

**(2011) 03 MAD CK 0528**

**In the Madras High Court**

**Case No :** Writ Petition No. 2015 of 2008 and M.P. No. 1 of 2008

S.V. Matha Prasad

APPELLANT

Vs

Bharat Petroleum Corporation Limited and Others

RESPONDENT

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**Date of Decision :** 24-03-2011

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Madras City Tenants Protection Act, 1922 — Section 9  
Petroleum Act, 1934 — Section 2  
Petroleum Rules, 2002 — Rule 144, 150, 150(1), 151, 151(1)

**Citation :** (2011) 6 MLJ 109

**Hon'ble Judges :** T. Raja, J

**Bench :** Single Bench

**Advocate :** I. Manjur Alam, for the Appellant; O.R. Santhanakrishnan, for R-1, S.M. Deenadayalan, for R-2 and R-3, V. Bharathidsasan, for R-4 and R. Subramanian for Hemalatha, for R-5 to R-9, for the Respondent

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## **Judgement**

T. Raja, J.—The Petitioner-S.V. Matha Prasad seeks for issuance of a writ of mandamus directing R2/Chief Controller, Department of Explosives, Chennai, and R3/Joint Chief Controller of Explosives, Chennai, to cancel the licence, if any, already renewed to run the Petrol Bunk of R-1 and not to renew the same in future; directing the Commissioner, Corporation of Chennai, to cancel the NOC granted to the first Respondent/Bharat Petroleum Corporation Limited (BPCL) for running the Petrol Bunk in the premises situated in D.S. No. 852 (Old No. 98) Anna Salai, next to P ORR & Sons; and also directing the first Respondent to stop running of retail distribution as Distributor of Petrol and carrying on any business in the said premises and hand over possession thereof to the Petitioner.

2. Certain vital facts, relevant for better appreciation of the present litigation, are briefly outlined below:

Late Mr. S.V. Ramakrishnan Mudaliar, father of the Petitioner herein, had leased out the property situated at Door No. 852 (Old No. 98) Anna Salai, Chennai, to M/

s. Burma Shell Oil Storage & Distributing Company, which was later taken over by the Central Government on 24.01.1976 and came to be called as Bharat Petroleum Corporation Ltd. (hereinafter referred to as the "Oil Corporation"), by lease deed dated 16.04.1955 for 10 years at a monthly rent of Rs. 450/-. During the currency of the lease, Ramakrishnan Mudaliar entered into a deed of sale, dated 31.03.1959, with one Rajabu Fathima Buhari and her husband A.M.B. Buhari over an agreement that the said Buhari should re-convey the property to Ramakrishnan Mudaliar on payment of fixed amount. On Buhari's refusal to re-convey the property, the Petitioner herein and his father filed C.S. No. 43 of 1962 on the file of this Court for specific performance and, by judgment dated 10.11.1965, the suit came to be decreed in their favour. The Original Side Appeals preferred by Buhari in OSA Nos. 8 & 9 of 1966 were allowed on 10.05.1972, whereupon, the matter was taken to the Supreme Court by the Petitioner and his father by filing Civil Appeal No. 224 of 1974. By Judgment, dated 17.04.1995, the Supreme Court allowed the Appeal, restoring the judgment passed in C.S. No. 43 of 1962.

It is the specific case of the Petitioner that, taking advantage of the litigations between his father and Buhari, even after expiry of the lease period and termination of the lease by them, the Oil Corporation continued with the possession and was running the business, whereupon, a suit in O.S. No. 3245 of 1999 came to be filed by the Petitioner before the II Assistant Judge, City Civil Court, Madras, as against the Oil Corporation seeking for a decree of permanent injunction restraining the Oil Corporation from putting up construction over the land in question. On 31.07.2003, the said suit was decreed as prayed for. The Appeal Suit filed by the Oil Corporation in A.S. No. 43 of 2004 on the file of the VII Additional Judge, City Civil Court, Madras, was dismissed on 23.03.2005, confirming the decree passed by the trial court. Citing the orders passed in his favour by different courts, the Petitioner made a representation, dated 06.05.2005, to R-1 to hand over the possession of the property. The Oil Corporation preferred a Second Appeal before this Court in SA. No. 1498 of 2005 as against the dismissal of A.S. No. 43 of 2004 and the said Second Appeal was dismissed by Order dated 06.12.2006 after recording an affidavit of undertaking filed by the Oil Corporation to the effect that they would not put up any further construction over the suit property.

In the above back ground, the Petitioner has come up with the present writ petition for a direction to the authorities/Respondents concerned not to renew the licence in favour of the Oil Corporation to run the Petrol Bunk and to cancel the NOC and for a further direction to the first Respondent to hand over possession of the property to the Petitioner immediately.

3. Learned Counsel for the Petitioner, by highlighting that this is an illustrious case where a public agency/R1 has been squatting on the property of the Petitioner-citizen for over decades together without renewal of the lease which expired long back in 1965 and also, without making payment of rent much less

arrears of rent by taking advantage of some litigations between the Petitioner and Buhari and wrongfully holding the property despite the court orders rendered in favour of the Petitioner, would make the following submissions.

3-A. Admittedly, the tenancy of the Oil Corporation was terminated with effect from 30.04.1965 by the erstwhile landowner calling upon Burma Shell to vacate and deliver vacant possession. That being so, Burma Shell itself was continuing to retain the possession in a wrongful manner after termination of the lease; therefore, the Oil Corporation which had no valid lease was a tenant at sufferance akin to a trespasser having no independent right to continue in possession. Subsequent to taking over of Burma Shell which was only a tenant at sufferance, the Oil Corporation cannot get better title than what Burma Shell had. Assuming that the Oil Corporation had exercised their statutory option under Sections-5 and 7 of Act 2 of 1976, such option can be exercised only once, whereas, in the case on hand, the Corporation in a wrongful manner retained the property in its cluster for about four decades, therefore, they have no locus standi whatsoever to raise any claim so as to retain the property forever by referring to any Act/law in particular the provisions of the City Tenants Protection Act.

3-B. The property in question is situated in a prime location of Anna Salai measuring about 11000 sq. ft. and to get back the same, the Petitioner is fighting a legal battle for about half a century. In respect of the property worth several crores of rupees, the Oil Corporation has not been paying even the petite rent of Rs. 450/- per month. Thus, a mighty instrumentality of the Government has been successfully suppressing the valuable rights of the Petitioner and despite armed with courts' orders in his favour, the Petitioner could not get the property back out of the clutches of the Oil Corporation. Even though the Corporation itself stated that their possession was valid upto 30.04.2005 in terms of Act 2 of 1976, till to-day, the possession has not been handed over. In these circumstances, the other authorities/Respondents-2 and 3 indifferently renewed the licence on 18.07.2007 and also granted the NOC without considering the representation of the Petitioner sent in June 2005 to cancel the licence on the ground that the Oil Corporation is ceased to have any "right to site" for storing petroleum in terms of Rules 150 and 152 of the Petroleum Rules 2002 corresponding to old Rules 151 and 153. Therefore, in the given case, the principles of equity requires that the direction sought for may be issued to the authorities/Respondents to prevent further injustice and wrong to the Petitioner at the hands of the powerful public agency.

3-C. By stating that a tenant at sufferance like the first Respondent is one who wrongfully continues in possession after the extinction of a lawful title and there is no difference between such person/agency and a trespasser, learned Counsel would refer to a decision of the Apex Court in C. Albert Morris Vs. K. Chandrasekaran and Others, and submit that when a lease granted to a party expired and when the landlord declined to renew the same, calling upon the

erstwhile tenant to surrender possession, the erstwhile lessee can no longer assert that he had any right to the site, because, his continued occupation of something which he had no right to occupy cannot be regarded as a source of a right to the land of which he himself was not in lawful possession.

3-D. Learned Counsel relied on a decision reported in Bharat Petroleum Corporation Ltd. and Another Vs. N.R. Vairamani and Another, to stress the point that the policy underlying in Section 9 of the City Tenants Protection Act is for those tenants who might have constructed a superstructure on the demised land and that the tenant has no vested right in the property.

3-E. By citing a Division Bench decision of this Court in Hindustan Petroleum Corporation Ltd. Vs. Devaraj Chordia, Navaratnamal Chordia, Bhawari Kavur and Navarathan Kavur Deora, , whereby the attitude and conduct of Public Sector Undertakings in wrongfully retaining possession of property was deprecated, learned Counsel submits that this is an exceptional case absolutely warranting this Court to allow the entire realm of prayer, as otherwise, grave injustice would result in to the Petitioner who, despite incessant legal battles fought for about half a century, could not take back his valuable property for his possession and enjoyment.

4. Per contra, Mr. O.R. Santhanakrishnan, learned Counsel appearing for Respondent No. 1/Oil Corporation would submit that Rule-151 of the Petroleum Rules does not deal with cancellation of a No-Objection certificate or an Explosive Licence rather the same pertains to refusal of licence. Further, as per Rule- 152 of the Rules, the NOC can be cancelled by the District Authority or the State Government in accordance with Rule-150 and the said District Authority being Commissioner of Police in terms of the definition given u/s 2(x) of the Rules, in the case on hand, the Application having been made to the Commissioner of Corporation of Chennai instead of the appropriate authority mentioned as above, the same does not deserve consideration. In other words, according to him, inasmuch as no application was submitted to the Commissioner of Police, who is the competent authority to cancel the NOC in terms of Rule 150 of the Rules, the present petition seeking issuance of mandamus to cancel the NOC by the Commissioner, Corporation of Chennai, is not maintainable. More over, no representation was made to the 3rd Respondent/Joint Chief Controller of Explosives for cancellation of the licence; therefore, no direction as sought for needs to be issued to the said authority.

The other segment of the argument advanced is that the "right to site" in respect of the Oil Corporation must be given a possible widest meaning and looking at such perspective, it may be concluded that the Oil Corporation has a vested right to purchase the property itself u/s 9 of the City Tenants Protection Act.

So submitting, learned Counsel placed much reliance on a decision reported in State of U.P. and Another Vs. Raja Ram Jaiswal and Another, wherein it has been

held that the High Court cannot proceed to take over the functions of the licensing authority and direct the licensing authority by a mandamus to grant licence, and ultimately pleaded for dismissal of the writ petition at the threshold.

5. Mr. R. Subramanian, learned Senior Counsel appearing for Respondents-5 to 9, who have been impleaded as necessary parties to the present litigation vide order passed in M.P. No. 1 of 2009 dated 18.09.2009, would point out that the 5th Respondent is the 2nd wife of the Petitioner's father and Respondent Nos. 6 to 9 are their son and daughters, and submit that during pendency of C.A. No. 224 of 1974 before the Supreme Court in respect of the property in question, the Petitioner herein released all his rights as per the family settlement deed dated 22.5.1969 registered as document No. 1305 of 1970 at the Office of the Sub Registrar, Periamet. Further, the impleaded Respondents herein were brought on record as LR's of deceased father - S.V. Ramakrishna Mudaliar; therefore, the benefit of the judgment and decree, dated 17.04.1995, passed in C.A. No. 224 of 1974, enures only to these Respondents alone to the complete exclusion of the Petitioner. It is ultimately submitted that the Petitioner has no right to seek conferment of any benefit on himself by way of direction to the first Respondent for eviction without the consent of Respondents-5 to 9 and that since the Petitioner intends to take away the entire property by depriving the share of these Respondents, the direction sought for may not be issued, by dismissing the writ petition.

6. Heard M/s. S.M. Deenadayalan and V. Bharathidasan, learned Counsels appearing for R2 & R-3 and Respondent No. 4 respectively.

7. I have carefully considered the rival submissions advanced on either side.

Looking at the history of the case, it could be seen that there were two sets of litigations launched in respect of the property owned by S.V. Ramakrishna Mudaliar - one by the Late father and the son Petitioner against Buhari for re-conveyance of the property and the other by the Petitioner against the first Respondent Corporation.

As against Buhari, the Petitioner's father succeeded before the trial court/High Court by getting a decree in his favour way back on 10.11.1965 in C.S. No. 43 of 1962. Though lost the case before the Division Bench in the appeal preferred by Buhari in OSA Nos. 8 and 9 of 1966, vide judgment dated 10.5.1972, the supreme court set aside the said judgment by its order dated 17.04.1995 in C.A. No. 224 of 1974 and restored the judgment passed in C.S. No. 43 of 1962. It seems that because of the aforesaid litigations which continued for decades together, the Oil Corporation did not pay the rent to the Petitioner's father or the Petitioner.

In the second set of litigation between the Petitioner and the Oil Corporation, O.S. No. 3245 of 1999 filed by the Petitioner on the file of the II Assistant City Civil Court, Chennai, seeking permanent injunction restraining the Oil Corporation from putting up construction over the land in question was decreed

by judgment dated 31.07.2003. After deeply delving into the factual and legal aspects involved, the trial court held that the Petitioner's title to the suit property has been upheld by the Supreme Court's decision. In respect of the Oil Corporation's claim that they exercised their statutory option for automatic renewal of the lease by relying on Central Act 2 of 1976, the trial court found that when the lease is determined, the Oil Corporation cannot claim the right as routine or automatic and held that therefore, they have no right to occupy the property. The Appeal filed before the VII Additional Judge, Civil Court, in A.S. No. 43 of 2004 was also dismissed by judgment dated 23.03.2005. Thereupon, the Oil Corporation though filed a Second Appeal in S.A. No. 1498 of 2005, the same was dismissed vide judgment dated 06.12.2006 without going into the merits based on the affidavit of undertaking filed by the Corporation to the effect that they would not put up any superstructure on the land.

8. Now, the present prayer has to be examined in the above background of litigations between the Petitioner and the Oil Corporation in respect of the property in question worth several crores of rupees.

9. Admittedly, the Oil Corporation did not pay even the trivial rent of Rs. 450/- per month for decades together even after clear judgment of the Apex Court about the Petitioner's title over the suit property. Therefore, the allegation that taking advantage of the lis as aforementioned, the Oil Corporation unilaterally extended the lease and very unfairly did not even pay the rent or rental arrears cannot be so lightly ignored. It is also pertinent to note that even now, the Oil Corporation has not come forward to pay the monthly rent much less the arrears accumulated for several long years. Naturally, such advantage might have been taken due to the in-fight and feud between the Petitioner on the one hand and the step mother and half-brother and sisters on the other. Be that as it may, when the first Respondent-Oil Corporation themselves had submitted a clear affidavit of undertaking in their own Second Appeal before this Court in S.A. No. 1498 of 2005, the position is made further clear that the Oil Corporation/Burma Shell was originally granted lease in respect of open-space alone. The factual finding of the courts below makes it further clear that what was available was not the constructed area but only an open-space, thereby, the case of the Oil Corporation that they have right to purchase the property u/s 9 of the City Tenants Protection Act is rendered meaningless. In respect of the admitted fact that the erstwhile owner himself terminated the tenancy of the Oil Corporation with effect from 30.04.1965, it is relevant to quote below the observation of this Court in G. Mohamed Taif and anr. v. The Bharath Petroleum Corporation Ltd. and Anr. 2001 (1) CTC 10 to the following effect with reference to the definition of the term "tenant" occurring in the City Tenants' Protection Act:

As per the above provision, the tenant is a person, who is liable to pay the rent under tenancy agreement express or implied and continues to be in possession of the land after determination of the tenancy agreement. So, the entire provision makes it clear that the tenant must be in possession of the land

pursuant to the agreement expressed or implied. In this case, there is no agreement expressed or implied, since the renewal is at the intervention of the statute. That is why the Division Bench of this Court in the writ appeal held that, "after issuance of notice of termination of lease, the Respondent corporation has no right to exercise their option for renewal and they have to vacate the premises. They are rank trespassers."

(Emphasis supplied)

As regards the rigour of Section-9 of the Act operating in favour of the Oil Corporation as argued by the counsel for the first Respondent, it is pertinent to quote here the following observation of the Apex Court in Vairamani's (cited supra) case:

Section 9 confers a privilege on a tenant against whom a suit for eviction has been filed by the landlord but that privilege is not absolute. Section 9 itself imposes restriction on the tenant's right to secure conveyance of only such portion of the holding as would be necessary for his convenient enjoyment. It creates a statutory right to purchase land through the medium of court on the fulfilment of conditions specified in Section 9 of the Tenants Act. It is not an absolute right, as the court has discretion to grant or refuse the relief for the purchase of the land. In *Swami Motor Transport (P) Ltd. v. Sri Sankaraswamigal Mull* 1963 Supp (1) SCR 282 this Court considered the question whether the right of a tenant to apply to a court for an order directing the landlord to sell the land to him for a price to be fixed by it u/s 9 of the Tenants Act is a property right. The court held, that the law of India does not recognize equitable estates, a statutory right to purchase land does not confer any right or interest in the property. The right conferred by Section 9 is a statutory right to purchase land and it does not create any interest or right to the property. The tenant's right to secure only such portion of the holding as may be necessary for his convenient enjoyment is equitable in nature. Under the common law a tenant is liable to eviction and he has no right to purchase the land demised to him at any price as well as under the Transfer of Property Act. The only right of a tenant who may have put up structure on the demised land is to remove the structure at the time of delivery of possession on the determination of the lease. Section 9 confers an additional statutory right to a tenant against whom suit for ejectment is filed to exercise an option to purchase the demised land to that extent only which he may require for convenient enjoyment of the property. 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.

10. The land in question is a open-space which was given in lease and subsequently the lease was terminated. Undoubtedly, the occupation without consent is "wrongful possession". The findings of the civil courts are that there was no superstructure over the land. Therefore, as on to-day, the land in question is wrongfully used by the first Respondent without valid renewal of lease and payment of rent or arrears of rent. Further, it is seen from the papers that

the structure that was put up by Burma Shell was demolished completely and the site remains to be open. The subject matter of the lease being an open space, at no stretch of imagination, it can be said that there is a privilege granted or accrued to the Oil Corporation which is equitable in nature in respect of the land. As held by the Hon"ble Apex Court in M.C. Chockalingam and Others Vs. V. Manickavasagam and Others, , litigious possession of the 1st Respondent can never be construed or meant to be a lawful possession in the absence of renewal of lease and termination of the same long ago prior to several decades. In view of this, the argument advanced on behalf of the first Respondent that they have a "right to site" should be held to be pointless and without any merit.

11. Coming to the direction sought for by the Petitioner to cancel the NOC-Licence granted by the authorities in favour of the 1st Respondent, it is seen that, after winning his case before the Supreme Court against Buhari and as against the Oil Corporation before the lower courts and dismissal of the Second Appeal based on the Undertaking of the first Respondent, the Petitioner made a sincere representation, dated 06.05.2005, requesting the Corporation to take instant steps to surrender the possession at least at that point of time. Since the mighty Public Agency was defiant, adverting to the court orders in his favour and termination of the lease much prior in point of time, in June, 2005, the Petitioner made an Application to the Joint Chief Controller of Explosives-R3 seeking cancellation of the NOC granted to R1 under Rule 151 of the Petroleum Rules and subsequently, by letter dated 28.12.2007, addressed to the Commissioner, Corporation of Chennai, he requested for cancellation of the licence granted to R1. In both letters, copy was marked to other appropriate authorities. Now, it would be useful to extract below Rule-150(1) and 152(1)(i) corresponding to old Rules-151(1) and 153(1)(i) of the Petroleum Rules,

150. Cancellation of no objection certificate.- (1) A no objection certificate granted under Rule 144 shall be liable to be cancelled by the District Authority or the State Government, if the District Authority or the State Government is satisfied that the licensee has ceased to have any right to use the site for storing petroleum:

....

152. Suspension and cancellation of license.- (1) Every license granted under these rules shall-

(a) stand cancelled, if the licensee ceases to have any right to the site for storing petroleum;

12. The Rules are thus very clear that every licence granted thereunder shall stand cancelled if the licensee ceases to have any right to the site for storing petroleum. In the light of the Rules, the stand of the first Respondent is that in the present case, the appropriate authority to cancel the Licence and the NOC being the 3rd Respondent-Joint Chief Controller of Explosives and the District Authority-Commissioner of Police respectively, the representation-application in



that regard not having been actually addressed to the said authorities, the writ petition seeking mandamus is not maintainable. In my considered opinion, the argument does not carry any merit if weighed in the light of the facts and circumstances as adverted to above. When the lease stood automatically terminated by efflux of time during 1965 itself and the Corporation still occupies the property only as a trespasser and thereby much water flown to the adverse interest of the Petitioners, technicalities cannot be allowed to be projected so conveniently to undo the just case and claim of the aggrieved party, the Petitioner. It should also be pointed out here that even though the Application for cancellation of the No objection Certificate was addressed to the Joint Chief Controller of Explosives, copy was in fact marked to the Commissioner of Police, the competent authority-District Authority who has jurisdiction over the issue. Similarly, the application for cancellation of licence was though addressed to the Commissioner of Chennai Corporation, a copy thereof was marked to the appropriate authority- Joint Controller of Explosives South Circle, Chennai. Therefore, in a given situation where the licensee ceases to have any right much less legal right to the site for storing petroleum, there may not be any difficulty for this Court to issue a suitable direction to the actual and competent authorities when such direction is absolutely necessary to do justice to the aggrieved party at least at this point of time. Ultimately, the said authorities are not going to consider or decide as to whether the licensee is in rightful possession or juridical or litigious possession, for, such issue had already been exhaustively discussed and decided by the competent civil courts. In this regard it may be relevant to quote below the observation of the Apex Court in *Albert Morris* case (cited supra):

In our opinion, any right which the dealer has over his site was the right which he had acquired in terms of the lease. When that lease expired and when the landlord declined to renew the same and also called upon the erstwhile tenant to surrender possession, the erstwhile lessee could no longer assert that he had any right to the site. His continued occupation of something which he had no right to occupy cannot be regarded as source of a right to the land of which he himself was not in lawful possession. As observed by this Court in the case of *M.C. Chockalingam and Ors. v. V. Manickavasagam and Ors.* (supra), litigious possession cannot be regarded as lawful possession. As rightly pointed out by the Division Bench of the High Court the right referred to in this Rule has necessarily to be regarded as right which is in accordance with law and the right to the site must be one which is capable of being regarded as lawful. We have already referred to *Bhawanji Lakhamshi and Ors. v. Himatlal Jamnadas Dani and Ors.* (supra) wherein this Court held that the act of holding over after the expiration of the term does not create a tenancy of any kind. A new tenancy is created only when the landlord assents to the continuance of the erstwhile tenant or the landlord agrees to accept rent for the continued possession of the land by the erstwhile tenant. The contention of Mr. L.N. Rao that the landlord's assent should be inferred from the conduct of the landlord who had filed the suit for ejectment, but did not pursue the same, has no force. This suit was

withdrawn with liberty to file a fresh suit on the same cause of action, liberty which the Court has granted. The possession of this site by the erstwhile lessee does not ripen into a lawful possession merely because the landlord did not proceed with the suit for ejectment at that time, but reserved the right to bring such a suit at a later point of time. That cannot amount to an assent on his part to the continued occupation of the landlord under cover of a right asserted by the erstwhile lessee. The words "right to the site" in Rule 153(1) (i) must, therefore, in our opinion, be given their full meaning and the effect that unless the person seeking a licence is in a position to establish a right to the site, he would not be entitled to hold or have his licence renewed. We have already rejected the contention of Mr. L.N. Rao that the Appellant-tenant is a statutory tenant for the reasons recorded earlier. The lease deed is very clear as to what was leased. The lease was of vacant land. That is evident from the recitals in the plaint, legal notice, lease deed etc. It is, therefore, not in dispute that the lease of land is not covered by the statute, The Pondicherry Buildings (Lease and Rent Control) Act, 1969 in force extending protection to tenants. We now come to the last contention of Mr. L.N. Rao that the first Respondent is not entitled to maintain the writ petition as the proceedings initiated by him before the Collector for cancellation of the No Objection Certificate is pending. The said submission cannot be accepted. While granting NOC, the Collector is not concerned about the ownership of the land. He is concerned about the location of the land and its suitability as a place for storage of petroleum. Rule 144 deals with the grant of NOC does not contemplate an enquiry into the ownership of the land nor does it require the Collector to enquire into the nature of the right claimed by the person who has applied for the NOC. We, therefore, uphold the judgment and final order passed by the Division Bench dated 7.10.2003 in Writ Appeal Nos. 1149 & 2140 of 2002 for the reasons given by us in this judgment.

13. In the light of the above case law, the first Respondent herein having lost the lease hold right after termination of the lease and who cannot be any more considered as a lawful tenant, is not entitled to have the licence renewed. Indeed, it is quite unfortunate that an instrumentality of the Government, in blatant violation of law and equity, squatted on the Petitioners property for a very long period which trend should never be allowed to continue ever again. In this regard, it would be appropriate to advert to the observation of the Apex Court in BPCL v. Dolly Das 1994 (4) SCC 458 which runs thus:

14. Before parting with this case, we think it appropriate to observe that the Hindustan Petroleum Corporation is a Government Company on whom the Central Government by notification vested the right, title and interest and the liabilities of the foreign company called the Caltex Petroleum Corporation. The said Government Company is not entitled to forcibly occupy the leasehold property of the Petitioner in the garb of exercising a right under the Act which right the Company does not possess, as discussed earlier. The rights of a citizen to hold its property cannot be abridged or infringed in the manner in which the Corporation has been forcing itself in the pretended exercise of a power referable

to an enactment which it does not possess. The Court cannot be a mute spectator when it is brought to the notice that a public sector undertaking is exercising a colourable power or an arbitrary power which on the face of the statute it does not possess. A Government Company like the Hindustan Petroleum Corporation is not expected of forcibly occupying the property of a citizen.

Referring to the above observation of the Supreme Court, a Division Bench of this Court in Hindustan Petroleum Corporation Ltd. Vs. Devaraj Chordia, Navaratnamal Chordia, Bhawari Kavur and Navarathan Kavur Deora, held to the following effect:

3. We are deeply distressed by the facts of this case. The Appellant is a Public Sector Corporation and therefore was expected to behave like an ideal person, but in this case we find that it has been illegally retaining possession of the property in dispute for 16 years after 1989 when its lease had admittedly come to an end. These days, unfortunately, some people are illegally holding on to the property over which they have no right to continue in possession once the period of the lease or grant ceases to exist. This is most improper and cannot be appreciated by this Court, particularly since the Appellant which is a Public Sector Undertaking must know how to respect the law.

9. One would have expected that after 1989 the Appellant herein like an honourable person would have vacated the suit property since its leasehold right ceased to exist after 1989. However, unfortunately, in our country, what is often seen is that people continue to remain in illegal possession of a property even for several years after their right to occupy the same ceased to exist. This practice has now become rampant in our country and the time has come when it must be curbed. An honourable person should vacate the property over which his lease or licence has expired and hand over possession of the same on the date of expiry of the lease or licence to the landlord/owner unless there is a fresh mutual agreement which permits him to continue in possession. It is to be noted with deep distress that the Appellant which is a well known Public Sector Undertaking has blatantly violated the law and continued in possession of the suit property for 16 years beyond the term of its lease. We are indeed very sad to note that a Public Sector Undertaking has behaved in this manner. In this country the rule of law prevails and Public Sector Undertakings are subordinate to law and not above the law. In this case, the Appellant which is a Public Sector Undertaking has taken the law into its own hands, which was most unfortunate and unjustified.

14. Further, a Constitution Bench of the Supreme Court in *The Moon Mills Ltd. v. M.R. Meher* AIR 1967 SC 1450 had categorically held that writ is legally a matter of sound discretion and would not be issued if there be such negligence or omission on the part of the applicant to assert his right as taken on conjunction with the lapse of time and other circumstances, which may cause prejudice to the adverse party. Writs so far as they are concerned with the enforcement of the other rights are not issued as a "matter of course." On a careful

consideration of the facts of the present case, the only conclusion would be that this is a deserving case where a writ must be issued as sought for as otherwise, as rightly pointed out, much prejudice would result in to the Petitioner.

15. Therefore, when there is a systematic failure on the part of a public agency to act with fairness and probity and such agency is adamant in its position to wrongfully and very unfairly retain the possession, in terms of fair-play and equity, it is absolutely just and necessary for this Court to interfere with such action and pass suitable orders to do complete and substantial justice. In this regard, aptly the decision of the Supreme Court rendered in Shangrila Food Products Ltd. and another Vs. Life Insurance Corporation of India and another, , can be referred to highlight the following conclusion:

the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India can take cognizance of the entire facts and circumstances of the case and pass appropriate orders to give the parties complete and substantial justice. The jurisdiction of the High Court, being extra ordinary, is normally exercisable keeping in mind the principle of equity. One of the ends of the equity is to promote honesty and fair play. If there be any unfair advantage gained by a party, before invoking the jurisdiction of the High Court, the court can take into account the unfair advantage gained and can require the party to shed the unfair game before granting relief.

(Emphasis supplied)

16. "Rule of law" means "justice to all" that needs to be done at any cost in every case by keeping in mind the principles of equity, justice and fair play. The stubborn attitude of the Public Sector in refusing to part with the Petitioner's prime property at Mount Road, Chennai, even after termination of the lease in 1965 and subsequent continuance and enjoyment of the same without paying the rent for a long time, certainly obligates this Court exercising its powers under Article 226 of the Constitution of India to shape and mould the suitable relief to the Petitioner without any longer standing on man-made technical procedures. The Rule of law was conceived in public interest and was intended to serve "public purpose". At least after 35 years of long wait and patience, let the rule of take its course, lest, it will not only lose its meaning but will also surely fail to command its respect. Having regard to the peculiar facts of this case, to uphold the rule of law, as held by the First Bench of this Court reported in Hindustan Petroleum Corporation Ltd. Vs. Devaraj Chordia, Navaratnamal Chordia, Bhawari Kavur and Navarathan Kavur Deora, , the Oil Corporation is liable to vacate and hand over vacant and peaceful possession of the land to the Petitioner.

17. In the light of the foregoing discussion, this Court holds that the first Respondent has no locus standi much less any justification to claim "right to site" for the reason that its litigious possession as trespasser/tenant at sufferance can never be regarded as lawful possession, particularly when the lease got expired long back and the landlord also declined to renew it and duly

intimated termination of the lease; that Section 9 of the City Tenants Protection Act has no application to the property in question as there was no superstructure to attract the said provision in terms of the factual finding rendered by the courts below as aforementioned and such finding was never challenged in the Second Appeal; that the first Respondent acted with total unfairness in squatting on the property for decades together under the garb of exercising an option under the Central Act that too without even payment of paltry rent for a valuable property worth crores of rupees; and that, in order to do complete and substantial justice, it is necessary to issue the direction as sought for by allowing the writ petition without vainly harping on the technical points.

18. Coming to the case of Respondents-5 to 9, who are none else than the step-mother and half-brother and sisters of the Petitioner, this Court is of the view that their request not to order return of property in favour of the Petitioner cannot be considered in these writ proceedings for the reason that it was the Petitioner, who along with his late father, has been launching the legal battle for about 4 decades before various judicial forums including the Supreme Court and that, at best, they can seek for their respective claims over the property before appropriate forum.

19. In the result, the Writ Petition is allowed with the following direction/observations:

a) The first Respondent-Oil Corporation is hereby directed to hand over the property in question to the Petitioner herein within a period of 4 (four) weeks from the date of receipt of a copy of this Order.

b) Since the licence and the NOC granted were in respect of the Petrol Bunk being run on the Property, which is now ordered to be handed over to the Petitioner, the authorities-the Chief Controller of Explosives and the Commissioner of Police are directed to pass appropriate orders for cancellation of Licence and NOC in terms of what is provided in the Petroleum Rules, in particular Rule-152 which says that the licence shall stand cancelled if the licensee ceases to have any right to the site in storing petroleum, and keeping in mind that the property is no more available to the 1st Respondent for storage or business purposes.

c) Simultaneously, the Petitioner is directed to re-submit the respective representations within a period of one week from to-day, enabling the aforementioned authorities to pass orders expeditiously.

d) R-5 to R-9 are at liberty to move appropriate forum in respect of their claim over the property, if they are so advised.

No costs. Connected Miscellaneous Petition is closed.