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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2024

CORAM:

THE HONOURABLE **DR.JUSTICE ANITA SUMANTH**

W.P.No.1382 of 2024 and
WMP.No.1412 of 2024

M/s.Sri Gowri and Co.,
Represented by its Partner
M.K.Krishnakumar
No.41, Railway Feeder Road,
Tiruppur – 641 601.

... Petitioner

Vs.

The Territory Manager (Retail),
Bharat Petroleum Corporation Limited,
Irugur TOP Installation, Ravathur (PO),
Irugur (Via), Coimbatore – 641 103.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the Respondent to hand over physical vacant possession of the premises situated at Survey No.106, 107/1, Parapalayam Village, Tiruppur Taluk, Tiruppur District – 638 601 to the Petitioner within a prescribed time limit.

For Petitioner : Mr.V.B.R.Menon

For Respondent : Mr.A.K.Sriram, Senior Counsel
for Mr.Anirudh Krishnan



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ORDER

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The petitioner is a partnership firm, owning the property at Survey No.106, 107/1, Parapalayam Village, Tiruppur Taluk, Tiruppur District 638 601 ('property'/property in question'). In 1996, it had entered into a registered lease agreement with the Bharat Petroleum Corporation Limited (BPCL)/respondent for running of a petrol bunk in the premises in question.

2.The Additional District Management and District Revenue Officer ('DRO') had issued a No Objection Certificate on 04.07.1997 under Rule 144 of the Petroleum Rules, 2002 enabling the operation of a Petroleum Retail Outlet in the premises, and an Explosives licence dated 31.12.2022 was also obtained from the Joint Chief Controller of Explosives. The lease had been for a period of 25 years from 22.06.1998 and upon determination of the lease on 31.07.2022, the respondent had wished to renew the same.

3.The petitioner had been unwilling for such renewal and had sought surrender of the premises from the respondent, but BPCL refused to budge. The petitioner approached the Joint Chief Controller of Explosives and the DRO Tiruppur, on 06.09.2022 seeking cancellation of the Explosives licence and No



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Objection Certificate citing Rule 152(i) and (ii) and Rule 150 of the Petroleum Rules, 2002. An enquiry had been caused and No Objection Certificate cancelled vide proceedings dated 12.10.2022. This order has become final.

4.WP.No.28896 of 2022 was filed seeking cancellation of the Explosives licence, which had come to be disposed on 18.07.2023. As a consequence, the Explosives licence has also been cancelled by order dated 17.08.2023. This too did not prompt the respondent to vacate the premises. Admittedly, no rent has been paid to the petitioner since 01.08.2022, the date of expiry of the lease.

5.A Civil Suit had been instituted by BPCL in O.S.No.314 of 2022 before the Principal District Munsif Court, Tiruppur seeking, among other reliefs, a declaration that the notice issued by the DRO proposing to cancel the No Objection Certificate was null and void. The reliefs sought in that suit are as follows:

'a. To declare the notice dated 21.09.2022 issued by the DRO for enquiry to the Plaintiff under Rule 150 of the Petroleum Rules, 2002 as null and void.

b. Granting permanent injunction restraining the Petitioner herein, their men, agents, representatives and followers from interfering with the leasehold rights of the plaintiff till the plaintiff is evicted through due process of law.

c. For a permanent injunction restraining the DRO from proceeding further pursuant to notice dated 21.09.2022.



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d. Awarding cost of the suit.

e. Grant such other reliefs that may be deemed just and fit under the circumstances of the case.'

6. With the order of cancellation dated 12.10.2022, the suit loses all force and is rendered infructuous.

7. Mr. V.B.R. Menon, learned counsel for the petitioner, after narrating the above facts, submits that the respondent is legally prohibited from operating the Petroleum outlet and hence must be asked to vacate forthwith. He relies on a slew of judgments in support of his submissions, being:

(i) *Hindustan Petroleum Corporation Ltd. and Another v. Dolly Das*¹

(ii) *Hindustan Petroleum Corporation Ltd. v. Devaraj Chordia and others*²

(iii) *C. Albert Morris v. K. Chandrasekaran and others*³

(iv) *Bharat Petroleum Corporation Limited v. R. Chandramouleeswaran and others*⁴

(v) *National Company v. Territory Manager, Bharat Petroleum Corporation Limited and Another*⁵

8. Per contra, Mr. A.K. Sriram, learned Senior Counsel for Mr. Anirudh Krishnan, learned counsel for the respondent would, at the outset, assail the

1 (1999) 4 SCC 450

2 2005 (2) CTC 401

3 (2006) 1 SCC 228

4 (2020) 11 SCC 718

5 (2021) 13 SCC 121



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maintainability of this writ petition stating that a writ cannot be maintained in support of a prayer for eviction simplicitor. He submit that if this practice were to be permitted, writ Courts would be flooded with similar pleas, whereas, an order of eviction is essentially a matter for the Civil Court to decide.

9.Respondent also points out that a counter claim had been filed by the petitioner in the suit filed by the respondent and thus the petitioner was well aware of the fact that it is the Civil Court which is the proper forum for remedy. Incidentally, the writ affidavit does not disclose the filing of counter claim by the petitioner in the Civil Suit and this aspect has come to light only from the oral submissions of the respondent. Even the counter is silent on this aspect.

10.I am of the view that the filing of a counter claim would not stand in the way of the maintainability of this writ petition, for several reasons. Firstly, the counter claim was returned by the learned Additional District Munsif under order dated 11.01.2024 and was not re-presented by the petitioner. Secondly, this writ petition has been instituted on 18.01.2024, a week after the return of the counter claim and hence the petitioner is not seen to be riding two horses simultaneously. Thirdly, the suit was instituted on 30.09.2022 seeking, among other things, a



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declaration that the proposal for cancellation of the NOC was null and void. The prayer in the suit was itself rendered infructuous by order of the DRO dated 12.10.2022 cancelling the NOC, particularly since that order has become final.

11.However, it would have been appropriate for the petitioner to have made a disclosure in its writ affidavit in regard to the counter claim, which has not been done. After some thought, this matter is left to lie, with a word of caution to the petitioner to ensure full disclosure before the Court should such an occasion arise in future.

12.Having said so, this does not change the view of this Court on maintainability of the writ petition itself. It is open for an aggrieved party to take recourse to whichever measures it deems are appropriate and most effective. Had the petitioner pursued the counter claim and the writ petition simultaneously, it would have been a different scenario. However, the counter claim had admittedly been returned by the Court on 25.01.2024 and was not re-presented or pursued. The suit in which the counter claim was filed has also been rendered infructuous.

13.The writ petition has been instituted only after date of return of the counter claim. Hence, I am of the view that the decision of the petitioner to pursue



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this writ petition is legitimate and that such decision does not overlap with any other remedial measures chosen by it. In this view of the matter, the writ petition can well be sustained and the objection on maintainability is rejected.

14. There has been some discussion on the applicability of the Madras City Tenants Protection Act, 1921 (MCTPA 1921), to this matter as this defence has been raised in the counter. The MCTPA 1921, under Section 1(3), sets out the area of applicability of the Act as (a) areas where the Act was in force as on the date of publication of the Madras City Tenants Protection (Amendment) Act, 1979 in the Gazette, to tenancy of land created before that date, and (b) in any other area to tenancy of land created before the date with effect from which the Act stood extended by way of Notification issued under Section 1(2)(b) of the MCTPA 1921.

15. The premises in question is located in Tiruppur and it is only on 08.01.1973 vide G.O.No.49 Revenue, published on 03.01.1973 that the Municipal Town of Tiruppur was brought under the ambit of the MCTPA, 1921. The operation of the MCTPA 1921 is only in respect of those tenancies created prior to the publication of the 1979 Amendment Act which came into force on 03.03.1980 or areas to which the Act stood extended by Notification. In this case, the lease



agreement has been executed on 01.08.1997, 17 years after the cut-off date when the 1979 Amendment Act came into force, and 25 years after the date of Notification under which Tiruppur stood included. It is in light of this settled and admitted position that Mr.Sriram, even at the threshold, has categorically accepted that protection under the MCTPA, 1921 is unavailable to BPCL in this case.

16.That leaves only the objection on maintainability qua the relief sought by the petitioner for handing over of vacant possession of the premises in question.

17.In *Dolly Das's*⁶ case, one of the points urged by Hindustan Petroleum Corporation Limited before the Supreme Court was that a writ would not lie to enforce contractual obligations in the absence of a constitutional or statutory right being breached. That was answered to say that such a conclusion would only arise in a case where the facts pleaded before this Court are disputed or complicated, needing elaborate investigation.

18.The Supreme Court has this to state at paragraph 9 of the judgment:

'9.We may now advert to the contention that the writ remedy is not appropriate in this case. Where interpretation of a contract arises in relation to immovable property and in working such a contract or relief thereof or any other fallout thereto may have the effect of giving rise to an action in tort or for damages, the

⁶ Foot Note supra 1



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appropriate remedy would be a civil suit. But if the facts pleaded before the court are of such a nature which do not involve any complicated questions of fact needing elaborate investigation of the same, the High Court could also exercise writ jurisdiction under Article 226 of the Constitution in such matters. There can be no hard and fast rule in such matters. When the High Court has chosen to exercise its powers under Article 226 of the Constitution we cannot say that the discretion exercised in entertaining the petition is wrong.'

19.In the case of *Devaraj Chordia*⁷, a Division Bench of this Court had expressed deep distress for the manner in which Hindustan Petroleum Corporation Limited, a public Corporation, had been illegally squatting on a property for 16 years after the lease admittedly came to an end. At paragraph 9, they make a distinction between a private citizen and a public sector undertaking, stating that an unlawful act by the latter would have far graver repercussions and consequences than one committed by a lay citizen. In conclusion, they direct HPCL to vacate the property within two months under threat of being evicted with police force. This was in 2005.

20.In the case of *R.Chandramouleeswaran*⁸, to which both parties have made detailed reference, the facts are that BPCL, IOCL and HPCL had filed

⁷ Foot Note supra 2

⁸ Foot Note supra 4



appeals raising questions of law relating to the right of the tenant under Section 9 of the MCTPA 1921 and an order passed under that Act directing the sale of the property.

21.The Supreme Court concluded, after a detailed exposition of the matter, that petroleum corporations would not be entitled to the benefit under the MCTPA 1921 unless they were in actual physical possession of the buildings constructed by them, meaning that the benefit under the 1921 Act would not be available to the Corporations if the petrol bunk had been sub-let to dealers or licencees. However, I reiterate that the MCTPA 1921 is, in any event inapplicable in this case, and as a result, the judgment in *R.Chandramouleeswaran*⁹ too has no application to this matter despite the bunk in the present case being in the physical possession of the respondent, company owned and company controlled.

22.In the case of *National Company*¹⁰, the facts are analogous to the present case. Incidentally the respondent corporation therein, BPCL, is the same as in the present case. That judgment arose from a decision of the Madras High Court and the prayer was for a direction to the respondent to vacate the property. BPCL had

9 Foot Note supra 4

10 Foot Note supra 5



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been squatting on that property from 2009 and litigation in respect of that property ultimately concluded only in 2021 by the judgment of the Supreme Court.

23.Initially, a single Judge of this Court had been persuaded to decide on the aspect of maintainability of the writ petition on the ground that the matter involved the resolution of disputed facts. Since there was a conflict of views of the Single Judges on that aspect, the Registry was directed to place the matter before a Division Bench for resolution.

24.Vide decision dated 19.09.2019 the Division Bench held that the writ petition was not maintainable and relegated the appellant therein to alternate remedy before the Civil Court. It was as against that decision that *National Company* approached the Supreme Court. The Bench found that the question of maintainability was really not *res integra* as the Supreme Court, in the judgments in *BPCL v. R.Ravikrishnan*¹¹, and *R.Chandramouleeswaran*¹², had considered similar prayers on merits.

25.In fact, the Bench notes that the plea of maintainability had not impressed even the Division Bench and that there was thus, no impediment for the Court to

¹¹ (2011) 5 CTC 437

¹² Foot Note supra 4



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consider the matter on the merits. In *Devaraj Chordia*¹³, the Division Bench of this Court has stated thus:

9. One would have expected that after 1989 the appellant herein like an honourable person would have vacated the suit property since its lease hold right ceased to exist after 1989. However, unfortunately, in our country, what is often seen is that people continue to remain in illegal possession of a property even for several years after their right to occupy the same ceased to exist. This practice has now become rampant in our Country and the time has come when it must be curbed. An honourable person should vacate the property over which his lease or license has expired and hand over possession of the same on the date of the expiry of the lease or license to the landlord / owner unless there is a fresh mutual agreement which permits him to continue in possession. It is to be noted with deep distress that the appellant which is a well known Public Sector Undertaking has blatantly violated the law and continued in possession of the suit property for 16 years beyond the term of its lease. We are indeed very sad to note that a Public Sector Undertaking has behaved in this manner. In this country the rule of law prevails and Public Sector Undertakings are subordinate to law and not above the law. In this case, the appellant which is a Public Sector Undertaking has taken the law into its own hands, which was most unfortunate and unjustified"

26 The observations of the Hon'ble Supreme Court in the case of *National Company*¹⁴ at paragraph 29 would be directly applicable to the facts and circumstances of the present case and have been rendered in the context of the same respondent as before me now. I extract the same below:

'29.As observed by the High Court, the conduct of Respondent 1 BPCL in continuing with the occupation of the said premises

¹³ Foot Note supra 2

¹⁴ Foot Note supra 5



without paying any rent from 31.12.2009 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 hand over peaceful and vacant possession to the appellant, it will also be necessary in the interests of justice to direct Respondent 1 BPCL to pay arrears of market rent from 31.12.2009, till the date of delivery of possession at the market rate.'

27. In conclusion, the appeal was allowed and BPCL directed to vacate the property within three months, pay arrears of market rent from date of expiry of lease till the date of handing over of possession, and were mulcted with costs also.

The directions issued in the case of *National Company*¹⁵ are as follows:-

'30. In the result, the appeal is allowed in the following terms:

30.1. Respondent 1 BPCL is directed to vacate and hand over peaceful and vacant possession of the said premises to the appellant within a period of three months from today.

30.2. Respondent 1 BPCL is directed to pay arrears of market rent to the appellant from 31-12-2009 till the date of handing over of possession.

31. We postpone the issue of determination of market rent for a period of three weeks from today. The appellant as well as the respondents shall file their written submissions with regard to the market rent with supporting documents within a period of two weeks from today.

32. Respondent 1 BPCL shall also pay costs, quantified at Rs.1,00,000 (Rupees one lakh only) to the appellant.

¹⁵ Foot Note supra 5



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28. These judgments illustrate the conduct of the respondent from 2009 till date. What is really disheartening is that the conduct of the same respondent remains identical, even today in 2024. There is no difference in its conduct today from what was noted by the Supreme Court in 2021. There is no opposition in regard to the sequence of dates and events involved in this matter, and they are admitted. In such a case one can only marvel at the high handedness of the respondent Corporation in continuing to, after determination of lease, (i) squat on a property (ii) despite the explicit denial of the land owner for extension of lease (iii) without paying rent (iv) after cancellation of No Objection Certificate and (v) after expiry of explosives licence.

29. In light of the aforesaid and, taking a cue from the judgment in *National Company*¹⁶, especially as the facts and circumstances are substantially similar, there is a direction to the respondent to vacate the premises forthwith and in any event not later than two months from date of receipt of this order. My conclusion also finds support from the decision of the First Bench of this Court in *Bharat Petroleum Corporation Limited v. Fortis Health Management Limited and others*

¹⁶ Foot Note supra 5



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[WP.No.3342 of 2023 dated 24.01.2024] involving similar factual and legal matrices.

30. As directed vide order dated 10.06.2024, the petitioner has submitted the particulars for determination of the arrears of rent due to the Petitioner since the expiry of the agreement with BPCL, on 31.07.2022. The increase of monthly rent during the 25 year period from 01.08.1997 to 31.07.2022 had been at the rate of 20% for every block of 5 years as per Lease Agreement dated 01.08.1999. The last monthly rent for the 5 year block of 01.08.2017 to 31.07.2022 was Rs.7,776/- as per the Lease deed at page 28 of typed set dated 16.01.2024.

31.I thus propose that the same escalation of 20% may be adopted for the next block of 5 years as per which the monthly rental shall be a sum of Rs.9,331/- p.m., in all, a sum of Rs.2,14,613/- for a period of 23 Months (01.08.2022 to 30.06.2024).

32.Since the rental arrears have been computed on the basis of actuals following the methodology under lease deed dated 01.08.1999, the market rate is not alluded to.



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33.The rental arrears of Rs.2,14,613/- along with interest at the rate of 12% payable from today till date of pay over to the petitioner shall be remitted by the respondent along with costs quantified at a sum of Rs.1,00,000/- (Rupees one lakh only) simultaneous with handing over of possession as directed.

34.This writ petition is allowed in terms of this order. No costs. Connected miscellaneous petition is closed.

20.06.2024

Index : Yes

Speaking Order

Neutral Citation: Yes

vs

**Note:Registry to place memo of costs
before me in the Chamber.**

To

The Territory Manager (Retail),
Bharat Petroleum Corporation Limited,
Irugur TOP Installation, Ravathur (PO),
Irugur (Via), Coimbatore – 641 103.



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Dr.ANITA SUMANTH, J.

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