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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2024

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.8375 of 2018

and

W.M.P.No. 10352 of 2018

1.Saraswathi Ammal
2.Sulochana

... Petitioners

Vs.

1.The Licensing Authority-cum-the
Chief Controller of Explosives,
Shastri Bhavan,
Haddows Road,
Nungambakkam,
Chennai – 600 006.

2.The District Collector,
Namakkal District,
Namakkal.

3.The Regional Manager,
Bharat Petroleum Corporation,
No.1, Ranganathan Gardens,
Off 11th Main Road,
Anna Nagar,
Chennai – 600 040.



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4. The Territory Manager (Retail),
Bharat Petroleum Corporation,
Athur and Kadhapparai Village,
Athur Post, Karur – 639 038.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the 1st respondent to cancel the License issued in favour of BPCL to run retail outlet situated at Ward 'A' Block No.11, T.S.No.136, with an extent of 4,320 sq.ft., at Thiruchengode Main Road, Namakkal Town in violation of provisions of Petroleum Rules 2000 or if any renewal application is pending, the same may be rejected in the light of the Rule 152(1)(i) of the Petroleum Rules 2002 as the License ceases right to the site for storing petroleum by considering the representation of the petitioners dated 24.02.2018.

For Petitioners	: Mr.K.M.Arun For Mr.S.Senthil
For R1	: Mr.A.Murugan
For R2	: Mr.G.Krishnaraja Additional Government Pleader
For R3 and R4	: Mr.M.Vijayan for M/s.King and Partridge



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ORDER

The Writ of Mandamus has been instituted to direct the 1st respondent to cancel the license issued in favour of the Bharat Petroleum Corporation Limited to run the retail outlet situated at Ward –A, Block No.1, T.S.No.136 to an extent of 4320 square feet in Thiruchengode Main road, Namakkal Town in violation of provisions of Petroleum Rules, 2000.

2. The petitioners are the co-owners of the property situated morefully described in the para 2 of the writ affidavit. The subject property was leased out in favour of the 4th respondent for a period from 26.10.1988 to 31.10.1995 for a monthly rent to a sum of Rs.1,500/- and the lease was extended for a period from 01.11.1995 to 31.10.2000 with a monthly rent of Rs.2,000/-. The original owner Mrs.Gajalakshmi died intestate on 12.10.2017 leaving behind her mother Mrs.Saraswathi Ammal, the first petitioner in the writ proceedings.

3. Admittedly, the lease period was expired on 31.10.2000. Thereafter, the petitioners have not extended the lease and the 4th respondent/Bharat Petroleum Corporation Limited is in un-authorised occupation of the portion



of the land belong to the writ petitioners. Since, the 4th respondent has not vacated the subject premises, the petitioners have instituted two Civil suits in O.S.No.149 of 2013 for recovery of rental arrears and subsequently filed O.S.No.35 of 2019 on the file of the Sub-Court, Namakkal for evicting the 4th respondent from the subject property.

4. The Suit for eviction filed in O.S.No.35 of 2019 was decreed in favour of the petitioners on 31.11.2021. The execution proceedings initiated by the petitioners are also pending. Meanwhile, the 4th respondent filed an appeal suit in A.S.No.65 of 2023. Admittedly, the Judgment and Decree passed by the Trial Court has not been stayed. The Appeal Suit itself has been instituted after a lapse of about one year from the date of passing of the decree. In the absence of any interim order, the Judgment and Decree by the Trial Court is in force.

5. The learned counsel for the petitioner, Mr.Arun would submit that the 1st respondent filed a Counter stating that if the petitioners obtains Decree and Judgment from the Competent Civil Court against the 3rd and 4th respondent declaring them as unauthorised occupant and declaring that the 3rd and 4th respondents have ceased the right to possess their site, then



consequently, the license granted to the 3rd and 4th respondents stands cancelled as per the provisions of 152(1)(i) of Petroleum Rules, 2002.

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6. As per the above provisions as stated by the 1st respondent in their counter, the 3rd and 4th respondents is in unauthorised occupation of the subject property belong to the petitioners and the Judgment and the Decree for eviction passed against them in O.S.No.35 of 2019 is also in force. Mere filing of an appeal suit cannot be a ground to seek extension of license nor to continue to be in possession of the subject property.

7. The learned Counsel for the 3rd and 4th respondent would oppose by stating that the Bharat Petroleum Corporation Limited has already filed an appeal suit which is pending. When the Civil litigation between the parties are pending, further actions are to be initiated only after the disposal of the appeal suit and therefore, the present writ petition is to be rejected. The 3rd and 4th respondents have already settled the lease rent due to the owners and therefore, they are not entitled for the possession of the site for the purpose of running retail petrol bunk.



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8. Considering the arguments as made between the parties, primarily, the lease deed executed between the petitioners and the 3rd and 4th respondents, admittedly, expired on 31.10.2000 and the lease was not renewed. After the expiry of the lease period, the 3rd and 4th respondents are continuing as unauthorised occupant. Since the 3rd and 4th respondents continue to be in occupation of the subject property after the expiry of the lease period, the petitioners filed O.S.No.149 of 2013 for recovery of rental arrears and damages. The said Suit was Decreed on 31.10.2018.

9. Subsequently, the petitioners filed a suit for eviction in O.S.No.35 of 2019 and the said suit was decreed in favour of the petitioners on 30.11.2021. No doubt, the appeal suit was instituted by the 3rd and 4th respondents in A.S.No.65 of 2023, but, admittedly, there is no stay granted against the Judgment and Decree passed by the Trial Court in O.S.No.35 of 2019. Thus, the Decree granted in favour of the petitioners are in force as of now.

10. Rule 152 of the Petroleum Rules, 2002 deals with suspension and cancellation of license. Sub Section (1) enumerates that “Every license granted under these rules shall:



(i) stand cancelled, if the license ceases to have any right to the site for storing petroleum”.

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Admittedly, the lease expired in the year 2000 and thereafter, the respondents 3 and 4 are in unauthorised occupation of the land belonging to the petitioners. Unauthorised occupation of the respondents 3 and 4 continued for several years and a suit for eviction was instituted by the petitioners in O.S.No.35 of 2019. The 1st respondent during the relevant point of time was duty bound to cancel the license granted to the respondents 3 and 4 by invoking Rule 152 of the Petroleum Rules, since the lease expired in the year 2000 itself. The in-action of the 1st respondent is apparent, since the respondents 3 and 4 are Bharath Petroleum Corporation Limited and the petrol bunk is run by the Company. Therefore, the respondents 3 and 4 could able to secure the license from the 1st respondent in violation of the Rule 152 of the Petroleum Rules, 2002. The suit for eviction was decreed in they year 2021 and there was no interim order in the appeal suit filed by the respondents 3 and 4. Therefore, the 1st respondent is bound to initiate action under Rule 152 of the Petroleum Rules and cancel the license granted in favour of the 3rd respondent.



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11. The property right of the petitioners is infringed at the instance of the respondents for several years, more specifically, by the Bharath Petroleum Corporation Limited, which is a Government owned Company. Right to Property is a Constitutional right of a citizen under Article 300(A) of the Constitution of India. Such right can be taken away only by the Authority of Law. The respondents 3 and 4 are in unauthorised occupation of the subject property from the year 2000. The Civil Court also passed a decree of eviction in favour of the petitioners. There is no interim stay granted in the appeal suit, which was instituted after a lapse of one year from the decree passed in the original suit. Unfortunately, the petitioners are the owners of the land and they are unable to take possession of their land for about 23 years and they are fighting against the Multi Government owned Oil Company. Thus, they are entitled for the relief.

12. This Court vide interim order dated 18.01.2024 directed the 3rd respondent to explain as to why the petitioners are being harassed despite the fact that the lease period expired in the year 2000. Further explanation is sought for on what basis the license has been renewed for about 23 years without any lease or any right to site.



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13. When matter was listed for further hearing today, the officials Mr.K.K.Chandrasekaran, DGM Marketing, Retail BPCL, South and Arun Kumar Sing, DGM (Legal) had appeared.

14. Mr.M.Vijayan, learned counsel for the respondents 3 and 4 in the absence of the above Officials made a submission that the respondents 3 and 4 / Corporation have decided to vacate the subject premises belonging to the petitioners within a period of one year from today i.e., on 19.01.2024 and handover the vacant possession to the petitioners without seeking any further extension or renewal of lease. Till such time the respondents 3 and 4 shall vacate and handover the possession to the petitioners, they will continue to pay the rent without any default. In view of the undertaking given by the respondents 3 and 4 to vacate and handover the vacant possession of the subject property to the petitioners, the respondents are directed to vacate the subject property within a period of one year from today i.e., on 19.01.2024.



15. Accordingly, the Writ Petition stands disposed of. Consequently,
the connected Miscellaneous Petition are closed. No costs.

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Index : Yes / No

Speaking order / Non-Speaking Order

Neutral Citation : Yes / No

To

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