

(2011) 08 MAD CK 0279

In the Madras High Court

Case No : O.S.A. No. 275 of 2007, C.M.A. No. 336 of 1987 and C.M.A. No. 2797 of 2006

Bharat Petroleum Corporation Ltd.

APPELLANT

Vs

R. Ravikrishnan and Thevar Automobiles
P.R. Aithala @
P. Ramakrishna Aithala Vs Hindustan Petroleum Corporation
Ltd.
Hindustan Petroleum Corporation Ltd. Vs Dr. T.D.
Ramasubramanian and Others

RESPONDENT

Date of Decision : 08-08-2011

Acts Referred:

Acquisition of Undertaking in India Act, 1976 — Section 7, 9
Causes Courts Act, 1882 — Section 41
Companies Act, 1956 — Section 396(1), 396(2)
Hotel and Lodging House Rates Control Act, 1947 — Section 15A
Madras City Tenants Protection Act, 1922 — Section 2(4), 3, 9

Citation : (2011) 08 MAD CK 0279

Hon'ble Judges : K.K. Sasidharan, J;D. Murugesan, J

Bench : Division Bench

Advocate : Krishna Srinivasan, in C.R.P. NPD. No. 1815 of 2002, G. Masilamani and King and Partridge, in C.M.A. No. 2797/2006 and C.M.A. No. 336/87 and P.S. Raman for R. Bharanidharan, in C.M.A. No. 336/1987, for the Appellant; O.R. Santhana Krishnan in O.S.A. No. 275/2007, K.C. Rajappa in C.R.P. NPD No. 1815/2002, Habibulla Basha, T.M. Pappiah in C.M.A. No. 2797/2006 and Sathish Parasaran in O.S.A. No. 275/2007, for the Respondent

Final Decision : Allowed

Judgement

D. Murugesan, J.—Whether the Public Sector Oil Companies who have entered into license agreements with their dealers and inducted them in possession of the leased land, buildings and equipment to run retail outlets would come within the meaning of Section 2(4)(ii)(a) and could maintain an application u/s 9 of the Chennai City Tenants' Protection Act, 1921 is the core question to be decided in these batch of cases pursuant to the direction of the Hon'ble Supreme Court by its judgment dated 03.12.2009 in Civil Appeal Nos. 5903/2006, 1257/2007,

1925/2007 and 708/2008.

2. The claim made by the oil Companies invoking the provisions of Chennai City Tenants' Protection Act, 1921 [hereinafter referred to as "City Tenants Protection Act"] to purchase the land in their legal possession and licensed to the dealers, came up for consideration before the Supreme Court in C.A. No. 5903/2006 etc. batch. The Supreme Court rejected the claim made by the oil Companies u/s 2(4)(ii)(b) of the City Tenants' Protection Act on the ground that the oil Companies were not in actual physical possession.

However, the Supreme Court was of the view that their claim should be considered u/s 2(4)(ii)(a) of the Act. Accordingly, the matter was remanded to this Court to render a finding. The operative portion of the remand order reads thus:

3.... 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 benefits 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.

3. Factual matrix of the respective civil miscellaneous appeals/original side appeal/revision are as follows:

C.M.A. No. 2797/2006:-- M/S. Caltex Oil Refining India Ltd. entered into a lease agreement with the owner of the premises bearing Door No. 85, Old No. 15/18, Sir Thiyagaraja Road, Chennai 600 017, for the purpose of putting up a petroleum outlet. The lease agreement was executed on 22.06.1959. The lease was initially for a period of five years with effect from 01.05.1959 and it was later renewed periodically up to 30.04.1979. The lessee after constructing a building, canopy and other facilities, opened the outlet. Caltex Oil Refining India Ltd. was taken over by the Government of India and it was later transferred to Hindustan Petroleum Corporation Ltd., [hereinafter referred to as HPCL]. The landlord issued a lawyer's notice dated 28.04.1982, calling upon HPCL to vacate and deliver possession besides claiming damages from 01.05.1979. This was followed by a civil suit in C.S. No. 598/1983 filed by the landlord praying for a decree for recovery of possession. In the said suit, HPCL filed an application bearing No. 3891/1984 u/s 9 of the City Tenants' Protection Act for a direction to the landlord to sell the suit property to them. The application was contested by the landlord. The matter was later transferred to the IV Additional Fast Track Court and the suit was registered as O.S. No. 4570/1997. The interlocutory application filed by HPCL was renumbered as I.A. No. 43/2005. In the meantime, the property was purchased by the present owner from the original Plaintiff. The application submitted by HPCL u/s 9 of the City Tenants' Protection Act was dismissed by the lower Court as per order dated 12.07.2006. The said order was

challenged before the High Court in C.M.A. No. 2797/2006. This Court as per judgment and Decree dated 24.11.2006, dismissed the appeal by confirming the judgment and Decree passed by the Trial Court. The SLP filed by the Corporation was taken up by the Supreme Court along with similar other matters and ultimately, the order of this Court was set aside and the matter was remanded for fresh consideration.

4. C.R.P.(NPD) No. 1815/2002:--The property admeasuring about 8440 sq.ft. comprised in O.S. No. 2101 and 2106 corresponding to R.S. No. 1692/33, Luz Church Road, Mylapore was taken on lease by the erstwhile Burmah Shell Oil Storage and Distributing Company of India Ltd. as per lease agreement dated 03.05.1961 for the purpose of putting up their retail outlet of petroleum products. The lease originally was for a period of ten years with effect from 01.05.1959 to 31.08.1969. Subsequently, Burma Shell was taken over by Government of India. By passing Burma Shell (Acquisition of Undertaking in India) Act, 1976. The undertaking was later transferred to M/S. Bharat Petroleum Corporation Ltd. By virtue of the provisions of Acquisition Act, existing lease was renewed for a further period of ten years from 01.09.1969 to 31.08.1979. Subsequent request made by BPCL for a further period of lease was rejected by the landlord.

5. The landlord later filed a suit in O.S. No. 8922/1995 before the City Civil Court, Chennai, praying for a decree of possession. In the said suit, BPCL filed an application in I.A. No. 6547/1996 invoking Section 9 of the City Tenants' Protection Act. The Trial Court, as per order dated 16.08.2000, appointed an Advocate Commissioner to inspect the property and find out the extent of land necessary for BPCL to run its business. The said order was challenged by the landlord in C.M.A. No. 131/2001. The Civil Miscellaneous Appeal was allowed by the Appellate Court as per judgment and Decree dated 12.12.2001. The said order was challenged before this Court in C.R.P. No. 1815/2002.

6. The Civil Revision Petition was dismissed by this Court on 25.08.2005 holding that BPCL was not in possession of the property and as such, they are not entitled to the benefits of the City Tenants' Protection Act. The said order was challenged in SLP No. 2471/2006, which was subsequently registered as C.A. No. 5903/2006. The Supreme Court by way of a common order remanded the matter for fresh consideration.

7. C.M.A. No. 336 of 1987:--Land admeasuring 100x100 feet situated at No. 183-A, R.S. No. 1139/2B Royapettah High Road, Chennai, was taken on lease by the erstwhile ESSO Eastern Inc. by way of a lease deed dated 26.02.1962. The lease was for the purpose of putting up a retail petroleum outlet. Initially, the lease was for a period of ten years with effect from 10.02.1962. Subsequently, the landlord filed a suit in O.S. No. 4400/1972, before the IV Additional City Civil Court, Chennai against ESSO Eastern Inc., praying for a decree of possession. By virtue of the ESSO (Acquisition of Undertaking) Act, the Central Government became the owner of the said Company and by way of a notification dated

12.07.1974, Government of India transferred the right, title and interest of ESSO Eastern Inc. in favour of M/S. Hindustan Petroleum Corporation Ltd. [hereinafter referred to as HPCL]. The suit filed by the landlord in O.S. No. 4400/1972 was dismissed by the IV Addition City Civil Court, Chennai as per judgment and Decree dated 06.05.1979. The said judgment and Decree was taken up in appeal in A.S. No. 337/1979 before the Principal Judge, City Civil Court, Chennai. The appeal was dismissed on 01.08.1980.

8. The landlord in the meantime, filed another suit in O.S. No. 3590/1982 before the City Civil Court, Chennai against HPCL praying for a decree of possession. In the said suit, HPCL filed an application in I.A. No. 12457/1982 u/s 9 of the City Tenants' Protection Act. The City Civil Court, Chennai by way of order dated 21.12.1983, held that HPCL is entitled to purchase the property u/s 9 of the City Tenants' Protection Act and appointed an Advocate Commissioner to determine the land value and to fix the compensation. The said order was challenged before this Court in C.M.A. No. 336/1987. The landlord has also filed an appeal in A.S. No. 113/1991 challenging the judgment and Decree in O.S. No. 3590/1982. The High Court as per judgment and Decree dated 09.10.2006, allowed the appeal filed by the landlord and dismissed the appeal filed by HPCL u/s 9 of the City Tenants' Protection Act. The said judgment was challenged before the Supreme Court by way of special leave petition. The SLP which was later converted as civil appeal, was allowed and the matter was remitted for fresh consideration.

9. O.S.A. No. 275/2007:-- The property admeasuring 350 and 597 sq.ft. at Door No. 73, T.T.K.Road, C.I.T. Colony, Chennai 18, was taken on lease by M/S. Burma Shell Oil Storage and Distributing Company, as per lease deed dated 01.03.1962. The lease originally was for a period of twenty years with effect from 01.03.1962. It was for the purpose of opening a petroleum outlet. M/S. Burma Shell Oil Company was taken over by the Government of India by virtue of the Central Enactment under the name and style of "Burmah Shell (Acquisition of Undertakings in India) Act, 1976". The Central Government thereafter issued a notification on 12.02.1976, whereby the name of Burmah Shell Refineries Ltd., was changed to Bharat Refineries Ltd. and later as BPCL. The period of lease expired on 28.02.1982. The landlord filed a writ petition in W.P. No. 8507/2002 praying for a Writ of Mandamus directing BPCL to vacate and hand over possession of the property. The writ petition was dismissed on 18.07.2005.

10. The landlord thereafter filed a civil suit in C.S. No. 687/2006 before the original side of this Court praying for a decree directing the BPCL to hand over vacant possession of the land. In the said suit, BPCL filed an application No. 476/2007, exercising their right u/s 9 of the City Tenants' Protection Act, praying for a direction to sell the subject land at a price fixed by the Court. The said application was dismissed on 02.07.2007 holding that the dealer is in physical possession of the property and as such, BPCL is not entitled to the benefits of the Act. The order in A. No. 476/2007 was challenged by way of appeal in O.S.A. No. 275/2007 before the Division Bench. The said appeal was dismissed on

28.09.2007 holding that HPCL was not in actual physical possession of the land, which is the primary requirement for seeking benefits u/s 9 of the City Tenants' Protection Act. The judgment and Decree dated 28.09.2007 in O.S.A. No. 275/2007 was taken up before the Supreme Court in C.A. No. 706/2008. The matter was ultimately remitted to this Court for fresh consideration.

11. The Supreme Court considered the factual matrix in C.A. No. 5903/2006 for the purpose of deciding the issue raised by the oil Companies. The Supreme Court by taking into account the fact that the outlets were in the possession of dealers and they were in actual physical possession of the property, rejected the contention raised by the oil Companies that they are in actual physical possession. The Supreme Court made the legal position clear that to claim the benefits of Section 2(4)(ii)(b), the tenant should be in actual physical possession. Since the issue was not considered in the light of Section 2(4)(ii)(a) of City Tenants' Protection Act, the Supreme Court remanded the matter for fresh consideration. The other appeals were also tagged along with C.A. No. 5903/2006 and a direction was issued to this Court to dispose of the matters afresh on merits.

12.(a) The learned Counsel for the Petitioner in C.R.P. No. 1815/2002 contended thus:

(i) The subject lease was originally granted in favour of Burmah Shell Oil Company. By virtue of "Burmah Shell (Acquisition of Undertakings in India) Act, 1976", BPCL became the successor-in-interest of the said Company. Therefore, BPCL was entitled to the benefits of the lease and whatever benefits available under a beneficial legislation like City Tenants' Protection Act could also be taken advantage of by BPCL;

(ii) Though the property was given on lease to the dealer, the legal possession of the property still vests with BPCL. Therefore, it cannot be said that BPCL is not in possession of the property;

(iii) Since the possession of the dealer is only as a licensee, the legal possession vests with BPCL and therefore, BPCL is entitled to the benefits of City Tenants' Protection Act;

(iv) The case of BPCL would come u/s 2(4)(ii)(a) inasmuch as BPCL continues to be in possession of the property by virtue of its position as the successor-in-interest of Burmah Shell;

(v) The Supreme Court in Bharat Petroleum Corporation Ltd. Vs. Chembur Service Station, , considered the dealership agreement and very clearly observed that the Company retains the legal possession in spite of the fact that the dealership is operated by the licensee. Therefore, BPCL is entitled to the benefits of City Tenants' Protection Act.

12(b). The learned Counsel for the Respondents in C.R.P. No. 1815/2002 would contend thus:

(i) The original lease was with Burmah Shell Oil Storage Company. There is No. privity of contract between BPCL and landlord. BPCL has not constructed any buildings and there was No. tenancy agreement between the parties. Therefore, BPCL would not come within the meaning of the term "tenant" u/s 2(4)(ii)(a) of the City Tenants' Protection Act;

(ii) The property is now in the direct possession of the dealer. BPCL has No. control over the dealer. It is rather a case of sub-lease. Therefore, BPCL has No. possession and as such, they are not entitled to the benefits of the City Tenants' Protection Act.

13(a). The learned senior Counsel for the Appellant/landlord in C.M.A. No. 336/1987 would contend thus:

(i) The interlocutory application filed by the tenant u/s 9 proceeds as if the oil Company is in physical possession of the property. However, the fact remains that it is only the dealer who is in actual possession of the property;

(ii) By amendment Act 24 of 1973, the legislature found that assignee/ successor in interest were not given the benefit under the Act and therefore, the definition of "tenant" in Section 2(4) was amended so as to introduce for the first time the concept of successor-in-interest or the assignee who had erected building on the demised land and continued in actual physical possession of such land and building. By claiming this protection afforded by the legislature, HPCL filed the petition u/s 9. Since HPCL has not made any construction and as they are not in possession of the land, HPCL cannot make any claim u/s 2(4)(ii)(a) or 2(4)(ii)(b) of the Act. (iii) Since HPCL was found "to be not in actual physical possession of the land" they are not entitled to the benefits of the Act;

(iv) Assuming without admitting that in the facts and circumstances of the case HPCL could legally plead as tenant u/s 2(4)(ii)(a), even in such cases, HPCL must be in actual physical possession of the land and building. The concept of constructive possession through sub-tenant or licensee cannot be imported to claim the benefits of the Act;

(v) Courts have repeatedly held that the word "possession" used in Sections 2(4) (i) and Sub-section (a) and (b) of Section 2(4)(ii) means and implies only actual physical possession.

(vi) The intention of the legislature is very clear that Section 2(4)(ii) is intended to cover only the original tenants.

13(b). The learned senior counsel for the Respondent in C.M.A. No. 336/1987 would contend thus:

(i) By virtue of the ESSO Acquisition Act, HPCL became the owner of the property hitherto owned by ESSO Inc. The leasehold rights of ESSO Inc. also devolved on HPCL by virtue of Section 7 of the ESSO Acquisition Act. Therefore, for all practical purposes, HPCL has stepped into the shoes of ESSO Inc. and as such,

HPCL was justified in filing an application u/s 9 of the Act.

(ii)The legislature very cautiously used the word "Possession" while defining the term "tenant" u/s 2(4)(ii)(a). The question of actual physical possession would come only in case the tenant claims the benefits u/s 2(4)(ii)(b). There is a wide difference between "Possession" and "actual physical possession". So long as the requirement is only "possession", it cannot be said that it should be actual physical possession.

(iii)It is true that the Supreme Court has stated in a judgment that the tenant should be in actual physical possession. However, it was not a decision after considering the various provisions of the Act. Therefore, the observations made in the said judgment cannot be used to reject the applications filed by BPCL.

14.(a)The learned Counsel for the Appellant in O.S.A. No. 275/2007 would contend thus:

(i) The Appellant is a successor-in-interest of Burmah Shell Oil Storage Company and as such, they are entitled to all the benefits conferred by the City Tenants" Protection Act;

(ii)The Appellant has marked the dealership agreement as an exhibit. The said agreement would show that the licensee has No. legal possession and they could do business so long as the Company permits them to do so. Therefore, the Company retains the legal possession and as such, they would come under the definition of tenant u/s 2(4)(ii)(a) of City Tenants" Protection Act.

14(b). The learned Counsel for the landlord would contend thus:

(i) City Tenants" Protection Act proceeds on the basis that there should be a valid lease between the lessor and the lessee. Admittedly, the original lease was granted in favour of Burmah Shell Oil Storage Company. The landlord never recognized the Appellant Corporation as a tenant. Therefore, the Appellant cannot take recourse to the provisions of City Tenants" Protection Act to purchase the land.

(ii)The entire business is being done by the dealer. The dealer is in actual physical possession. So long as the Appellant is not in possession, they cannot invoke the provisions of City Tenants" Protection Act.

15. Before we proceed further, let us consider the legislative history of the Chennai City Tenants" Protection Act, 1921.

(i) The Madras City Tenants" Protection Act [Act 3 of 1922] was enacted to give protection to the tenants who live in municipal towns and townships and adjoining areas in the State of Tamil Nadu and who have constructed buildings on the lands belonging to others. The original Act protected tenancies which existed as on the date of the enactment. Since the tenancies created subsequently were not protected, Madras City Tenants" Protection Act, was amended by Act 19 of 1955. By virtue of the amending Act, the provisions of the Act were extended to

places beyond Chennai city and specified areas within 5 miles of City of Madras.

(ii) By virtue of Act 13 of 1960, definition "tenant", as contained in the principal Act, was amended whereby and whereunder heirs of tenant alone were entitled for protection and assignees and persons deriving title from the tenant were not given the benefits;

(iii) Subsequent to the decision of the Supreme Court in Haridas Girdhardas and Others Vs. Varadaraja Pillai and Another, , Tamil Nadu Act 4/1972 was passed whereby, Section 12 of the Original Act was amended with retrospective effect and thereby, contracts made by the tenants with the landlord containing stipulation regarding erection of buildings after the date of contract and limiting their rights conferred by the statute were rendered nugatory.

(iv) Thereafter, Act 24/1973 was passed. The definition of tenant underwent a sea change. The definition was enlarged and Section 2(4)(ii)(b) was added.

(v) Subsequently, another Amendment Act came into force with effect from 31.03.1980. Amendment Act 2/1980 dated 27.02.1980 protected the tenancy created before 03.03.1980 and the benefits were given to such tenants also.

(vi) By virtue of Act 2/1996 dated 11.01.1996, tenants under the religious institutions and religious charities were denied the benefits of the Act.

16.(a) Section 2(4) defines "tenant" thus:

2(4) "Tenant" in relation to any land:

(i) means a person liable to pay rent in respect of such land, under a tenancy agreement express or implied, and (ii) includes - (a) any such person as is referred to in Sub-clause (i) who continues in possession of the land after the determination of the tenancy agreement, (b) any person who was a tenant in respect of such land under a tenancy agreement to which this Act is applicable under Sub-section (3) of Section 1 and who or any of his predecessors in interest had erected any building on such land and who continues in actual physical possession of such land and building, notwithstanding that

16(b). Section 3 deals with payment of compensation on ejection:

3. Payment of Compensation on ejection:

Every tenant shall on ejection be entitled to be paid as compensation the value of any building, which may have been erected by him, by any of his predecessors in interest, or by any person not in occupation at the time of ejection who derived title from either of them, and for which compensation has not already been paid. A tenant who is entitled to compensation for the value of any building shall also be paid the value of trees which may have been planted by him on the land [and of any improvements which may have been made by him].

16(c). Section 9 deals with an Application to Court for directing the landlord to sell land. The relevant clause reads thus:

9. Application to Court for directing the landlord to sell land:

(1)[(a)(i)]Any tenant who is entitled to compensation u/s 3 and against whom a suit in ejectment has been instituted or proceeding u/s 41 of the Presidency Small Causes Courts Act, 1882 (Central Act XV of 1882), taken by the landlord may, [within one month of the date of the publication of the [Chennai] City Tenants' Protection [Amendment] Act, 1979 in the Tamil Nadu Government Gazette or of the date with effect from which this Act is extended to the municipal town, township or village in which the land is situate] or within [one month] after the service on him of summons, apply to the Court for an order that the landlord shall be directed [to sell for a price to be fixed by the Court, the whole or part of, the extent of land specified in the application].

17. Before addressing the rival contentions, it would be useful to refer the earlier authorities, interpreting the provisions of City Tenants' Protection Act.

18. In Haridas Girdhardas and Others Vs. Varadaraja Pillai and Another, , a vacant piece of land was taken on lease by the tenant. There was a clause in the lease deed giving option to the landlord to purchase the superstructure by paying a sum of Rs. 50,000/-. The attempt made by the tenant to purchase the portion invoking the provisions of the City Tenants' Protection Act was rejected by the Trial Court as well as the High Court. When the matter was taken in SLP, the Supreme Court held that the relevant clauses in the lease deed amounted to a stipulation as to the erection of buildings and consequently the proviso to Section 12 of the Act would apply and as such, the tenant was not entitled to purchase the property.

Haridoss Giridhardoss was decided on 18.08.1971. Subsequently, there was an amendment and as per Section 3 of the Amendment Act 4/1972, proviso to Section 12 was added. The Amendment came into force on 09.02.1972.

19. In view of the Amended Act, the tenant once again made application for a direction to the landlord to sell the land to him. The Division Bench of the High Court on 13.10.1972 in Varadharaja Pillai v. Haridoss Giridardas and Ors. held that Section 4 of City Tenants' Protection Act neither expressly nor by necessary implication, authorized reopening or review of any final judgment, decree or order of any Court made by it in a proceeding validly instituted before it. The matter was once again taken before the Supreme Court. The tenant gave an undertaking that he would vacate the premises. The review of the earlier judgment sought by the tenant was dismissed on 12.03.1973.

Thereafter, Amended Act, 24/1973 came into force on 27.07.1973. The Amended Act enlarged the definition of tenant and enabled the tenants to apply for an order to assign the land and for the said purpose, to apply for review or reopen the earlier proceedings.

After the Amendment Act of 1973 (Act 24 of 1973), the tenant through the legal representatives once again approached the Court to assign the land to them. The

contention raised by the tenant was rejected by the Division Bench. The said judgment is reported in 1989 LW 1. The Division Bench rejected the contention of the tenant mainly on the ground that the tenant should continue to possess the land even after termination of tenancy. Since the tenant has already vacated the premises, the amended Act would not come to their rescue. The Division Bench said::

10.... In our opinion, the requirement u/s 2(ii)(a) or (b) as to continuance in possession of the land, or continuance in actual possession of the land and building has to be satisfied not only as on the date of the Amending Act 24 of 1973, came into force and on the date of the application for sale, but also subsequently until an order is made u/s 9 and the same as well the provisions of that section are fully worked out. Such a requirement is necessary.

20. In T.R.P. Raja Sekara Bhoopathy Vs. Navaneethammal and Others, , the issue as to whether a tenant who is not in actual physical possession can claim the benefits under City Tenants' Protection Act came up for consideration before a Division Bench of this Court. Speaking for the Bench, the Hon'ble Chief Justice T.Ramaprasada Rao held that actual possession is primordial requirement to claim the benefits of the Act. The learned Chief Justice said:

5.... On a fair reading of Section 2 (4)(ii)(b) of the Act, it is clear that such a physical and actual possession of the land and building is a sine quo non to project the benefits or statutory entitlement under the Act. If that were not the intendment of this piece of legislation, then the very foundation of its objective would be lost, and at the same time it would be a travesty to hold that it is only the original tenant of the vacant site, who put up the superstructure, who would be entitled to the benefits of the Act and that his heirs, though they may be persons who can be described as tenants would be entitled to such benefits even though they have parted with possession. I am, therefore, of the view that the primordial requirement for a tenant to claim the benefits under the Act is that he should be in actual physical possession of such land and building.

21. The question regarding actual physical possession as a primary requirement for claiming the benefits of City Tenants' Protection Act came up once again before the High Court in Estate of T.P. Ramaswami Pillai rep. By T.R. Kannan v. A. Mohd. Yousuf and Ors. - 1983 (2) MLJ 319. It was held thus:

5.... It is true that u/s 2 (4) (i) of the Act, while defining a "tenant", there is No. specific reference whatever to the tenant being in possession of the land; but what has been stated u/s 2 (4) (i) is one of the incidents of a tenancy express or implied viz., the tenant had made or rendered himself liable to pay rent in respect of the land. The payment of such rent to the landlord is only on account of the possession and enjoyment of the demised land by the tenant and not for any other purposes. The normal incident of a tenancy is that the tenant should be put in possession of the land let out and the landlord should be paid the rent for the land so let out. In the definition, u/s 2 (4) (i) of the Act, the liability to

pay the rent alone is explicitly referred to, but that would also take in the other incidents of a tenancy express or implied viz., the possession of the demised land by the tenant. That it was so contemplated is made clearer by Section 2 (4) (ii) of the Act which enacts an inclusive definition so as to take in persons who continue to remain in possession after the determination of the tenancy agreement. The inclusive definition confers the status of a tenant on a erstwhile tenant who continues in possession, even after the determination of the tenancy agreement; but what is important is this contemplates that the person referred to in Section 2 (4) (i) of the Act should also be a person, who should be in possession while Section 2 (4) (i) of the Act contemplates a person who is in possession as a tenant during the subsistence of the tenancy and thereby becoming entitled to the benefits of the Act, Section 2 (4) (ii) extends such benefits to a person who continues to remain in possession of the demised land after the determination of the tenancy agreement. In other words on a conjoint reading of Sections 2 (4) (i) and 2 (4) (ii) of the Act, it is clear that while Section 2 (4) (i) takes in a tenant in possession during the currency of the lease, Section 2 (4) (ii) contemplates the case of continuity of possession by an erstwhile tenant, after the determination of the tenancy and the conferment of the status of a tenant even on such a person. To accept the contention of the learned Counsel for the Petitioner would be to hold that the tenant need not be in possession during the currency or subsistence of the lease to claim the benefits of Section 9 or other provisions of the Act, but nevertheless can claim such statutory benefits, while after the expiry or determination of the lease, unless he is in possession, he cannot claim the benefits of Section 9 or other provisions of the Act as a tenant u/s 2 (4) (ii) of the Act. This is a very anomalous position. That is why, the word "tenant" has been so defined in the Act as to take in both categories of persons, viz., tenants in possession during the subsistence after the determination of the lease.

22. In *P. Anantha Krishnan Nair v. Dr. G. Ramakrishnan and another*- 1987 (2) SCC 429, while considering the scope of an enquiry u/s 9 of City Tenants' Protection Act with respect to convenient enjoyment of land, the Supreme Court indicated that the tenant must be in occupation of the land.

The observation reads thus:

11.... The policy underlying Section 9 of the Act, is directed to safeguard the eviction of those tenants who may have constructed superstructure on the demised land, so that they may continue to occupy the same for the purposes of their residence or business. Section 9(1)(b) ordains the court to first decide the minimum extent of the land which may be necessary for the convenient enjoyment by the tenant, it therefore contemplates that the tenant requires the land for the convenient enjoyment of the property. If the tenant does not occupy the land or the superstructure or if he is not residing therein or carrying on any business, the question of convenient enjoyment of the land by him could not arise. The court has to consider the need of the tenant and if it finds that the

tenant does not require any part of the land, it may reject the application and direct eviction of the tenant, in that event the landlord has to pay compensation to the tenant for the superstructure.

23. In *Hamsa Patel and Others Vs. S. Balakrishnan and Another*, a Division Bench of this Court held that physical possession of the property is sine quo non for the tenant seeking to purchase the leasehold premises, u/s 9 of City Tenants' Protection Act.

24. The Supreme Court in *S.R. Radhakrishnan and Others Vs. Neelamegam*, indicated that the tenant must satisfy the following four conditions to claim the rights conferred by City Tenants' Protection Act:

(i) He should be a tenant in possession of the land.

(ii) He should have erected a superstructure on the land in respect of which he would be entitled to claim compensation u/s 3.

(iii) A suit or proceeding for eviction should have been taken by the landlord against him.

(iv) He should have applied to the court for direction in that regard within one month from the date of service of summons in such suit.

25. In *S.R. Radhakrishnan (supra)*, Supreme Court further held that actual physical possession is essential in the context of relevant provisions of City Tenants' Protection Act. The observation read thus:

13.... Actual physical possession is essential in the context of relevant provisions of the Act. In fact in *P. Ananthakrishnan Nair v. Dr G. Ramakrishnan* (though cited by the learned Counsel for the Appellant), it was held by this Court that the premises must be in personal occupation of the tenant before he could exercise the right u/s 9 of the Act. It was also observed by this Court that: (SCC pp. 437-38, paras 10-11) Section 9 confers an additional statutory right on a tenant against whom suit for ejectment is filed to exercise an option to purchase the demised land through the medium of court on fulfilment of conditions specified therein. It is not an absolute right, as the court has discretion to grant or refuse the relief for the purchase of the land. The tenant has No. vested right in the property, instead it is a privilege granted to him by the statute which is equitable in nature. The policy underlying Section 9 is directed to safeguard the eviction of those tenants who may have constructed superstructure on the demised land, so that they may continue to occupy the same for the purposes of their residence or business.

From these observations it follows that actual physical possession of the demised premises of the tenant is the sine qua non of an application u/s 9.

26. In *C.A. No. 5903/2006 (BPCL v. Nirmala and others)* dated 03.12.2009, the Supreme Court recently held that in order to claim the benefits of Sub-clause (b) of Section 2(4)(ii) of City Tenants' Protection Act, the tenant must be in actual

physical possession. The Supreme Court further held that the Petroleum Corporations having given the actual possession of the land to dealers, cannot claim the benefit of Section 2(4)(ii)(b). However, the Supreme Court further indicated that "had the words "possession" alone been used in Clause (b), as has been done in Clause (a), the legal position might have been different".

27. In S.R. Radhakrishnan and Others Vs. Neelamegam, , the Supreme Court held that actual physical possession of the demised premises of the tenant is a sine quo non to an application u/s 9 of the Act. However, in C.A. No. 1257/2007 etc. batch (BPCL v. Nirmala and others) dated 3.12.2009, the Supreme Court has sought to make a distinction between the word "actual physical possession" as used in Section 2(4)(ii)(b) and "possession" as found in in Section 2(4)(ii)(a).

28. Though there is an indication in the remand order with respect to the requirement regarding actual physical possession for considering the case u/s 2(4)(ii)(b), and the requirement of "possession alone" for a case to come u/s 2(4)(ii)(a), No. definite finding was given and the matter was remitted to this Court for fresh consideration. In fact, the Hon"ble Supreme Court very clearly stated that the issue should be considered on merits and as per law uninfluenced by any observation made in the order, except the finding about Clause (b) of Section 2(4)(ii). Therefore, the legal position indicated in S.R. Radhakrishnan and Others Vs. Neelamegam, still holds good.

29. In order to invoke the provisions of Section 2(4)(ii)(b), a tenant in respect of land under a tenancy agreement to which the City Tenants" Protection Act is made applicable under Sub-section (3) of Section 1 must prove that he or any of his predecessors in interest had erected any building on such land and continues to be in actual physical possession of such land and building. Sub-section (3) of Section 1 defines the applicability of the City Tenants" Protection Act to certain areas. Further, in order to avail the provisions of the said section, the tenant should continue in actual physical possession of the land and building. As the Supreme Court has already held that actual physical possession is a pre-condition for a tenant to invoke the provisions of Section 9, an argument was advanced stating that the provisions of Section 2(4)(ii)(a) does not use the words "actual physical possession" and therefore it is not mandatory for a tenant to be in actual physical possession of the land to invoke Section 9. We do not find any force in the said contention in view of the judgment of the Supreme Court in S.R.Radhakrishnan"s case. As to the words "continues in possession" of the land employed in Section 2(4)(ii)(a) are concerned, in our opinion, the word "possession" should only mean actual physical possession of the land and building. That Section should be read along with Section 3, which empowers a tenant to seek for payment of compensation for such land. That Section provides that a tenant shall on ejection be entitled to be paid compensation the value of any building which may have been erected by him, by any of his predecessors in interest or by any person not in occupation at the time of ejection who derived title from either of them and for which compensation has not already been paid.

For a landlord to file a petition for ejectment, the tenant must be in actual physical possession. An argument was sought to be advanced on behalf of the oil Companies that since the provisions of Section 3 entitle the tenant to claim compensation in respect of the building which have been erected by them or any of their predecessors in interest and the building in the land in question have been erected by the tenants before the acquisition Act was passed, they are entitled to make an application u/s 9, as they are entitled to compensation u/s 3. This argument cannot be accepted for the simple reason that by the acquisition Act the oil Companies only acquired the leasehold rights of the erstwhile companies which would not include the right of the person who put up superstructure unless the companies are in actual physical possession of the land and building. In this case, the oil Companies could claim only legal possession of the land, as the superstructures had been erected by the licensees who had been granted licenses by the oil Companies. In that sense, the provisions of Section 2(4)(ii)(a) should be read only in that way, namely, that when the provision employs the words "continues in possession", it should mean actual physical possession which is sine quo non for a tenant to claim compensation u/s 3 of the Act.

30. The issue regarding the applicability of Section 2(4)(ii)(a) has to be decided in the light of the law laid down by this Court and the Supreme Court referred to above. The lease in all these cases were granted in favour of the predecessor-in-interest of the oil Companies. M/S. Burmah Shell Oil Company, ESSO Eastern Inc. and Caltex were the predecessor-in-interest of the present Government owned Corporations. These foreign Companies were taken over by Government of India by virtue of the enactments passed by the Parliament.

31. The provisions of Burmah Shell (Acquisition of Undertakings in India) Act, 1976, Caltex (Acquisition of shares of Caltex Oil Refining (India) Ltd. and of the Undertakings in India of Caltex (India) Ltd. Act, 1977 and the ESSO (Acquisition of Undertakings in India) Act, 1974 are identical in nature. Therefore, we may refer to the relevant provisions of ESSO Acquisition Act.

32. The ESSO (Acquisition of Undertakings in India) Act, 1974 was enacted to provide for the acquisition and transfer of the right, title and interest of Esso Eastern Inc. in relation to its undertakings in India with a view to ensuring co-ordinated distribution and utilization of petroleum products distributed and marketed in India by the said Company. Section 3 of Esso (Acquisition of Undertaking in India) Act provides that on the appointed day, the right, title and interest of Esso in relation to its undertakings in India, shall stand transferred to, and shall vest in, the Central Government.

33. Section 4 of the Act deals with General effect of vesting. It reads thus:

4. General effect of vesting:

(1) The undertakings referred to in Section 3 shall be deemed, save as otherwise provided in Sub-section (2) to include all assets, rights, powers, authorities and

privileges and all property, movable and immovable, cash balances, reserve funds, investments and all other rights and interests in, or arising out of, such property as were, immediately before the appointed day, in the ownership, possession, power or control of Esso, in relation to its undertakings in India, and all books of account, registers, records and all other documents of whatever nature relating thereto and shall also be deemed to include all borrowings, liabilities and obligations of whatever kind then subsisting of Esso in relation to its undertakings in India. (2) to (4).....

34. Section 5 provides that the Central Government would be the lessee or the tenant under certain circumstances:

5. Central Government to be lessee or tenant under certain circumstances. (1) Where any property is held in India by Esso under any lease or under any right of tenancy, the Central Government shall, on and from the appointed day, be deemed to have become the lessee or tenant, as the case may be, in respect of such property as if the lease or tenancy in relation to such property had been granted to the Central Government, and thereupon all the rights under such lease or tenancy shall be deemed to have been transferred to and vested in the Central Government.

(2) On the expiry of the term of any lease or tenancy referred to in Sub-section (1), such lease or tenancy shall, if so desired by the Central Government, be renewed on the same terms and conditions on which the lease or tenancy was held by Esso immediately before the appointed day.

35. Section 7 deals with the power of Central Government to direct vesting of the undertakings of Esso in a Government Company. It reads thus:

7. Power of Central Government to direct vesting of the undertakings of Esso in a Government Company. (1) Notwithstanding anything contained in Sections 3, 4 and 5, the Central Government may, if it is satisfied that a Government company is willing to comply, or has complied, with such terms and conditions as that Government may think fit to impose direct, by notification, that the right, title and interest and the liabilities of Esso in relation to any undertaking in India shall, instead of continuing to vest in the Central Government, vest in the Government company either on the date of the notification or on such earlier or later date (not being a date earlier than the appointed day) as may be specified in the notification.

(2) Where the right, title and interest and the liabilities of Esso in relation to its undertakings in India in a Government company under Sub-section (1) the Government company shall, on and from the date of such vesting, be deemed to have become the owner, tenant or lessee, as the case may be, in relation to such undertaking, and all the rights and liabilities of the Central Government in relation to such undertakings shall, on and from the date of such vesting, be deemed to have become the right and liabilities, respectively, of the Government company.

(3) The provisions of Sub-section (2) of Section 5 shall apply to a lease or tenancy, which vests in a Government company, as they apply to a lease or tenancy vested in the Central Government and reference therein to the "Central Government" shall be continued as a reference to the Government company.

36. A cumulative reading of Sections 3, 4 and 5 would show that from the date of vesting, the Central Government is deemed to be the lessee of the property taken on lease by ESSO Eastern Inc. In exercise of power conferred u/s 7(2), the Central Government issued a notification whereby and whereunder, the right, title and interest of Esso Inc. was transferred to HPCL. Therefore, consequent to the said notification, HPCL became the lessee of the leasehold premises.

37. In *Bharat Petroleum Corporation Ltd. Vs. P. Kesavan and Another*, , Supreme Court considered the legislative scheme contained in the *Burmah Shell [Acquisition of Undertaking] Act, 1976*. The Supreme Court with special reference to Sections 4, 5 and 7 of the Act, observed thus:

11. The said Act is a special statute vis-?-vis the Transfer of Property Act which is a general statute. By reason of the provisions of the said Act, the right, title and interest of *Burmah Shell* vested in the Central Government and consequently in the Appellant Company. A lease of immovable property is also an asset and/or right in an immovable property. The leasehold right, thus, held by *Burmah Shell* vested in the Appellant. By reason of Sub-section (2) of Section 5 of the Act, a right of renewal was created in the Appellant in terms whereof in the event of exercise of its option, the existing lease was renewed for a further term on the same terms and conditions. As noticed hereinbefore, Section 11 of the Act provides for a non obstante clause.

12. As would appear from the preamble of the Transfer of Property Act, the same applies only to transfer by act of parties. A transfer by operation of law is not validated or invalidated by anything contained in the Act. A transfer which takes place by operation of law, therefore, need not meet the requirement of the provisions of the Transfer of Property Act or the Indian Registration Act.

13. The said Act is a special statute. Sub-section (2) of Section 5 thereof mandates that in the event the Appellant desires to renew the lease or tenancy, the same would be renewed on the same terms and conditions on which the lease or tenancy was held by *Burmah Shell* immediately prior to the appointed day.

14. Sub-section (1) of Section 5 of the Act provides for a legal fiction in terms whereof the Appellant herein became a lessee in respect of the leasehold. A legal fiction, as is well known, must be given its full effect. [See *Bhavnagar University v. Palitana Sugar Mill (P) Ltd.*] Sub-section (2) of Section 5 of the Act is imperative in character and must be construed as such.

38. In *Hindustan Petroleum Corporation Ltd. and Another Vs. Shyam Co-operative Housing Society and Others*, , the issue before the Supreme Court was

whether the lease granted by the landlord to the erstwhile Esso Company would devolve on the successor-in-interest viz., HPCL and as to whether the said Corporation would get the benefits and protection of Bombay Rents, Hotel and Lodging House Rates Control Act. The Supreme Court after considering the Esso Acquisition of Undertakings Act, 1974, held that HPCL is a tenant for all practical purposes. The Supreme Court said:

13. The appellate court was clearly in error in not appreciating that by Section 3 of the Acquisition Act, the right, title and interest of Esso Eastern Inc. in relation to its undertakings in India, shall stand transferred to, and shall vest in, the Central Government as from the appointed day i.e. as from 13-3-1974. Under Sub-section (1) of Section 5 thereof, the Central Government became the lessee or tenant, as the case may be. By Sub-section (2) thereof, on the expiry of the term of any lease or tenancy referred to in Sub-section (1), such lease or tenancy shall, if so desired by the Central Government, be renewed on the same terms and conditions on which the lease or tenancy was held by Esso immediately before the appointed day. By a notification issued on the next date, the right, title and interest of the Central Government became vested in Esso Standard Refining Company of India Ltd., a government company, w.e.f. 15-3-1974. Furthermore, by reason of Lube India and Esso Standard Refining Company of India Ltd. Amalgamation Order, 1974 made by the Company Law Board u/s 396(1) and (2) of the Companies Act, 1956, the undertaking of Lube India Ltd. vested in Esso Standard Refining Company of India Ltd. and immediately upon such transfer, the name of Esso Standard Refining Company of India Ltd., stood changed to Hindustan Petroleum Corporation Ltd.

14. In the premises, Petitioner No. 1 Hindustan Petroleum Corporation Ltd. is clearly protected u/s 15-A of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947.

39. In view of the Acquisition Act and the subsequent notifications issued by the Central Government transferring the assets as well as the rights and liabilities of the Central Government in relation to the earlier foreign oil Companies, the Public Sector oil Companies viz., HPCL and BPCL are entitled to the benefits of all privileges including the leasehold right enjoyed by their predecessor-in-interest. Therefore, there is No. difficulty in coming to the conclusion that the tenancy right taken on lease by the erstwhile Burmah Shell Oil Corporation, Caltex and Esso devolved on public sector oil Companies.

40. The next question relates to the license agreements executed by the Corporations in favour of their dealers and the legal consequences flowing from such licenses. There is No. dispute that in all these matters, licensees alone are in occupation of the property as on today. The respective Corporations have executed license agreements with their dealers and by virtue of those agreements, the dealers are conducting the outlets. This agreement is known as Dispensing Pump and Selling License Agreement [hereinafter referred to as "DPSL"].

41. The learned Counsel for the landlord in C.R.P. No. 1815/2002 raised a preliminary objection against considering DPSL agreement. According to the learned Counsel, DPSL agreement was not marked as an exhibit and as such, the said agreement now produced by the Corporation cannot be looked into by this Court. In any case, according to the learned Counsel, the parties were not given an opportunity to make their submissions on the basis of the DPSL agreement and as such, while considering the issue as to whether the Corporation is in actual possession of the property, the said document cannot be looked into. It is true that only in C.S. No. 687/2006, DPSL agreement was marked as an exhibit. We have perused the said agreement. We have also verified the DPSL agreements produced by HPCL. The agreements are in fact, similar in nature. The very same clauses are contained in all these agreements.

42. The Supreme Court has already considered the nature of DPSL agreement in Bharat Petroleum Corporation Ltd. Vs. Chembur Service Station, . The findings given by the Supreme Court with respect to the position of a licensee under a DPSL agreement would apply with full vigour to the present batch of cases. It is true that on account of the differences in the views expressed by the learned Judges on the Bench, the matter was placed before the Hon"ble Chief Justice of India for constitution of another Bench. However, it is found that with respect to the interpretation of DPSL agreement, there was No. disagreement.

43. The Supreme Court in Chembur Service Station, noted the following features to arrive at a conclusion that licensee has No. legal possession of licensed premises.

32. In this case, the DPSL agreement clearly demonstrated that licence granted by the Appellant enabled the licensee (Respondent) to enter upon the retail outlet premises only for the limited purpose of using the facilities (that is motor spirit/HSD pumps, storage tanks, etc.) for purposes of sale of Appellant's motor spirit, HSD, motor oils, greases or other motor accessories (together referred to as "products of the Appellant") as a licensee of the Appellant at the prices specified by the Appellant. The Respondent could not sell any other goods or the products of any one else. It could not charge a price different from what was stipulated by the Appellant. The Respondent could not enter the outlet premises if the licence granted to the Respondent to sell the Appellant's petrol and petroleum products was terminated. In other words, the Respondent licensee had No. licence to enter the petrol pump premises or use the "facilities", if it could not sell the products of the Appellant. The relevant terms of the DPSL agreement extracted in para 16 above show that the licence was given to the licensee to enter the Appellant's outlet premises and use the equipment/facilities provided by the Appellant for the exclusive purpose of sale of the products of the Appellant.

44. Though the licensees are in actual possession of the property, it was only by virtue of a license agreement. The Supreme Court found that No. tenancy was created in favour of the licensee on account of DPSL agreement.

45. The licensee would be in a position to operate the outlet so long as the dealership agreement is in force. The moment the Corporation terminates the dealership, the licensee has No. other alternative than to surrender the premises. Therefore, the licensee has No. independent right over the premises. This position now stands concluded on account of the decision of the Supreme Court in Chembur Service Station.

45. Section 52 of the Easement Act defines "License" thus:

52. License defined:--Where one person grants to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a licence.

46. In Pradeep Oil Corporation Vs. Municipal Corporation of Delhi and Another, , the Supreme Court indicated the distinction between lease and license thus:

16. It is quite clear that the distinction between lease and license is marked by the last clause of Section 52 of the Easements Act as by reason of a license, No. estate or interest in the property is created.

47. In Associated Hotels of India Ltd. Vs. R.N. Kapoor, , the Supreme Court explained the facets of license thus:

... if a document gives only a right to use the property in a particular way or under certain terms while it remains in possession and control of the owner thereof, it will be a licence. The legal possession, therefore, continues to be with the owner of the property, but the licensee is permitted to make use of the premises for a particular purpose. But for the permission, his occupation would be unlawful. It does not create in his favour any estate or interest in the property. There is, therefore, clear distinction between the two concepts. The dividing line is clear though sometimes it becomes very thin or even blurred. At one time it was thought that the test of exclusive possession was infallible and if a person was given exclusive possession of a premises, it would conclusively establish that he was a lessee. But there was a change and the recent trend of judicial opinion is reflected in Errington v. Errington, wherein Lord Denning reviewing the case-law on the subject summarizes the result of his discussion thus at p. 155:

The result of all these cases is that, although a person who is let into exclusive possession is, prima facie, to be considered to be tenant, nevertheless he will not be held to be so if the circumstances negative any intention to create a tenancy.

48. The Supreme Court in C.M. Beena and Another Vs. P.N. Ramachandra Rao, , explained the concept of license thus:

8. Only a right to use the property in a particular way or under certain terms given to the occupant while the owner retains the control or possession over the

premises results in a licence being created; for the owner retains legal possession while all that the licensee gets is a permission to use the premises for a particular purpose or in a particular manner and but for the permission so given the occupation would have been unlawful.

49. The Supreme Court in *Mumbai International Airport Pvt. Ltd. Vs. Golden Chariot Airport and Another*, , held that mere license does not create any estate or interest with which it is concerned. The Supreme Court in *Ram Dass Vs. Davinder*, , in the context of the provisions of Rent Control Act, highlighted the distinction between the term "possession" and "occupy". The Supreme Court said::

The terms "possession" and "occupy" are in common parlance used interchangeably. However, in law, possession over a property may amount to holding it as an owner but to occupy is to keep possession of by being present in it.

50. The land involved in all these matters were the subject matter of lease agreements between the erstwhile Burmah Shell Oil Company, Esso Eastern Inc., Caltex and the concerned land owners. By virtue of the acquisition Act, and by operation of law, the Public Sector oil Companies have become the tenants. This position is no longer *res integra* in view of the decision of the Supreme Court in *Hindustan Petroleum Corporation Ltd. and Another Vs. Shyam Co-operative Housing Society and Others*, and *Bharat Petroleum Corporation Ltd. Vs. P. Kesavan and Another*, .

51. The subject lands are now in the possession of dealers as licensees, on the basis of respective DPSL agreements. The question is whether the oil Companies have lost their legal possession? The provisions of DPSL agreement gives a clear indication that the dealers were given only permission to conduct the outlet in the manner suggested by the Corporation. The Petroleum products are supplied by the oil Companies. Buildings were assessed in the name of the Corporations. Explosive license, Municipal License and Corporation License also stand in the name of Corporation. The dealers are only agents and as such, their possession has to be construed to be the possession of the principal. Therefore, no right would accrue to the dealers on account of their possession of the outlets and on the strength of DPSL agreement. In fact, the Company reserved the right to terminate the agreement at any point of time and the moment the agreement is terminated, the position of the licensee would thereafter will be in the nature of a trespasser. It cannot be said that the oil Corporations have parted with their possession and as such, they would not come under the definition "tenant". Therefore, we hold that the public sector oil Companies are in legal possession of the property, though the actual possession is with the licensees.

52. Section 9 of the Act permits the tenant to make an application to the Court for an order directing the landlord to sell the property for a price to be fixed by the Court. Section 9 pre-supposes that only a tenant who is entitled to

compensation u/s 3 could make an application. Therefore, the oil Corporations have to prove that they are entitled to compensation u/s 3 of the Act. The buildings in question were put up by the predecessor-in-interest of the oil Corporations. It is the contention of the land owners that the Public Sector Oil Corporations were not the original tenants and as such, they are not entitled to compensation u/s 3 of the City Tenant Protection Act. Therefore, the term "tenant" assumes importance. ESSO Acquisition Act, Burmah Shell Acquisition Act and Caltex (Acquisition) Act were enacted to provide for the acquisition and transfer of the right, title and interest of these foreign Companies in relation to its undertakings in India. Subsequently, invoking the power conferred u/s 7(2) of the Acquisition Act, the Government of India transferred this foreign undertakings, including their right, title, interest and liabilities to BPCL and HPCL. Therefore, Public Sector Oil Companies became a tenant by operation of law. This position was confirmed by the Supreme Court in Hindustan Petroleum Corporation Ltd. and Another Vs. Shyam Co-operative Housing Society and Others, .

53. The Supreme Court very clearly observed that all the rights, title and interest of Esso Eastern Inc. vest with the Central Government and later it was given to HPCL. In fact, in Bharat Petroleum Corporation Ltd. Vs. P. Kesavan and Another, , the very acquisition Act was challenged and the Supreme Court very categorically held that by virtue of the legal fiction as contained u/s 5(1) of the Act, Bharat Petroleum became a lessee in respect of the leasehold. Therefore, the Public Sector Oil Corporations have to be considered as tenants on account of the legal fiction as contained in the Acquisition Act. Even though the buildings were constructed only by the erstwhile Burmah Shell and Esso Eastern Inc., by virtue of the provisions of Acquisition Act, the respective oil Companies have become entitled to the superstructure and as such, by stepping into the shoes of their predecessor-in-interest, these oil Companies are entitled to the value of the building as compensation.

54. Though we have arrived at a conclusion that the oil Companies are in legal possession of the subject premises, the further question to be considered is whether the oil Companies are entitled to maintain an application u/s 9 of the Act, in view of the judgment of Supreme Court in S.R. Radhakrishnan and Others Vs. Neelamegam, . In that judgment, the Supreme Court very categorically held that actual physical possession is essential in the context of relevant provisions of the City Tenants' Protection Act. It was further held that actual physical possession of the demised premises of the tenant is sine quo non for filing an application u/s 9 of the Act.

55. The learned Senior Counsel for Hindustan Petroleum Corporation in C.M.A. No. 336/1987 contended that in S.R.Radhakrishnan, the Supreme Court had No. occasion to consider the distinction between Section 2(4)(ii)(a) and 2(4)(ii)(b) of the Act and as such, the finding that actual physical possession is sine quo non for claiming the benefits u/s 9 of the Act, cannot be taken as a binding

precedent. According to the learned senior counsel, the issue regarding physical possession within the meaning of Section 2(4)(ii)(a) was not an issue before the Supreme Court in S.R.Radhakrishnan Case and as such, observation regarding physical possession was nothing but obiter dicta. The learned senior counsel further contended that the order of remand passed by the Supreme Court in C.A. No. 5903/2006 etc. batch gives a clear indication that to claim the benefits of Section 2(4)(ii)(a), legal possession alone is sufficient.

56. It is true that in S.R.Radhakrishnan, the Supreme Court has not considered the issue provision wise and the conditions to be satisfied by the tenant to claim the benefits of City Tenants' Protection Act. It is also a matter of record that in the remand order, the Supreme Court has not given a definite finding with regard to the requirement of actual physical possession so as to come within the definition of "tenant" u/s 2(4)(ii)(a). In fact, the Supreme Court directed this Court to decide the issue without in any way being influenced by the observation as contained in the said judgment. Therefore, as on today, the views expressed by the Supreme Court in S.R.Radhakrishnan holds the field.

57. It is trite that Judicial discipline is a self imposed discipline. Indian Judicial System is based on hierarchy of Courts. The lower Courts and the High Courts must follow the law laid down by the Supreme Court. The law laid down by the Supreme Court is the law of the land. High Courts cannot by-pass the ratio of the judgment of Supreme Court. It is true that the decisions are not statutes. It is equally true that decisions should be considered in the light of the factual situation of a given case. Judicial discipline requires us to follow the law laid down by the Supreme Court.

58. In Special Deputy Collector v. N. Vasudeva Rao, (2007) 14 SCC 165, the Supreme Court found that the High Court had distinguished an earlier judgment of the Supreme Court on the ground that there was No. elaborate discussion in the said judgment and therefore, No. reason is discernible. While condemning the said Act, the Supreme Court observed:

13.... High Court distinguished the judgment on the ground that there was No. elaborate discussion in the judgment and therefore No. reason is discernible. To say the least, the alleged distinguishing feature as pointed out by the High Court not to follow the judgment cannot be said to be graceful. It is clearly violative of the judicial discipline.

59. The Supreme Court in Dwarikesh Sugar Industries Ltd. Vs. Prem Heavy Engineering Works (P) Ltd., and another, , expressed its deep concern in overlooking the binding precedents and passing orders ignoring the settled position. The Supreme Court said::

32. When a position, in law, is well settled as a result of judicial pronouncement of this Court, it would amount to judicial impropriety to say the least, for the subordinate courts including the High Courts to ignore the settled decisions and then to pass a judicial order which is clearly contrary to the settled legal position.

Such judicial adventurism cannot be permitted and we strongly deprecate the tendency of the subordinate courts in not applying the settled principles and in passing whimsical orders which necessarily has the effect of granting wrongful and unwarranted relief to one of the parties. It is time that this tendency stops.

60. The Supreme Court in paragraph 6 of the judgment in S.R. Radhakrishnan and Others Vs. Neelamegam, , indicated that the provisions of the City Tenants' Protection Act do not specifically mention that a tenant should be in occupation of the tenanted premises before he can file an application u/s 3 of the Act. Therefore, the Supreme Court was conscious of the fact that there was No. requirement to show the possession of the tenanted premises as a condition precedent for filing an application u/s 9 of the Act. Even then, the Supreme Court on a consideration of the earlier decisions, arrived at a conclusion that actual physical possession is essential and rather it is sine quo non for filing an application u/s 9. In view of the said categorical finding given by the Supreme Court, we are not in a position to take a different view in the matter.

61. In view of our discussion in the preceding paragraphs, we are convinced that the oil Companies are in legal possession of the subject lands notwithstanding the actual physical possession by the dealers. However, we reject the claim made by the oil Companies u/s 2(4)(ii)(a) in view of the decision of the Supreme Court in S.R. Radhakrishnan and Others Vs. Neelamegam, , holding that actual physical possession is sine quo non for claiming the benefits of Section 9 of the City Tenants' Protection Act.

62. On the basis of our above discussion, we hold that:

(i) M/S. BharatPetroleum Corporation Ltd. and Hindustan Petroleum Corporation Ltd., are in legal possession of the land and building, originally given on lease to their predecessor-in-interest and devolved on them by virtue of the Acquisition Acts and now in the possession of the dealers on the basis of DPSL agreement;

(ii) In order to come within the definition of Section 2(4)(ii)(a) of the Act, the applicant must have actual physical possession of the land;

(iii) Though the oil Companies are in legal possession of the lands and superstructure in question, they are not entitled to maintain the application u/s 9 of the Act, in view of the judgment of Supreme Court in S.R. Radhakrishnan and Others Vs. Neelamegam, , holding that actual physical possession is sine quo non for making an application under any of the provisions of City Tenants' Protection Act.

63. For all the above reasons, we reject the applications filed by the concerned oil Companies u/s 9 of the City Tenants' Protection Act.

C.R.P. No. 1815/2002, O.S.A. No. 275/2007, C.M.A. No. 336/1987 and C.M.A. No. 2797/2006 are disposed of accordingly. No. costs. Consequently, connected M.P.s are closed.