecution on 17.09.2009. The petitioner had deliberately suppressed this fact. The petitioner is yet to establish that she owns the property that is covered by the lease deed. Admittedly, a much larger extent was taken by way of lease and the portion said to have been purchased by the petitioner is yet to be demarcated on ground. The petitioner is falsely representing that she is the owner of the entire land on which the petroleum outlet is located. The matter necessarily requires evidence to be adduced. If the matter is adjudicated by the jurisdictional Civil Court, the licensee can raise all the legal pleas available to her. The petitioner had purchased a share of joint family coparcenary property and she was never put in possession. Having purchased the undivided share, the petitioner's remedy lies elsewhere.



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6.The learned counsel appearing for the fourth respondent pressed for dismissal of the writ petition. He relied on the following case laws:-

“(i) Sarguja Transport Service Vs. State Transport Appellate Tribunal reported in (1987) 1 SCC 5

(ii) Ramesh Chandra Sankla V. Vikram Cement reported in (2008) 14 SCC 58

(iii) Ratnagiri Gas and Power Private Limited Vs. RDS Projects Limited (2013) 1 SCC 524

(iv) Mayandi Vs. Pandarachamy reported in 2019 SCC Online SC 1866

(v) National Company Vs. Territory Manager, BPCL reported in 2019 SCC Online Mad 38941 and

(vi) M.J.Exporters Private Limited Vs. Union of India reported in (2021) 13 SCC 543”

7.I carefully considered the rival contentions and went through the materials on record. It is agreed by the learned counsel on either side that the provision of the Chennai City Tenants Protection Act, 1972 is not applicable to the case on hand.

8.The question whether the lessor can maintain a writ petition for recovering possession of the land leased out in favour of an oil company



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(IOC, BPCL and HP) is no longer *res integra* vide **2011 (5) CTC 437**

(BPCL Vs. Ravikrishnan) and **(2016) SCC Online Mad 26422**

(M.Ashrafunisa Vs. BPCL). The Hon'ble Apex Court in the decision

reported in **(2021) 13 SCC 121 (National Company Vs. Territory**

Manager, BPCL) directed as follows:-

“29. As observed by the High Court, the conduct of the Respondent No.1-BPCL in continuing with the occupation of the said premises without paying any rent from 31st December, 2009 is unbecoming of a statutory corporation, which is a State within the meaning of Article 12 of the Constitution of India. We therefore find that while directing the Respondents to vacate the said premises and handover peaceful and vacant possession to the Appellant, it will also be necessary in the interests of justice to direct the Respondent No. 1-BPCL to pay arrears of market rent from 31st December, 2009, till the date of delivery of possession at the market rate.”

9.The first question that calls for consideration is whether the present writ petition is barred on account of dismissal of W.P.No.29992 of 2002. It is true that the petitioner's vendor / Jayasankar filed the said



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writ petition for directing BPCL to hand over possession of the leased site. When the case was listed on 17.09.2009, there was no representation on behalf of the writ petitioner therein. The petition was dismissed for non-prosecution. Copy of the said order has been enclosed in the typed set of papers filed by the fourth respondent. The learned counsel for the fourth respondent contended that the principle underlying Rule 1 of Order XXIII of CPC will apply to writ petitions also. He relied on the decision of the Hon'ble Apex Court reported in **(1987) 1 SCC 5 (Sarguja Transport Service Vs. State Transport Appellate Tribunal)**. On the other hand, the learned counsel for the petitioner relied on the decision of the Hon'ble Supreme Court reported in **(2008) 1 SCC 494 (Sarva Shramik Sanghatana (K.V.), Mumbai Vs. State of Maharashtra)** in which it was held that the decision in Sarguja Transport Service cannot be treated as Euclid's formula. However, the learned counsel for the fourth respondent pointed out that Sarguja Transport Service case has been cited with approval even in a recent decision reported in **(2021) 13 SCC 543 (M.J.Exporters Private Limited Vs. Union of India)**.



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10. Now let me closely examine the ratio laid down in ***Sarguja Transport Service***. In paragraph No.7, the Hon'ble Apex Court notes that Civil Procedure Code makes a distinction between abandonment of a suit and withdrawal from a suit with permission to file a fresh suit. Order XXIII, Rule 1 provides that where the plaintiff abandons a suit or withdraws from a suit without the permission, he shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim. In paragraph No.8, the Hon'ble Apex Court formulated the question in the following terms:-

“The question for our consideration is whether it would or would not advance the cause of justice if the principle underlying Rule 1 of Order XXIII of the Code is adopted in respect of writ petitions filed under Articles 226, 227 of the Constitution of India also.”

The rest of the discussion in paragraph No.8 is only as regards withdrawal of writ petitions. In paragraph No.9, the Hon'ble Apex Court held that the principle underlying Rule 1 of Order XXIII of CPC should be extended in the interests of administration of justice to cases of withdrawal of writ petition also. It was of course clarified that the said

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bar will not be applicable in matters involving the personal liberty of an individual or when the fundamental right guaranteed under Article 21 of the Constitution of India is sought to be enforced. I am not able to discern any proposition in Sarguja Transport Service to the effect that the abandonment of a writ petition would operate as a bar for instituting a fresh writ petition on the same cause of action. In the decision reported in **(2017) 14 SCC 634 (Himachal Pradesh Finance Corporation Vs. Anil Garg)**, the Hon'ble Apex Court distinguished Sarguja Transport Service in the following terms:-

“13. The question whether there has been an abandonment of the claim by withdrawal of the Suit is a mixed question of law and fact as held in Ramesh Chandra Sankla v. Vikram Cement MANU/SC/7810/2008 : (2008) 14 SCC 58. The language of the order for withdrawal will not always be determinative. The background facts will necessarily have to be examined for a proper and just decision. Sarguja Transport Service (supra) cannot be applied as an abstract proposition or the ratio applied sans the facts of a case. The extract below is considered relevant observing as follows:



9..... While the withdrawal of a writ petition filed in a High Court without permission to file a fresh writ petition may not bar other remedies like a suit..... ”

11.The petitioner's vendor no doubt filed a writ petition seeking recovery of possession of the leased site. During the pendency of the writ proceedings, he had sold his interest and right in the leased land in favour of the writ petitioner on 24.10.2008. Thus, when the writ petition was listed for dismissal on 17.09.2009, he ceased to have any interest in the subject matter. Therefore, the dismissal of W.P.No.29992 of 2002 will not constitute “abandonment”. The question of abandonment will raise only if the person has interest and does not pursue the matter. Whether the litigant ceased to have any interest, the dismissal of suit / writ petition for non-prosecution will not constitute a legal abandonment within the meaning of Rule 1 of Order XXIII of CPC. In any event, the present writ petition is founded on a subsequent cause of action altogether. BPCL had recognized the petitioner as their lessor. But the petitioner was not interested in continuing the tenancy. She therefore issued legal notice terminating the lease. On this cause of action, the present writ petition came to be filed. Just as a suit of ejectment can lie



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notwithstanding the dismissal of an earlier suit provided there is subsequent cause of action, the present writ petition founded on the petitioner's purchase vide sale deed dated 24.10.2008 and issuance of termination notice cannot be said to be barred. I, therefore, reject the first objection raised by the learned counsel for the fourth respondent.

12. Another aspect needs to be clarified. BPCL had acknowledged the petitioner as their lessor. They cannot in the counter affidavit deny the said status. The fourth respondent is only a lessee under BPCL. He cannot claim any higher right. The original stand of BPCL will bind the fourth respondent also.

13. It is true that the petitioner does not own the entire leased site. She owns only 6042 ¼ sq. ft. out of the total extent of 11088 sq. ft. Now it is only a question of survey, sub-division and demarcation. This is an exercise that can be very easily undertaken by the revenue authorities. On this technical ground that the land purchased by the petitioner has not been sub-divided on ground, she cannot be denied relief. BPCL is a public sector undertaking. Their dealings must be fair. The lease



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commenced in the year 1956. There has been no extension since 1996.

The petitioner after becoming owner of a valuable piece of land has been unable to enjoy the benefits. The fourth respondent as licensee cannot entangle the petitioner in further litigation.

14.I, therefore, direct BPCL to hand over possession to the petitioner 6042 ¼ sq. ft. purchased by her sale deed dated 24.10.2008. It is for the parties to approach the jurisdictional revenue and survey authorities for demarcating the land to be handed over.

15.This writ petition is allowed on these terms. No costs.

29.08.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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To:-

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G.R.SWAMINATHAN, J.

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