

**Smt. Dolly Das Vs. Hindustan Petroleum Corporation Ltd. and anr.**

**Smt. Dolly Das Vs. Hindustan Petroleum Corporation Ltd. and anr.**

**SooperKanoon Citation :** [sooperkanoon.com/525307](http://sooperkanoon.com/525307)

**Court :** Orissa

**Decided On :** Aug-11-1993

**Reported in :** AIR1994Ori103

**Judge :** G.B. Patnaik and ;B.N. Dash, JJ.

**Acts :** Caltex (Acquisition of Shares of Caltex Oil Refining (India) Limited and of the Undertakings in India of Caltex (India) Limited) Act, 1977 - Sections 5(2) and 7(3)

**Appeal No. :** Original Jurn. Case No. 2162 of 1993

**Appellant :** Smt. Dolly Das

**Respondent :** Hindustan Petroleum Corporation Ltd. and anr.

**Advocate for Def. :** Jayant Das, Adv.

**Advocate for Pet/Ap. :** A. Patnaik, Adv.

**Disposition :** Petition allowed

**Judgement :**

**G.B. Patnaik, J.**

1. The petitioner as the lessee in respect of the disputed plot was in possession of the leasehold property on the basis of the lease deed dated 10th of August, 1964,

executed by the Governor of Orissa. The lease deed indicates that the land had been leased out for industrial and commercial purposes, mainly for automobile shop room and service station. The original lessee was M/s. Kalinga Automobiles, a partnership firm, and the present petitioner is now the sole lessee. M/s. Caltex (India) Limited entered into a lease agreement with the petitioner and became the sub-lessee in respect of the disputed premises by virtue of the lease deed dated 1-10-1969 and the period of lease was 10 years commencing from 1-10-1969. The lease deed contained a clause conferring an option of renewal with the lessee for a further term of ten years to be exercised before the expiry of the term created under the original lease and it was clearly indicated in the lease deed that upon exercise of the right of renewal, a fresh lease incorporating all the terms and conditions suitably modified shall be executed and registered by both parties to the agreement. While the original lease commencing from 1-10-1969 for a period of 10 years was continuing and M/s. Caltex (India) Limited was the lessee, the Caltex (Acquisition of Shares of Caltex Oil Refining (India) Limited and of the Undertakings in India of Caltex India) Limited) Ordinance, 1976, was promulgated. The Government of India in the Ministry of Petroleum issued a notification dated 30th of December, 1976, in exercise of powers conferred by Sub-section (1) of Section 9 of the Ordinance directing that the right, title and interest and liabilities of Caltex (India) in relation to its undertakings in India shall vest in Caltex Oil Refining (India) Limited with effect from 30th of December, 1976. The said notification has been annexed as Annexure-A/1 to the additional affidavit filed by the opposite parties. On 23-4-1977, the Parliament enacted the Caltex (Acquisition of Shares of Caltex Oil Refining (India) Limited and of the Undertakings in India of Caltex (India) Limited) Act, 1977 (Central Act 17 of 1977) (hereinafter referred to as the 'Act'). On 9-5-1978, the Company Law Board in exercise of powers conferred under Sub-sections (1) and (2) of Section 396 of the Companies Act, 1956, passed an amalgamation order amalgamating the Caltex Oil Refining (India) Limited and Hindustan Petroleum Corporation Limited, a copy of which order has been annexed as Annexure-A/2 to the Additional Affidavit filed by the opposite parties. The aforesaid order is referred to hereinafter as the 'Amalgamation Order'. Clause 3 of the said Amalgamation Order stipulated that on the appointed day, the Undertaking of Caltex Oil Refining (India) Limited (for short, CORIL) will stand

transferred to, and vested in, the Hindustan Petroleum Corporation Limited (for short, HPCL) and HPCL shall be deemed to be the Company resulting from the amalgamation. Clause 5 of the Amalgamation Order protected the contracts et cetera entered into by CORIL. Clause 5 of the Amalgamation Order is extracted herein below in extenso :--

'5. Saving of contracts, etc.-- Subject to the other provisions contained in this Order and without prejudice to the powers conferred on Central Government under Section 15 of the Caltex (Acquisition of Shares of Caltex Oil Refining (India) Limited) and of the Undertakings in India of Caltex (India) Limited) Act, 1977, all contracts, deeds, bonds, agreements and other instruments of whatever nature to which CORIL is a party subsisting or having effect immediately before the appointed day, shall, as from that day, be of as full force and effect against, or in favour of. HPCL, as the case may be, and may be enforced as fully and effectually as if, instead of CORIL, HPCL has been a party thereto or as if they had been executed in favour of HPCL.'

The said H PCL expressed its desire exercising its option for renewal of the lease for a further period of 10 years by requesting through a letter date 23rd of May, 1979, which has been annexed as Annexure-3 to the writ application. The said HPCL purported to have exercised its power under Clause 3(g) of the original lease agreement between M/s. Kalinga Automobiles and Caltex (India) Limited. In reply to the aforesaid letter M/s. Kalinga Automobiles indicated that monthly rental should be revised in view of the escalation of the Government rate with regard to the rental for the land and it was also indicated that since the Corporation has appointed a dealer and M/s. Kalinga Automobiles was in business in automobiles, the Corporation may appoint them as dealer. Be that as it may, notwithstanding the HPCL exercising its option for renewal for a further period of 10 years, by intimating M/s. Kalinga Automobiles vide letter dated 23-5-1979 under Annexure-3 and M/s. Kalinga Automobiles having some reservations about the same as per Annexure-4, no lease deed was executed in accordance with Clause 3(g) of the original lease agreement, nor any such deed was registered. But, however, the Corporation continued to occupy the premises in question and M/s. Kalinga Automobiles as well as its successor-in-interest, the present petitioner, continued

to receive the monthly rent. On 13th of September, 1989, HPCL intimated M/s. Kalinga Automobiles Ltd. that they are exercising the further right to renew the lease for a period of 20 years commencing from 1-10-1989 in accordance with Sections 5 and 7(3) of the Act. The said letter has been annexed as Annexure-5 to the writ application. The present petitioner who has acquired the rights of M/s. Kalinga Automobiles gave a reply on 17-10-1989, annexed as Annexure-6, intimating that there has been no execution and registration of any lease deed in favour of the Corporation in accordance with Clause 3(g) of the agreement subsequent to the expiry of 10 years' period which expired on 30-9-1979 and, therefore, the question of exercising any further right of renewal under Sections 5 and 7(3) of the Act does not arise. The petitioner accordingly requested the Corporation to handover the premises. The disputed premises in the meantime has been mutated in the name of the petitioner by the State of Orissa, the owner of the property, in view of the relinquishment of the rights of the other partners of the firm. Notwithstanding the request of the petitioner, the Corporation having insisted on a further term of renewal, the petitioner has approached this Court, for the following reliefs :--

(a) to declare that opposite party No. 1 has no right under Sections 5 and 7 of the Act to claim any renewal of the lease in respect of the premises in question;

(b) to quash the letter of opposite party No. 1 dated 13-9-1989, annexed as Annexure-5;

and

(c) to grant such further relief as the court may deem fit and proper.

2. The opposite parties have filed a counter-affidavit taking the stand that in view of Sections 5 and 7 of the Act, the opposite parties have the right to get renewal of the lease for further period of twenty years with effect from 1989 and the petitioner is bound to renew the same, since the renewal in question is under the provisions of a statute. It is further contended that the petitioner has no locus standi to file the writ application as the lessee was a partnership firm called M/s. Kalinga Automobiles. With regard to the petitioner's case of non-execution of any lease

deed after expiry of the original lease in the year 1979, the stand of the Corporation in the counter-affidavit is that even though no lease deed has been executed and registered, but in view of the fact that the Corporation is continuing to possess the premises and is paying the rent and the petitioner is accepting the same, it must be deemed in the eye of law that there has been a renewal of the lease and the Corporation continues as a lessee. On behalf of the opposite parties an additional affidavit has been filed annexing a few documents to indicate how the HPCL acquired the rights and liabilities of CORIL.

3. In course of hearing, we had called upon the petitioner's counsel to produce the original lease deed executed by the State of Orissa in favour of M/s. Kalinga Automobiles to find out the real purpose for which the lease had been granted and in accordance with the same, a copy of the lease deed has been produced before us by Mr. Patnaik for the petitioner.

4. From the averments made and materials produced, the following admitted facts emerge. The State of Orissa granted lease in favour of a partnership firm called M/s, Kalinga Automobiles in the year 1964 under the lease deed dated 10th of August, 1964 in respect of the disputed premises for industrial and commercial purposes, mainly for automobile shop room and service station. On a portion of the leasehold, the lessee M/s. Kalinga Automobiles had constructed a structure for running a petrol pump, but instead of itself running the pump had sublet the disputed premises on 1-9-1970 to Caltex (India) Limited for a period of ten years commencing from 1-10-1969 and executed and registered the lease deed for that purpose and said Caltex (India) Limited appointed an agent to run the petrol pump. The tenure of the lease expired on 30-9-1979. Prior to the said expiry, by virtue of the Ordinance promulgated in 1976, the Central Government issued notification under Section 9(1) of the Ordinance vesting the rights of the Caltex (India) Limited with Caltex Oil Refining (India) Limited. Under the notification issued by the Central Government under Section 9(1) of the Ordinance, the right, title and interest of Caltex (India) Limited, stood vested with a Government Company called Caltex Oil Refining (India) Limited. Thereafter by virtue of the Act, the shares of Caltex Oil Refining (India) Limited were acquired by the Government of India and with effect from the appointed day, i.e. 30th of December, 1976, the right, title and

interest of Caltex (India) Limited in relation to its Undertakings stood transferred to and vested in the Government Company called the Caltex Oil Refining (India) Limited (CORIL). Subsequently, by virtue of the Amalgamation Order passed by the Company Law Board, the CORIL stood amalgamated with the HPCL and thus HPCL became the successor-in-interest of the original lessee, namely Caltex (India) Limited. Even though the lease expired since 30-9-1979, but there has been no execution of a fresh lease deed and yet HPCL continues to be in possession of the premises. The original partners of the partnership firm having relinquished their interest in favour of the petitioner who is the widow of one of the partners, the petitioner has been recognised as the lessee in respect of the leasehold by the grantor, the State of Orissa and she has been mutated accordingly.

5. Mr. Patnaik for the petitioner raises the following contentions :---

(i) No lease deed having been executed renewing the lease after its expiry 30-9-1979 in accordance with Clause 3(g) of the original lease agreement between the petitioner and Caltex (India) Limited, the HPCL who is the successor-in-interest of said Caltex (India) Limited is not entitled to exercise any further option of renewal and, therefore, the impugned letter under Annexure 5 is without jurisdiction and the position of the HPCL is that of a trespasser;

(ii) Even if the HPCL had a right of renewal under Section 5 read with Section 7 of the Act, the said renewal could be exercised only once and, therefore, in any view of the matter, there is no right of renewal subsequent to 1989;

(iii) Even under the Act, the right of renewal has to be exercised when desired by the Central Government and admittedly, the Central Government having not desired, it was not open for the HPCL to exercise that right;

(iv) In view of the enormous escalation of price of land in the capital city of Bhubaneswar, it is an arbitrary and inequitable act and conduct of the Corporation to occupy the premises at a paltry rent of Rs. 1900/- per month;

(v) In any view of the matter, the petitioner herself being in automobile business and having offered herself to be appointed as an agent under the Corporation to run the petrol pump, the Corporation instead of acceding to the said request illegally appointed another as an agent and the said act must be held to be arbitrary and unjustified.

6. Mr. Das appearing for the Corporation, on the other hand, contends that by legislation the Corporation having acquired the rights and liabilities of the original lessee, namely Caltex (India) Limited, was entitled to exercise the option of renewal contained in the lease deed and, in fact, did exercise that option in 1979. Even though no lease of renewal has been executed, yet the Corporation having continued to possess the land and having paid rent for the same which the petitioner has accepted, in the eye of law, there has been a renewal of the lease and, therefore, in accordance with the original terms contained in the lease deed between M/s. Kalinga Automobiles and M/s. Caltex (India) Limited, the Corporation has a right for asking for a further renewal of 20 years and thus the letter under Annexure 5 cannot be said to be illegal or arbitrary. Mr. Das further contends that bearing in mind the object of enacting Central Act 17 of 1977 which Act was enacted in public interest and the Parliament having conferred the right of renewal under Sections 5 and 7 of the Act, the said right cannot be taken away unilaterally by the lessor. Mr. Das lastly urges that the Corporation is willing to enhance the rent bearing in mind the escalation of price subject to the condition that lessor agrees for renewing the lease for a period of 20 years.

7. In view of the rival submissions at the Bar, the first question that arises for consideration is whether the HPCL has any right of further renewal after expiry of the renewed period of 10 years by virtue of Sections 5 and 7 of the Act. It is in this context it must be borne in mind that even though HPCL became the successor-in-interest of Caltex (India) Limited, the original lessee, while the original lease was still subsisting and the said lease expired on 30-9-1979, but no renewal lease deed has been executed by the lessor. Before delving into an enquiry on the first question, it would be appropriate for us to notice the object with which the business in dealing with petroleum was nationalised. The Caltex Petroleum Corporation was a Company incorporated in the United States of America and as

one of its subsidiaries, the Caltex Oil Refining (India) Limited, an Indian Company was carrying on the business of refining crude oil and producing petroleum products in India. Another subsidiary Company of the said Caltex Petroleum Corporation called Caltex (India) Limited which was also a foreign Company was carrying on the business of marketing and distributing the petroleum products. Apart from Caltex (India) Limited, two other foreign companies were also dealing with petroleum products in India, namely ESSO and Burmah Shell. In order to secure the ownership and control of the production of nation's petroleum resources and to secure ownership and control of the undertakings carrying on the business of distributing and marketing of petroleum products which would subserve the common good, the Parliament enacted three Acquisition Acts, namely ESSO (Acquisition of Undertakings in India) Act, 14 of 1974, Burmah Shell (Acquisition of Undertakings in India) Act, 2 of 1976 and Caltex (Acquisition of Shares of Caltex Oil Refining (India) Limited and of the Undertakings in India of Caltex (India) Limited Act, 17 of 1977 and the provisions are in pari materia. We are, however, concerned in the present case with the last Act. The main object underlying the Act is to acquire the right, title and interest of the Oil Company in question carrying on the business of distributing and marketing petroleum products in India with a view to subserving the common good. After enacting the three legislations referred to earlier, the Undertakings of the three foreign Companies stood vested in the Central Government and then the Central Government created two Oil Corporations, called the Hindustan Petroleum Corporation and Bharat Petroleum Corporation. The Undertakings of the ESSO and Caltex (India) Limited merged into the Hindustan Petroleum Corporation whereas the Undertaking of Burmah Shell was transferred into Bharat Petroleum Corporation. After the enactment of the Act, the validity of Sections 5 and 7 of the Act was challenged in two or three High Courts, but each of the High Courts held the Act to be intra vires. We are not concerned in the present case with the vires of the Act since Mr. Patnaik for the petitioner never challenges the same. But it would be appropriate to notice some of these decisions wherein the vires has been upheld but some observations were made which may be relevant for adjudication of the present case.

8. The vires of these Acts was challenged in the case of *Mustafa Hussain v. Union of India*, AIR 1981 Andhra Pradesh 283. After an elaborate discussion of the law on the subject and the provisions of Article 39 of the Constitution as well as Article 31 of the Constitution and on examining Sections 5(2) and 7(3) of the respective enactments, the learned Judges of the Andhra Pradesh High Court observed (para 9) :--

'.....There cannot be any doubt that the State Policy in enacting these Acts is only to give effect to the directive principles as enshrined in Article 39(b) of the Constitution...'

Examining the question as to whether conferring a right to exercise its option is unrelated to the object of acquisition, the learned Judges have made a rather weighty observation which need to be extracted (para 11) :--

'..... Before we proceed further it must be made clear that these provisions do not give scope for any perpetual lease as apprehended by the learned counsel. The corporations can exercise this option only once on the same terms and conditions on which the lease or tenancy was existing on the appointed day.'

On further elaboration on the subject, the Court observed (para 12) :--

'..... A perusal of the preamble as well as the other provisions in the other two enactments would also show that the object behind the State policy was to have the ownership and control over these undertakings dealing in petroleum products which are very essential and to see that the public are supplied with the same. By merely acquiring these undertakings the object cannot be achieved. It is a matter of common knowledge that these undertakings had entered into leases with numerous individuals in respect of the plots on which the supply pumps etc.were installed. Such pumps are very essential for distribution and supply of the products. All such leases and rights of tenancy were in existence on the appointed day. Unless such leases are continued for reasonable time, the very object of acquisition of these undertakings will get defeated. If on the appointed day or soon after many of the leases were about to expire then the State which has acquired these undertakings will be in a difficult position unless the Corporations created by

the State are empowered to continue the leases or rights of tenancy for some more time. It is with this object that Section 5(2) and Section 7(3) of the respective Acquisition Acts are incorporated. Therefore, we have no doubt whatsoever in holding that these provisions are basically and essentially necessary for giving effect to the object of the State policy. It can by no stretch of imagination be said that the dominant object of these impugned provisions is only to achieve an unauthorised purpose.'

The pari materia provision of Esso (Acquisition of Undertakings in India) Act (14 of 1974) came up for consideration before their Lordships of the Bombay High Court in the case of Trade Centre Developers and Builders Pvt. Ltd. v. Union of India, AIR 1985 Bombay 4. The learned Judges of the Bombay High Court upheld the validity of the Act on a finding that the enactment was enacted for giving effect to the policy of the State towards securing the principles specified in Clauses (b) and (c) of Article 30 of the Constitution and, therefore, it be protected by Article 31C of the Constitution. So far as Sections 5(2) and 7(3) of the Act are concerned, the learned Judges observed that the said provisions are integrally connected with the scheme of nationalisation and since the original enactment was for acquisition of the rights for the purpose of distribution of petroleum products so as to subserve the common good, the provisions of Sections 5(2) and 7(3) must be held to be directly related to the said object and consequently, it was held that those provisions are basically and essentially necessary for giving effect to the object of the State Policy. The learned Judges then observed that the provisions of Sections 5(2) and 7(3) of the Act were enacted to give breathing time to the Central Government or the governmental company to organise their affairs. Obviously, the intention of the legislature was to get the said lease renewed on the same terms and conditions for once only and the provisions do not give any scope for perpetual lease. While considering the question whether Sections 5(2) and 7(3) of the Act are in any way violative of Article 300A of the Constitution, the learned Judges held that renewal that is permitted under Sections 5(2) and 7(3) of the Act giving option to the Corporation could be exercised once and on the same terms and conditions of the existing lease which must be held to be fair and reasonable as the provisions are intended to give a breathing time to the Company to organise its affairs.

In a recent decision of the Kerala High Court in the case of P. Sankaranarayanan Nambiarv. Union of India, AIR 1990 Kerala 5, the provisions of Sections 5(2) and 7(3) of the Act were held to be intra vires on the ground that they are the part of a scheme of statutory acquisition and thus are ancillary and incidental provisions to achieve the main purpose of the Act in question. On the question of right of renewal, the learned Judges observed that the option of renewal shall be exercised if so desired by the Central Government, but a mere desire in the context may not be enough and there should be an element of need for renewing the lease.

9. It is not necessary for us to further delve into the matter since in the case in hand the vires of the Act has not been assailed. H.P.C.L. having become of the lessee in place of Caltex (India) Limited while the original lease was subsisting and after expiry of the lease, no fresh lease deed having been executed between the parties, Clause 3(g) of the lease agreement was not acted upon and, therefore the HPCL cannot enforce a second renewal after the renewed term of ten years expired in 1989. Further, the provisions of Sections 5(2) and 7(3) of the Act have been upheld on the ground of reasonableness by interpreting that those provisions contemplate of a renewal of the lease for one term so that the Government would have a breathing space to manage its affairs. Those provisions do not conceive of successive renewals of the lease; as otherwise it would be held to be arbitrary in that case. In that view of the matter, HPCL who is the successor-in-interest of the original lessee, the Caltex (India) Limited, was not entitled to exercise any option for renewal for a further period after the renewed term of 10 years expired in 1989 and consequently, the impugned letter under Annexure-5 must be held to be without jurisdiction as such a power cannot be conceived of under Section 5(2) and 7(3) of the Act.

10. The next question that arises for consideration is whether the Act having authorised only the Central Government to express its desire, HPCL was entitled to exercise that right? Mr. Patnaik for the petitioner places reliance on a Bench decision of this Court in the case of Bharat Petroleum Corporation limited, State of Orissa, (1990) 69 Cut LT 839, wherein this Court held that the expression 'if so desired by the Central Government' is of great significance and Sub-section (2) of

Section 5 cannot have any application when Central Government has not expressed the desire for renewal. No doubt, the aforesaid decision supports the contention of Mr. Patnaik, the learned counsel for the petitioner, but HPCL by virtue of legislative enactment and by virtue of orders of the Company Law Board having acquired all the rights, liabilities and assets of the former Company and further those rights which were with the Central Government having vested with HPCL, HPCL could also express its 'desire' for renewal. The power under Section 5(2) and 7(3) of the Act could thus be exercised by HPCL and Mr. Patnaik's contention, therefore, cannot be accepted.

11. So far as- the third submission of Mr. Patnaik is concerned, it is an undisputed fact that the price of land at Bhubaneswar has escalated to an enormous extent. When the petitioner obtained the lease from the State Government, the premium charge by the State Government was less than Rs. 10,000/-per acre, whereas the present premium that is being charged by the State Government for an acre of land for commercial purposes is about Rs. 30 lakhs. We had taken into consideration the aforesaid escalation while deciding the case of Bharat Petroleum Corporation Limited, (1990) 69 Cut LT 839 and taking into account the fact that the land was centrally located and bearing in mind the escalated price we had called upon the Corporation to pay a rental of Rs. 4,000/ - per month for the period 1st April, 1984, till 31st of March, 1995. After expiry of the lease which had been originally executed between the petitioner and Caltex (India) Limited, no fresh lease deed had been executed between the petitioner and HPCL in accordance with Clause 3(g) of the lease agreement. But yet from 1979, HPCL had continued to possess the premises in exercise of the right of option for renewal conferred upon it under Sections 5(2) and 7(3) of the Act and rent having been paid the petitioner has accepted the rent. The possession of the Corporation, therefore, is an act of holding over. The expression 'holding over' is used in the sense of retaining possession. But in view of the interpretation given by several High Courts with regard the provisions of Sections 5(2) and 7(3) of the Act to the effect that it conceives of exercise of option of renewal for one term, subsequent to 1989, therefore, possession of HPCL would be that of a trespasser. Since the petitioner has not agreed to extend the terms of the lease and since the Corporation has no right to exercise an option for renewal but yet it occupies the premises, particularly

when the Corporation is a public sector undertaking of the Government, the Corporation is bound to pay to the petitioner damages at the rate of Rs. 5,000/-per month until the Corporation vacates the premises in question and delivers possession of the same to the petitioner.

12. So far as the last contention of Mr. Pat-naik for the petitioner is concerned, we also find sufficient force in the same. The premises in question is the leasehold property of the petitioner and it had been leased out to the petitioner for being used for industrial and commercial purposes mainly for automobile shop room and service station. The statement of Objects and Reasons of the Acquisition Acts indicates that the Act were enacted in implementation of the policy for progressively securing the ownership and control of the products of the nation's petroleum resources which would subserve the common good. While the Central Government acquired the business of sale of petroleum of the Company under the Acquisition Act, provisions had been made to give a breathing space to the Central Government or its successor by exercising a right of renewal of the lease for one term so that the affairs could be managed. The object of the Act sought to be achieved being the acquisition of the rights, assets and liabilities of the Esso, the Caltex (India) Limited and the Burmah-Shell and that object having been fulfilled, the Corporation is not entitled to forcibly take away the leasehold interest of the petitioner. The Corporation is running the petrol pump on the leasehold premises of the petitioner by appointing some other person as agent. Therefore, if the petitioner is desirous of continuing the business of sale of petrol, and the terms and conditions are agreed to between the Corporation and the petitioner, then there is no justification on the part of the Corporation to engage another person as its agent and forcibly occupy the leasehold premises of the petitioner and continue the said business. In all fairness, if the petitioner expresses desire to continue the running of petrol pump as an agent of the Corporation at the premises in question, since the petitioner is the owner of the premises the Corporation should appoint the petitioner as its agent to run the petrol pump in question. But this is a matter which has to be decided on an agreement between the parties and no mandamus can be issued in that regard.

13. In the aforesaid premises, we issue the following directions :--

(i) The impugned letter of Hindustan Petroleum Corporation Limited under Annexure 5 is quashed as the Corporation does not have the power to exercise option for any further renewal after expiry of the renewed period in 1989;

(ii) The said HPCL should deliver the vacant possession of the premises in question to the petitioner;

(iii) Subsequent to 30-9-1989, the date on which the renewed period of ten years expired, the HPCL would be liable to pay the petitioner at the rate of Rs. 5,000/- (five thousand) per month till vacating the premises in question in favour of the petitioner

(iv) It would be open for the HPCL to negotiate with the petitioner and if the petitioner agrees, to appoint the petitioner, as an agent of HPCL for continuing the petrol pump in question.

14. Before parting with this case, we think it appropriate to observe that the Hindustan Petroleum Corporation is a Government Company on whom the Central Government by notification vested the right, title and interest and the liabilities of the foreign company called the Caltex Petroleum Corporation. The said Government Company is not entitled to forcibly occupy the leasehold property of the petitioner in the garb of exercising a right under the Act which right the Company does not possess, as discussed earlier. The rights of a citizen to hold its property cannot be abridged or infringed in the manner in which the Corporation has been forcing itself in the pretended exercise of a power referable to an enactment which it does not possess. The Court cannot be a mute spectator when it is brought to the notice that a public sector undertaking is exercising a colourable power or an arbitrary power which on the face of the statute it does not possess. A Government Company like the Hindustan Petroleum Corporation is not expected of forcibly occupying the property of a citizen. In the aforesaid premises, we allow this writ application with the directions and observations made earlier. We, however, make no order as to costs.

**B.N. Dash, J.**

15. I agree.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**