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W.P.No.26407 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.10.2024

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THE HONOURABLE **MR.JUSTICE M.DHANDAPANI**

W.P.No.26407 of 2024

and

WMP.No.28860 of 2024

1. Nawabzada Ghulam Mohiuddin alias Mohammad Asif Ali
2. Nawabzada Ghulam Ghouse alias Mohammad Nasir Ali ...Petitioners

Vs.

1. M/s. Bharat Petroleum Corporation Ltd.,
Rep. by its Territory Manager (Retail),
No.1, Ranganathan Gardens,
Off 11th Main Road, P.B.No.1212 & 1213,
Anna Nagar West, Chennai – 600 040.
Also at;
Bharat Bhavan,
4 & 6, Currimbhoy Road, P.B.No.688,
Mumbai – 400 001.
2. M/s. C.R. Renuka Devi,
Rep. by its Partner M.Muralidhar,
BPCL Greams Road Petrol Bunk,
No.18, Greams Road, Chennai – 600 008. ...Respondents

Petition filed under Article 226 of the Constitution of India to issue
a Writ of Mandamus directing the 1st respondent to handover peaceful and



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vacant possession of the property bearing Municipal No.18, Greams Road, Egmore, Chennai – 600 008.

For Petitioners : Mr.Sathish Parasaran, Senior Counsel
for Mr.Rahul Balaji

For Respondents : Mr.O.S.Karthikeyan, for R1

ORDER

This Writ petition has been filed seeking direction to the 1st respondent to handover the peaceful and vacant possession of the property bearing Municipal No.18, Greams Road, Egmore, Chennai – 600 008.

2. It is the case of the petitioners that they are the joint owners of the property and that the said property was leased to the 1st respondent since 1964. The property originally belonged to their paternal grandfather and on 8.8.1964, their paternal grandfather executed a lease deed registered as Document No.2485/1964 in favour of Burmah Shell Oil Storage and Distributing Company of India Ltd., giving the property for lease for 15 years effective from 1.7.1964. Upon independence, Burmah Shell was taken over, which included the tenancy rights as well and the company was



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rechristened as Bharat Petroleum Corporation Ltd. Upon expiry of lease, the 1st respondent exercised its statutory right of renewal and, thereafter, based on family arrangement, the property was jointly owned by the petitioners and they executed a lease with the 1st respondent for a period of 30 years. However, even after expiry of the lease, the 1st respondent continues to occupy the property illegally without vacating the same and returning the property to the petitioners and, therefore, left with no other alternative, the petitioners have filed the present writ petition.

3. Learned counsel for the petitioners submitted that the issue involved in the present petition is no longer *res integra* and the same was decided by the Apex Court in ***National Company - Vs - The Territory Manager, Bharat Petroleum Corporation Ltd. & Ors.***(2021 (13) SCC 121).

4. Per contra, the learned counsel for the 1st respondent submitted that the issue involved in the present case is a disputed question of fact and the same has to be adjudicated only by the competent civil court. Further, the decision relied upon by the petitioners emanated out of an ejection suit which was confirmed by the Apex Court and the said decision is not



applicable to this case.

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5. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

6. Even a bare perusal of the order passed by the Apex Court in *National Company case (supra)* reveals that the said case is squarely applicable to the case on hand and for better appreciation, the relevant portion of the said decision is quoted hereunder :-

“21. It could thus clearly be seen that the Division Bench itself did not find much favour with the arguments advanced on behalf of the Respondent No. 1-BPCL with regard to non-exercise of jurisdiction Under Article 226 of the Constitution of India on the ground of availability of alternate remedy and declined the relief only on the ground that the view taken by the other Division Bench in the case of R. Ravikiran (supra) and other matters, was pending consideration before this Court in a batch of appeals and Special Leave Petitions.

22. The said impediment is now no more in existence. The view taken by the Division Bench in the case of R. Ravikiran (supra) has been upheld by a Bench of three judges of this Court in the case of R. Chandramouleeswaran (supra).



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23. It will be relevant to refer to the following observations of this Court in the case of *R.Chandramouleeswaran* (supra):

17. A Division Bench of this Court vide order dated 3-12-2009 in *Bharat Petroleum Corporation Ltd. v. Nirmala* [*Bharat Petroleum Corporation Ltd. v. Nirmala*, MANU/SC/1980/2009 : (2020) 11 SCC 738] and other connected matters while interpreting Sub-clause (b) to Section 2(4)(ii) has held that the expression "actual physical possession of land and building" would mean and require the tenant to be in actual physical possession. The provisions would not be applicable if the tenant is not in actual physical possession and has given the premises on lease or licence basis to a third party. The Court, however, did not give any finding on the question whether such benefit is available to the Appellant Under Section 2(4)(i) or Section 2(4)(ii)(a). We are reproducing the relevant portion of the order which reads as under: (SCC pp. 740-42, paras 7-10 & 13-14)

7. As regards Sub-clause (b) of Section 2(4), we do not agree with the contention of Mr. Nariman. On a plain reading of Sub-clause (b) we notice that it uses the words "actual physical possession". Had the word "possession" alone been used in Clause (b), as has been done in Clause (a), the legal position may have been different. However, the words "actual physical possession" are strong and emphatic. That means that the factual state of affairs has to be seen, not the legal or deemed state of affairs. There is no doubt that the Appellant had handed



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over possession to his licensee/agent who was in actual physical possession of the suit premises. When a statute uses strong and emphatic words, we cannot twist or give a strained interpretation to the said words. The literal Rule of interpretation is the first Rule of interpretation which means that if the meaning of a statute is plain and clear then it should not be given a twisted or strained meaning. We will be giving a strained and artificial interpretation to the words "actual physical possession" if we say that the Appellant is deemed to be in actual physical possession. We cannot give such an interpretation to Sub-clause (b) of Section 2(4) of the Act particularly since Clause (a) only uses the word "possession" and not "actual physical possession". Hence, we reject the contention of Mr. R.F. Nariman, learned Counsel appearing for the Appellant and hold that the Appellant was not in actual physical possession.

8. The Preamble of the Act makes it clear that the Act applies where superstructure is constructed on the land, which is leased. Hence, the submission that Clause (a) applies when there is no superstructure erected on the vacant land which was leased is not correct. In fact, the Act was meant to give some protection to leased land on which the tenant constructed some superstructure.

9. As regards the submission of Mr. Nariman that the Appellant is entitled to the benefit of Sub-clause (a) of Sections 2(4) of the Act, it appears that this aspect has not been considered by the High Court. In our opinion, the High Court should have considered whether the Appellant is entitled to the benefit of Section 2(4)(i) and Sub-clause (a) of Section



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2(4)(ii) of the Act.

10. We are not expressing any final opinion on the question whether the Appellant is entitled to the benefit of Sections 2(4)(i) and 2(4)(ii)(a) of the Act as in our opinion it was incumbent upon the High Court to have recorded a finding on the said issue. Therefore, we set aside the impugned judgment and order [Bharat Petroleum Corporation Ltd. v. M. Nirmala, CRP (NPD) No. 1815 of 2002, order dated 25-8-2005 (Mad)] of the High Court and remand the matter back to the Division Bench of the High Court to record a finding on the question whether the Appellant is entitled to the benefit of Section 2(4)(i) and Sub-clause (a) of Section 2(4)(ii) of the Act. Needless to mention, that the Division Bench of the High Court shall decide the said question in accordance with law and uninfluenced by any observation made by us in this order except the finding that the Appellant is not covered by Sub-clause (b) of Section 2(4) of the Act. We make it clear that we are not expressing any opinion of our own on the other issue. We hope and trust that the Division Bench of the High Court will dispose of the case expeditiously and preferably within a period of six months from the date a copy of this order is produced before it.

13. We are further of the opinion that where the lessee is in actual physical possession of the land over which he has made construction then he is entitled to an additional benefit given by Section 9(1)(a)(ii) of the Act. However, if the lessee who has made construction on the land let out to him but was not subsequently in possession of the same, as is the case of the Appellants in the present cases, then he is not entitled to the benefit of Section 9(1)(a)(ii)



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though he may be entitled to the benefit of Section 9(1)(a)(i). These are the questions on which the Division Bench of the High Court will record a finding.

14. Therefore, we set aside the impugned judgments and orders of the High Court and remand the matter back to the Division Bench of the High Court to record a finding on the question whether the Appellant is covered by Section 2(4)(i) and Sub-clause (a) of Section 2(4)(ii) of the Act and is entitled to the benefit of Section 9(1). Needless to mention, the Division Bench of the High Court shall decide the said question in accordance with law and uninfluenced by any observation made by us in this order except our finding about Clause (b) of Section 2(4). We make it clear that we are not expressing any opinion of our own on other issues. We hope and trust that the Division Bench of the High Court will dispose of these cases expeditiously and preferably within a period of six months from the date a copy of this order is produced before it.

18. Thus, while interpreting Sub-clause (b) to Section 2(4)(ii), this Court has held that the expression "actual physical possession of land and building" would mean and require the tenant to be in actual possession and Sub-clause (b) would not apply if the tenant has sub-let the building or has given the premises on leave and licence basis. The aforesaid decision would operate as res judicata in the case of the Appellant and the landlords who were parties to the decision. In other cases, it would operate as a binding precedent Under Article 141 of the



Constitution.

[emphasis supplied]

24. It could thus be seen that this Court in the case of R. Chandramouleeswaran (supra) has held that this Court in the case of Bharat Petroleum Corporation Ltd. v. Nirmala and Ors. MANU/SC/1980/2009 : (2020) 11 SCC 738 and other connected matters, while interpreting the expression "actual physical possession of land and building" would mean and require the tenant to be in actual physical possession and Sub-clause (b) would not apply if the tenant has sub-let the building or has given the premises on leave and licence basis. It further held that the aforesaid decision would operate as res judicata in the case of the Appellant and the landlords who were parties to the said decision. It further held that in other cases, it would operate as a binding precedent Under Article 141 of the Constitution of India. Not only that, but this Court made the position amply clear in the concluding paragraph 28, which reads thus:

28. Recording the aforesaid position, we dismiss the present appeals by the Appellant, that is, the three petroleum companies, and uphold the orders passed by the High Court that the Appellant tenants would not be entitled to the benefit and rights under the Act unless they are in actual physical possession of the building constructed by them. In other words, in case the Appellants have let out or sub-let the building or given it to third parties, including dealers or licensees, they would not be entitled to protection and benefit under the



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Act.

[emphasis supplied]

25. This Court has upheld the orders passed by the High Court that the Appellant tenants would not be entitled to the benefit and rights under the Tenants Act unless they are in actual physical possession of the building constructed by them. The position is amply made clear by observing that in case the Appellants have let out or sub-let the building or given it to third parties, including dealers or licensees, they would not be entitled to protection and benefit under the Tenants Act.”

7. In the said case, the counter raised by the respondents therein with regard to availability of alternate remedy and therefore, writ petition under Article 226 ought not to have been entertained was negatived. In the present case, it is very much clear that the lease period expired as early as on 30.6.24 and after expiry of lease period, the respondent Petroleum Corporation is not entitled to occupy the subject premises, which is in fact the view expressed in the aforesaid decision.

8. In view of the ratio laid down above, this Writ petition stands allowed and the 1st respondent is directed to vacate the premises and hand over possession of the same to the petitioners within a period of 12 weeks



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from the date of receipt of a copy of this order. Till such vacating and handing over possession, the 1st respondent is directed to pay the necessary lease rent. No costs. Consequently, the connected Miscellaneous petition is closed.

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(2/2)

skt

NCC : Yes/ No
Speaking Order : Yes/ No
Index : Yes/ No

To

M/s. Bharat Petroleum Corporation Ltd.,
Rep. by its Territory Manager (Retail),
No.1, Ranganathan Gardens,
Off 11th Main Road, P.B.No.1212 & 1213,
Anna Nagar West, Chennai – 600 040.
Also at; Bharat Bhavan,
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and
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WMP.No.28859 of 2024
in
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M.DHANDAPANI, J.

In view of amendment to the Court fee rules, this petition is allowed, subject to payment of separate Court fee, within a period of two weeks, from the date of receipt of a copy of this order, if not already paid, failing which this order shall be applicable only to the first petitioner.

14.10.2024
(1/2)

skt