

W.A.(MD) No.1022 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.08.2025

CORAM:

**THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA
and
THE HONOURABLE MS.JUSTICE R.POORNIMA**

**W.A.(MD) No.1022 of 2025
and
C.M.P(MD) No.6463 of 2025**

The Indian Oil Corporation Limited,
rep. by its Manager (Retail Sales)
Madurai Divisional Office,
No.2, Race Course Road,
Chokkikulam,
Madurai – 625 002.

... Appellant

Vs.

1. Gandhimathinathan
2. M.Sankar
- 3.M.Devika

... Respondents



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Writ Appeal filed under Clause 15 of Letters Patent to set aside the order dated 01.08.2024 in W.P(MD) No.9495 of 2024 on the file of this Court.

For Appellants : Mr.K.Muraleedharan

For Respondent : Mr.S.Radhakrishnan – for R1 & R2

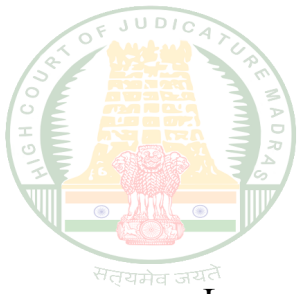
J U D G M E N T

[Judgment of the Court was made by A.D.JAGADISH CHANDIRA, J.]

This writ appeal is directed against the order of the learned Single Judge, dated 01.08.2024 passed in W.P(MD) No.9495 of 2024.

2. The facts leading to the filing of the writ appeal are as follows:

The writ petitioners are the owners of the vacant land measuring 8,524 square feet comprised in Survey No.730/A-1 & 2 in Meelavittan Village, Thoothukudi Taluk, Thoothukudi District. As per

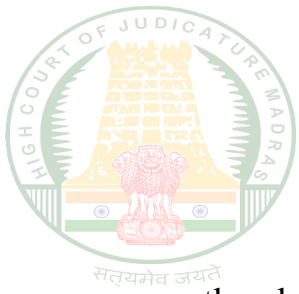


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Lease Deed Agreement No.725 of 2004, the writ petitioners had leased their vacant lands to the 1st respondent for running a retail petrol vending outlet. The twenty years lease period got over by 29.03.2024. As per the clause contained in the lease deed, the respondents ought to have vacated and delivered the vacant possession to the writ petitioners. Since the respondents did not come forward to hand over the possession, the writ petitioners had sent notice to them on 20.03.2024. Even thereafter, since the respondents have not handed over the possession, the writ petitioners have approached this Court by filing W.P.(MD)No.9495 of 2024.

3. The respondents had objected the same holding that the writ petition is not maintainable and the writ petitioners are to approach the civil Court to decide the subject matter for recovery of possession.

4. The learned Single Judge by relying on the decision of the Apex Court in *National Company Vs. Territory Manager, Bharat Petroleum Corporation Limited* reported in *2021 (13) SCC 121* holding that the appellant Corporation is a Government of India undertaking and



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thereby, it is amenable to writ jurisdiction in terms of Article 12 of the Constitution of India and also finding that the lease period of 20 years had expired, directed the appellant Corporation/first respondent to hand over vacant possession of the premises in question to the writ petitioners within a period of four months from the date of receipt of a copy of the order.

5. Challenging the same, the writ appeal has been filed by the appellant Corporation.

6. Mr.K.Muraleedharan, learned counsel appearing for the appellant Corporation would submit that the writ petitioners ought to have approached the civil Court for specific performance for enforcing the clause in the agreement regarding option for renewal of the lease and the Corporation has been regularly paying the rent and when the writ petitioners have not approached the civil Court for vacating them and the learned Single Judge ought to have dismissed the writ petition and erred in allowing it.



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7. Per contra, Mr.S.Radhakrishnan, learned counsel appearing for the respondents 1 and 2/writ petitioners would submit that the lease was specifically for a period of 20 years and the lease also expired on 29.03.2024 and as per the lease deed, the lease can be renewed mutually for a further term. But the writ petitioners were not ready for extension of lease. Further, the appellant Corporation was not in actual physical possession and they have sublet to the 3rd parties and thereby, they would not be entitled to benefit and rights under the Tenants Act, as held in the case of ***Bharat Petroleum Corporation Limited Vs. Chandramouleeswaran and Others*** reported in ***AIR 2020 SCC 727***, and they are liable for eviction.

8. He would further submit that the learned Single Judge rightly holding that the appellant Corporation is amenable to the writ jurisdiction, has allowed the writ petition by directing the respondents to vacate and hand over the possession and thereby would seek for dismissal of the writ appeal.



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9. Heard the learned counsel on either side and perused the materials available on record.

10. Admittedly, as per the lease deed, dated 30.03.2004, the lease period was for a period of 20 years and it had lapsed on 29.03.2024. As per the lease deed, after expiry of the said term of 20 years of lease, it can be renewed only on mutual terms for a further period through a separate lease deed. In this case, the writ petitioners/land owners were not ready for extension of lease.

11. Further, the appellant Corporation is not running on its own and it has been sub-let to 3rd party and the appellant Corporation is not in actual possession of the petrol bunk and given to third party and in such circumstances, the appellant Corporation will not be entitled to protection and benefit and rights under the Tenants Act, as held in ***Chandramouleeswaran's referred*** supra wherein, it has been held as under :

“17. A Division Bench of this Court vide order dated 3rd December 2009 in C.A. No. 5903 of 2006 titled Bharat



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Petroleum Corporation Ltd. v. Nirmala and Another 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:

“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 over possession to his licensee/agent who was in actual physical possession of



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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



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constructed some superstructure.

9. As regards the submission of Mr. Nariman that the appellant is entitled to the benefit of sub-clause (a) of Section 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 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 Section 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 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 subclause (b) of Section 2(4) of the Act. We make it clear that we are not



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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.

xx xx xx

12. 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) 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.

13. 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



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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 the 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.”



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12. Further, admittedly, the lease period had expired on 29.03.2024.

13. We thereby do not find any infirmity or illegality in the order of the learned Single Judge. Hence, the Writ Appeal is liable to be dismissed.

14. Accordingly, the Writ Appeal stands dismissed. The appellant Corporation shall vacate and hand over the vacant possession of the premises to the respondents 1 and 2/writ petitioners within a period of two months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

[A.D.J.C., J.] [R.P., J.]
01.08.2025

Index : Yes / No
Neutral Citation : Yes / No

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AND
R.POORNIMA, J.

RM

JUDGMENT MADE IN
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DATED : 01.08.2025