

IN THE HIGH COURT OF TELANGANA AT HYDERABAD**W.P. No. 41751 of 2022****Between:**

Smt Kundarapu Chayadevi

... Petitioner

And

The Government of India and others

... Respondents

JUDGMENT PRONOUNCED ON: 18.03.2024**THE HON'BLE MRS JUSTICE SUREPALLI NANDA**

1. Whether Reporters of Local newspapers : Yes
may be allowed to see the Judgment?
2. Whether the copies of judgment may be : Yes
marked to Law Reporters/Journals?
3. Whether Their Lordships wish to : Yes
see the fair copy of the Judgment?

SUREPALLI NANDA, J

THE HON'BLE MRS JUSTICE SUREPALLI NANDA**W.P. No. 41751 of 2022****% 18.03.2024****Between:**

Smt Kundarapu Chayadevi

... Petitioner

And

The Government of India and others

... Respondents

< Gist:

➤ Head Note:

!Counsel for the Petitioner: Mr Jalli Srikanth

^counsel for Respondent No. 1: Dy.Solicitor General of India

^ counsel for Respondents 2 to 4: Mr Dominic Fernandes

^ counsel for Respondent No.5: Mr. B.Raghavendra Rao

? Cases Referred:

1. (2021) 20 SCC 454

HON'BLE MRS JUSTICE SUREPALLI NANDA**W.P. No. 41751 of 2022****ORDER:**

Heard Mr Jella Srikanth, the Learned counsel appearing on behalf of the Petitioner, and Mr G.Praveen Kumar, learned Deputy Solicitor General of India appearing on behalf of the 1st Respondent, Mr Dominic Fernandes, learned standing counsel appearing on behalf of Respondents No. 2, 3 and 4 and B.Raghavendra Rao, learned counsel appearing on behalf of the 5th Respondent.

2. **The petitioner approached this Court seeking prayer as under:**

“to issue an appropriate writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the respondent Nos.2 to 4 in not initiating appropriate action against the respondent No.5 on the representation submitted by the petitioner dated 20.05.2022, as highly illegal, arbitrary, unconstitutional, and violation of Principles of natural justice, besides violation of Articles 14 and 300-A of the Constitution of India and consequently direct the respondent Nos. 2 to

4 not to supply stocks to the 5th respondent dealer conducting sales on unauthorised property.”

3. PERUSED THE RECORD :

A) Legal Notice dated 20.05.2022 issued by the learned counsel for the petitioner to the 3rd respondent, reads as under:

“Under the instructions from my client Smt Kundarapu Chayadevi W/o K.Sudhakar, Occ: House Wife, R/o H.No.11-24-198, Autonagar to Deshaipet 80 ft road, Warangal Town and District, Telangana State, issue you the following notice: -

1. It is represented by my client that, she is the absolute owner of the land admeasuring 546 Sq Yds in Sy No.159 situated in Malkapur Village of Ramagundam Mandal with scheduled boundaries; East: Land of P.Satyanaranya, West: Plot of D.Kishan, South:Plot of K.Vijaya Laxmi, North: Road by virtue of registered Sale Deed No.1887/89.

2. That, a Lease Agreement was executed on 16.01.1990 in favour of M/s Sri Venkateshwara Service Station, IOCL Retail Outlet represented by Pachunoori Satyanarayana for a period of Fifteen (15) years for establishment of IOCL Retail Outlet. The Lease period had expired on 27.12.2004 and the Lease Agreement

has not renewed or extended after the expiry of lease on 27.12.2004.

3. That, even after several notices, the Lessee M/s Sri Venkateshwara Service Station, IOCL Retail Outlet represented by Pachunoori Satyanarayana has not paid the lease rentals nor vacated the premise as per the Agreement and continuing illegally.

4. That, the Lessee M/s Sri Venkateshwara Service Station, IOCL Retail Outlet represented by Pachunoori Satyanarayana is carrying out the business by suppressing the facts that the Lease Agreement had expired on 27.12.2004 and that the sub-lessee/Corporation is not complying the obligations under the principal Lease deed. The sub-lessee is entitled to take such steps against the lessee M/s Sri Venkateshwara Service Station, IOCL Retail Outlet represented by Pachunoori Satyanarayana for failure to perform the obligations under the principal Lease deed including the payments of lease amount.

I therefore, call upon the Corporation to take necessary action against the lessee M/s Sri Venkateshwara Service Station, IOCL Retail Outlet represented by Pachunoori Satyanarayana for running the Retail Outlet by misrepresentations and suppressing the fact that the Lease Agreement expired on 27.12.2004 and further advice to clear all the rental dues and vacate the premise of my client Smt. Kundarapu Chayadevi at the earliest date within a period of three (3) months, failure

to do so my client shall be constrained to move the necessary court of law.

B) Counter affidavit filed by the Respondents No.2 to 4 in particular paras 5, 6 and 7 read as under :

"5. In reply to paragraph 2 to 4 of the Writ Affidavit it is submitted that the averments made in the paragraph are matters of record and the petitioner is put to strict proof of the same. It is respectfully submitted that M/s Sri Venkateswara Service Station is a B site Outlet located in Godavarikhani commissioned in 1965. Retail Outlet (RO) is having average sale of 40KL MS and 250KL HSD. Outlet is a partnership firm with Shri P Satyanarayana and Shri H Satyanarayana as partners. Dealership agreement was executed on 15.10.1990. Partner P Satynarayana has expired and the Corporation is yet to receive legal heir certificates for Reconstitution of the RO. **It is further submitted that since the RO is a B site Retail Outlet, Corporation has not taken the land on lease neither from the Landlord nor from the dealer. As the dealer is currently in the possession of the site, Corporation is supplying loads to dealer as indented by him as per dealership agreement.**

6. In reply to paragraph 5 to 8 of the Writ Affidavit it is submitted that the averments made by the Petitioner are matters of record and the petitioner is put to strict proof of the same. **It is reiterated that the Retail**

Outlet is a B site Outlet and as such Corporation has not taken the land on lease neither from the Landlord or from the dealer.

7. In reply to paragraph 9 of the Writ Affidavit it is submitted that the appropriate remedy if any available to the petitioner is to approach the civil Court and as such the present writ petition is not maintainable and liable to be dismissed on this ground alone."

C) Counter affidavit filed by the 5th Respondent and in particular paras 4, 7 and 9, reads as under:

"4. With reference to para 4, it is submitted, lease agreement was executed on 06-01-1990 by petitioner in favour of 5th respondent. Due to subsequent developments the lease agreement got abated before the expiry of lease agreement. Petitioner expressed his intention to sell away his land and on 01-09-1991 petitioner entered into agreement of sale with father of the 5th respondent for a total consideration Rs 4 lakhs. Out of which petitioner received Rs 3 lakhs by 1993 itself. On the said same sale agreement Sri Sudhakar husband of petitioner attested having received Rs 93,000. Followed by another Rs 65,000 received receipt. Receipt of Rs 1 lakh along with interest duly signed by Sri Sudhakar on his IOC petrol bunk letter head., D.D. amount for Rs 35,000 in the name of Sudhakar filling station etc. Even after the receipt of sale consideration

petitioner did not execute the sale deed at one pretext or the other. Copy of the sale agreement and receipts filed as material papers. (Annexure 2)

7. With reference to para 7, it is submitted that at the cost of repetition, **petitioner having sold the land for valid consideration, acknowledged the receipt of payment from father of 5th respondent. As a result, 5th respondent continued in possession to the knowledge of one and all for the past 30 years as owner of the land and not as lessee. Hence question of payment of rent before 10th of every month does not arise.** As a prudent lessor appropriate action during subsistence of lease, if rents were not made by lessor in violation of lease agreement, would be to approach Hon'ble civil court to collect the rent and filing of suit for eviction and not approaching the Hon'ble High Court for eviction after 30 years.

9. With reference to para 9, it is submitted that petitioner made representation to the respondents 2-4 to direct the 5th respondent to continue to pay, arrears of rentals and for eviction based on lease agreement said to have been entered in to 34 years ago. Present claim is based on such lease deed which expired 20 years ago. **The 5th respondent family is continuing as rightful owner and in possession of the landed property for the past 30 years to the knowledge of the petitioner.**

Appropriate remedy is available to approach Hon'ble civil court having jurisdiction and not Hon'ble High Court under Art 226 of constitution of India.

After the demise of father, mother is continuing as legal heir and heading the Venkateswara filling station and filing the income tax returns. Petrol bunk is the only source of income and around 20 families are surviving on petrol bunk. Writ petition shall be dismissed for non-joinder of proper party."

4. The case of the Petitioner, in brief, as per the averments made in the affidavit filed in support of the present writ petition is as under:

The Petitioner is the absolute owner of the land admeasuring 546 sq. yards in Sy.No.159 situated in Malkapur Village of Ramagundam Mandal, by virtue of Registered Sale Deed No.1887/89 dated 06.01.1990, and a lease agreement was executed on 16.01.1990 by the Petitioner in favour of the 5th Respondent for a period of 15 years for establishment of IOCL Retail Outlet. The lease period had expired on 27.12.2004 and the Lease Agreement is not renewed or extended after the expiry of the Lease on 27.12.2004. It is further the case of the Petitioner that even after several notices the

Lessee i.e., the 5th Respondent herein had not paid the Lease/Rentals nor vacated the premises as per the Agreement and the 5th Respondent is continuing the operations of IOCL Retail Outlet illegally. Though the Lease Agreement expired on 27.12.2004 the Sub-lessee/Corporation i.e., Respondent Nos.2 to 4 are not complying the obligations under the principle Lease Deed and though the Sub-Lessor shall pay rentals before the 10th of every calendar month, but the Sub-Lessor is not paying the rents since long time. The 2nd Respondent Corporation inspite of repeated requests and reminders by the Petitioner did not initiate any steps including stopping of supply of stocks to the 5th Respondent and aggrieved by the action of the Respondent Nos.2 to 4 in initiating appropriate action against the 5th Respondent on the representation submitted by the Petitioner dated 20.05.2022, the present Writ Petition has been filed.

5. The Learned Counsel appearing on behalf of the Petitioner mainly puts forth the following submissions :
- i) The Lease Agreement was executed on 16.01.1990

by the Petitioner in favour of the 5th Respondent for a period of 15 years for establishment of IOCL Retail Outlet and the Lease period had expired on 27.12.2004 and the Lease Agreement is not renewed or extended after the expiry of Lease on 27.12.2004.

ii) The 5th Respondent had not paid the Lease/Rentals nor vacated the premises and is continuing the operations of IOCL Retail Outlet illegally.

iii) The 2nd Respondent Corporation inspite of repeated requests and reminders did not initiate any steps including stopping of supply of stocks to the 5th Respondent which is not only illegal and arbitrary but also violative of Article 14 and 300-A of the Consitution of India.

iv) Placing reliance on Rule 152(1) (i) of the Petroleum Rules and further placing reliance on the judgment dated 28.06.2023 in W.P.No.8508 of 2022 of the High Court of Judicature at Bombay, Nagpur Bench at Nagpur, learned counsel for the petitioner contends that the license granted in favour of 5th Respondent

stood cancelled on the date when the lease expired i.e., on 27.12.2004 and therefore the license granted under the Petroleum Rules, 2002 of the 5th Respondent stood cancelled on 27.12.2004 and 5th Respondent ceases to have any right to the subject site for storing petroleum as per Rule 152(1)(i) of the Petroleum Rules 2002.

On the basis of the aforesaid submissions, Learned counsel for the Petitioner contends that the writ petition should be allowed as prayed for.

6. The Learned Counsel appearing on behalf of the Respondent Nos.2 to 4 mainly puts forth the following submissions :

- i) The Respondent Corporation is not part of the dispute between the Petitioner and the Lessors.
- ii) The remedy of the Petitioner is to approach the Civil Court.
- iii) There is no contract between the Petitioner and the Respondent Corporation and therefore there cannot be a direction issued to the Respondent Corporation at the behest of the Petitioner.

iv) The Petitioner does not have any locus to approach this Court as there is no right of the Petitioner i.e., infringed by the Corporation.

v) The Writ Petition is not maintainable since there are disputed questions of facts.

vi) The lease expired on 27.12.2004 and the Petitioner's representation to the Respondent Corporation is after expiry of 17 years of the alleged lease period.

vii) The Petitioner cannot force the Respondent Corporation to stop supplies to the dealer in view of the fact that in the event of awaiting legal heir certificate for reconstitution of any dealership, the Corporation policy provides for supply of fuel and running of dealership by the legal heirs as per Guideline No.10.

viii) The Petitioner instead of taking steps for eviction of 5th Respondent Dealer is making an effort to get supplies stopped to Respondent No.5.

On the basis of the aforesaid submissions the Learned Counsel appearing on behalf of Respondent

Nos.2 to 4 contends that the Writ Petition has to be dismissed.

7. The Learned Counsel appearing on behalf of the 5th Respondent mainly puts forth the following submissions:

- i) The Petitioner has no legal right.**
- ii) The Petitioner has no locus standi.**
- iii) Petitioner is not part of the contract to enforce the terms of the contract.**
- iv) Petitioner expressed his intention to sell away the subject land on 01.09.1991, the Petitioner entered into Agreement of Sale with the father of the 5th Respondent for a total consideration of Rs.4,00,000/- out which Petitioner received Rs.3,00,000/- by 1993 itself even after receipt of the sale consideration, the Petitioner did not execute the Sale Deed on one pretext or the other.**
- v) The Petitioner's remedy is before competent Civil Court having jurisdiction and the Writ Petition is devoid of merits.**

On the basis of the aforesaid submissions the learned Counsel for the 5th Respondent contends that the Writ Petition has to be dismissed.

DISCUSSION AND CONCLUSION :

8. A bare perusal of the counter affidavit filed by the Respondent Nos.2 to 4 indicates that it is their specific plea that the 5th Respondent is a B-site outlet and the Respondent Nos.2 to 4 had not taken the subject land on lease neither from the landlord or from the dealer and since the dealer is currently in possession of the site, the Corporation is supplying the loads to the dealer as per Dealership Agreement and that the partner P. Satyanarayana had expired and the Corporation is yet to receive legal heir certificates for reconstitution of the retail outlet.

9. It is true that the material on record indicates that the Petitioner herein had leased out the subject land in favour of the 5th Respondent and therefore the 5th Respondent is the tenant on the basis of the recitals in the Agreement which is in force as per the terms of the

Agreement executed on 16.01.1990 by the Petitioner in favour of the 5th Respondent for a period of 15 years for establishment of IOCL Retail Outlet and the same had expired on 27.12.2004 and the same admittedly had not been renewed or extended after expiry of lease on 27.12.2004, but the counter affidavit filed by the 5th Respondent however at paras 4, 7 and 9 indicates the specific plea of 5th Respondent that there had been subsequent developments and Agreement of Sale of having been entered into in respect of the subject land on 01.09.1991 in between the Petitioner and the father of the 5th Respondent and the counter of the 5th respondent further refers to series of correspondence dt. 24.09.1998, 22.10.1998, 02.11.1998, 24.11.1998, 27.05.2009, 15.06.2009 and 27.06.2009 between the Petitioner and the father of the 5th Respondent, which are also enclosed as material documents along with the counter affidavit filed by the 5th Respondent.

10. This Court opines that in the present case there are serious disputed questions of fact in the inter se disputes between the Petitioner and 5th Respondent

herein and hence the judgments relied upon by the Counsel for the Petitioner (a) judgment dt. 28.06.2023 in W.P.No.8508/2022 passed by the High Court of Judicature at Bombay, Nagpur Bench at Nagpur, and (b) the Apex Court judgment dt. 26.10.2005 in C.Albert Morris Vs. K.Chandra Sekhar and Others, do not have application to the facts of the present case. The Apex Court in the judgment dated 20.07.2021 reported in (2021) 20 SCC 454 in Shubhas Jain Vs Rajeshwari Shivam & Others at para 26 observed as under :

“It is settled law that the High Court exercising its extra ordinary writ jurisdiction under Article 226 of the Constitution of India does not adjudicate hotly disputed questions of facts”.

11. Taking into consideration the above said facts and circumstances of the case and duly considering the view of the Apex Court in the Judgment reported in (2021) 20 SCC 454, dated 20.07.2021 in Shubhas Jain Vs Rajeshwari Shivam & Others at para 26 (referred to and extracted above) and duly considering the averments made at para 5 of the counter affidavit filed by the Respondent Nos.2 to 4 and the averments made in the

counter affidavit filed by the 5th Respondent at paras 4, 7 and 9 (referred to and extracted above), this Court opines that there is no privity of contract between the Petitioner and the Respondent Nos.2 to 4 and duly taking into consideration the serious disputed questions of fact between the Petitioner and the Respondent No.5 family, this Court opines that the said civil disputes cannot be adjudicated under Writ jurisdiction. Accordingly the Writ Petition is dismissed. However, there shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

SUREPALLI NANDA, J

Dated: 18.03.2024

Note: L.R. copy to be marked

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