IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.04.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.8688 of 2021

N.S.Karthikeyan ... Petitioner

Vs.

1.Indian Oil Corporation Limited,
Rep. By its General Manager(Retail Sales),
Chennai Divisional Office,
No.500, Anna Salai,
Teynampet,
Chennai-18

2.The Manager(Sales),
Indian Oil Corporation Limited,
Regional Office-Chennai Divisional Office,
No.139, Nungambakkam High Road,
Chennai-34 ... Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India praying to issue a Writ of Mandamus directing the respondents to vacate the petrol vending retail outlet situated in the premises and the property comprised in survey no.78, Pattabi Ramapuram Village, Thiruttani Taluk, Thiruvallur District, having an extent of 15,000 sq.ft. by removing the structures of canopies and other installations such as petrol vending pumps, storage pits and all other structures erected thereon, as the registered lease dated 30.11.2000 lapsed by efflux of time and to handover the vacant possession to the petitioner, within a time frame limit that may be fixed by this Court.

For Petitioner : Mr.P.G.Thiyagu

For Respondents : Mr.Mohamed Fayaz Ali

ORDER

This writ petition has been filed for direction to the respondents to vacate the petrol vending retail outlet situated in the premises owned by the petitioner by removing the superstructures of canopies and other installations.

2. The petitioner's father's property is comprised in survey No.78, Pattabi Ramapuram Village, Tiruttani Taluk, Tiruvallur District to an extent of 15000 sq.ft. He had entered into a registered lease with the respondents on 30.11.2000 registered vide document No.2682 of 2000 for a period of twenty years. As a time bound lease, commenced from 30.11.2000. It got expired on 29.11.2020. Therefore, the respondents are bound to hand over the vacant possession as on 30.11.2020. The other conditions of the lease agreement revealed that the lessor and lessee at liberty to renew the lease on mutually agreed terms on expiration of that

period unless the lessee delivered a month prior notice to renew the lease. The lessee shall at the expiration or sooner determination of the said term yield up and deliver peaceful and vacant possession of the demised premises. Therefore, it becomes a mandate on the part of the lessee to hand over the vacant possession to the lessor in a peaceful manner after expiry of the lease period. The premises was leased out in favour of the respondents on the monthly rent of Rs.7,250/- for the first five years and second five years at the rate of Rs.9,055/-. Further, for the third set of five years, fixed rent at Rs.11,330/- and fourth set of five years, rent has been fixed as Rs.14,165/-. The respondents also paid advance amount at Rs.1,74,000/- and the same will be repaid at a determination of the lease by the lessor without interest.

2.1 After the demise of the petitioner's father, the petitioner became the absolute owner of the subject property. In fact, the petitioner also had duly informed to the respondents about the transfer of ownership by the communication dated 02.03.2009. As per the lease agreement, the petitioner caused notice to the second respondent dated

17.09.2020 by determining the lease with request to hand over the vacant possession immediately after completion of lease period i.e. 30.11.2020. However, the first respondent by way of reply requested for rendering the consent for renewal of lease and to finalise the terms. However, the petitioner did not agree for the said request and sent so many communications to respondents to vacate the subject premises and hand over the vacant possession. However, so far the respondents did not vacate the premises. That apart, the respondents reduced the rent from Rs.14,165/- to Rs.13,693/- without any licence.

3. The respondents filed counter and the learned counsel appearing for the respondents submitted that the petitioner ought to have approached the civil court for appropriate relief and as such, the writ petition itself is not maintainable under Article 226 of the Constitution of India. The respondents are regularly paying the monthly rent as agreed by them. As per the lease agreement, the petitioner is bound to renew the lease as provided under the lease agreement. In support of his contention, he relied upon the judgment of the Hon'ble Supreme Court of India in the

case of ***M/s.Indian Oil Corporation & Ors Vs. T.Amirthavalli*** in Special Leave to Appeal No.16624 of 2019 dated 07.07.2023, wherein it is held that appropriate remedy for the respondents is to approach the competent court by filing a suit.

4. However, though the Hon'ble Supreme Court of India set aside the order of eviction, directed the appellants to remove themselves from the land subject matter of the lease within a period of three months. The similar issue was already dealt with by the Hon'ble Division Bench of the High Court of Bombay, Nagpur Bench in the case of ***Vijay Vs. M/s.Indian Oil Corporation Ltd. through its Director(Marketing)*** and held as follows:

> *10. Rule 152 of the Petroleum Rules, 2002 reads thus:*
>
> *152. Suspension and cancellation of license. - (1) Every license granted under these rules shall -*
>
> *(i)stand cancelled, if licensee ceases to have any right to the site for storing petroleum;*
>
> *(ii)stand cancelled, if the no objection certificate is cancelled by the District Authority or the State*

Government in accordance with subrule(1) of rule 150;;

(iii)be liable to be suspended or cancelled by an order of the licensing authority for any contravention of the Act or of any rule thereunder or of any condition contained in such license, or by order of the Central Government, if it is satisfied that there are sufficient grounds for doing so:

Provided that -

(a) before suspending or cancelling a license under this rule, the holder of the license shall be given an opportunity of being heard;

(b)the maximum period of suspension shall not exceed three months; and

(c) the suspension of a license shall not debar the holder of the license from applying for its renewal in accordance with the provisions of rule 148.

(2) Notwithstanding anything contained in sub-rule (1), an opportunity of being heard may not be given to the holder of a license before his license is suspended or cancelled in cases -

(a) where the license is suspended by a licensing authority as an interim measure for violation of any of the provisions of the Act or these rules, or of any conditions contained in such license and in his opinion

such violation is likely to cause imminent danger to the public

Provided that where a license is so suspended, the licensing authority shall give the holder of the license an opportunity of being heard before the order of suspension is confirmed;or

(b)where the license is suspended or cancelled by the Central Government, if that Government considers that in the public interest or in the interest of the security of the State, such opportunity should not be given.

[(3) A licensing authority or the Central Government suspending or cancelling a license under sub-rule(1), shall record its reason for so doing in writing and shall furnish to the licensee a copy of the order cancelling the license.]

Rule 152 supra is considered by the Apex Court in C. Albert Morris. It was argued on behalf of the licensee that the "right" mentioned in Rule 152(1)(i) of the Petroleum Rules will have to be interpreted in widest manner possible and it is synonymous to the mere right of possession. It was further submitted that the licensee is a tenant holding over and has an existing right to the site. The licensee further argued that no mandamus could have been issued by the High Court *not to renew the license. The plea that the licensee is a statutory tenant was also canvased on the touchstone of the lease deed.*

The Apex Court held that mere acceptance of rent by the landlord from the tenant in possession after the lease has been determined either by efflux of time or by notice to quit would not create a tenancy so as to confer on the erstwhile tenant the status of a tenant or a right to be in possession.

The Apex Court then held that the licensee is not statutory tenant inasmuch as what was leased out was a vacant land and the provisions of the Pondicherry Buildings (Lease and Rent Control)Act, 1969 are not applicable. The Apex Court rejected the submission canvased on behalf of the licensee, that the word "right" used in Rule 152 of the Petroleum Rules only means legal right to continue on the land. It is further held that the term "juridical possession" or "litigious possession" does not connote a valid legal right to continue in possession within the meaning of the said Rule and occupation without consent is wrongful occupation.

Considering the submission canvased on behalf of the licensee that the word "right to site" must be *given liberal interpretation having regard to the public interest sub-served by the petrol outlets, the Apex Court observes thus:*

"42 The argument of Mr. L.N. Rao, learned senior counsel appearing for the appellant is that the words "right to site" appearing in Rule 153(1) of the Petroleum rules must be given liberal interpretation having regard to the public interest sub-served by the Petrol bunks which are essential for the smooth flow of goods and services as also for the movement of persons. Rule 153(1) (i) of the Petroleum Rules is "right to the site" for storing petroleum. It is not the right for storing petroleum on the site. That is so because that aspect is dealt with specifically in subclause (ii) of Rule 153(1) which refers to a no objection certificate, which the District authority or the State Government is required to give. No Objection Certificate which is granted under Rule 144 is the one given by the authority concerned stating that it has no objection for the storage of petroleum on the site after examining the site plan and other relevant factors. The words "right to the site" have, therefore, to be understood as referring to 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 the trespass 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".

5. Thus it is clear that mere acceptance of rent by the landlord from the tenant in possession after the lease has been determined either by efflux of time or by notice to quit would not create a tenancy so as to confer on the erstwhile tenant the status of a tenant or a right to be in possession. Further, the first respondent is not statutory tenant inasmuch as what was leased out was a vacant land and as such, the Buildings (Lease and Rent Control) Act will not apply. Further, as per Rule 152 of the Petroleum Rules, 2002, as states supra, the licence shall stand cancelled if licensee ceases to have any right to the site for storing

petroleum. Admittedly the lease agreement executed by the petitioner's father for a period of 20 years had expired from 30.11.2020. In fact the petitioner caused legal notice as early as on 17.09.2020 itself calling upon the respondents to vacate and hand over the vacant possession of the subject property. Subsequently, though the respondents requested to renew the lease period, the same was not accepted by the petitioner and as such on 30.11.2020 onwards, the respondents have no right to the site for storing petroleum. Therefore, their licence itself ought to have been cancelled as per the Petroleum Rules, 2002. Further, though the Hon'ble Supreme Court of India set aside the order passed by the High Court, the Hon'ble Supreme Court of India itself directed the respondents to vacate the subject premises within the stipulated time. Therefore, the above judgment is not helpful to the case on hand.

6. In view of the above, the respondents are directed to vacate and hand over the subject premises to the petitioner within a period of one month from today, since the respondents are running petrol vending retail outlet without any valid licence.

7. With the above direction, this writ petition is allowed. There shall be no order as to costs.

04.04.2024

Neutral Citation:Yes/No
Index: Yes/No
Speaking/Non-speaking order
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