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W.P.No.20312 of



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.09.2023

PRONOUNCED ON : 19.09.2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.20312 of 2020

and

W.M.P.No.25096 of 2020

Bharat Petroleum Corporation Ltd.,
Rep. by its Territory Manager (Retail),
Having office at Top Installation,
Ravuthur Post, Via Irugur, Coimbatore.

... Petitioner

Vs.

1. State of Tamil Nadu,
Rep. by its Secretary,
Revenue Department, Secretariat,
Fort St.George, Chennai-600 009.

2. The Special Commissioner and
Commissioner of Land Administration,
Chepauk, Chennai-600 005.

3. The Tahsildar,
Udagamandalam, The Nilgiris.

4. N.N.Naidu and Son,
Dealers in petroleum products,
Charring Cross,
Ooty / The Nilgiris.

... Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of Certiorarified Mandamus, directing to quash the tentative demand notice under Ref. PR.C.A4/ 12539/ 2001 dated 9.12.2020 of the 3rd respondent and consequently to forbear the respondents 1 to 3 their men, agents, servants and others from taking action to resume back the land to the Government.

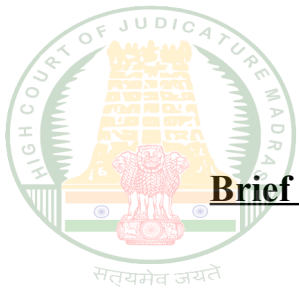
For Petitioner : Mr.AR.L.Sundaresan,
Additional Solicitor General of India,
assisted by
Mr.O.S.Karthikeyan

For Respondents :
(for R1 to R3) : Mr.S.Silambanan,
Additional Advocate General,
assisted by
Mr.G.Krishna Raja,
Additional Government Pleader

(for R4) : No Appearance

ORDER

The lis on hand has been instituted questioning the validity of the tentative demand notice issued by the 3rd respondent in notice dated 09.12.2020 and to forebear respondents 1 to 3, their men and agents, from taking action to resume back the land to the Government.

**Brief History of the Case:**

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2. Initially the Government issued G.O.Ms. No.1055, Revenue Department, dated 03.02.1978 and ordered to lease out an extent of 0.21 6/16 acres (or) 21.375 cents of the Government land in Udhagai Taluk, Nilgiris District in favour of M/s.N.N Naidu & Sons for the period from 17.07.1967 to 13.06.1978 with the condition that the lease will not be renewed after 30.06.1978. Accordingly, the Government had ordered for resumption of the subject land on 01.07.1978. Challenging the said resumption, BPCL had filed W.P.No.2334 of 1978 before this Court which was dismissed on 28.01.1981.

3. Thereafter, in G.O.Ms.No.417, Revenue Department, dated 26.04.1996, the Government had ordered for leasing out the subject land to M/s.Bharat Petroleum Corporation Limited, for a period of 13 years from 15.05.1981 to 14.05.1994. On expiry of the lease period, the lease was renewed for a further period of 9 years from 15.05.1994 to 14.05.2003 vide G.O.Ms. No.38, Revenue Department dated 25.01.2005. The annual lease rent was fixed at 14% of the land cost, subject to further revision of lease rent once in 3 years.



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4. In accordance with the Government Order issued in G.O.Ms.No.38, Revenue Department, dated 25.01.2005, the Tahsildar Udhagamandalam has worked out the lease amount for the period from 15.05.1994 to 14.05.2006 for a sum of Rs.1,07,34,407/- vide demand notice in RC.A4/2593/2001 dated 18.08.2006. The lessee BPCL had not remitted the lease amount to the Government and action was initiated under the provisions of the Revenue Recovery Act by the Tahsildar, Udhagamandalam against the lessee.

5. The details of the lease amount pending as on date to the petitioner are calculated by the respondents and it is furnished below:-

<i>Sl.No.</i>	<i>Name of the Lessee</i>	<i>Total Extent, Leased out</i>	<i>Balance Amount in Rs.</i>		
			Arrear	Current	Total Balance
1	Bharat Petroleum	0.12 acre	6/16 Rs.2,83,73,217	Rs.23,48,514	Rs.3,07,21,731

6. The writ petitioner failed to pay the arrears of the lease rent as demanded by the respondent Government and filed a petition to the



Commissioner of Land Administration and subsequently filed W.P.No.26585

of 2019 before the High Court of Madras. The said Writ petition was dismissed by this Court on 26.11.2019. Admittedly, the period of lease expired on 14.05.2003. Subsequently, the petitioner continued without any lease agreement and the Government fixed the annual lease rent at 14% of land cost as per the Government orders issued in G.O.Ms.No.38.

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7. In the said Government Order in G.O.Ms. No.38, Revenue Department, dated 25.01.2005, the Government had issued orders for renewal of lease of the Government land measuring 0.21-6/16 acres in S.No.1749 and 1750 of Udthagamandalam Taluk, Nilgiris District in faour of M/s. B.P.C.L. for a further period of 9 years from 15.05.94 to 14.5.2003 under the provision of RSO 24A with the following conditions:

“(i) The lease rent shall be refixed, once in three years.

(ii) The annual lease rent shall be fixed at 14% of land cost and 13% of Additional Surcharge thereon shall be fixed and collected for the period from 15.5.1994 to 14.5.1997.

(iii) The annual lease rent shall be fixed at 14% of land cost and 13% of Additional Surcharge thereon shall be fixed



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and collected for the period from 15.5.1997 to 3.6.1998. The annual lease rent at 14% shall be fixed (including Additional Surcharge) and collected for the period from 4.6.1998 to 14.5.2000.

(iv) The annual lease rent shall be fixed at 14% of land cost (including additional surcharge) and collected for the period from 15.5.2000 to 14.5.2003.

(v) Penal Interest at the rate of 12% of lease rent per annum shall be collected for the belated payment of lease rent from 15.5.1994 till the date of issue of G.O.”

8. In G.O.Ms.No.324 Revenue LD 2(1) Department, dated 10.9.2001, issued instructions that when the lease has to be renewed on its period of expiry, the lessee shall pay the lease amount which may be tentatively arrived at by adding the percentage provisional increase in lease on the tentative valuation of the land, an increase of 12% per annum to the lease year / reference year till its renewal / revision of rent that may be fixed.

9. The working sheet for the calculation of lease rent was arrived by Tahsildar Udhagamandalam with reference to the prevailing rule provision



along with the demand notice. The payment made by the petitioner company was a tentative one and on finalization of the revision of lease rent, the petitioner company is liable for payment of lease rent as per the norms along with the 12% penal interest for the period of belated payment of lease rent.

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10. Admittedly, in the present case, the lease period expired as early as 14.05.2003 and in view of pendency of W.P.No.13012 of 2007, filed by M/s.N.N. Naidu and Sons (Dealer of BPCL) and interim stay granted thereon, further renewal of lease could not be made. While dismissing the writ petition on 08.08.2019, the Hon'ble High Court has pointed out that M/S. N.N.Naidu & Sons has no locus standi to challenge the demand notice issued by the Tahlisdar, as they were not party to the notice. The petitioner's Company having known the above fact, allowed the dealer to contest the case unnecessarily for the past 13 years and failed in the legal forum, now has come forward to negotiate with the administration for the fixation of the fair lease rent.

**Petitioner's arguments:**

11. The learned Additional Solicitor General of India, appearing on behalf of the petitioner mainly contended that the petitioner BPCL is ready to settle the arrears of lease rent but the penal rent is to be waived. The tentative demand notice issued by the Tahsildar is based on an erroneous calculation and they have not considered the fact that the BPCL is serving for the benefit of the people in that locality by running a retail petrol bunk and therefore, the respondent ought to have considered the case of the petitioner while fixing the lease rent in an exorbitant manner. The tentative demand notice was issued surprisingly without prior intimation to the petitioner. The Government renewed the lease in G.O.Ms.No.38 and therefore, the Tahsildar ought not to have revised the rent without the permission of the Government. The tentative lease rent from 15.05.2003 to till date is to be worked out in a proper manner and therefore, the demand notice is to be set aside.

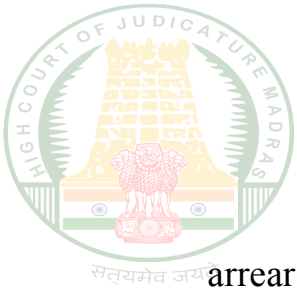
Arguments on behalf of respondents 1 to 3:

12. The learned Additional Advocate General mainly contended that the first writ petition was dismissed on the ground that the dealer has no locus standi. The subsequent writ petition filed by the petitioner in W.P.No.26585



of 2019 was dismissed by this Court on 26.11.2019 on the ground that the Commissioner of Land Administration conducted an enquiry on the representation submitted by the writ petitioner on 14.11.2019 and based on the said representation of the BPCL, the writ petition was disposed of. Admittedly, the lease period expired on 14.05.2003 and the petitioner is in occupation of high value Government land without paying proper rent incommensuration of the rent prevailing in that locality. The Government have sustained huge financial loss despite the fact that the petitioner is a commercial organisation and is making huge profit by running petrol bunk in that locality.

13.The learned Additional Advocate General brought to the notice of this Court that several petrol bunks are running adjacent to the subject petrol bunk and even if the Government land has been resumed, the public services will not get affected and therefore, the contention of the petitioner that they are doing public services, in this case, may not have much relevance. The petitioner has taken the bunk from the erstwhile dealer M/s.N.N.Naidu & Sons and they are running it themselves.



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14. That being the factum, the petitioner ought to have paid the arrears of the lease rent as per the Government order issued for the purpose of renewal of lease. Since the petitioner failed to pay the lease rent, the lease was not renewed by the Government and therefore, the petitioner is liable to vacate the premises failing which the Government has to resume the land to protect the financial interest of the State. It is contended that as of now the petitioner corporation has to pay a sum of Rs.3,55,31,862/- towards arrears of the lease rent. The Government is continuously sustaining monetary loss on account of non payment of the lease rent. That apart, Udthagamandalam is a hilly area and there is a scarcity of land. The lands are valuable in hilly areas and the Government of Tamil Nadu required lands for providing public services. The petitioner is in occupation of the valuable Government land without even paying the lease rent and therefore, the writ petition is to be dismissed.

Discussion:

15. It is not in dispute between the parties that the Government in G.O.Ms.No.38, Revenue Department dated 25.01.2005 issued orders for renewal of lease of Government land measuring 0.21 6/16 acres of Udthagai



Taluk in favour of the writ petitioner BPCL for a further period of 9 years from 15.05.1994 to 14.5.2003 under the provision of RSO 24 A.

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16. As per the Revenue standing orders, conditions are imposed. Admitting the condition as stipulated in the revenue standing orders, the petitioner accepted the renewal of lease by the Government and was paying the rent as fixed initially. The revenue standing orders stipulates conditions that the lease rent shall be re-fixed once in three years. The annual lease rent shall be fixed at 14% of land cost and 13% of Additional Surcharge thereon shall be fixed and collected for the period from 15.05.1994 to 14.05.1997. The penal interest at the rate of 12% of the lease rent per annum shall be collected for the belated payment of lease rent from 15.05.1994 till the issuance of G.O. The petitioner have accepted the lease conditions imposed with reference to Revenue Standing order 24A and continued the occupation of the Government premises and was running a retail petrol bunk.

17. Nilgiris District is a hilly area with more than 45% forest coverage where land is a scarce resource and the respondents have stated that the District Administration finds it difficult to identify lands for any public



interest. In the present case, the petitioner lessee is neither paying the lease rent nor is vacating the Government land so as to put the land for any kind of public interest.

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18. In respect of the Government letter (Ms)No.155, Revenue Department dated 10.03.2005, the Government issued orders for collection of lease rent at 7% of land cost inclusive of additional surcharge and 14% of land cost inclusive of additional surcharge for non commercial purpose and commercial purposes respectively, in respect of the leases in the Municipal areas and Corporation limits. Based on the said Government Order, the lease rent at the rate of 14% of the land cost is worked out as lease rent and the petitioner has not challenged the Government Order having accepted the renewal of lease and fixation of lease rent as ordered by the Government. The petitioner company has to abide by the terms and conditions. The petitioner company having agreed to the terms and conditions laid down by the Government and the District Administration, Nilgiris District, is obligated to comply with the same. The penal rent at the rate of 12% of the lease rent per annum was also imposed by way of the condition which was agreed by the petitioner company.



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19. The admitted facts between the parties to the lis on hand would be sufficient to form opinion that the lease expired on 14.05.2003 and the arrears of lease rent was calculated based on the Government Order issued in G.O.Ms. No.38 dated 25.01.2005. Tentative demand notice was issued based on the Government Orders. The lease was not renewed subsequently. The petitioner company is in unauthorised occupation of the valuable Government land. Adjacent to the petitioner company, there are other petrol bunks which are run by other petroleum corporations. Thus, resumption of land would not cause any public inconvenience in that locality. The petitioner is a chronic defaulter in payment of lease rent and they have continuously committed default in payment of the rent. The petitioner BPCL, being a commercial organisation and running petrol bunk for profit, is not entitled to claim any leniency either from the Government of Tamil Nadu or from the hands of this Court. The petitioner is selling petroleum products and making profit without paying lease rent to the Government of Tamil Nadu resulted in monetary loss to the state exchequer. As rightly pointed out that Udthagamandalam is a hilly area where 45% of the area is covered by forest, the District Administration finds it difficult to identify lands for public purposes. That being the factum,



any leniency or misplaced sympathy by this Court would result in financial loss to the State Exchequer and would be equally detrimental to the public interest, more specially with reference to the topography of Udhagamandalam Taluk, Nilgiris District.

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20. The petitioner has not established any acceptable grounds for the purpose of considering their case for grant of relief. Thus, this Court is inclined to pass the following orders:

(i) The relief as such sought for in the present writ petition stands rejected.

(ii) The petitioner BPCL is directed to vacate the subject Government land within a period of one (1) month from the date of receipt of a copy of this order and to hand over vacant possession to the District Administration of Nilgiris District.

(iii) In the event of failure to vacate the premises within a month, the respondents 1 to 3 are directed to evict the petitioner and resume the Government land immediately on expiry of the one month period.

(iv) The respondents 1 to 3 are directed to recover the arrears of



lease rent and other charges as admissible under law by following the procedures as contemplated.

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21. With these directions the writ petition stands **disposed of**. No Costs. Consequently, connected miscellaneous petition is closed.

19.09.2023

Index: Yes
Speaking order
Neutral Citation: Yes
(*sha*)

To

1. State of Tamil Nadu,
Rep. by its Secretary,
Revenue Department, Secretariat,
Fort St.George, Chennai-600 009.

2. The Special Commissioner and
Commissioner of Land Administration,
Chepauk, Chennai-600 005.

3. The Tahsildar,
Udagamandalam, The Nilgiris.

4. N.N.Naidu and Son,
Dealers in petroleum products,
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S.M.SUBRAMANIAM, J.

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