
(2013) 12 MAD CK 0019

In the Madras High Court

Case No : W.A. No. 630 of 2011 and M.P. No's. 1 and 1 of 2011 and 1 of 2013

S.V.R. Saroja and Others

APPELLANT

Vs

S.V. Matha Prasad and Others

RESPONDENT

Date of Decision : 12-12-2013

Acts Referred:

Citation : (2014) 1 MLJ 385 : (2014) WritLR 409

Hon'ble Judges : Satish K. Agnihotri, J;K.K. Sasidharan, J

Bench : Division Bench

Advocate : R. Natarjan for Mrs. S. Hemalatha in W.A. No. 630 of 2011 and Mr. O.R. Santhanakrishnan in W.A. No. 657/2011, for the Appellant; O.R. Santhanakrishnan for Respondent No. 2 in W.A. No. 630 of 2011, Mr. A.S. Vijayaraghavan, SCGSC for Respondents 3 and 4 in W.A. No. 630 of 2011 and for Respondents 2 and 3 in W.A. No. 657/2011, Mr. R. Arunmozhi for Respondent No. 5 in W.A. No. 630 of 2011 and for Respondent No. 4 in W.A. No. 657/2011, Mr. R. Natarjan for S. Hemalatha for Respondent 5 to 9 in W.A. No. 657/2011 and Mr. A.R.L. Sundaresan for Mr. I. Manjur Alam for Respondent No. 1 in W.A. No. 630 of 2011 and for Respondent No. 1 in W.A. No. 657/2011, for the Respondent

Final Decision : Allowed

Judgement

Satish K. Agnihotri and K.K. Sasidharan, JJ.—These two writ appeals are directed against the order, dated 24, March, 2011 in W.P. No.

2015 of 2008 whereby and whereunder, the learned Single Judge was pleased to direct M/s. Bharat Petroleum Corporation Ltd., appellant in

W.A. No. 657 of 2011 to hand over the leasehold premises to the first respondent along with a consequential direction to the Chief Controller of

Explosives and Commissioner of Police to pass appropriate orders for cancellation of Explosive licence and "no objection certificate" in

accordance with Rule 152 of The Petroleum Rules, 2002. Since there are two

intra Court appeals challenging the very same order, the

background facts as found in W.A. No. 657 of 2011 are taken up to narrate the litigative history.

The facts:

W.A. No. 657 of 2011:

2. The appellant is a Government of India Undertaking engaged in the business of petroleum products. The property which is the subject matter of

the writ petition was taken on lease by the appellant vide lease agreement, dated 16.4.1955. The lease was initially for a period of 10 years

commencing from 1.5.1955 with a provision for renewal. The lease executed by Thiru S.V. Ramakrishnan was in favour of Burmah Shell Oil

Storage and Distributing Co. of India Ltd. The Government of India enacted Act 2 of 1976 for the purpose of taking over M/s. Burmah Shell Oil

Storage and Distributing Co. of India Ltd. By virtue of the provisions of Act 2 of 1976, rights and obligations of M/s. Burmah Shell Oil Storage

and Distributing Co. Of India Ltd. vest with Government of India. The Government of India incorporated M/s. Bharat Petroleum Corporation

India Ltd. (hereinafter referred to as ""Corporation"") in exercise of right conferred under Act 2 of 1976. The Corporation exercised the statutory

option and accordingly, the lease was statutorily renewed. The property was later purchased by Mrs. Rajabu Fathima Bhuhari and Bhuhari and

they have been receiving the rent from Corporation.

3. While the matters stood thus, the first respondent filed a writ petition in W.P. No. 2015 of 2008 for issuance of a writ of Mandamus, directing

the statutory authorities to cancel the No Objection Certificate and Explosive Licence issued to the Corporation to run the Petroleum outlet and to

stop carrying on business in the said premises and to hand over vacant possession of land.

4. The Corporation was arrayed as first respondent in W.P. No. 2015 of 2008. The Corporation filed a detailed counter affidavit in answer to the

contentions raised in the affidavit filed in support of the writ petition. The Corporation had narrated the entire background facts including the

statutory renewal of lease. The Corporation took a specific stand that they are entitled to the statutory protection under the Madras City Tenants

Protection Act, 1921 and as such the very writ petition is not maintainable.

5. During the currency of the writ petition, the appellant in W.A. No. 630 of 2011 filed an application to implead them as respondents 5 to 9 in the said writ petition. The application was allowed.

6. The respondents 5 to 9, who are the appellants in W.A. No. 630 of 2011 filed a detailed counter affidavit in the writ petition indicating that the first respondent is neither the owner of the property nor landlord of the premises and as such the writ petition at his instance is not maintainable for eviction.

7. According to the respondents 5 to 9, the connected proceedings are pending before the Executing Court and the Hon"ble Supreme Court.

Thiru S.V. Ramakrishnan executed a Will, dated 15.7.1970 bequeathing all his properties in favour of the eighth respondent. The eighth

respondent has already filed O.P. No. 367 of 2008 for probate of Will which was later converted as T.O.S. No. 3 of 2008 and the proceedings

are still pending. In short, the respondents 5 to 9 challenged the very right claimed by the first respondent to file a writ petition with a prayer to

evict the lessee.

The order under challenge:

8. The learned Single Judge was of the view that the first respondent has launched a legal battle for about four decades and the litigation still

continues before various judicial forums including the Hon"ble Supreme Court and as such he is entitled to evict the tenant. The learned Judge

observed that the tenancy came to an end long back and in the absence of renewal, it was not open to the Corporation to retain possession of the

site to run the outlet. The learned Judge allowed the writ petition and the Corporation was directed to hand over possession of the property in

question to the first respondent within a period of four weeks.

9. The learned Single Judge further directed the Commissioner of Police, Chennai and the Chief Controller of Explosives to cancel the No

Objection Certificate and the Explosive Licence taking into account the factual position that the Corporation is not having any legal right to continue

in possession of the premises. Aggrieved by the said order, the first respondent in W.P. No. 2015 of 2008 is before this Court by filing intra court

appeal in W.A. No. 657 of 2011.

W.A. No. 630 of 2011:

10. This appeal is filed at the instance of respondents 5 to 9 in W.P. No. 2015 of 2008. The appellants are aggrieved primarily on account of the

direction given by the learned Single Judge to hand over vacant possession of the premises to the first respondent notwithstanding their right in the

property and numerous proceedings pending before various Courts including the Hon"ble Supreme Court.

Summary of submissions:

11. Thiru O.R. Santhanakrishnan, the learned counsel for the appellant in W.A. No. 657 of 2011 contended that the writ petition filed by the first

respondent for possession is not maintainable. M/s. Bharat Petroleum Corporation Ltd. is in possession and enjoyment of the premises on the

basis of a valid lease and thereafter by operation of law. According to the learned counsel, the learned Single Judge proceeded as if the first

respondent is entitled to evict the tenant. The appellant is having every right to continue in possession. The appellant is also having the statutory

protection under The Madras City Tenants Protection Act, 1921. The learned Single Judge therefore erred in issuing a mandamus for possession.

The learned counsel further contended that the issue relating to possession claimed by the appellant cannot be agitated in a writ jurisdiction. Even

though the appellant raised valid grounds with regard to statutory protection under the City Tenants Protection Act, there was no attempt made by

the learned Single Judge to adjudicate the said issue. The learned counsel submitted that the appellant could be evicted only in the manner known

to law and not by way of a writ petition. He would submit that the learned Judge placed reliance on the overruled decision in N.R. Vairamani to

issue the writ and as such the very direction is liable to be recalled.

12. Mr. R. Natarajan, the learned counsel for the appellants in W.A. No. 630 of 2011 disputed the very bonafides in filing the writ petition. The

learned counsel by taking us through various proceedings pending before the Hon"ble Supreme Court and the Executing Court contended that the

first respondent concealed the material facts and made an attempt to obtain an order behind the back of appellants. The learned counsel further

contended that the appellants in W.A. No. 630 of 2011 are entitled to take possession of land. The first respondent has no right even to direct the

tenant to vacate the premises. The learned counsel submitted that the learned Single Judge was not correct in directing the tenant to hand over

vacant possession to the first respondent without taking into account the earlier orders passed by various Courts and the pendency of the

application filed by him before the Supreme Court for a direction to give possession of property.

13. Mr. A.R.L. Sundaresan, learned Senior counsel for the first respondent in both the writ appeals, contended that the lease period expired long

back. The first respondent being the second plaintiff in C.S. No. 43 of 1962 was justified in filing the writ petition. According to the learned Senior

counsel, lease expired by efflux of period and in fact the Corporation has very clearly admitted the said fact. Even then the Corporation continued

to occupy the premises. The learned Senior counsel by placing reliance on Section 152 of Petroleum Rules, 2002 contended that the explosives

department is bound to consider the right of the licensee to occupy the premises before renewing the licence. Since the Corporation has no

subsisting leasehold right in respect of the property, the explosive department is bound to consider the said fact. It was further contended that the

disputes relating to possession between the appellants in W.A. No. 630 of 2011 and the first respondent would not give a right to the Corporation

(appellant in W.A. No. 657 of 2011) to continue to occupy the premises. The learned Senior counsel while justifying the order passed by the

learned Single Judge, contended that the writ petition for a direction to evict the State owned Corporation is maintainable in view of its position as

an instrumentality of the State.

DISCUSSION:

14. The land in R.S. No. 3197 (door No. 852) admeasuring 3 grounds and 1654 sq. ft. was given on lease by Thiru S.V. Ramakrishnan in favour

of M/s. Burmah Shell Oil Storage and Distributing Co. of India Ltd. for the purpose of locating a petroleum outlet. The lessee agreed to pay

monthly rent of Rs. 450/-. The lease agreement, dated 16, April 1955 contains the terms and conditions of the lease including the period.

15. The subject land was assigned by Thiru S.V. Ramakrishnan in favour of Mrs. Rajabu Fathima Buhari and Mr. Buhari by registered document,

dated 31.3.1959.

16. The vendor (Thiru S.V. Ramakrishnan) along with the first respondent filed C.S. No. 43/1962 before the original side of this Court praying for

a judgment and decree directing the defendants/purchasers to recovery the property. The suit was decreed by judgment and decree, dated

10.11.1965. Subsequently, there was a family settlement vide document, dated 22.5.1965 whereby and whereunder, the first respondent

relinquished his right in respect of the subject property in favour of Thiru S.V. Ramakrishnan.

17. Thiru S.V. Ramakrishnan appears to have executed a Will in favour of Mrs. N. Renuka Devi, 4th appellant in W.A. No. 630 of 2011/8th

respondent in W.A. No. 657 of 2011.

18. The Original side appeal preferred by the unsuccessful defendants in C.S. No. 43 of 1962 was allowed by the Division Bench of this Court by

judgment and decree, dated 10.5.1972. The decree was challenged by Thiru S.V. Ramakrishnan in SLP No. 224 of 1974 before the Hon"ble

Supreme Court. During the currency of SLP, Thiru S.V. Ramakrishnan died on 31.12.1980. In the meantime, the appellants in W.A. No. 630 of

2011 appears to have executed a sale deed in favour of third parties. The Hon"ble Supreme Court allowed the Civil Appeal in C.A. No. 224 of

1974, by judgment, dated 17.4.1995. Thereafter, the first respondent filed E.P. No. 48 of 1997 praying for delivery of the premises. The

purchasers have filed impleading application in E.P. No. 48 of 1997. The Execution petition was allowed by order, dated 7.7.2000 directing the

judgment debtor to execute reconveyance deed in favour of the first respondent. The said order was challenged in A. No. 2872 and 2873 of

2000. The order was later modified by the Court indicating that the appellants in W.A. No. 630 of 2011 are also entitled to execute the decree.

The appeal preferred against the said order in O.S.A. No. 372 of 2000 was dismissed. The order, dated 11.4.2001 in O.S.A. No. 372 of 2000

was upheld by the Hon"ble Supreme Court.

19. While so, the first respondent filed I.A. No. 2 of 2008 in C.A. No. 224 of 1974 with a prayer to pass an order directing the respondents

therein to hand over the possession of subject property to him. The said interlocutory application is stated to be pending along with the connected

Civil appeal No. 7130 and 7133 of 2011. The Hon"ble Supreme Court by order,

dated 2.5.2008 in C.A. No. 7130 - 7133 of 2011 stayed all further proceedings in E.P. No. 48 of 1997.

20. We have narrated the above background facts only to show that there is an ongoing dispute between the appellants in W.A. No. 630 of 2011

and the first respondent with respect to the property, which is the subject matter of this litigation.

21. The first respondent notwithstanding the pendency of application, dated 2.9.2008 in I.A. No. 2 of 2008 in C.A. No. 224 of 1974 before the

Hon"ble Supreme Court and the currency of the related appeals preferred against the order in E.P. No. 48 of 1997, claimed right to take

possession of the property from the lessee. The first respondent submitted an application before the Joint Chief Controller of Explosives, Chennai

to cancel the explosive licence issued to the Corporation/appellant in W.A. No. 657 of 2011. Similar application was preferred to the Chennai

Corporation to cancel the trade licence. The statutory authorities have not taken any action pursuant to those two applications. The petitioner

therefore, filed the writ petition in W.P. No. 2015 of 2008.

22. The Core question that arises for consideration is whether the learned Single Judge was correct in directing delivery of vacant possession of the

premises to the first respondent besides issuing a positive direction to the statutory authorities for cancellation of No Objection Certificate and

explosive licence in the light of the expiry of lease period.

23. The first respondent very conveniently omitted to implead the appellants in W.A. No. 630 of 2011 as parties to the writ petition

notwithstanding the pendency of the execution petition and Civil Appeals in which they are also parties. The appellants in W.A. No. 630 of 2011

filed application for impleading and thereby they secured a right to oppose the writ petition.

24. The Corporation raised several contentions in the writ petition including its claim under the provisions of Madras City Tenants Protection Act.

The impugned order does not contain any finding with respect to those vital contentions.

25. The learned Senior counsel for the first respondent by placing reliance on the decree in C.S. No. 43 of 1962 contended that the Civil Court

has already given an incidental finding that there is no building in the land and as

such the claim regarding purchase of property by tenant by invoking the provisions of Madras City Tenants Protection Act does not arise for consideration. We are not inclined to accept the said contention for more than one reason. The appellant in W.A. No. 657 of 2011 raised the said issue very specifically. However, there was no finding given by the learned Single Judge with respect to the said contentious issue. In fact, the question regarding right to claim possession and the right claimed by the tenant to purchase the superstructure by invoking the provisions of the Madras City Tenants Protection Act ought to have been raised by the first respondent before the appropriate Court. Such disputed questions cannot be agitated before the Writ Court in a proceeding under Article 226 of the Constitution of India.

26. The Supreme Court in Bharat Petroleum Corporation LTD. Vs. N.R. Vairamani while setting aside the judgment of the Division Bench of this

Court in N.R. Vairamani (2001) 1 CTC 1, indicated the right given to the tenant u/s 9 of the Madras City Tenants Protection Act, 1921. The

Supreme Court observed:

13. In a writ petition some benefits available to the tenant under the Tenants Act could not have been diluted. There is some dispute about the

entitlement of the tenant to get protection under the Tenants Act which can be more effectively decided in case action in terms of what is required

under the Tenants Act is taken by the landlord.

14. Once a suit is filed by the landlord for the eviction of a tenant from land the tenant has right to apply to the court within one month from the

date of the service of summons for the issuance of order directing the landlord to sell the whole or part of the extent of land as specified in the

application to him for a price to be fixed by the court. On making of such an application the court is under a mandatory duty to first decide the

minimum extent of the land ""which may be necessary for the convenient enjoyment by the tenant"". The court must hold enquiry to determine

whether the tenant requires the land for his convenient enjoyment, and if so, what area or portion of the land would be necessary for his convenient

enjoyment. The court may on the facts of a particular case come to the conclusion that the tenant does not require any portion of the land and in

that event it may reject the application and decree the suit for ejectment and

direct the landlord to pay compensation to the tenant. But if the court finds that the tenant needs the whole or any portion of the demised land for ""convenient enjoyment"", the court has to fix the price of the land on the basis of market value of three years immediately preceding the date of the order. The court may thereupon direct the tenant to deposit the amount so determined within a specific period being less than three months and not more than three years. If the tenant fails to pay the amount so determined, the tenants application shall stand dismissed.

27. The first respondent appears to have adopted a short cut method to seek possession of property. Even though the appellants in W.A. No. 630 of 2011 also claimed right in the leasehold premises, none of them were made parties. Earlier, the first respondent filed a suit for injunction restraining the Corporation from putting up construction. However, when it comes to delivery of possession, the first respondent conveniently invoked writ jurisdiction. It is not as if the basic facts are all admitted. In case, the relief of possession is to be granted, necessarily the court should consider all the earlier litigations, including the right claimed by the first respondent to take possession, which is the subject matter before the Supreme Court. There is no point in saying that irrespective of the nature of dispute and pendency of proceedings before various forums, the Corporation is bound to deliver possession. Even to take possession of the premises from the Corporation, the proper parties should be before the Court. The Court should also consider the substantial issues as to whether the petitioner is entitled to take possession without associating the other sharers. This is notwithstanding the claim made by the appellants in W.A. No. 630 of 2011 on the strength of the Will which is the subject matter in T.O.S. No. 2 of 2009. Since the legality of the Will is an issue in T.O.S., we are not making any observation with respect to the proceedings before the Court of testamentary jurisdiction.

28. The first respondent wanted the Writ Court to direct the Petroleum Corporation to hand over vacant possession to him. The Corporation has taken up a contention that they are entitled to the right conferred by the Madras City Tenants Protection Act. Even though the very same contention was taken in the earlier suit, there was no final adjudication of the said question by framing a specific issue. It was essentially a suit for

injunction. The writ petition is not in the nature of a direction petition to exercise the statutory duty. The Corporation was not bound to surrender

vacant possession without deciding the right claimed on the basis of the Madras City Tenants Protection Act. The counter affidavit filed by the

Corporation and the appellants in W.A. No. 630 of 2011 contain statements disputing the right claimed by the first respondent to seek possession.

The incidental observation made by the Civil Court that there was no building in the property without framing any issue on proper pleadings and

evidence, would not give a right to the first respondent to contend that there is no contentious issue in the writ petition, thereby enabling him to

obtain a positive direction to take possession of the property. There should be a legal right to seek the prerogative writ of mandamus and a

corresponding duty on the other side. Even the right claimed by the first respondent is in dispute at the instance of appellants in W.A. Nos. 630 of

2011. The interlocutory application filed by the first respondent to permit him to take possession is pending before the Supreme Court. Such being

the case the first respondent alone cannot make a claim for delivery of possession and that too to surrender the property to him. Therefore the

element of right is missing with respect to the first limb of the prayer. Similar is the case of duty. The Corporation having taken contentions on the

basis of the right conferred by a local law on tenants was perfectly correct in its stand that they are not liable to surrender possession unless their

right is decided. This aspect was not taken note of by the learned Judge while issuing mandamus to direct the Corporation to deliver possession.

29. The salient features of a writ of mandamus was indicated by the Supreme Court in *The Rajasthan State Industrial Development and Investment*

Corporation and Another Vs. Diamond and Gem Development Corporation Ltd. and Another, :

21. The primary purpose of a writ of mandamus is to protect and establish rights and to impose a corresponding imperative duty existing in

law. It is designed to promote justice (*ex debito justitiae*). The grant or refusal of the writ is at the discretion of the court. The writ cannot be

granted unless it is established that there is an existing legal right of the applicant, or an existing duty of the respondent. Thus, the writ does not lie to

create or to establish a legal right, but to enforce one that is already established. While dealing with a writ petition, the court must exercise

discretion, taking into consideration a wide variety of circumstances, inter alia, the facts of the case, the exigency that warrants such exercise of

discretion, the consequences of grant or refusal of the writ, and the nature and extent of injury that is likely to ensue by such grant or refusal.

22. Hence, discretion must be exercised by the court on grounds of public policy, public interest and public good. The writ is equitable in nature

and thus, its issuance is governed by equitable principles. Refusal of relief must be for reasons which would lead to injustice. The prime

consideration for the issuance of the said writ is, whether or not substantial justice will be promoted. Furthermore, while granting such a writ, the

court must make every effort to ensure from the averments of the writ petition, whether there exist proper pleadings. In order to maintain the writ

of mandamus, the first and foremost requirement is that the petition must not be frivolous, and must be filed in good faith. Additionally, the applicant

must make a demand which is clear, plain and unambiguous. It must be made to an officer having the requisite authority to perform the act

demanded. Furthermore, the authority against whom mandamus is issued, should have rejected the demand earlier. Therefore, a demand and its

subsequent refusal, either by words, or by conduct, are necessary to satisfy the court that the opposite party is determined to ignore the demand of

the applicant with respect to the enforcement of his legal right. However, a demand may not be necessary when the same is manifest from the facts

of the case, that is, when it is an empty formality, or when it is obvious that the opposite party would not consider the demand.

30. However that is not the case with the second limb of the prayer. In order to conduct a petroleum outlet the Corporation must possess

Explosive Licence. The licence should be renewed periodically. While renewing the licence, the Explosives Department must ensure that the

licensee is having right in the land to operate the business. When there is a statutory duty cast on the Explosive Department to verify and confirm

the right of the licensee in respect of the land, it is open even to a person having even a fractional right in the property to bring to the notice of the

Explosives Department about the factual position and to ensure that the statutory requirements are complied with before renewal of licence.

Therefore the learned Single Judge was correct in issuing a mandamus to consider the right claimed by the Corporation in respect of the land

during the process of renewal, without connecting it with the finding regarding the right to claim possession.

31. The appellants in W.A. No. 630 of 2011 in their counter affidavit filed in W.P. No. 2015 of 2008 have provided the details of earlier

proceedings. Those details would give a clear picture that the first respondent alone is not entitled to take possession of property from the

Corporation. Since the writ petition filed by the first respondent involved serious disputed questions of fact, we are not in agreement with the views

expressed by the learned Single Judge with respect to the finding regarding possession.

32. The next question relates to the direction given to the statutory authorities to consider the application for cancellation of No Objection

Certificate and explosive licence.

33. The Petroleum Rules 2002 contain detailed provisions regarding suspension and cancellation of No Objection Certificate. Similarly, there are

provisions regarding grant of explosive licence and the cancellation of the same on certain grounds.

34. Rule 150 of Petroleum Rules 2002 gives power to the District authorities to cancel No Objection Certificate in case licensee ceases to have

any right in the premises for storing petroleum. Similarly, Rule 152 of Petroleum Rules gives power to the explosive department to suspend or

cancel the licence in case licensee ceases to have any right in respect of the land where the outlet is located. Therefore, it is very clear that

notwithstanding the currency of No Objection Certificate, the explosive department is empowered to cancel the licence in case the licensee ceases

to have right in the site for storing petroleum products.

35. The question whether litigious possession would amount to a "right to the site" within the meaning of Rule 153(1)(i) of the Petroleum Rules

came up for consideration before the Supreme Court in C. Albert Morris Vs. K. Chandrasekaran and Others, . The Supreme Court indicated the

legal position in the following words:

42. Rule 153(1)(i) of the Petroleum Rules is right to the site for storing petroleum. It is not the right for storing petroleum on the site. That is

so because that aspect is dealt with specifically in sub-clause (ii) of Rule 153(1) which refers to a no objection certificate, which the District

authority or the State Government is required to give. No Objection Certificate which is granted under Rule 144 is the one given by the concerned

authority stating that it has no objection for the storage of petroleum on the site after examining the site plan and other relevant factors. The words

right to the site have, therefore, to be understood as referring to right to the site on which the petroleum is stored. A person can be said to have a

right to something when it is possible to find a lawful origin for that right. A wrong cannot be a right of a person who trespasses on to another's

land cannot be said to have a right to the land vis-a-vis the owner because he happens to be in possession of that land. Mere presence on the land

by itself does not result in a right to the land. Such presence on the premises may ripen into a right by reason of possession having become adverse

to the true owner by reason of the passage of time and possession being open uninterrupted, continuous and in one sown right.

43. 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 has 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 *M.C. Chockalingam and Others Vs. V.*

Manickavasagam and Others, , litigious possession cannot be regarded as lawful possession.

36. The documents available on record clearly shows that the Corporation admitted the factual position that the lease expired long back. There is

nothing on record to show that the lease was renewed thereafter. It was only on account of the admitted factual position that there was no renewal

either by operation of law or by agreement between the parties, after the statutory renewal, the first respondent made a request to the statutory

authorities to cancel the No Objection Certificate besides the explosive licence.

37. The learned counsel for the appellant in W.A. No. 657 of 2011 by placing reliance on the judgment of the Hon''ble Supreme Court in *The*

Rajasthan State Industrial Development and Investment Corporation and Another Vs. Diamond and Gem Development Corporation Ltd. and

Another, contended that the representation should be a comprehensive one. According to the learned counsel, representation given by the first respondent to the statutory authorities proceed as if the authority to cancel No Objection Certificate is the explosive department. We are not in agreement with the said submission. The first respondent submitted a representation to the Joint Chief Controller of Explosives, Chennai requesting to cancel the No Objection Certificate and explosive licence. The said application was forwarded to the Commissioner of Police, Chennai. It is also a matter of record that copies of the representations were forwarded to the Commissioner of Police, Chennai who is stated to be the statutory authority to issue No Objection Certificate. The fact that the first respondent clubbed both the reliefs in a single representation would not go to show that it is not a comprehensive one and as such no direction could be issued to the statutory authorities to consider the issue.

38. There is no dispute that the explosive licence was not renewed beyond 2008. The learned Standing counsel representing the explosive department has submitted that the application for renewal of explosive licence is pending on account of the pendency of execution petition and the present writ petition. Therefore, it is very clear that the first respondent is running the outlet without renewing explosive licence. The first respondent has come up with a contention that the Corporation has no right to continue in possession on account of the expiry of the lease long back. While considering the application for renewal of explosive licence necessarily statutory authorities should also consider the question as to whether the applicant is having any right in the site for storing petroleum products. It is only for the said purpose, the first respondent approached the explosive department. The Corporation cannot take a stand that the first respondent has no right to call upon the explosive department even to consider his objection before renewing licence. There is a statutory duty cast on the explosive department to consider the jurisdictional fact as to whether the applicant is having a legal right in the site in question. It was only on account of the factual position that the Corporation has no valid lease deed, the first respondent has made a representation to the explosive department to cancel the licence. The order passed by the learned Single Judge directing the explosive department to consider the representation, should be considered in the factual background of this case. We are therefore of

the considered view that the learned Judge was perfectly correct in directing the explosive department to consider the right claimed by the first

respondent in respect of the site before renewing the explosive licence. We are therefore inclined to modify the order passed by the learned Single

Judge.

Disposition:-

39. We set aside the direction given by the learned Single Judge to the Corporation to hand over vacant possession of the premises to the first

respondent. We give liberty to the first respondent to submit a comprehensive representation to the Explosives Department, Chennai indicating the

reasons in support of the request for cancellation of licence. The Explosive department is directed to consider the application submitted by the

Corporation/appellant in W.A. No. 657 of 2011 for renewal of explosive licence in the light of the said representation. The appellants in W.A. No.

630 of 2011 are also given liberty to submit their views in respect of the application for renewal of licence submitted by the Corporation. Since the

application for renewal of licence is stated to be pending before the Explosive department and taking into account the fact that the petroleum outlet

is functioning without Explosive Licence, the Explosives Department should take all possible efforts to dispose of the matter within a period of four

weeks from the date of receipt of representation from the first respondent. The writ appeals are allowed in part as indicated above. Consequently,

connected miscellaneous petitions are closed. No costs.