REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6726 OF 2021

[Arising out of Special Leave Petition (Civil) No.28057 of 2019]

NATIONAL COMPANY, REPRESENTED BY ITS MANAGING PARTNER ...APPELLANT(S)

VERSUS

THE TERRITORY MANAGER, BHARAT PETROLEUM CORPORATION LTD. & ANR. .... RESPONDENT(S)

J U D G M E N T

B.R. GAVAI, J.

1. Leave granted.

2. The appellant has approached this Court being aggrieved by the judgment and order dated 19th September, 2019, passed by the Division Bench of the High Court of Judicature at Madras, in Writ Petition No.16228 of 2014, thereby denying the prayer made by the appellant for a direction to the respondents to vacate the property.

3. The facts, in brief, giving rise to the present appeal, are as under:

The property in question, being the property consisting of vacant land situated at Old No.320, New No.469, Anna Salai, Nandanam, Chennai 600035, admeasuring 6107 sq.ft. (hereinafter referred to as 'the said premises") was leased to the predecessor of the respondent No.1-Bharat Petroleum Corporation Ltd. (hereinafter referred to as "the BPCL"), viz., Burmah Shell Oil Storage and Distributing Company of India by the predecessor of the appellant, initially for a period of 20 years in the year 1960. Thereafter, the lease was renewed for another 20 years and finally for another period of 11 years vide a registered lease deed dated 23rd April, 1999. The said lease period came to

an end on 31st December, 2009. On the said premises, respondent No.1-BPCL put up a petrol bunk, which was being operated by the respondent No.2-M/s Vijaya Auto Services, its licensor.

Before the expiry of the lease period, i.e., 31st December, 2009, the appellant had issued a notice on 14th August, 2008 to respondent No.1-BPCL, thereby terminating the lease. Thereafter, on 20th May, 2009, the appellant issued another notice to respondent No.1-BPCL to vacate the said premises. By subsequent notices dated 16th July, 2009 and 3rd October, 2009, the appellant reiterated its demand.

Since respondent No.1-BPCL neither vacated the said premises nor took steps to formalize a fresh lease agreement, the appellant approached the Madras High Court praying for a direction to the respondents to vacate the said premises.

It appears that, in the meantime, there were some attempts to settle the matter, as the respondent No.1-BPCL had shown interest in purchasing the property outright. However, the same did not fructify.

The matter originally was placed before the single judge of the Madras High Court. On 25th April, 2019, the single judge of the Madras High Court passed the following order:

> "*With regard to maintainable of the writ petition, in so far as the relief prayed for in the writ petition, there* is *conflict of judgment passed by this Court reported in* ***2001(1) CTC 1 (W.A.No.2302 of 1999, dated 20.10.2000), 2001 (1) CTC 10 (W.P.No.20061 of 1998, dated 2.12.2000), CDJ 2016 MHC 5023 (W.P.No.29312 of 2014), CDJ 2018 MHC 1772 (W.P.No.14883 of 2015, dated 22.01.2018)*** *and an unreported judgment in* ***W.P.No.7432 of 2009, dated 22.10.2009*** *on the one hand held that writ petition* is *not maintainable, and the judgment passed by this. Court reported in* ***2005(3) L. W.758 (W.P.No.B,l58 of 2001, dated 19.7.2005), 2005 (3) L.W. 523 (W.P.No.44758 of 2002, dated 21.7.2005), 2011 (1) L.W.146 (W.A.No.1767 of 2003, dated 25.11.2010), 2014 (1) MLJ 385 (W.A. Nos. 630 & 657 of 2011, dated 12.12.2013)*** *and unreported judgments passed by this Court in* ***W.A.Nos.1796 & 1893 of 2014 dated 29.8.2008, W.P.No.13521 of 2002 dated 4.1.2011, W.A. No. 44 of 2000 dated 21.7.2000 and W.A. No.779 of 2008***

> ***dated 23.10.2008*** *on the other hand, writ petition* is *maintainable.*
>
> *Therefore,* Registry is *directed to place this writ petition before the Hon'ble Chief Justice for assigning the* writ petition before the appropriate Division *Bench,* so *as to decide the maintainability of the wit petition."*

Pursuant to the aforesaid order, as per the directions of the learned Chief Justice, the matter was placed before the Division Bench of the High Court.

A preliminary objection was taken regarding the maintainability of the writ petition on the ground that the writ petition involved disputed questions of fact and as such, was not maintainable.

It was, however, contended on behalf of the appellant that no disputed questions of law or fact arose for consideration and as such, in view of the law laid down by this Court, the writ petition was maintainable.

The Division Bench by the impugned judgment and order dated 19th September, 2019, held that the relief claimed by the appellant for a direction to the respondents to vacate the said premises could not be granted in a

petition under Article 226 of the Constitution of India and relegated the appellant to the alternate remedy available in law.

The Division Bench in the impugned judgment referred to the judgment of this Court in the case of ***C. Albert Morris v. K. Chandrasekaran and others***[1], wherein this Court has held that once the lease has expired and the landlord has declined to renew the lease and where the owner calls upon the erstwhile tenant to surrender possession, he could no longer assert any right over the site.

The Division Bench also referred to the judgment of this Court in the case of ***Hindustan Petroleum Corporation Ltd. and another v. Dolly Das***[2], wherein a similar claim on behalf of the owner of the land was allowed by this Court in writ jurisdiction.

However, the Division Bench found that the aforesaid judgments of this Court had not considered the aspect with regard to protection given to a tenant under the

1 (2006) 1 SCC 228
2 (1999) 4 SCC 450

enactments similar to Chennai City Tenants Protection Act, 1921 (hereinafter referred to as "the Tenants Act").

The Division Bench has also referred to its earlier judgments in paragraphs 57 and 58 of the impugned judgment, which read thus:

> "57. In Bharat petroleum Corporation Ltd vs R.Ravikiran 2011 (5) CTC 437, a division bench of this court while disposing CRP (NPD), OSA and CMA) held that oil company was in legal possession of the subject land. While the actual physical possession was with the dealers. The court rejected the claim of the Oil Companies under section 2(4) (ii) (a) in view of the decision of the Honourable Supreme Court in **S.R Radhakrishnan** vs **Neelamegam** (2003) 10 SCC 705.
>
> 58. In the aforesaid case it was held that actual physical possession was a sine qua non for claiming the benefit of section 9 of the Tamil Nadu City Tenants Protection Act, 1972. However, while concluding, the court observed that to come within the definition of section 2(4) (ii) (a) of the Act, the petroleum company should be in actual possession of the land and since they were not in actual possession, they were not entitled to protection under section 9 of the Act. Similar view has been taken in several other decisions."

The Division Bench observed thus:

> "59. This view of the Division Bench of this court is now subject matter of appeal in a batch of appeals and Special Leave Petitions/appeal before the Hon'ble Supreme Court."

Thereafter, the Division Bench referred to various pronouncements of this Court as well as the Madras High Court and observed that the conduct of the respondent No.1-BPCL was not befitting as an organ of a State. Thereafter, the Division Bench observed thus:

> "72. The remedy that is sought to be obtained before us is a remedy which can only be granted by a civil court or by the commercial courts as the arrangement between the petitioner and the respondent arises out of a private contract entered between them upto 31.12.1999.
>
> 73. Under section 3 of the Madras City Tenants Protection Act, 1921, the 1st respondent has a right to receive compensation for the value for building which may have been erected by them or by their predecessor in interest and subject to the Agreement. This compensation is payable once eviction is ordered.
>
> 74. Likewise, under section 9, a tenant who is entitled to compensation under

> section 3 of the Act, against whom eviction proceeding has been instituted or proceedings under section 41 of the Presidency Small Causes Court Act, 1979 has a right to apply for an order of the court to direct the landlord to sell whole or part of land for his convenient enjoyment and the court shall thereafter fix the price of the minimum extent of the land to be sold.
>
> 75. Therefore, to ask the 1st respondent to vacate the property without giving the 1st respondent any remedy under the provisions of the Madras City Tenants Protection Act, 1921 would amount to by-passing the law and depriving the 1st respondent of the legal remedy available to it as per the dictum of the Hon'ble Supreme Court in Bharat petroleum Corporation Ltd versus N.R.Vairamani (2004) 8 SCC 579.
>
> 76. We are therefore of the view that in the present proceeding, the rights of the 1st respondent under Section 9 of the Act, cannot be ignored. Whether the 1st respondent to a tenant cannot be determined here. Since we are not conducting trial in a writ proceeding, we cannot suo moto exercise power under Section 9 of the Act."

The Division Bench thereafter again referred to the conduct of the respondent No.1-BPCL in continuing to occupy the said premises without paying any rent thereof.

The Division Bench goes on to observe that, "***Though we are perturbed by the conduct of the 1st respondent, we are unfortunate unable to come to the rescue of the petitioner in this writ petition in view of the above discussion***." (emphasis supplied).

It could thus clearly be seen that, though the Division Bench found that the claim made in the writ petition was almost similar to the claim, which was allowed by it in the case of ***Bharat Petroleum Corporation Ltd. v. R. Ravikiran and others***[3], it denied the relief to the appellant only on the ground of protection granted under the Tenants Act and that the view taken by the Madras High Court in the case of ***R. Ravikiran*** (supra) was pending before this Court.

We have to examine the correctness of the said view.

4. We have heard Shri V. Giri, learned Senior Counsel appearing on behalf of the appellant and Shri

3 2011 (5) CTC 437

Kailash Vasdev, learned Senior Counsel appearing on behalf of the respondents.

5. Shri V. Giri, learned Senior Counsel appearing on behalf of the appellant submits that the issue is no more *res integra*. This Court, speaking through a bench of three judges, in the case of ***Bharat Petroleum Corporation Limited v. R. Chandramouleeswaran and others***[4] has held that the tenants would not be entitled to benefit and rights under the Tenants Act unless they are in actual physical possession of the building constructed by them. He submits that, in the present case also, undisputedly, respondent No.1-BPCL has sub-let/leased out the said premises to the respondent No.2 and as such, it is not in actual physical possession of the building constructed by it. He therefore submits that the judgment of this Court in the case of ***R. Chandramouleeswaran*** (supra) squarely applies to the facts of the present case.

6. Learned Senior Counsel further submits that in the present case, no disputed questions of law or facts arise

4 (2020) 11 SCC 718

for consideration. As such, the Madras High Court while exercising its jurisdiction under Article 226 of the Constitution of India ought to have allowed the writ petition. He further submits that respondent No.1-BPCL is enjoying the property without paying a single farthing from the date of expiry of lease by efflux of time i.e. 31st December, 2009 and as such, the conduct of the respondent No.1-BPCL is unbecoming of a statutory corporation, which is a State within the meaning of Article 12 of the Constitution of India. He therefore submits that while allowing the appeal and directing the respondent No.1-BPCL to handover vacant and peaceful possession of the said premises to the appellant, it will also be necessary that this Court directs the respondent No.1-BPCL to pay market rent from 31st December, 2009 till the date of delivery of actual physical possession.

7. Shri Kailash Vasdev, learned Senior Counsel appearing on behalf of the BPCL, on the contrary, submits that the question as to whether the respondent No.1-BPCL has sub-let or leased out the said premises to the respondent No.2 is a disputed question of fact, which can

only be adjudicated upon by the parties before the appropriate forum. He further submits that the view taken by this Court in the case of ***R. Chandramouleeswaran*** (supra) is not a correct view in law. He submits that the perusal of the agreements entered into between the BPCL with its dealers would show that the possession of the premises, with all the control, is with the BPCL. The dealer is only given a right to run the petrol pump. He therefore submits that the High Court has rightly relegated the appellant to the alternate remedy available in law.

8. Perusal of the impugned judgment rendered by the Division Bench would reveal that though an objection with regard to maintainability of the writ petition on the ground of alternate remedy was seriously raised by the respondent No.1-BPCL, the Division Bench was not impressed much with the said submission. As a matter of fact, the Division Bench not only referred to the judgment of this Court in the case of ***ABL International Ltd. and another v. Export Credit Guarantee Corporation of India Ltd.***

and others[5] but also emboldened the following observations of this Court while reproducing paragraph 19 of the said judgment, which reads thus:

> "**19. Therefore, it is clear from the above enunciation of law that merely because one of the parties to the litigation raises a dispute in regard to the facts of the case, the court entertaining such petition under Article 226 of the Constitution is not always bound to relegate the parties to a suit."**

9. The Division Bench also referred to the judgment of this Court in the case of ***Dolly Das*** (supra), wherein this Court held that in similar facts, appellants therein were justified in approaching the writ Court under Article 226 of the Constitution of India and directed the HPCL to handover vacant possession and pay the monthly rent.

10. It is to be noted, as has been noted by the High Court, that the Division Bench of the same High Court in its decision in the case of ***R. Ravikiran*** (supra) had held that oil company was in legal possession of the subject land,

---

5 (2004) 3 SCC 553

while the actual physical possession was with the dealers. The Division Bench specifically rejected the claim made by the oil company under Section 2(4) (ii) (a) of the Tenants Act, in view of the judgment of this Court in case of ***S.R. Radhakrishnan and others v. Neelamegam***[6].

11. Having noted that to get the benefit under Section 9 of the Tamil Nadu City Tenants Protection Act, 1972, the petroleum company should be in actual possession of the land and since they were not in actual possession, they were not entitled to protection under Section 9 of the Tenants Act, the Division Bench in the impugned judgment stopped at granting relief in favour of the appellant only on the ground that the view of the Division Bench in ***R. Ravikiran*** (supra) was subject matter of appeal in a batch of Special Leave Petitions/Appeals pending before this Court.

12. It could thus clearly be seen that the Division Bench itself did not find much favour with the arguments advanced on behalf of the respondent No.1-BPCL with

6 (2003) 10 SCC 705

regard to non-exercise of jurisdiction under Article 226 of the Constitution of India on the ground of availability of alternate remedy and declined the relief only on the ground that the view taken by the other Division Bench in the case of ***R. Ravikiran*** (supra) and other matters, was pending consideration before this Court in a batch of appeals and Special Leave Petitions.

13. The said impediment is now no more in existence. The view taken by the Division Bench in the case of ***R. Ravikiran*** (supra) has been upheld by a Bench of three judges of this Court in the case of ***R. Chandramouleeswaran*** (supra).

14. It will be relevant to refer to the following observations of this Court in the case of ***R. Chandramouleeswaran*** (supra):

> "**17.** A Division Bench of this Court vide order dated 3-12-2009 in *Bharat Petroleum Corpn. Ltd.* v. *Nirmala* [*Bharat Petroleum Corpn. Ltd.* v. *Nirmala*, (2020) 11 SCC 738] and other connected matters while interpreting sub-clause (*b*) to Sec-

tion 2(4)(*ii*) has held that the expression "actual physical possession of land and building" would mean and require the tenant to be in actual physical possession. The provisions would not be applicable if the tenant is not in actual physical possession and has given the premises on lease or licence basis to a third party. The Court, however, did not give any finding on the question whether such benefit is available to the appellant under Section 2(4)(*i*) or Section 2(4)(*ii*)(*a*). We are reproducing the relevant portion of the order which reads as under: (SCC pp. 740-42, paras 7-10 & 13-14)

> '7. As regards sub-clause (*b*) of Section 2(4), we do not agree with the contention of Mr Nariman. On a plain reading of sub-clause (*b*) we notice that it uses the words "actual physical possession". Had the word "possession" alone been used in clause (*b*), as has been done in clause (*a*), the legal position may have been different. However, the words "actual physical possession" are strong and emphatic. That means that the factual state of affairs has to be seen, not the legal or deemed state of affairs. There is no doubt that the appellant had handed over possession to his licensee/agent who was in actual physical possession of the suit premises. When a statute uses strong and emphatic words, we cannot twist or give a strained interpretation to the said words. The literal rule of interpre-

tation is the first rule of interpretation which means that if the meaning of a statute is plain and clear then it should not be given a twisted or strained meaning. We will be giving a strained and artificial interpretation to the words "actual physical possession" if we say that the appellant is deemed to be in actual physical possession. We cannot give such an interpretation to sub-clause (*b*) of Section 2(4) of the Act particularly since clause (*a*) only uses the word "possession" and not "actual physical possession". Hence, we reject the contention of Mr R.F. Nariman, learned counsel appearing for the appellant and hold that the appellant was not in actual physical possession.

8. The Preamble of the Act makes it clear that the Act applies where superstructure is constructed on the land, which is leased. Hence, the submission that clause (*a*) applies when there is no superstructure erected on the vacant land which was leased is not correct. In fact, the Act was meant to give some protection to leased land on which the tenant constructed some superstructure.

9. As regards the submission of Mr Nariman that the appellant is entitled to the benefit of sub-clause (*a*) of Sections 2(4) of the Act, it appears that this aspect has not been considered by the High Court. In our opinion, the High Court should have considered

whether the appellant is entitled to the benefit of Section 2(4)(*i*) and sub-clause (*a*) of Section 2(4)(*ii*) of the Act.

10. We are not expressing any final opinion on the question whether the appellant is entitled to the benefit of Sections 2(4)(*i*) and 2(4)(*ii*)(*a*) of the Act as in our opinion it was incumbent upon the High Court to have recorded a finding on the said issue. Therefore, we set aside the impugned judgment and order [*Bharat Petroleum Corpn. Ltd.* v. *M. Nirmala*, CRP (NPD) No. 1815 of 2002, order dated 25-8-2005 (Mad)] of the High Court and remand the matter back to the Division Bench of the High Court to record a finding on the question whether the appellant is entitled to the benefit of Section 2(4)(*i*) and sub-clause (*a*) of Section 2(4)(*ii*) of the Act. Needless to mention, that the Division Bench of the High Court shall decide the said question in accordance with law and uninfluenced by any observation made by us in this order except the finding that the appellant is not covered by sub-clause (*b*) of Section 2(4) of the Act. We make it clear that we are not expressing any opinion of our own on the other issue. We hope and trust that the Division Bench of the High Court will dispose of the case expeditiously and preferably within a period of six months from the date a copy of this order is produced before it.

***

13. We are further of the opinion that where the lessee is in actual physical possession of the land over which he has made construction then he is entitled to an additional benefit given by Section 9(1)(*a*)(*ii*) of the Act. However, if the lessee who has made construction on the land let out to him but was not subsequently in possession of the same, as is the case of the appellants in the present cases, then he is not entitled to the benefit of Section 9(1)(*a*)(*ii*) though he may be entitled to the benefit of Section 9(1)(*a*)(*i*). These are the questions on which the Division Bench of the High Court will record a finding.

14. Therefore, we set aside the impugned judgments and orders of the High Court and remand the matter back to the Division Bench of the High Court to record a finding on the question whether the appellant is covered by Section 2(4)(*i*) and sub-clause (*a*) of Section 2(4)(*ii*) of the Act and is entitled to the benefit of Section 9(1). Needless to mention, the Division Bench of the High Court shall decide the said question in accordance with law and uninfluenced by any observation made by us in this order except our finding about clause (*b*) of Section 2(4). We make it clear that we are not expressing any opinion of our own on other issues. We hope and trust that the Division Bench of the High Court will dis-

> pose of these cases expeditiously and preferably within a period of six months from the date a copy of this order is produced before it.'
>
> **18. Thus, while interpreting sub-clause (*b*) to Section 2(4)(*ii*), this Court has held that the expression "actual physical possession of land and building" would mean and require the tenant to be in actual possession and sub-clause (*b*) would not apply if the tenant has sub-let the building or has given the premises on leave and licence basis. The aforesaid decision would operate as res judicata in the case of the appellant and the landlords who were parties to the decision. In other cases, it would operate as a binding precedent under Article 141 of the Constitution**."
>
> [emphasis supplied]

15. It could thus be seen that this Court in the case of ***R. Chandramouleeswaran*** (supra) has held that this Court in the case of ***Bharat Petroleum Corporation Ltd. v.* Nirmala and others**[7] and other connected matters, while interpreting the expression "actual physical possession of land and building" would mean and require the tenant to be in actual physical possession and sub-clause (b)

7 (2020) 11 SCC 738

would not apply if the tenant has sub-let the building or has given the premises on leave and licence basis. It further held that the aforesaid decision would operate as res judicata in the case of the appellant and the landlords who were parties to the said decision. It further held that in other cases, it would operate as a binding precedent under Article 141 of the Constitution of India. Not only that, but this Court made the position amply clear in the concluding paragraph 28, which reads thus:

> **"28.** Recording the aforesaid position, we dismiss the present appeals by the appellant, that is, the three petroleum companies, and uphold the orders passed by the High Court that the appellant tenants would not be entitled to the benefit and rights under the Act unless they are in actual physical possession of the building constructed by them. ***In other words, in case the appellants have let out or sub-let the building or given it to third parties, including dealers or licensees, they would not be entitled to protection and benefit under the Act***."
>
> [emphasis supplied]

16. This Court has upheld the orders passed by the High Court that the appellant tenants would not be entitled

to the benefit and rights under the Tenants Act unless they are in actual physical possession of the building constructed by them. The position is amply made clear by observing that in case the appellants have let out or sub-let the building or given it to third parties, including dealers or licensees, they would not be entitled to protection and benefit under the Tenants Act.

17. Though Shri Kailash Vasdev, learned Senior Counsel, attempted to assail the correctness of the said judgment, such an exercise is not permissible in law. The said judgment of this Court in the case of ***R. Chandramouleeswaran*** (supra) is delivered by a Bench consisting of three judges and we are bound by the view taken therein.

18. We have perused the agreement between the respondent No.1-BPCL and the respondent No.2 herein. Shri Kailash Vasdev, learned Senior Counsel, fairly concedes that all the agreements between the respondent No.1-BPCL and its dealers are identical. As such, when a Bench of

three judges of this Court in the case of ***R. Chandramouleeswaran*** (supra), while considering a similar agreement between the appellant-BPCL and the dealer, has held that since the appellant tenant was not in actual physical possession, it was not entitled to the protection under the Tenants Act, the said view is bound even in the facts of the present case.

19. In the result, we find that the view taken by the High Court, thereby relegating the appellant to the alternate remedy available in law, is not sustainable.

20. As observed by the High Court, the conduct of the respondent No.1-BPCL in continuing with the occupation of the said premises without paying any rent from 31st December, 2009 is unbecoming of a statutory corporation, which is a State within the meaning of Article 12 of the Constitution of India. We therefore find that while directing the respondents to vacate the said premises and handover peaceful and vacant possession to the appellant, it will also be necessary in the interests of justice to direct the respondent No.1-BPCL to pay arrears of market rent from

31st December, 2009, till the date of delivery of possession at the market rate.

21. In the result, the appeal is allowed in the following terms:

(i) The respondent No.1-BPCL is directed to vacate and handover peaceful and vacant possession of the said premises to the appellant within a period of three months from today.

(ii) The respondent No.1-BPCL is directed to pay arrears of market rent to the appellant from 31st December, 2009 till the date of handing over of possession.

22. We postpone the issue of determination of market rent for a period of three weeks from today. The appellant as well as the respondents shall file their written submissions with regard to the market rent with supporting documents within a period of two weeks from today.

23. The respondent No.1-BPCL shall also pay costs, quantified at Rs.1,00,000/- (Rupees One lakh only) to the appellant.

24. The appeal is disposed of in the above terms. Pending applications, if any, shall stand disposed of.

....., J.
[L. NAGESWARA RAO]

....., J.
[B.R. GAVAI]

NEW DELHI;
NOVEMBER 11, 2021