



W.A.(MD)No.590 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 13.02.2025

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
and
THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN**

**W.A.(MD)No.590 of 2020
and
C.M.P.(MD)No.3860 of 2020**

The Territory Manager,
Bharat Petroleum Corporation Limited,
Retail Territory Office,
37, Thirupparakundram Road,
Madurai - 625 004.

... Appellant

Vs.

- 1.G.Manimekalai
- 2.G.Das Prakash
- 3.G.Bhuvaneshwari
- 4.The Chief Controller of Explosives,
Petroleum and Explosives and
Safety Organisation,
A Block,5 Floor,
CGO Complex, Semmary Hills,
Nagpur - 440 006.
- 5.The Joint Chief Controller of Explosives,
Petroleum and Explosives and
Safety Organisation,



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A and D Wing,
Block 1-B, IInd Floor, Shastri Bhavan,
No.26, Haddows Road, Nungambakkam,
Chennai – 600 006.

6.The District Revenue Office (DRO),
Dindigul Collectorate,
Dindigul District.

7.P.Jayabharathi

... Respondents

Prayer : Writ Appeal filed under Clause XV of Letters Patent, to allow the writ appeal by setting aside the order dated 17-02-2020 in W.P.(MD).No.4294 of 2018 on the file of this Court.

For Appellant : Mr.S.Nateshraaja,
Standing Counsel.

For Respondents : Mr.H.Laskhmi Shankar for R1 to R3.
Mr.S.Jeyasingh,
Central Govt. Senior Panel Counsel for R4 & R5.
Mr.S.R.A.Ramachandran,
Addl. Government Pleader for R6.
Mr.S.Rajasekar for R7.

JUDGMENT

(Judgment of the court was delivered by G.R.Swaminathan, J.)

The respondents 1 to 3 herein are the owners of the petition mentioned site which is located on the outskirts of Dindigul town. It measures an extent of 30,972 sq. ft. The property was leased out in



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favour of Bharat Petroleum Corporation Limited (BPCL) with effect from 01.01.1997 for a period of twenty years vide lease deed dated 16.07.1998. The lease period ended on 31.12.2016. BPCL did not immediately hand over vacant possession of the site. Therefore, the land owners filed W.P.(MD)No.4294 of 2018. They sought two fold reliefs: (a) To hand over vacant possession of the property. (b) Damages computed at the rate of Rs.75,000/- per month. The writ petition was allowed vide order dated 17.02.2020 in the following terms:-

“39.Accordingly, this writ petition is allowed and the fourth respondent is directed to vacate premises and hand over the possession to the petitioner, within a period of three weeks from the date of receipt of a copy of this order. The fourth respondent is directed to pay a sum of Rs.50,000/- per month calculated from the date of expiry of lease i.e. from 01.01.2017 till possession is handed over to the petitioners. The entire amount shall be paid within a period of three weeks from the date of receipt of a copy of this order. It is open to the fourth respondent to collect any portion of amount or the entire amount from the fifth respondent as he was in enjoyment and carrying on business for some time.”

Questioning the same, this writ appeal came to be filed by BPCL.



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2.It is not in dispute that during the pendency of the writ appeal, possession was handed over on 16.03.2021. The only question that calls for determination in this writ appeal is the quantum of damages payable by the appellant for the period from 01.01.2017 to 16.03.2021. The learned Single Judge had directed the appellant to pay a sum of Rs.50,000/- per month with effect from 01.01.2017 till handing over possession to the writ petitioners.

3.The learned counsel for the appellant reiterated all the contentions set out in the memorandum of grounds of appeal. He contended that the figure arrived by the learned Single Judge is not founded on facts. He relied on the decision of the Hon'ble Supreme Court reported in **2015 0 Supreme(Mad) 3274 (Bharat Petroleum Corporation Limited Vs. K.T.Raja Kumaravel)** in support of his contention that in writ proceedings, the quantum of damages cannot be determined. He called upon this Court to set aside the order passed by the learned Single Judge and allow this writ appeal.



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4.Per contra, the learned counsel for the respondents 1 to 3/ writ petitioners submitted that the impugned order is equitable in nature and that it does not call for interference.

5.We carefully considered the rival contentions and went through the materials on record. We do endorse the stand of the learned standing counsel for BPCL that in normal circumstances, a writ petition cannot lie for determining fair rent or damages. But in the case on hand, the facts are slightly different. On the verge of expiry of the lease period, the writ petitioners sent legal notice dated 12.12.2016. In the said legal notice, the writ petitioners had stated that the property would fetch rental income not less than Rs.75,000/- per month, if it is rented out to somebody else. In response thereto, the appellant replied on 21.12.2016 as follows:-

“You have vide your latest notice alleged our lack of understanding of the core content of your earlier legal notice. It is therefore, once again reiterated that we have been consistently willing and requesting your clients to come forward for negotiations for renewal of the lease at prevailing market rentals. In fact, you have in your latest notice informed of your tentative estimation of the rental amount for the said site to be Rs 75,000. We



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are willing and ready /to negotiate the monthly rentals at your estimated amount, by according a personal meeting with your clients.

It is already informed to you vide our letter dated 18.10.2016 that your clients came forward for negotiations on renewal of lease in the month of March, 2016. At the cost of sounding repetitive, we once again request you to advise your clients to come forward for negotiations.”

6.In their reply, the appellant had not seriously disputed the figure of Rs.75,000/- quoted by the writ petitioners. On the other hand, the appellant was ready to conduct negotiation in that regard. That is why, the learned Single Judge fixed the figure as Rs.50,000/- per month. Paragraph Nos.36 and 37 of the order of the learned Single Judge read as follows:-

“36.The learned counsel for the petitioners relied upon the commission that is payable to the dealer for retail outlet by calculating the volume of business. The learned counsel for the petitioners submitted that the fifth respondent is drawing not less than Rs.10,00,000/- as monthly income by way of commission. Though the dealer is also selling other products like lubricant oil



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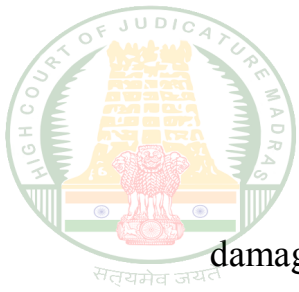


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and other items, it is stated that the income at the worse will not less than Rs.5,00,000/-, after deducting all expenses under all heads.

37.This Court cannot determine fair rent on the basis of the income earned by the dealer. The fifth respondent opted to take the lease from the petitioners and the fifth respondent himself has agreed to pay a sum of Rs.75,000/- per month by way of rent for the same premises on fresh terms. The petitioners are deprived of their legitimate income for about four years. From the offer that was made by the fifth respondent, a sum of Rs. 75,000/- can be taken as a reasonable rent. Hence, the petitioners are entitled to collect even a sum of Rs.75,000/- per month towards damages for use and occupation.”

7.The learned counsel for the writ petitioners also points out that the writ petitioners had obtained a decree against the appellant for Rs.7,50,000/- in O.S.No.43 of 2008 on 20.11.2014. According to the writ petitioners, a generator belonging to them had been appropriated by the appellant. The judgment and decree was questioned by the appellant in A.S.No.2 of 2016 on the file of the Principal District Court, Dindigul and the same was dismissed on 28.04.2017. To enforce the decree, the writ petitioners filed E.P.No.247 of 2018 on the file of the Principal Sub Court, Madurai. It appears that oral assurance was given that the

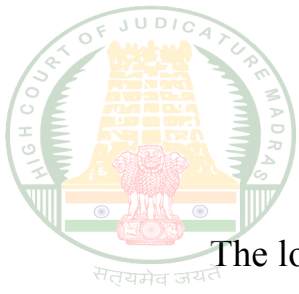


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damages as determined in this writ petition would be settled. Relying on the oral assurance, the writ petitioners not pressed the EP also.

8.BPCL is a public sector undertaking. It has to conduct itself as an exemplar in all respects. Once the lease period got over, BPCL ought to have without any demur handed over vacant possession of the property to the land owners, when the lease was not renewed. They did not do so. They held on to the property for more than 4 ½ years. It is interesting to note that NOC under the Explosives Act was also cancelled in the year 2018. In fact, BPCL had not conducted any business either on its own or through the dealer in the petition mentioned property from 29.06.2018. There is a phrase known as “dog in the manger”. The property was neither utilized by BPCL nor it permitted the land owners to utilize the same. This conduct of a public sector undertaking cannot be appreciated. We would expect the appellant / corporation to hand over possession of the leased property to the land owners when the lease period expires and there is no renewal of lease without expecting any judicial order.

9.It is also relevant to note that writ petitioners herein were originally dealers under BPCL. At present, they are dealers under HPCL.



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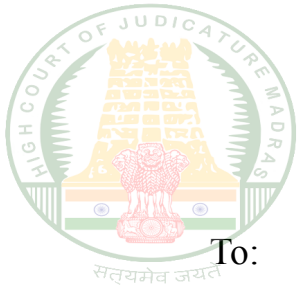
The loss suffered by the writ petitioners on account of non-availability of the petition mentioned site must be far more.

10.However, taking into account the overall facts and circumstances, we are of the view that interest of justice will be met, if the figure of Rs.50,000/- per month determined by the learned Single Judge is further reduced to Rs.35,000/- per month. If the appellant pays the amount as quantified by us within a period of eight weeks from the date of receipt of a copy of the judgment, it will not carry interest. If the appellant fails to pay the entire amount within the aforesaid time line, it will carry interest at the rate of 8% per annum from the date when the cause of action originally arose.

11.The impugned order is accordingly modified and this writ appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

(G.R.S. J.) & (M.J.R. J.)
13.02.2025

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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To:

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The District Revenue Office (DRO),
Dindigul Collectorate,
Dindigul District.



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