

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 2771 OF 2021

Vijay s/o Harinarayan Choudhary,
aged about 66 years, Occ. Business,
R/o Plot No.2, Pramila Regency,
Near Kalambe Flour Mill,
Rewati Nagar, Nagpur.

PETITIONER

.....VERSUS.....

1. M/s. Indian Oil Corporation Ltd.,
through its Director (Marketing),
having its registered office at Indian Oil Bhavan, G-9,
Ali Yawar Jung Marg, Bandra (East),
Mumbai – 400051.
2. The Assistant Manager (Retail),
M/s. Indian Oil Corporation Ltd.,
Nagpur Divisional Office,
“Akarshan Busiplex”, 26,
Central Bazar Road, Ramdaspath,
Nagpur – 440010.
3. Joint Chief Control of Explosives (West Circle), Mumbai,
Petroleum and Explosives Safety Organisation (PESO),
A-1/ A-2 Wing, 5th Floor, C.G.O. Complex,
C.B.D. Belapur, Navi Mumbai – 400614.

RESPONDENTS

Shri R.M. Sharma, Advocate for the petitioner.
Shri Rohit Joshi, Advocate for respondent Nos. 1 and 2.
Shri V.A. Bramhe, Advocate for respondent No.3.

CORAM : A. S. CHANDURKAR AND URMILA JOSHI - PHALKE, JJ.

DATE OF RESERVING THE JUDGMENT : JULY 20, 2022

DATE OF PRONOUNCEMENT OF THE JUDGMENT : AUGUST 11, 2022

JUDGMENT (PER : A.S. CHANDURKAR, J.)

RULE. Rule made returnable forthwith and heard the learned
Counsel for the parties.

2. The petitioner is the owner of plot No. 190 situated at Mouza – Harpur, Tahsil and District – Nagpur admeasuring about 6000 square feet. On 30/4/2004, the petitioner let out the said plot of land to the Indian Oil Corporation – respondent No.1 for running its petroleum outlet. By executing a lease deed for a period of 11 years and 6 months, the lessee was put in possession. One of the terms of the lease was that on expiry of period of 11 years and 6 months, the lease would stand terminated automatically and the lessee would deliver vacant possession of the demised premises. Accordingly, after expiry of the lease period, the petitioner on 10/12/2015 issued a notice to the lessee terminating the lease and demanding possession of the said plot. Since the possession was not delivered, the petitioner filed Special Civil Suit bearing No. 1288/2018 seeking possession of the said plot after evicting the lessee. The said suit is pending.

3. The lessee sought renewal of the license that was granted by the Petroleum and Explosives Department for conducting the petroleum outlet. Such application for renewal of the license was made by the lessee on 23/12/2017 and the Chief Controller of Explosives granted renewal of the said lease for a period of 10 years till 31/12/2027. It is the case of the petitioner that the Petroleum and Explosives Safety Organisation had issued a Circular on 4/1/2012 by which it was mandated that while

renewing a license, amongst various documents, an undertaking should also be obtained from the lessee that its right to use the site for storage of petroleum had not ceased and that no Court proceedings in respect of the site were pending. The petitioner obtained the relevant documents from the said Organisation under the provisions of the Right to Information Act, 2005 (for short “the Act of 2005”). He got knowledge that the lessee had submitted an undertaking dated 26/11/2014 while seeking renewal of the explosives license. Though the application for such renewal was made on 23/12/2017, the fact that suit for eviction had been filed by the petitioner and was pending was not brought to the notice of respondent No.3. On the contrary, an old undertaking executed prior to the filing of the suit had been relied upon. In that view of the matter, the petitioner made various representations calling upon respondent No.3 to re-consider its decision of renewing the license. Since those requests were not being considered by respondent No.3, the petitioner had filed Writ Petition No. 7629/2019 seeking expeditious consideration of those requests. Directions were issued in that Writ Petition on 11/12/2020 requiring the respondent No.3 to take a decision on the representations made by the petitioner. Accordingly, on 6/1/2021, respondent No.3 considered the representations and observed that since the licensee was in possession and was not liable to be evicted without following the due process of law, there was no reason not to renew the license. The said authority therefore

refused to suspend/ cancel the said license.

Being aggrieved, the petitioner has challenged the aforesaid order dated 6/1/2021 passed by respondent No.3.

4. Shri R.M. Sharma, learned Counsel for the petitioner submitted that as per the lease deed, the same was to expire on 29/10/2015. The lessee was bound to deliver vacant possession of the site after that date. Since that was not done, the petitioner had filed a suit for eviction which was pending. In terms of the Circular dated 4/1/2012, it was necessary for the lessee to have submitted a proper undertaking while seeking renewal of the explosives license on 23/12/2017. However, the lessee submitted an undertaking dated 26/11/2014 and stated that no legal proceedings were pending with regard to the site in question. By filing such undertaking while seeking renewal of the license on 23/12/2017, the lessee furnished incorrect information which led respondent No.3 to renew the license. If the renewal of the license was sought after filing of the said suit, it was not open for the lessee to suppress the fact of pendency of the suit. It was further submitted that the possession of the lessee was litigious in nature and therefore the same could not be termed to be a legal possession. The petitioner had an objection to the renewal of the lease and hence the position as prevailing

on the date when the application for renewal was moved ought to have been taken into consideration. The learned Counsel placed reliance on the decisions in *C. Albert Morris Vs. K. Chandrasekaran and others* [(2006) 1 SCC 228] and in *Vimal Sudarshan Bafna Vs. State of Maharashtra and others* [2017(6) Mh.L.J. 227] to urge that respondent No.3 committed an error in not suspending/ cancelling the renewal of the explosives license. It was thus prayed that the impugned order be set aside and the renewal of the license be quashed.

5. Shri R. Joshi, learned Counsel for respondent Nos. 1 and 2 supported the order dated 6/1/2021. According to him, the entry of the lessee at the site in question had a rightful origin as the lessee had entered possession pursuant to the lease deed dated 30/4/2004. Until the lessee was evicted by following the due process of law, it could not be said that the lessee had no right to possession. Since the lessee continued in possession pursuant to the execution of the lease deed, its possession could be treated as lawful. It was then submitted that the petitioner had sworn an affidavit on 21/1/2004 stating therein that initially, the Nagpur Improvement Trust had granted lease to him for the period till 24/10/2015. The petitioner had further stated that under the lease deed, the lessee was to continue in possession till 21/1/2033. The learned Counsel referred to paragraph 42 of the decision in *C. Albert Morris*

(*supra*) and submitted that there was no reason to interfere with the impugned order. The rights of the parties would be adjudicated in the Civil Court and till then the lessee was entitled to continue in possession. It was thus submitted that the Writ Petition was liable to be denied.

Shri V.A. Bramhe, learned Counsel for respondent No.3 submitted that the license had been renewed after considering the documents submitted by the lessee. No illegality was committed while renewing the license.

6. We have heard the learned Counsel for the parties at length and we have perused the documents placed on record. It is an undisputed fact that by executing a lease deed on 30/4/2004, the site in question was leased out to the lessee for the period till 29/10/2015. As per Clause (n) of the lease deed the lease was to come to an end after the stipulated period. It is also undisputed that as the lessee did not handover vacant possession, a suit for eviction has been filed by the petitioner after giving a notice to the lessee. In that suit, the lessee has appeared and has filed its written statement on 7/6/2016. It is in this backdrop that the aspect of renewal of the explosives license would have to be considered.

7. As per the Circular dated 4/1/2012 issued by the Petroleum

and Explosives Safety Organisation, the Chief Controller of Explosives informed all its offices that while granting approval to the storage of petroleum or while granting renewal of a license, an undertaking ought to be obtained from the licensee that the licensee's right to use the site for storage of petroleum had not ceased and that no litigation or Court proceedings in respect of the subject site were pending. From the said Circular, it becomes clear that after 4/1/2012, an application for renewal of the license was required to be accompanied by such undertaking. From the documents obtained by the petitioner under the Act of 2005, it is evident that on 23/12/2017, the lessee sought renewal of the explosives license by moving an application in that regard. The application for renewal is dated 15/12/2017 and along with it an undertaking dated 26/11/2014 has been annexed. As per the said undertaking, no legal proceedings in any Court of law were stated to be pending. While the state of affairs as existing on 26/11/2014 as contained in the undertaking may be correct, when the application dated 15/12/2017 seeking renewal of the license was moved, it was necessary for the lessee to indicate the position prevailing on that date or shortly prior thereto when such application for renewal of the license was made. The fact that on 22/1/2016 the suit for eviction was filed by the petitioner and on 7/6/2016 the lessee had filed its written statement clearly indicates that on 23/12/2017 when the application for renewal of the explosives license

was made, the suit for eviction was pending in the Court and was being contested by the lessee. It was therefore necessary for the lessee to have disclosed this fact by filing an undertaking executed on or shortly before the date on which the application for renewal of the explosives license was moved. We find that the act of the lessee of submitting an old undertaking dated 26/11/2014 which indicated the picture as prevailing on that date was not liable to be submitted especially when the renewal application was dated 15/12/2017. The lessee ought to have disclosed the pendency of the Civil Suit for eviction and the fact that a notice for terminating the lease had already been given. Since an old undertaking was submitted, it appears that respondent No.3 proceeded to renew the license by considering the state of affairs mentioned therein. The grievance of the petitioner that such renewal has been granted without placing the true existing position before respondent No.3 as was existing on the date of moving of the application is justified. The consideration of the request for renewal could have been different had the pendency of the Civil Suit been indicated in the undertaking. On this count, we find that re-consideration of the lessee's application for renewal of the explosives license is warranted in the light of the situation as existing on the date of the renewal application.

8. For the aforesaid reasons, the order dated 6/1/2021 is set

aside. Respondent No.3 is directed to re-consider the lessee's application dated 15/12/2017 seeking renewal of the explosives license afresh. Respondent Nos. 1 and 2 shall submit an undertaking in terms of the Circular dated 4/1/2012 indicating the position as was prevailing on the date of moving of the application for renewal of the explosives license. After the necessary compliance is made, respondent No.3 shall take a decision on the application for renewal of the explosives license. To facilitate this re-consideration, respondent Nos. 1 and 2 shall submit a fresh undertaking in the manner stated hereinabove to respondent No.3 within a period of four weeks from receipt of copy of this judgment. Within a further period of four weeks of receiving copy of such undertaking, respondent No.3 shall re-consider the application dated 15/12/2017 seeking renewal of the explosives license. It would be open for respondent No.3 to hear the parties if found necessary. The decision taken on the application for renewal of the explosives license shall be communicated to the parties. The decision be taken in accordance with law without being influenced by any observation in the judgment.

9. Rule is made absolute in the aforesaid terms. No costs.

(URMILA JOSHI - PHALKE, J.)

(A.S. CHANDURKAR, J.)

Sumit