



WEB COPY



WA No.3342 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2024

CORAM

THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

WA No.3342 of 2023

Bharat Petroleum Corporation Ltd.,
Door No.55-L,
Old D.No.1-A Part,
1st Main Road, Gandhi Nagar,
Adyar, Chennai 600020 : Appellant

versus

- 1.Fortis Health Management Ltd.,
rep. By its Authorised Signatory
- 2.The Joint Chief Controller of Explosives,
South circle Office, Chennai
A and D.Wing, Block 18, 2nd Floor, Shastri Bhavan,
26, Haddows Road, Nungambakkam,
Chennai 600006
- 3.The District Collector,
Rajaji Salai, 4th Floor,
George Town, Chennai 1.
- 4.The District Fire Officer/Station Master,
Tamil Nadu Fire and Rescue Services Department,
Teynampet, Chennai 18
- 5.M/s.Sarathy Agencies,
D.No.55-L, Old. D.No.1-A part,
1st main Road, Gandhi Nagar,



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Adyar, Chennai 20

: Respondents

Prayer: Writ appeal filed under Clause 15 of the Letters Patent against the order of the learned Single Judge in WP No.12928 of 2023 dated 11.08.2023.

For the Appellant : Mr.A.K.Sriram,
Senior Counsel,
for Mr.O.S.Karthikeyan

For Respondent No.1 : Mr.Rahul Balaji

For Respondent No.2 : Mr.V.T.Balaji, SPC

For Respondents 3, 4 : Mr.Karthik Jagannathan,
Government Advocate

For Respondent No.5 : Mr.C.T.Murugappan

JUDGMENT

(Made by the Hon'ble Chief Justice)

We have heard Mr.A.K.Sriram, learned Senior Counsel for the appellant, Mr.Rahul Balaji, learned counsel appearing for the first respondent, Mr.V.T.Balaji, learned counsel appearing for the second respondent, Mr.Karthik Jagannathan, learned Government Advocate, appearing for respondents 3 and 4; and Mr.C.T.Murugappan, learned counsel appearing for the fifth respondent.



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2. The present respondent No.1/original writ petitioner filed WP No.12928 of 2023 seeking directions against the present appellant, to handover peaceful and vacant possession of the property situate at Door No.55/L (Old Door No.1-A (Part) in Plot No.164/N2 164/N3), First Main Road, Gandhi Nagar, Adyar, Chennai 600 020, to the original writ petitioner.

3. Shorn of unnecessary details, the factual matrix to decide the *lis* is culled out as under:

(a) On or about 12.06.1961, a lease agreement was entered into between one Ramachandran and M/s.Burma Shell Oil Storage and Distribution Company of India Limited. The said lease was for a period of thirty years. The lease was to expire on 30.09.1990.

(b) The lease property subsequently devolved upon one S.P.Dhanasekaran and others. The said S.P.Dhanasekaran had filed O.S.No.8892/1990 against the present appellant for delivery of possession. The



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present appellant also filed a suit bearing O.S.No.2588/1991 for renewal of lease from 01.10.1990.

(c) On or about 29.09.1992, Dhanasekaran and others sold the property to M/s.Malar Hospitals Limited. The said M/s.Malar Hospitals Limited instituted a suit in O.S.No.10873 of 1992 for simplicitor injunction against the present appellant, not to put up any additional construction. The said suit came to be dismissed for default.

(d) Malar Hospitals instituted a suit in C.S.No.1136 of 1996 for recovery of possession based on its title. The said suit was transferred to the City Civil Court, Chennai; where it was renumbered as O.S.No.10498 of 1996. The suit was dismissed on the ground that statutorily extended lease term has not expired under the Burma Shell Acquisition Act by then. The suit in O.S.No.2588 of 1991 filed by the present appellant for renewal of lease came to be decreed. The extended term of lease was to end only in September 2020.



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(e) In or about February, 2008, the original writ petitioner/present first respondent acquired Malar Hospital shares. The original writ petitioner instituted suit in C.S.No.309/2011 for possession of the suit property and for damages. The same was transferred to the City Civil Court, Chennai and renumbered as O.S.No.7914 of 2019. During the pendency of the said suit, the instant writ petition was filed for delivery of vacant possession of the property on the premise that the extended lease period in terms of the Burma Shell Acquisition Act has ended on 30.09.2020.

(f) The learned Single Judge allowed the writ petition granting three months' time to the present appellant to vacate the premises.

(g) Aggrieved by the said order, the present appeal has been filed."

4. Mr.A.K.Sriram, learned Senior Counsel, appearing for the appellant, strenuously contends that during the pendency of the civil



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suit, for the same relief, writ petition is not tenable. This aspect has not been considered by the learned Single Judge. He further submits that there is a delay in filing the writ petition. The lease period, even according to the original writ petitioner, had expired in September, 2020; whereas, the writ petition was filed only in the year 2023. The other ground raised by the learned Senior Counsel is that the writ petitioner had never made any demand; nor issued any notice to the appellant for re-possession or termination of the tenancy. He further submits that the original respondent No.5 - M/s.Sarathy Agencies is in actual physical possession, as dealer of the present appellant. In view of that, the present appellant cannot deliver possession to the original writ petitioner.

5. The learned counsel for the original writ petitioner submits that upon expiry of the statutory extended period of lease, the appellant has no right to retain the possession. The original writ petitioner has already withdrawn the relief of possession claimed in the civil suit and the said civil suit is only proceeded with for damages. The writ petition as such is perfectly maintainable. The



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original writ petitioner was not aware that the present appellant has inducted a dealer. However, the privity of contract is between the original writ petitioner and the present appellant only. There is no privity of contract between the original writ petitioner and the original fifth respondent.

6. The learned counsel for the second respondent submits that the authority concerned has cancelled the license of the appellant for running business on the subject writ site.

7. We have perused the order passed by the learned Single Judge.

8. It appears to be a matter of fact that for the past 33 years, the present appellant, a lessee, has not paid rent to the original writ petitioner or its predecessor-in-title. The contention of the present appellant is that the erstwhile owner/lessor was not willing to receive the rent. It appears that the appellant did not even venture to deposit the rent in the Court, though suits were pending between



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the parties. The appellant is a Central Government controlled corporation. It is expected to be a model litigant. The fact that rent is not paid for 33 years does not benefit the appellant.

9. Moreover, even the statutory extended period of lease, of which the appellant was taking benefit under the Burma Shell Acquisition Act, came to an end on 30.09.2020. The appellant cannot retain possession, and at the same time, not pay the rent amount. The appellant appears to be a recalcitrant defaulter. No defence is available to the present appellant. Moreover, even the license of the appellant to carry on the business on the subject land is cancelled and the appellant cannot carry on the business on the subject land.

10. In light of all the aforesaid facts, we do not find any error committed by the learned Single Judge in passing the impugned order.

11. At this stage, the learned senior counsel for the appellant



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submits that though the appellant has removed the product stored in the underground tank; however, the underground tank also would be required to be removed. The same would be a tedious act and some time would be required for the same.

12. In view of that, we pass the following order:

(a) We allow the appellant to remove the underground tank, within three months from today.

(b) Possession of the writ site shall be handed over the original writ petitioner.

(c) The original writ petitioner shall cooperate with the appellant for removal of the underground tank.

(d) The writ appeal as such is dismissed



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with the above observation. There shall be no order as to costs. Consequently, CMP Nos.27271/2023 and 27729/2023 are closed.

(S.V.G., CJ.)

(D.B.C., J.)

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: Yes/No



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To

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- 1.The District Fire Officer/Station Master,
Tamil Nadu Fire and Rescue Services Department,
Teynampet, Chennai 18
- 2.The Joint Chief Controller of Explosives,
South circle Office, Chennai
A and D.Wing, Block 18,
2nd Floor, Shastri Bhavan,
26, Haddows Road, Nungambakkam,
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- 3.The District Collector,
Rajaji Salai, 4th Floor,
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THE HON'BLE CHIEF JUSTICE
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