THE HON'BLE JUSTICE MOUSHUMI BHATTACHARYA

W.P.Nos.25779 and 18813 of 2024

Mr. Mayur Reddy, learned Senior Counsel representing K.V.Raman, learned counsel for the petitioners in W.P.No.18813 of 2024.

Mr. B. Adinarayana Rao, learned Senior Counsel appearing for Mr. M.K. Viswanath Naidu, learned counsel for petitioner in W.P.No.25779 of 2024.

Mr. Dominic Fernandes, learned Standing Counsel for IOCL.

COMMON ORDER:

Both the writ petitions proceed on a similar set of facts with minor variations and seek the same relief i.e., for a writ of mandamus declaring the action of the respondents/the Indian Oil Corporation Limited (IOCL) and their Retail Sales Heads, respectively, in refusing to vacate the premises belonging to the petitioners, as illegal and arbitrary. The petitioners seek a consequential direction on the said respondents to vacate the premises and stop operation of the IOCL Petroleum Outlets on the petitioners' properties.

2. The admitted facts which are common to both the writ petitions are stated below:

2.1. The petitioners claim to be the absolute owners of the properties which form the subject matter of the Lease Deeds executed between the petitioners and the IOCL on certain agreed terms including monthly rents. The leases were executed for a period of 20 years - from 30.06.2004 till 30.06.2024 in W.P.No.18813 of 2024 and from 11.08.2004 to 10.08.2024 in W.P.No.25779 of 2024. Both the leases hence expired on 30.06.2024 and 10.08.2024 i.e., before filing of the writ petitions in July, 2024 and September, 2024, respectively.

2.2. The petitioners in W.P.No.18813 of 2024 became the owners of the subject property by virtue of a registered Will dated 15.04.2015. There is no dispute as to the ownership of the subject properties. The petitioners wrote to the respondents on 24.05.2023, 24.07.2023 and 08.02.2024 respectively, conveying that they are not interested to extend the lease and requesting the respondents to vacate the premises after expiry of the lease period. The Divisional Retail Sales Head, Secunderabad Division Office, IOCL (respondent No.3 in W.P.No.18813 of 2024 and respondent No.2 in W.P.No.25779 of 2024) wrote to the petitioners on 04.09.2023 requesting for renewal of the lease for a further period of 19 years and 11 months. The petitioners in W.P.No.18813 of 2024 sent legal notices to the respondents on 21.09.2023 and 04.03.2024 reiterating their intention not to extend the lease and demanding that the premises be vacated and vacant possession be handed over to the petitioners after expiry of the lease period. The leases expired on 30.06.2024 and 10.08.2024 respectively. The respondents however continued to utilize the subject premises and continue to do so as on date.

2.3. There are slight differences in the dates of correspondence between the parties but the effect of the communications exchanged between them remains the same.

2.4 On 30.09.2024, the Petroleum and Explosives Safety Organisation (PESO) suspended the petroleum bunk's license granted to the respondents for storage and supply of Petrol and High Speed Diesel.

2.5. IOCL filed a Suit (O.S.No.17 of 2024) before the learned District Judge, Medchal-Malkajgiri, on 23.04.2024, for specific performance viz., execution of the lease deed for a further period of

19 years 11 months. The Court is informed that the said Suit is pending as on date.

3. Learned Senior Counsel appearing for the petitioners in both the writ petitions argue in favour of maintainability of the writ petitions on the ground that the action of the respondents in refusing to vacate the subject premises despite expiry of the lease period is arbitrary, illegal and offends Articles 14 and 21 of the Constitution of India. Counsel has placed reliance on several decisions in support of their contentions on the maintainability of the writ petitions.

4. Learned counsel appearing for the respondents/IOCL has argued against the maintainability of the writ petitions on the ground that a writ petition would not lie for enforcement of contractual obligations where constitutional or statutory rights are not involved. Counsel further submits that the respondents have stopped utilizing the subject premises as Petrol Bunks and have repeatedly requested the petitioners for extending the leases in the terms which are favourable for the petitioners. Counsel argues, with commendable effort, that the facts in the present cases do not involve any statutory liability on the part of the respondents and

are purely in the realm of a private contract where a Court should be slow to interfere under Article 226 of the Constitution.

5. The issue of maintainability of the writ petitions should be decided first.

6. Article 226 (1) of the Constitution of India confers power to every High Court to issue writs or orders for enforcement of the rights conferred under Part III of the Constitution or for any other purpose. Part III sets out the Fundamental Rights including equality before law and protection of the right to carry on any trade or business and protection of life and personal liberty under Articles 14, 19 and 21 respectively. It is settled that the jurisdictional High Court exercising powers under Article 226 of the Constitution can intervene in instances of violation of the Fundamental Rights of any person or citizen and issue appropriate orders and directions on an authority or person falling within the contours of Article 226 or Article 12 of the Constitution as the case may be.

7. The question to be answered in these cases is whether the action of the respondents, as public authorities, in failing to vacate

the subject premises after expiry of the leases amounts to arbitrary action warranting invocation of Article 226 of the Constitution.

8. The law with regard to obligations of the State or instrumentality of the State as a partner in a Contract has now been settled by the Supreme Court in a long line of decisions. The scope of judicial review under Article 226 of the Constitution of India has gained traction and width in recent times through judicial pronouncements. The Supreme Court and the High Courts have arrived at a consensus that a writ petition is maintainable even where the relief claimed stems from the contractual sphere where the State/instrumentality of the State is a party. The complaining party (the petitioner) can invoke the jurisdiction of a High Court within the bounds of judicial review on the fairness doctrine.

9. The High Court in such cases retains the discretion to decide whether the controversy stems purely from the consensual element of a contract in the nature of tenders or whether the dispute consists of a public law element. In the latter case, the writ Court

can certainly intervene where the State has acted arbitrarily or has abused its dominant position in contractual matters.

10. The shift of boundaries expanding the zone of writ remedies is attributable to several decisions including *ABL International Ltd. Vs. Export Credit Guarantee Corporation of India Ltd.*[1], *Joshi Technologies International Inc. Vs. Union of India*[2], *M.P. Power Management Co. Ltd. Vs. Sky Power Southeast Solar India Pvt. Ltd.*[3], and the most recent decision in *Subodh Kumar Singh Rathour Vs. Chief Executive Officer*[4] where the Supreme Court examined the decisions holding the field of whether a writ petition assailing the action of a State or instrumentality of a State in a contractual dispute can be entertained by a High Court under Article 226 of the Constitution of India.

11. All of the aforesaid decisions point to the direction of opening up the boundaries in contractual disputes with the underlying mandate that the State, as a contracting party, must act fairly and reasonably. In other words, the State must not act (or fail to act)

[1] (2004) 3 SCC 553
[2] (2015) 7 SCC 728
[3] (2023) 2 SCC 703
[4] 2024 SCC OnLine SC 1682

in a manner which offends Article 14 of the Constitution of India, namely, unequal treatment. The decisions also reiterate that mere existence of disputed questions of fact would alone not disentitle a Court from entertaining a writ petition as a matter of rule.

12. While a complaint grounded on a breach of contract is more suitable for resolution in a civil action, the mandate of the State to inform all its actions with reasonableness is not diluted if the complaining party invokes the writ jurisdiction of a High Court: *M.P Power Management Co. Ltd.* (supra). State action in contractual matters must conform to a standard of rational and non-discriminatory conduct which is free from extraneous considerations: *Ramana Dauaram Shetty Vs. The International Airport Authority of India*[5].

13. Although, counsel for the respondents-IOCL has relied on paragraph 7 of the Report in *Hindustan Petroleum Corporation Limited v. Dolly Das*[6] to urge that a writ proceeding would not lie to enforce contractual obligations even if it is sought to be enforced against a State in the absence of constitutional or statutory rights

[5] (1979) 3 SCC 489
[6] (1999) 4 SCC 450

being involved, paragraph 9 of the said decision opines that there can be no hard and fast rule in exercise of discretion by a Court. The Supreme Court in *Dolly Das* (supra) in fact disposed of the appeal without interfering with the order of the High Court on the point of maintainability. The fact that the decisions shown to the Court were given on different factual considerations would not be a ground to relegate the petitioners to a different forum since the respondent-IOCL, as a public body, has no defense to its high-handed conduct in holding on to the subject premises.

14. Therefore, the fact that the present dispute arises out of lease deeds executed between the petitioners and a public authority would not, by itself, oust the jurisdiction of this Court. The only thing which must be assessed is whether the conduct of the respondent amounts to arbitrariness which breaches the standard of fairness expected of a public body. The answer to whether the writ petition is maintainable despite emanating from a contract is hence answered in the affirmative and in favour of the petitioner.

15. There is no dispute that both the leases have expired on 30.06.2024 and 10.08.2024 respectively and that the respondents/IOCL continues to be in occupation of the leased lands. The second question to be answered is whether the action of the respondents in doing so would amount to a conduct within the periphery of the power which can be exercised by a Court under Article 226 of the Constitution.

16. The answer would have been easier had the respondents committed certain overt acts reflective of arbitrary conduct. The Court could then have concluded that a writ petition would automatically lie from such conduct. In most of the cases cited on behalf of the parties, the State either terminated the contract, cancelled a tender or excluded a party from a selection process which culminated in the parties approaching the writ Court. The Courts accordingly found the action of the State to be writ-worthy.

17. Inaction or the absence of overt action, so to speak, falls in a different category. Inaction is not lethargic lack of action *per se* but a culpable failure or refusal to act where the action would have led to an outcome of "Rightful" action, that is one which preserves the rights fundamental to the other party. Therefore, silence or not

doing anything, is equivalent to doing something which robs another of his/her rights and makes the inaction actionable in a writ Court. Inaction on the part of a State body is generally lack of diligence, probity or action which is expected of a public authority in terms of reflecting its will to act in furtherance of the Fundamental Rights guaranteed to persons and citizens under the Constitution. If a public body fails to take appropriate action to prevent breach of these rights, the inaction would warrant judicial review.

18. In the present case, the respondent, in fact, has done nothing; or in other words, stayed put on the disputed land and refused to budge therefrom despite expiry of the lease. The absence of overt acts on the part of the respondents cannot however be used as a defense to a charge of arbitrariness. Quietly continuing to squat on the petitioners' land without a right or a license would be equivalent to an act which is both overt and lacking in probity. The respondents have also failed to act despite several notices sent by the petitioners from July, 2023 to March, 2024, which was well before the expiration of the leases.

19. Common sense dictates that a party, least of all a public body, cannot hold on to a right or a property which no longer exists. The continued occupation of the leasehold land is not only an act of defiance but also one which has the potential of causing monetary loss to the petitioners. The petitioners could well have leased the land to a third party but are unable to do so by reason of the continued occupation by the respondents. The respondents' occupation may also be described as "litigious possession" which was equated to unlawful possession by the Supreme Court in *C.Albert Morris v. K. Chandrasekaran.*[7] And litigious indeed it is, since the respondent filed a Suit against the petitioners for specific performance for executing the lease deed for a period of 19 years 11 months before the District Court at Medchal-Malkajgiri District.

20. In *National Company v. Territory Manager, Bharat Petroleum Corporation Limited*[8], the Supreme Court considered a similar issue i.e., whether a writ petition under Article 226 of the Constitution can be maintainable for vacating the premises in question occupied by Oil Companies even after expiry of the lease period. The Supreme Court held that the conduct of the respondent No.1-

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[7] (2006) 1 SCC 228

[8] (2021) 13 SCC 121

BPCL in continuing to be in occupation of the premises after expiry of lease was unbecoming of a statutory corporation which is a "State" within the meaning of Article 12 of the Constitution. The view of this Court with regard to continued occupation of the respondents by unlawful means is reinforced by the suspension of license of the respondents' Petrol Bunks by the PESO on 30.09.2024. Therefore, the respondents cannot have any conceivable reason for staying on in the said premises with or without using the same as a retail outlet. The fact that the respondents have discontinued using the land as a retail outlet does not clothe the occupation with legality.

21. The second question is hence also answered in favour of the petitioners – that is, the respondent's inaction amounts to arbitrary and unreasonable conduct.

22. The Court is therefore inclined to hold in favour of the petitioners on both counts i.e., the maintainability of the writ petitions as well as on the need to intervene and pass appropriate orders in favour of the petitioners.

23. W.P.Nos.25779 and 18813 of 2024 are allowed and disposed of by directing the respondents to vacate the subject premises and hand over possession of the subject premises to the petitioners within 4 weeks from 18.11.2024.

24. Miscellaneous Applications, if any, pending in these writ petitions stand closed. There shall be no order as to costs.

MOUSHUMI BHATTACHARYA, J

Date: 13.11.2024
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