

Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2276 OF 2011
[Arising out of SLP [C] No.9134/2009]

Bharat Petroleum Corporation Ltd.

... Appellant

Vs.

Chembur Service Station

... Respondent

J U D G M E N TR.V.RAVEENDRAN, J.

Leave granted.

2. The appellant - Bharat Petroleum Corporation Ltd. (also referred to as BPCL) is a Public Sector Undertaking under the administrative control of the Ministry of Petroleum & Natural Gas, Union of India, engaged in refining, distributing and selling petroleum products, such as Motor Spirit (MS/Petrol), High Speed Diesel (HSD), Kerosene, Liquefied Petroleum Gas (LPG), etc. all over the country. It is the successor-in-title of Burmah-Shell Oil Storage and Distributing Company of India Ltd. (for short 'Burmah Shell').

3. On 2.9.1971, Burmah Shell took on lease a piece and parcel of land admeasuring about 680 sq.yds. bearing CTS Nos. 339 and 339/1 situated at V.N. Purav Marg, Chembur, Mumbai, for the purpose of a Storage Depot or Service Station with the right to erect and maintain all manner of equipment, plant, machinery, tanks, pumps and structures. In the said plot, Burmah Shell erected and installed the Dispensing pumps together with underground tanks and other equipment, fittings and facilities for storage of petrol, High Speed Diesel (HSD) and other products and constructed some structures for carrying on the business of sale and supply of such products. The said service station is also referred to as a Retail Petroleum Outlet (for short 'the RPO'). On 1.4.1972, the appellant entered into a Dispensing Pump and Selling Licence agreement (for short 'DPSL Agreement') with the respondent, appointing it as the dealer for selling the petroleum products of the appellant from the said RPO.

4. The undertaking of Burmah Shell was taken over by the Central Government and subsequently vested in Bharat Petroleum Corporation Ltd., appellant herein, in accordance with the provisions of the Burmah Shell (Acquisition of Undertakings in India) Act, 1976 on 24.1.1976.

5. The respondent had originally two partners, Dharma Vir Joshi and Mahesh Mangtani and on the death of Dharma Vir Joshi, a fresh dealership agreement described as 'Dispensing Pump and Selling Licence' was executed between the appellant and respondent on 1.12.1995. In terms of the said agreement, the respondent was functioning as a dealer of the appellant.

6. During a surprise inspection on 9.3.2007 carried out by the Quality Control Cell of the appellant in the presence of the Manager of the respondent, it was noticed that one of the dispensing units (No.0IC 3633) was giving a short delivery of 20 ml. of HSD (that is, when tested for accuracy against a five litre calibrated measure, the display showed 5.02 litres). When the Dispensing Unit was checked on flash mode 55555 twice, it gave short delivery of 210 ml. (that is as against 5 litres, the display showed 5.21 litres). Therefore, the Electronic Register Assembly (ERA) of the said dispensing unit was removed from the Unit and was sent for inspection to MIDCO - the manufacturer of the dispensing Unit. MIDCO gave a report on 27.3.2007 stating that there was a deviation in the counting ERA and the Microcontroller chip hardware in the ERA was not the

original component supplied by them with the Dispensing Unit. The appellant, therefore, issued a show cause notice to the respondent on 12.6.2007 alleging that the respondent had manipulated/altered the original chip with a view to making illegal gain by cheating the customers of the company, thereby causing breach of trust, and calling upon the respondent to show cause within 15 days, as to why action should not be taken including termination of the dealership. The respondent sent a reply dated 10.7.2007 denying the allegations in the show cause notice.

7. The respondent filed a suit (Suit No.913/2008) in the Court of Small Causes, Bombay for the following reliefs :
(a) for a declaration that it is the tenant of the appellant in respect of the structures and equipment and sub-tenant of the appellant in regard to the land comprised in the suit premises (CTS Nos. 339 and 339/1, V.N. Purav Marg, Chembur, Mumbai, measuring 6118 sq. ft.); (b) for a declaration that the supply of petrol and petroleum products by the appellant at the suit premises was an essential supply under section 29 of the Maharashtra Rent Control Act, 1999; (c) for a declaration that the show cause notice dated 12.6.2007 was illegal and did not constitute a just and sufficient cause for cutting off or

withholding the essential supply of petrol and petroleum products; (d) for a permanent injunction restraining the appellant from forcibly dispossessing respondent from suit premises or in any manner interfering with the possession of the respondent in regard to the suit premises; and (e) restraining the appellant from withholding or cutting off the supply of petrol and petroleum products from the suit premises. An application for temporary injunction was also filed to restrain the appellant from forcibly dispossessing the respondent from the premises or interfering with its possession of the suit premises and from withholding or cutting off of any supply of petrol and petroleum products.

8. The appellant resisted the suit and the application for temporary injunction by contending that the respondent was neither a tenant, nor a sub-tenant, nor a deemed tenant. The Court of Small Causes by interim order dated 13.5.2008 directed the appellant to maintain status quo as on that date, that is, the respondent "shall remain in possession of the suit premises" and the appellant shall "continue to supply petrol and petroleum products to the petrol pump in the suit premises", till the preliminary issue regarding jurisdiction to entertain the suit was framed and a decision was rendered thereon.

9. Feeling aggrieved, the appellant filed an appeal. A Division Bench of the Small Causes Court, by order dated 26.8.2008, partly allowed the appeal. It set aside the order of the trial court in so far as it directed the appellant to continue the supply of petrol and petroleum products in the suit premises to respondent. The direction that the appellant shall maintain status quo by permitting the respondent to continue with the possession of the suit premises was not disturbed. The appellate bench held that the respondent had prima facie established its induction in the suit premises as a licensee in the light of the agreements dated 1.4.1972 and 1.12.1995. The said order dated 26.8.2008 of the appellate bench of the Small Causes Court was challenged by the respondent by filing W.P. No.6689/2008, to the extent it reversed the direction for supply of petroleum products. The said order was also challenged by the appellant in W.P.No.8130/2008 to the extent that it permitted the respondent to remain in possession of the suit premises.

10. The respondent's writ petition (WP No.6689/2008) was dismissed by a learned Single Judge by judgment dated 1.10.2008. The writ petition filed by the appellant (W.P. No.8130/2008) was disposed of by a brief order dated

29.1.2009, observing that "Instead of getting embroiled with the larger issues raised in the present petition, in my opinion, interest of justice would be subserved if the petition is disposed of, by clarifying the order of status quo granted by the Lower Court to mean that the said order of status quo shall not preclude the petitioner (BPCL) from taking recourse to recovery of possession of the suit property from the respondent (plaintiff) by following due process of law including by resorting to action under the provisions of the Public Premises Act, if permissible." The said order is challenged in this appeal by special leave.

Subsequent events

11. Certain subsequent events require to be noticed. The respondent filed a second suit (Suit No.2557/2008) in the City Civil Court, Mumbai, praying for the following reliefs: (a) a declaration that supply of petrol and petroleum products in the suit premises to respondent by the appellant is an essential supply under the Essential Commodities Act, 1955; (b) for a declaration that the notice dated 12.6.2007 is illegal and a further declaration that the appellant is not entitled to terminate/set aside

the dealership under the agreement dated 1.12.1995; and (c) for an injunction restraining the appellant from stopping the supply of petrol and petroleum products or acting upon the notice dated 12.6.2007.

12. On 19.3.2009, the appellant terminated the dealership agreement and informed the respondent that it shall have no right to use the retail outlet premises for any purpose whatsoever and the facilities (Motor Spirit and/or High Speed Diesel pumps, storage tanks, pipes and fittings and all other facilities erected and provided by the company at the retail outlets) or to sell any petroleum products lying in the retail outlets. Supply of petroleum products to the said Retail Petroleum Outlet was also stopped. The said termination however made it clear that the order was without interfering with or disturbing the order of status quo in regard to the possession passed on 30.5.2008 and affirmed the orders dated 26.8.2008 and 29.1.2009 passed by the appellate bench and the High Court respectively.

13. The respondent filed a third suit (Suit No.706/2009 in the City Civil Court, Bombay) for the following reliefs :
(a) a declaration that the termination notice dated 19.3.2009 was illegal and unenforceable and that the dealership agreement dated 1.12.1995 continues to subsist;

(b) for a permanent injunction restraining the appellant or giving effect to the termination notice dated 19.3.2009; and (c) for an order restraining the appellant from discontinuing or withholding supply of petrol and petroleum products and CNG to the petrol pump premises and declare that the supply of petrol and petroleum products to the said premises is an essential supply.

Contentions of appellant

14. The appellant has urged the following contentions :

(a) The dealership granted by the appellant in favour of the respondent was in the nature of an agency for sale of the petroleum products supplied by the appellant, in the appellant's property, under the appellant's emblem (BPCL Petrol Pump or Service Station). The respondent as the dealer/agent uses the petrol pump premises and the equipments therein as an agent of the appellant. The respondent does not have any right, title or interest in the premises. (b) A person appointed by the appellant, as its dealer to sell the petroleum products supplied by the appellant through the company retail outlet premises under the terms of a Dispensing Pump and Selling Licence (DPSL) agreement, on termination of the selling agreement -

cessation of supplies ceases to be a dealer. Consequently he can neither sell any petroleum products in the retail outlet premises, nor use the appellant's retail outlet premises or facilities for any other purpose, nor create any obstruction to the running of the retail outlet by the appellant directly or through another dealer - regular or *ad hoc*. (c) Even if the termination of the dealership is invalid, the only relief that could be claimed by the ex-dealer/agent is award of compensation. A court could not therefore grant temporary injunction requiring the appellant to maintain status quo, thereby permitting the respondent to hold on to the petrol pump premises and prevent the use thereof by the appellant in the manner it deems fit.

Contention of Respondent

15. The respondent contended as follows: (a) The DPSL agreement executed on 1.4.1972 appointing the respondent as a dealer, granted an exclusive licence to the respondent to use the petrol pump premises for a period of 15 years; that as the licensee is in lawful occupation of the premises, he could not be dispossessed forcibly from the premises but could only be evicted in a manner known to law. (b) As it was in possession of the premises as a licensee as on

1.2.1973, it became a deemed tenant by virtue of Section 15A of the Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947 (for short 'the old Bombay Rent Act'); and consequently it became entitled to the protection against eviction under that Act. When the said Act was repealed and replaced by the Maharashtra Rent Control Act, 1999 (for short 'the MRC Act'); the protection against eviction continued to be available to it under the MRC Act.

(c) There was no error or defect in the Dispensing Unit and the decision to suspend the supplies and terminate the licence were illegal and unwarranted.

Questions arising for consideration

16. On the contentions raised, the questions that arise for our consideration are :

(i) What is the nature of a licence that is granted to the respondent by the appellant under the DPSL agreement ?

(ii) Whether the High court was justified in upholding the grant of an interim order of status quo directing the appellant not to interfere with the respondent's 'possession' of the petrol pump premises and requiring the appellant to resort to appropriate legal action to secure possession from the respondent ?

(iii) Whether the licence to use the petrol pump premises for the purpose of sale of the petroleum products

of the appellant granted to respondent on 1.4.1972 could be construed as a licence as defined in Section 5(4A) of the old Bombay Rent Act so as to attract section 15A of the said Act which provided that any person who was in occupation of any premises as a licensee as on 1.2.1973 shall on that date be deemed to have become a tenant of the landlord in respect of the premises in his occupation ?

The contract

17. Both parties agreed and submitted that the rights and obligations of parties are governed by the terms of the DPSL agreement dated 1.12.1995. We may therefore refer to the relevant provisions thereof :

"WHEREAS the Company has at the request of the Licensees agreed to permit the Licensees to enter upon the Company's premises described in the Schedule and shown on the blueprint attached hereto (hereinafter referred to as "the said premises") as the Licensees of the Company for the purposes, and upon the terms and subject to the conditions hereinafter mentioned. ..."

NOW THESE PRESENT WITNESS AND IT IS HEREBY AGREED AND DECLARED AS FOLLOWS :

"1. Subject to the conditions contained hereinafter the Company hereby grants Licence unto the Licensees for a period of 15 (fifteen) years and during the continuance of this Licence to enter upon the said premises and to use the Motor Spirit and/or H.S.D. Pumps, Storage Tanks, Pipes and Fittings and all other facilities erected and provided by the Company upon the said premises, and also any additional facilities at any time during the continuance of this Licence provided by the Company upon the said premises (all of which are hereinafter for brevity referred to as "the said facilities") for the

purpose of the sale of Motor Spirit and/or H.S.D., Motor Oils, Greases and other Motor accessories, as the Licensees of the Company. The Company expressly reserves to itself the right to take back the whole or any portion of the said premises or the said facilities or alter them at any time during the continuance of this Licence at its sole discretion.

x x x x

4. The said premises and the said facilities shall at all times during the continuance of this Licence remain the absolute property and in sole possession of the Company and no part of the said facilities shall be removed by the Licensees nor shall the position of any constituent part thereof or of the said premises be changed or altered without the previous written consent of the Company.

5. The premises and the said facilities hereby licensed to the Licensees shall only be used for stocking and selling/dispensing the Petroleum Products of the Company and shall not be used for any other purpose except as may be permitted in writing by the Company.

x x x x

9. Neither the Licensees nor the Licensees' servants or agents shall interfere in any way with the working parts of the pumps or other equipment provided by the Company.

x x x x

12. This Licence may be terminated without assigning any reason whatsoever by either party giving to the other not less than ninety days notice in writing to expire at any time of its intention to terminate it and upon the expiration of any such notice this Licence shall stand cancelled and revoked. The requisite period of notice may be reduced or waved by mutual consent.

x x x x

15. Upon the revocation or termination of this Licence for any cause whatsoever the Licensees shall cease to have any rights whatsoever to enter or remain on the premises or to use the said facilities and shall be deemed to be trespassers if they continue to do so. Upon such termination or revocation either under Clause 12 or Clause 13 hereof, if the Licensees or their servants and/or agents remain on the premise, the Company shall be at liberty to evict them by using such means as may be necessary and prevent them from entering upon the licensed premises.

X X X X

18. The Licensees hereby expressly agree and declare that nothing herein contained shall be construed to create any right other than the revocable permission granted by the Company in favour of the Licensees in respect of the Licensed premises/facilities strictly in accordance with the terms hereof. In particular nothing herein contained shall be construed to create any tenancy or other right of occupation whatsoever in favour of the Licensees."

(emphasis

supplied)

Re : Questions (i) and (ii)

18. Licence is defined in section 52 of the Indian Easements Act, 1882 as under :

"52. 'License' defined :

Where one person grants to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a license."

The definition of licence makes it clear that a licence granted by the owner enables a licensee a right to do or continue to do certain specified things in or upon an immovable property.

19. In *Associated Hotels of India Ltd. v. R.N. Kapoor* (AIR 1959 SC 1262) this Court referred to the difference between a lease and licence.:

"There is a marked distinction between a lease and a licence. Section 105 of the Transfer of Property Act defines a lease of immovable property as a transfer of a right to enjoy such property made for a certain time in consideration for a price paid or promised. Under Section 108 of the said Act, the lessee is entitled to be put in possession of the property. A lease is therefore a transfer of an interest in land. The interest transferred is called the leasehold interest. The lessor parts with his right to enjoy the property during the term of the lease, and it follows from it that the lessee gets that right to the exclusion of the lessor....."

After referring to the definition of licence in Section 52 of the Easement Act, this court held:

"Under the aforesaid section, if a document gives only a right to use the property in a particular way or under certain terms while it remains in possession and control of the owner thereof, it will be a licence. The legal possession, therefore, continues to be with the owner of the property, but the licensee is permitted to make use of the premises for a particular purpose. But for the permission, his occupation would be unlawful. It does not create in his favour any estate or interest in the property. There is,

therefore, clear distinction between the two concepts. The dividing line is clear though sometimes it becomes very thin or even blurred. At one time it was thought that the test of exclusive possession was infallible and if a person was given exclusive possession of a premises, it would conclusively establish that he was a lessee. But there was a change and the recent trend of judicial opinion is reflected in *Errington v. Errington* [1952] 1 All E.R. 149, wherein Lord Denning reviewing the case law on the subject summarizes the result of his discussion thus at p. 155 :

"The result of all these cases is that, although a person who is let into exclusive possession is, *prima facie*, to be considered to be tenant, nevertheless he will not be held to be so if the circumstances negative any intention to create a tenancy."

"...The following propositions may, therefore, be taken as well-established : (1) To ascertain whether a document creates a licence or lease, the substance of the document must be preferred to the form; (2) the real test is the intention of the parties - whether they intended to create a lease or a licence; (3) if the document creates an interest in the property, it is a lease; but, if it only permits another to make use of the property, of which the legal possession continues with the owner, it is a licence; and (4) if under the document a party gets exclusive possession of the property, *prima facie*, he is considered to be a tenant; but circumstances may be established which negative the intention to create a lease..."

In *C.M. Beena vs. P.N. Ramachandra Rao* - 2004 (3) SCC 595, this Court explained a Licence thus :

"Only a right to use the property in a particular way or under certain terms given to the occupant while the owner retains the control or possession over the premises results in a licence being created; for the owner retains legal possession

while all that the licensee gets is a permission to use the premises for a particular purpose or in a particular manner and but for the permission so given the occupation would have been unlawful."

20. Licences can be of different kinds. Some licences with reference to use of immovable property may be very wide, virtually bordering upon leases. Some licences can be very very narrow, giving a mere right enabling a person to visit a premises - say a museum or a lecture hall or an exhibition. In between are the licences of different hues and degrees. All licences can not be treated on the same footing. We may refer to some illustrations to highlight the difference.

Illustration (A):

An owner of a property enters into a lease thereof, but to avoid the rigours of Rent Control legislation, calls it as a licence agreement. Though such a lease is captioned as a 'licence agreement', the terms thereof show that it is in essence, a lease. Such a licence agreement which puts the licensee in exclusive possession of the premises, untrammelled by any control, and free from any directions from the licensor (instead of conferring only a bare personal privilege to use the premises) will be a lease, even if described as licence. For example, if the

exclusive possession of an apartment or a flat or a shop is delivered by the owner for a monthly consideration without retaining any manner of control, it will be a lease irrespective of whether the arrangement is called by the owner as a 'lease', or 'licence'. As far as the person who is let into exclusive possession, the quality and nature of his rights in respect of the premises will be that of a lease or a tenant and not that of a licensee. Obviously such a 'licensee' cannot be 'evicted' or 'dispossessed' or prevented from using the premises without initiating legal action in accordance with law.

Illustration (B):

The owner of a land constructs a shopping mall with hundred shops. The owner of the mall earmarks different shops for different purposes, that is sale of different types of goods/merchandise, that is shops for exclusive clothing for men, shops for exclusive clothing for women, shops for hosiery, shops for watches, shops for cameras, shops for shoes, shops for cosmetics and perfumes, shops for watches, shops for sports goods, shops for electronic goods, shops for books, shops for snacks and drinks etc. The mall owner grants licences in regard to individual shops to licensees to carry on the identified or earmarked

business. The licensor controls the hours of business, regulates the maintenance, manner of display, cleanliness in the shops. The ingress and egress to the shop licensed to the licensee is through the corridors in the mall leading from three or four common access points/entrances which are under the control of the licensor. The licensee is however entitled to stock the shop with brands of his choice though he does not have the right to change the earmarked purpose, entertain any clientele or customers of his choice and fix the prices/terms for his goods. He can also lock the shop at the end of the business hours and open it whenever he wants. No one else can trade in that shop. In such a case, in spite of the restrictions, controls and directions of the licensor, and in spite of the grant being described as licence, the transaction will be a lease or tenancy and the licensee cannot be dispossessed or evicted except by recourse of law.

Illustration (C):

In a shopping complex or in a mall the owner gives a licence to a person to use a counter to sell his goods in consideration of a fee. The access is controlled by the licensor and there is no exclusive use of any specific space by the licensee. At the end of the day, the licensee

can close the counter. The space around the counter is visited and used by customers to the mall and not exclusively by the customers of the licensee. In such a case, if the licence is terminated, the licensor can effectively prevent the licensee from entering upon his premises and the licensee will have no right to use the counter except to remove his belongings. In such a licence it may not be necessary for the licensor to sue the licensee for 'possession' or 'eviction'.

Illustration (D):

A much narrower version of a licence is where an exhibitor of cinematograph films, or a theatre owner permits a 'customer' or 'guest' to visit an entertainment hall to view and enjoy a movie or a show for the price of a ticket. The licensee is permitted to occupy a seat in the theatre exclusively for the period of the show. Or a cloakroom with toilet facilities in a public building permits a visitor to use the toilet/closet facilities on payment of a fee. The licensee is permitted to use the toilet/closet exclusively to relieve himself. In such cases, the licence is for a specific purpose and for a specific period. The licensee has no other right to enter the premises, nor the right to continue to occupy the seat

in the theatre or use the toilet/closet continuously. Such a licensee can be forcibly removed by the licensor if the licensee overstays or continues to occupy the seat beyond the show, or refuses to leave the cloakroom. It is not necessary for the licensor to sue the licensee.

Illustration (E):

A reputed manufacturer of textiles owns several retail outlets in different parts of the country. The outlets are housed in premises owned by the manufacturer or premises taken by it on lease. The manufacturer employs a sales manager on salary for each outlet to manage the outlet and sell its products and entrust him with the keys of the premises, so that he can open the outlet for business and close the outlet at the end of the day. Or the manufacturer, instead of engaging a sales manager, appoints an agent who is permitted to sell only the products of the manufacturer in the retail outlet, and receive a commission on the turnover of sales. The manufacturer stipulates the manner of sale, and the terms of sale including the prices at which the goods are sold. The manufacturer also checks the products sold periodically to ensure that only its products (and not fakes) are sold. The manufacturer also reserves the right to terminate the services of the sales manager/agent. In such cases on termination of the services

of the employee/agent, the manufacturer can physically prevent the sales manager/agent from entering the retail outlet and make alternative arrangements for running the outlet. There is no need to approach a court to 'evict' the sales manager/agent.

21. Where an employer or principal permits the use of its premises, by its employee or agent, such use, whether loosely referred to as 'possession' or 'occupation' or 'use' by the employee or the agent, is on behalf of the employer/principal. In other words, the employer/principal continues to be in possession and occupation and the employee/agent is merely a licensee who is permitted to enter the premises for the limited purpose of selling the goods of the employer/principle. The employee/agent cannot claim any 'possession' or 'occupation' or 'right to use' independent of the employer/principal who is the licensor. In such cases if the employee is terminated from service, he cannot obviously contend that he is in "occupation" of the premises and that he can be evicted or dispossessed only by initiating action in a court of law. Similarly the agent who is permitted to enter the premises every day to sell the goods cannot, on termination of the agency, contend that he continues to be in exclusive occupation of

the premises and unless evicted through a court of law entitled to continue in occupation. This is because licence that is granted to the employee/agent is a limited licence to enter upon and use the premises, *not for his own purposes or his own business*, but for the purposes of the employer/principal, to sell its goods in the manner prescribed by the employer/principal and subject to the terms and conditions stipulated in the contract of employment/agency in regard to the manner of sales, the prices at which the goods are to be sold or the services to be rendered to the customers. In such cases, when the employment or agency is terminated and the employer/principal informs the employee/agent that his services are no longer required and he is no longer the employee/agent, the licence granted to such employee/agent to enter the retail outlet stands revoked and the ex-employee/ex-agent ceases to have any right to enter the premises. On the other hand, the employer/principal who continues to have possession will be entitled to enter the premises, or appoint another employee or agent, or legitimately prevent the ex-employee/ex-agent from entering upon the premises or using the premises. In such cases, there is no need for the licensor (that is the employer or the principal) to file a suit for eviction or injunction

against the ex-employee or ex-agent. The licensor can protect or defend its possession and physically prevent the licensee (employee/agent) from entering the outlet.

22. In this behalf we may refer to the decision of this court in *Southern Roadways Ltd. Madurai v. SM Krishnan* (1989) 4 SCC 603. In that case, Southern Roadways appointed the respondent as its commission agent for carrying on its business in Madras city. Southern Roadways took on lease a godown and put it in the possession of the respondent for the purpose of carrying on the agency business. The agreement between the parties provided that *Southern Roadways* could remove the agent at any time without notice and upon removal, it could occupy the godown and also use the services of the employees engaged by the agent. In the course of audit, mismanagement and misappropriation by the agent was discovered and as a result Southern Roadways terminated the agency and took possession of the godown and appointed another person as agent. The respondent prevented the new agent and the appellant from carrying on the business in the godown premises. Therefore the appellant filed a suit for injunction against the respondent. A learned Single Judge granted a temporary injunction. On an appeal by the ex-agent, the division bench of the Madras

High Court vacated the injunction which was challenged before this court by Southern Roadways. This Court allowed the appeal. This court held:

"At the outset, we may state that we are not so much concerned with the rival claims relating to actual possession of the suit premises. Indeed, that is quite irrelevant for the purpose of determining the rights of the company to carry on its business. Mr. Venugopal, learned Counsel for the appellant also discreetly did not advert to that controversy. He, however, rested his case on certain facts which are proved or agreed. They may be stated as follows : The company was and is the tenant of the suit premises and has been paying rent to the owner. The lease in respect of the premises has been renewed up to November 22, 1993. It was the company which has executed the lease and not the respondent. The respondent as agent was allowed to remain in possession of the premises. It was only for the purpose of carrying on company's business. His agency has been terminated and his authority to act for the company has been put an end to. These facts are indeed not disputed. On these facts the contention of counsel is that when the agency has been terminated, the respondent has no legal right to remain in the premises or to interfere with the business activities of the company.

The principal has right to carry on business as usual after the removal of his agent. The Courts are rarely willing to imply a term fettering such freedom of the principal unless there is some agreement to the contrary. The agreement between the parties in this case does not confer right on the respondent to continue in possession of the suit premises even after termination of agency. Nor does it preserve right for him to interfere with the company's business. On the contrary, it provides that the respondent could be removed at any time without notice and after removal the company could carry on its business as usual. The company under the terms of the agreement is, therefore, entitled to assert and exercise its

right which cannot be disputed or denied by the respondent.

...under law, revocation of agency by the principal immediately terminates the agent's actual authority to act for the principal unless the agent's authority is coupled with an interest as envisaged under Section 202 of the Indian Contract Act. When agency is revoked, the agent could claim compensation if his case falls under Section 205 or could exercise a lien on the principal's property under Section 221. The agent's lien on principal's property recognised under Section 221 could be exercised only when there is no agreement inconsistent with the lien. In the present case the terms of the agreement by which the respondent was appointed as agent, expressly authorises the company to occupy the godown upon revocation of agency. Secondly, the lien in any event, in our opinion, cannot be utilised or taken advantage of to interfere with principal's business activities.

The crux of the matter is that an agent holds the principal's property only on behalf of the principal. He acquires no interest for himself in such property. He cannot deny principal's title to property. Nor he can convert it into any other kind or use. His possession is the possession of the principal for all purposes.

In this case, the respondents' possession of the suit premises was on behalf of the company and not on his own right.

It is, therefore, unnecessary for the company to file a suit for recovery of possession. The respondent has no right to remain in possession of the suit premises after termination of his agency. He has also no right to interfere with the company's business."

23. In this case, the DPSL Agreement clearly demonstrated that licence granted by the appellant enabled the licensee (respondent) to enter upon the retail outlet premises only

for the limited purpose of using the facilities (that is Motor Spirit/HSD Pumps, storage tanks etc.) for purposes of sale of appellant's Motor Spirit, HSD, Motor oils, Greases or other motor accessories (together referred to as 'Products of the appellant') as a licensee of the appellant at the prices specified by the appellant. The respondent could not sell any other goods or the products of any one else. It could not charge a price different from what was stipulated by the appellant. The respondent could not enter the outlet premises if the licence granted to the respondent to sell the appellant's petrol and petroleum products was terminated. In other words, the respondent-licensee had no licence to enter the petrol pump premises or use the 'facilities', if it could not sell the products of the appellant. The relevant terms of the DPSL agreement extracted in para 17 above show that the licence was given to the licensee to enter the appellant's outlet premises and use the equipment/facilities provided by the appellant for the exclusive purpose of sale of the products of the appellant. This has been completely lost sight of by the courts below.

24. It should be noted that the appellant has installed specialized equipments (that is HSD/Petrol/oil

dispensers/pumps attached to storage tanks through pipes/fittings) and the licence given to the respondent was to enter upon the premises to use the said equipment/facilities provided by the appellant for the purpose of sale of the appellant's products (that is motor spirit, HSD, motor oil, grease etc.) at the rates/prices fixed by the appellant. If the respondent could not sell these petroleum products on account of suspension/termination, there is no occasion or need for the respondent to enter upon the outlet premises as it cannot sell any other goods or use the outlet for any other purpose. Therefore the licence to enter and use the outlet premises also comes to an end when the licence is terminated or supply of appellant's products is stopped. Clause 15 of the DPSL Agreement specifically provides that on revocation or termination of the licence for any cause whatsoever, the licensee shall cease to have any right to enter or remain in the premises or use the facilities. As the licence is only to enter the appellant's outlet premises to use the facilities for sale of appellant's petroleum products, if the licence to use the appellant's facilities for sale of appellant's products comes to an end and supply of appellant's products for sale by the respondent is stopped, there is no question of the licensee

entering the outlet premises at all or remaining in the outlet premises or using the outlet premises.

25. To reiterate, the permission granted to the respondent by the appellant to enter the outlet premises is for the purposes of using the equipments/facilities belonging to the appellant installed in the outlet, to sell the products of the appellant. Under the licence (DPSL) agreement, the respondent cannot enter the premises for any purpose other than for using the facilities or equipment installed by the appellant or for any purpose other than selling the petroleum products of the appellant. Therefore the licence to enter the premises and the licence to use the facilities/equipment is incidental to the licence to sell the products of the appellant as a licensed dealer, distributor or agent. In this case the premises is a land held on leasehold by the appellant wherein it has constructed/erected certain structures and housed certain facilities/ equipment. The premises is known as appellant's 'company owned retail outlet'. The goods/products sold belong to the appellant. If the appellant decides to stop the supply of its goods for sale in the said outlet, automatically the licence granted to the respondent to enter premises and use the facilities become redundant,

invalid and infructuous. *There is no licence in favour of the licensee to use the premises or use the facilities independent of the licence to sell the goods of the appellant.* Further the agreement makes it clear that the agreement does not create any tenancy rights in the premises; that it is terminable by 90 days notice on either side and it is terminable by the appellant even without giving such notice in the event of breach. Therefore there cannot be an injunction restraining the appellant from entering upon its outlet premises or using the outlet for its business or inducting any new dealer or agent.

26. Where the licence in favour of the licensee is only to use the retail outlet premises or use the equipments/facilities installed therein, exclusively in connection with the sale of the goods of the licensor, the licensee does not have the right to use the premises for dealing or selling any other goods. When the licensee cannot use the premises for any purpose on account of the stoppage of supply of licensor's goods for sale, it will be wholly unreasonable to require the licensor to sue the licensee for 'possession' of such company controlled retail outlet premises. This is not a case where the licensee has

alleged that any amount is due to it from the licensor by way of commission or remuneration for services, or that on account of non-payment thereof it is entitled to retain the retail outlet premises and facilities of the licensor by claiming a lien over them under section 221 of the Indian Contract Act, 1872. In regard to a licence governed by a commercial contract, it may be inappropriate to apply the principles of Administrative Law, even if the licensor may answer the definition of 'State' under Article 12 of the Constitution of India. In view of the above, it is unnecessary to examine whether appellant is a 'state' within the meaning of that expression under Article 12 of the Constitution of India, nor necessary to keep in view the requirement that if the licensor answers the definition of 'state', a duty to act fairly and reasonably without any arbitrariness or discrimination is also implied. Be that as it may.

27. It is made clear that this decision applies only to licences where the licensor is the owner/ lessee of the premises and the equipment (in this case dispensing pumps and other equipment) and where the licensee is engaged merely for sale of the products of the licensor. In other words, this decision would apply to petrol stations which are known as CCROs ('Company Controlled Retail Outlets').

If the licensee is himself the owner/lessee of the premises where the petroleum products outlet is situated or where the exclusive right to use the premises is given to the licensee for carrying on any business or dealing with any goods unconnected with the licensor, this decision may not apply and it may be necessary for the licensor to have recourse either to a Civil Court for a mandatory injunction to give up the premises, or the Estate Officer under the Public Premises Act for 'eviction' as the case may be, depending upon the nature of licence and the status and relationship of the parties.

28. In this case in pursuance of a routine inspection certain serious irregularities were viewed and as a consequence supply of its products was stopped, suspended and a show cause notice was issued calling upon respondent to show cause why action should not be taken including termination of the dealership for the reasons stated therein. Therefore when such a notice is issued as a precursor to termination, the respondent licensee ceases to have right to sell the goods in the outlet premises and does not get the cause of action either to seek continuance of the supply of the products or remain in and use the premises. The show cause notice was followed by a termination of the licence of dealership on 19.3.2009. Even

if the termination or non-supply amounts to breach of contract, the remedy of the agent-licensee at best is to seek damages, if it is established that the dealership was wrongly determined or supply was wrongly stopped. Consequently, the licensee does not have any right to use the premises nor any right to enter upon the premises after the termination of the agency.

Re: Question No.(iii)

29. The contention of the respondent is that as it was a licensee from 1.4.1972, it became a deemed tenant under section 15A of the old Bombay Rent Act (which provided that any person in occupation of a premises as a licensee as on 1.2.1973, became a deemed tenant) and consequently can be evicted only by filing a petition for eviction under the Rent Act.

JUDGMENT

30. To appreciate the said contention of the respondent, it is necessary to refer to the relevant provisions of the relevant rent law. We may first refer to the definitions of 'tenant' and 'licensee' under the old Bombay Rent Act and MRC Act.

<u>Section 7(15)(a) of the MRC Act reads as follows :-</u>	<u>Section 5(11) of the Old Bombay Rent Act</u>
(15) "tenant" means any	"Tenant" means any person by

person by whom or on whose account rent is payable for any premises and includes, - (a) such person, - (i) (i) who is a tenant, or (ii) (ii) who is a deemed tenant, or (iii) (iii) who is a sub-tenant as permitted under a contract or by the permission or consent of the landlord, or (iv) (iv) who has derived title under a tenant, or (v) (v) to whom interest in premises has been assigned or transferred as permitted, by virtue of, or under the provisions of, any of the repealed Acts; (b) a person who is deemed to be a tenant under section 25; (c) a person to whom interest in premises has been assigned or transferred as permitted under section 26; x x x x x x x	whom or on whose account rent is payable for any premises and includes - (a) Such sub-tenants and other persons as have derived title under a tenant (before the 1st day of February, 1973; (aa) any person to whom interest in premises has been assigned or transferred as permitted or deemed to be permitted, under section 15; x x x x x x x (bb) such licensees as are deemed to be tenants for the purposes of this Act by section 15A; x x x x x x x
<u>Section 7(5) of the MRC Act</u> (5) 'Licensee', in respect of any premises or any part thereof, means the person who is in occupation of the premises or such part, as the case may be, under a subsisting agreement for licence given for a licence free or charge; and includes any person in such	<u>Section 5(4A) of the old Bombay Rent Act</u> (4A) 'licensee', in respect of any premises or any part thereof, means the person who is in occupation of the premises or such part, as the case may be, under a subsisting agreement for licence given for a licence fee or charge; and includes any person in such occupation

occupation of any premises or part thereof in a building vesting in or leased to a co-operative housing society registered or deemed to be registered under the Maharashtra Co-operative Societies Act, 1960 (Mah. XXIV of 1961) <i>but does not include</i> a paying guest, a member of a family residing together, a person in the service or employment of the licensor, or a person conducting a running business belonging to the licensor or a person having any accommodation for rendering or carrying on medical or paramedical services or activities in or near a nursing home, hospital, or sanatorium or a person having any accommodation in a hotel, lodging house, hostel, guest house, club, nursing home, hospital, sanatorium, dharmashala, home for widows, orphans or like premises, marriage or public hall or like premises....."	of any premises or part thereof in a building vesting in or leased to a co-operative housing society registered or deemed to be registered under the Maharashtra Co-operative Societies Act, 1960; <i>but does not include</i> a paying guest, a member of a family residing together, a person in the service or employment of the licensor, or a person conducting a running business belonging to the licensor, (for a person having any accommodation for rendering or carrying on medical or para-medical services or activities in or near a nursing home, hospital or sanatorium, dharmashala, home for widows, orphans or like premises, marriage or public hall or like premises....."
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(emphasis supplied)

31. The old Bombay Rent Act recognised such licensees as 'deemed tenants' under section 15A and they are covered under the definition of a tenant under section 7(15)(a) of the MRC Act. Section 15A of the old Bombay Rent Act read as follows : -

"15A. Certain licensees in occupation on 1st February 1973 to become tenants-

- (1) Notwithstanding anything contained elsewhere in this Act or anything contrary to in any other law for the time being in force, or in any contract where any person is on the 1st day of February 1973 in occupation of any premises, or any part thereof which is not less than a room, as a licensee he shall on that date be deemed to have become, for the purpose of this Act, the tenant of the landlord, in respect of the premises or part thereof, in his occupation.**
- (2) The provisions of sub-section (1) shall not affect in any manner the operation of sub-section (1) of section 15 after the date aforesaid."**

Significantly there is no provision either in the old Bombay Rent Act or under the MRC Act, enabling or treating any person who became a licensee after 1.2.1973 as a deemed tenant.

32. The occupation by the respondent was not occupation on its own account, but occupation on behalf of the appellant. Therefore the respondent was not in 'occupation' of the outlet in its own right for its own proposes, but was using the outlet and facilities in the possession and occupation of the appellant, to sell the appellant's products in the manner provided in the DPSL Agreement. In such a situation, the agent who is called as the licensee does not become a deemed tenant. The condition for deemed tenancy is not the

description of the person as 'licensee', but the person being in occupation of a premises as licensee as on 1.2.1973. A person who obtains a licence from the government to sell liquor is a 'licensee'. A person who obtains a licence from the municipal corporation to construct a building is also a 'licensee'. A person authorized to drive a motor vehicle is also a 'licensee'. Every person who holds any type of 'licence' does not become a tenant. The deemed tenancy under Section 15A of old Bombay Rent Act refers to a person who held a licence to use a premises for his own use as on 1.2.1973.

33. Section 5(4A) of the old Bombay Rent Act defined a licensee in respect of any premises or any part thereof, as referring to the person who is in occupation of the premises or such part under a subsisting agreement for licence given for a licence fee or charge. The definition makes it clear, *a person in the service or employment of the licensor, or a person conducting a running business belonging to the licensor* is not a 'licensee' where the appellant has a retail outlet in a premises either owned or taken on lease by it, where it has installed its specialized equipment/facilities for sale of its products and the outlet is exclusively used for the sale of the

products of the appellant, the unit is running business of the appellant. An agent licensed to run the Retail Petroleum outlet of the appellant, which is a running business belonging to the appellant is not therefore a 'licensee' either under the old Bombay Rent Act (nor under the new MRC Act). Therefore the respondent did not become a tenant under the appellant nor became entitled to protection against eviction.

34. Only those persons who held a licence to occupy any premises as on 1.2.1973 could become deemed tenants under Section 15(A) of the old Bombay Rent Act. As a person conducting a running business on behalf of the owner of such business is not a 'licensee' as defined under the Rent Act, even if the person concerned was using premises on 1.2.1973, he will not become a deemed tenant. Consequently the respondent could not claim that he became a deemed tenant. Therefore the respondent could not claim the protection of any rent control law as a tenant. One more aspects may be noticed here. If the respondent had become a deemed tenant in 1972, it would not have entered into an agreement on 1.7.1995 reiterating that it continue to be a licensee and that it does not have any leasehold or tenancy rights in the premises. In view of the above, it is not

necessary to consider the alternative contention of the appellant that even if the respondent had become a deemed tenant in pursuance of the agreement dated 1.4.1972, such a tenancy come to an end and the appellant again become licensee pure and simple from 1.12.1995 when the fresh agreement was entered, does not require to be considered.

Conclusion

35. In view of the above, this appeal is allowed. The order of the High Court and the order of the courts below, directing status quo are set aside. Consequently, the appellant is entitled to continue in possession of the petrol pump premises and use it for its business. The appellant is also entitled to lawfully prevent the respondent from entering upon the premises. The trial court is directed to dispose of the suit expeditiously, on the basis of the evidence, in accordance with law, keeping in view the legal position explained above.

.....J.
(R V Raveendran)

New Delhi;
March 2, 2011.

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2276 OF 2010

ARISING OUT OF SPECIAL LEAVE PETITION (C) NO. 9134 OF 2009

Bharat Petroleum Corpn. Ltd.

...Appellant

Versus

Chembur Service Station

...Respondent

J U D G M E N T

Gokhale J.

Leave Granted.

2. This appeal seeks to challenge the order passed by a Single Judge of the Bombay High Court dated 29th January, 2009 disposing of the Writ Petition No. 8130 of 2008 filed by the appellant herein with certain observations. The appellant intends to regain the possession of a Retail Petroleum Outlet concerning which, the High Court has observed that it will be open to the appellant to proceed in respect of the concerned premises, if they are public premises, by following due process of law and not by force. According to the appellant however,

issuing a show cause notice, and terminating the dealership after considering the reply of the respondent, is the required due process of law and nothing more.

3. Short facts leading to this appeal are as follows:- The appellant is the successor to the erstwhile Burmah-Shell Oil Storage and Distributing Company of India Ltd. (hereinafter referred to as Burmah Shell). On 2.9.1971, Burmah Shell took on lease a piece / parcel of land admeasuring about 680 sq.yds. bearing CTS Nos. 339 and 339/1 situated at V.N. Purav Marg, Chembur, Mumbai. This was for the purpose of erecting one or more petrol pumps together with underground tanks and other fittings and facilities for storage of petrol and High Speed Diesel (HSD) Oil, for carrying on the business of sale & supply of such products. Burmah Shell constructed the necessary structures and erected the petrol pumps and other structures, fittings and facilities which are jointly referred to hereafter as Retail Petroleum Outlet (RPO). A few rooms were also put up on that land for facilitating the working of the RPO. On 1.4.1972, the appellant entered into an agreement with the respondent, whereby the respondent were appointed as the dealers for selling the petroleum products of the appellant from the said RPO.

4. The Burmah Shell Company was taken over by the Government of India under the Burmah Shell (Acquisition of Undertakings in India) Act, 1976, and later the name of the Company was changed to Bharat Petroleum Corporation Ltd. (BPCL), the appellant herein. By a subsequent notification issued under Section 7 of the said Act of 1976, the rights and liabilities of Burmah-Shell in relation to its undertakings in India, stood transferred to be appellant. Accordingly, upon the aforesaid vesting by virtue of the provisions of this Act, the appellant Company became the lessee in respect of the said RPO at Chembur, Mumbai.

5. Subsequently, on the death of one of the partners of the respondent, a fresh dealership agreement was executed between the appellant and the respondent on 1.12.1995, and we are concerned with the rights and liabilities of the parties under this agreement.

6. It so transpired that during a surprise inspection carried out by the Quality Control Cell of the appellant in the presence of the manager of the respondent, it was noticed that one dispensing unit was making a short delivery of 20 ml. of HSD per 5 litres. It was checked twice thereafter, when it gave short delivery of 210 ml. per 5 litres measure. Therefore, the Electronic Register

Assembly (ERA) of the said dispensing unit was removed therefrom and was sent for inspection to the manufacturer MIDCO. MIDCO gave a report on 27.3.2007 stating amongst others, that there was a deviation in the ERA, but the Microcontroller chip hardware in the ERA was not the original as supplied by them. The appellant, therefore, issued a show cause notice to the respondent on 12.6.2007 under the relevant provisions of the agreement between the parties stating therein that the respondent had manipulated / altered the original chip with a view of making illegal gain by cheating the customers of the Company, thereby causing breach of trust, and calling upon the respondent to show cause within 15 days, as to why action should not be taken including termination of the dealership.

7. Respondent denied all these allegations by their reply dated 10.7.2007, but before the appellant could take any decision on the show cause notice, the respondent instituted a suit in the Court of Small Cause at Mumbai (being RAD suit No. 913/2008) for a declaration that the respondent was a tenant of the appellant company in respect of the structures, and a sub-tenant of the appellant in respect of the land on which the RPO was situated. The respondent made a further submission that the supply of petrol and petroleum products was an essential supply under

Section 29 of the Maharashtra Rent Control Act (hereinafter referred to as the MRC Act). The show cause notice, therefore, was illegal, and that the appellant had no sufficient cause for withholding the essential supply of petrol and petroleum products. The respondent moved an interim application to restrain the appellants from dispossessing them from the said RPO and also from withholding supply of petrol and petroleum products.

8. The appellant filed a reply to the injunction application and stated amongst others that the respondent was neither a tenant, nor a sub-tenant, nor a deemed tenant in respect of the suit premises. In para 3 (b) it was stated as follows:-

"b) The defendant is a Government company wherein the Govt. of India has more than 51% shares. The defendant is a lessee of land. The alleged suit premises are public premises within the meaning of Public Premises Eviction Act, 1971. The plaintiff who claims through the defendant possession of the suit premises is covered under the said Act."

It was further stated that the respondent was only a dealer, and the open piece of land under the agreement was not covered in the definition of the 'premises' under the MRC Act, and that the MRC Act was not applicable.

9. A learned Single Judge of the Court of Small Causes initially granted an interim injunction as prayed by the respondent herein. Since the appellant wanted the issue regarding jurisdiction to be decided as a preliminary issue, the learned Judge directed that until the framing of preliminary issue regarding jurisdiction to entertain and try the suit, and decision thereon, the appellant will not dispossess the respondent from the petrol pump, and shall continue to supply the petroleum products, though the appellant will have the right to inspect the petrol pump and equipments for the purpose of checking smooth working of the same.

10. Being aggrieved by this order the appellant filed an appeal before the Division Bench of Small Causes Court at Mumbai (being Appeal No. 401 of 2008). The Division Bench by its order dated 26.8.2008 allowed this appeal in part deleting the direction to continue to supply petrol and petroleum products, but maintained the order of status-quo with respect to the possession of the respondent.

11. Being aggrieved by the part of that order which vacated the direction to supply petrol and petroleum products, the respondent filed a Writ Petition (bearing W.P. 6689 of 2008) in the Bombay High Court. A Learned

Single Judge by his order dated 1.10.2008 dismissed the said Writ Petition. The Learned Single Judge noted that the respondent herein was claiming a tenant-landlord relationship on the basis of the dealership agreement between them, and then seeking a direction to supply petrol and petroleum products as an essential supply to be enjoyed by the tenant under Section 29 of the MRC Act. The Learned Judge held that it had to be first decided as to whether the relationship between them was that of tenant and landlord. Until then, such a mandatory order could not be passed. He further held that:-

'any dispute or cause of action pertaining to the breach of terms and conditions of the such dealership agreement cannot be gone into by Court under MRC Act. The remedy is elsewhere.'

The Learned Judge held that the order of the lower appellate court was reasoned and correct one.

12. The appellant also filed another Writ Petition being Writ Petition No. 8130 of 2008 and challenged the other part of the order dated 26.8.2008 to the extent it was against the appellant viz. the direction to maintain the status quo with respect to the possession of the RPO. Another Learned Single Judge heard the petition and by his order dated 29th January, 2009 held that:-

"Interest of justice would be subserved if the Petition is disposed of by clarifying the order of status quo granted by the Lower Court to mean that the said order of status quo shall not preclude the Petitioner from taking recourse to recovery of possession of the suit property from the Respondent/plaintiff by following due process of law including by resorting to action under the provisions of Public Premises Act, if permissible"

He further held that:-

"If the Competent Authority were to order eviction of the Respondent in the said proceedings, that order will naturally supersede the order of status quo passed by the Lower Court, if it were to be established that the property is public premises as it belongs to the Petitioner Corporation. In order words, order of status quo shall operate only till the Competent Authority and/ or the appropriate forum were to pass order of eviction against the Respondent in relation to the suit premises."

13. The Counsel for the respondent submitted before the Learned Single Judge that the observations in the order may influence the proceedings pending between the parties before the Civil Court. Thereon the Learned Single Judge observed that the Civil Court is bound to follow the mandate of law, if the suit premises are public premises, and the question of precluding the petitioner from taking recourse to the action under that act, if available, cannot be countenanced. He further held that in spite of pendency of the civil action, it will be open to the Petitioner Corporation to proceed in respect of suit premises if the same are public premises. Lastly he held that:-

"in any case the possession of the premises cannot be obtained by the Petitioner by force, but by following due process of law which option is left to the Petitioner in terms of this order."

The petition was disposed of accordingly by the order dated 29th January, 2009. Being aggrieved by this order the present Petition for leave to Appeal has been filed on 4.4.2009.

14. It so transpired that the respondent on the other hand filed another suit being Short Cause Suit No. 2557 of 2008 in the City Civil Court of Mumbai, seeking a direction that the appellant should continue to supply the petroleum products. A summons / notice dated 3.2.2009 was served on the appellant. On 19.3.2009 the appellant has, by their letter dated 19.3.2009 terminated the dealership agreement and stopped the supplies of petroleum products to this RPO. The respondent has thereafter filed a third suit bearing No. 706 of 2009 in the City Civil Court at Mumbai for a declaration that the termination was illegal and unforceable, and for other consequential reliefs.

15. As stated earlier, the main submission of the appellant in the SLP is that they are not required to proceed under The Public Premises (Eviction of Unauthorised Occupant) Act, 1971, hereinafter referred to as the Public Premises Act. They have terminated the dealership agreement

and stopped the supply of petroleum products. They contend that they should be entitled to take possession without recourse to the proceedings under the Public Premises Act. According to them the observations of the Learned Single Judge that the possession of the premises cannot be obtained by force was uncalled for.

16. It is submitted on behalf of the appellant that the relation between the appellant and the respondent is that of a principal and an agent, and as a dealer, the respondent cannot claim any kind of possessory right, interest or any title in the premises from where the business was being carried out on by virtue of the dealership agreement. The appellant relied upon the judgment of this Court in *Southern Roadways Ltd. vs. S.M. Krishnan* [1989 (4) SCC 603] in this behalf, and particularly paragraphs 12 to 22 thereof. It is submitted that the respondent only pays the electricity charges for the activities carried on at the RPO. He does not pay anything for the premises. He is not in any independent occupation.

17. It is submitted that the respondent was an agent of the appellant and in that capacity he was handed over an open piece of land and a few structures thereon which

cannot be called, in any manner, 'public premises', under the Public Premises Act. Since the respondent is not in an independent occupation of the premises, there was no question of taking any action against him as an unauthorized occupant under the said act. The respondent is simply an agent and the moment the agency is determined, he has to vacate the premises. Issuance of a show cause notice, considering the reply to the show cause notice, and thereafter determining the dealership was the sufficient compliance with the requirement of due process of law, and nothing further was required to be done by the appellant to get back the possession in the nature of filing of a suit or obtaining an order from a competent authority.

18. Relying upon the judgment in Southern Roadways (supra), it was submitted on behalf of the appellant that the possession of the premises which an agent is having, is basically the possession of the principal and he does not occupy the premises independently. It was submitted that though, in the agreement between the parties, the respondent is referred as a licensee, it is essentially an agreement of agency. Then, it was submitted that once the agreement of dealership was terminated, the only relief which could be sought by the dealer was to seek compensation for loss of earning, in the event the

termination is held to be bad in law. There cannot be any order of restoration of the dealership or any obstruction in running of the RPO by the petroleum company even by way of an ad-hoc arrangement. Reliance was placed in this behalf on the judgment of this Court in *Amritsar Gas v. Indian Oil Corporation* [1991 (1) SCC 533].

19. Some of the clauses of the dealership agreement were pressed into service by the appellant, particularly the following clauses:-

"i) In the preamble - "... the Company has at the request of the Licensees agreed to permit the Licensees to enter upon the Company's premises..."

ii) In Clause 1 - "... The company expressly reserves to itself the right to take back the whole or any portion of the said premises or the said facilities or alter them at any time during the continuance of this Licence at its sole discretion... .."

iii) In Clause 4 - "... The said premises and the said facilities shall at all times during the continuance of this Licence remain the absolute property and in sole possession of the Company and no part of the said facilities shall be removed by the Licensees nor shall the position of any constituent part thereof or of the said premises be changed or altered without the previous written consent of the company.".

iv) In Clause 8 - "... Neither the Licensee nor the Licensees' servants or agents shall interfere in any way with the working parts of the pumps or other equipment provided by the Company.".

v) In Clause 12 - "This Licence may be terminated without assigning any reason whatsoever by either party giving to the other not less than

ninety days notice in writing to expire at any time of its intention to terminate it and upon the expiration of any such notice this Licence shall stand cancelled and revoked. The requisite period of notice may be reduced or waived by mutual consent."

vi) In Clause 13 (a) - " Notwithstanding anything to the contrary herein contained the Company shall be at liberty to terminate this Agreement forthwith upon or at any time on the happening of any of the events following:

.....

.....

(vii) - If the Licensees shall be guilty of a breach of any of the covenants and stipulations on their part contained in this agreement.".

vii) In Clause 15 - "Upon the revocation or termination of this Licence for any cause whatsoever the Licensees shall cease to have any rights whatsoever to enter or remain on the premises or to use the said facilities and shall be deemed to be trespassers if they continue to do so. Upon such termination or revocation either under clause 12 or Clause 13 hereof, if the Licensees or their servants and/ or agents remain on the premises, the Company shall be at liberty to evict them by using such means as may be necessary and prevent them from entering upon the licensed premises.";

viii) In Clause 18 - " The Licensees hereby expressly agree and declare that nothing herein contained shall be construed to create any right other than the revocable permission granted by the company in favour of the Licensees in respect of the licensed premises/facilities strictly in accordance with the terms hereof. In particular nothing herein contained shall be construed to create any tenancy or other right of occupation whatsoever in favour of the Licensees."

20. It was therefore, submitted on behalf of the appellant that both the suits filed by the respondent were

mis-conceived. Firstly, the respondent has approached the Court of Small Causes under the MRC Act for a declaration that it is the tenant of the appellant in respect of the structures, and a sub-tenant in respect of the land. In that suit itself the respondent has prayed for an order that the supply of petroleum products should be continued as an essential supply under Section 29 of the MRC Act. The Appellate Bench of the Court of Small Causes is right in vacating the mandatory direction given by the Single Judge of that Court to supply the petroleum products. Such an order could not be granted in those proceedings, and the Learned Single Judge of the High Court who heard was also correct in not entertaining Writ Petition No. 6689 of 2008 filed by the respondent.

21. The case of the appellant, however was that the appellant were right in challenging the other part of the order of the Appellate Bench of the Court of Small Causes wherein the bench had maintained the part of the order of status-quo passed by a Single Judge at that Court with respect to the possession of the respondent. The appellant had, therefore, rightly filed the abovereferred Writ Petition No. 8130 of 2008. According to the appellant, they had not let out the premises to the respondent, but had allowed the respondent only to sell appellant's

petroleum products at a price fixed by the Ministry of Petroleum from time to time. The manipulation in the dispensing unit effected by the respondent had led to the issuance of the show cause notice. The respondent had rushed to the Court of Small Causes even before the reply of the respondent could be considered by the appellant. By seeking an injunction in the Court of Small Causes, the respondent had restrained the appellant from taking any decision on the show cause notice, which decision the appellant has now taken after the impugned order was passed by the Learned Single Judge in Writ Petition No. 8130 of 2008, who has held that the civil action initiated by the respondent could not prevent the appellant from taking action in accordance with due process of law. That is why now the appellant has determined the respondent's licence by their letter dated 19.3.2009 and according to them that is sufficient compliance of the requirement of due process of law. According to the appellant, with this determination of agency, the action in accordance with the due process of law is complete and they can take the possession of the RPO, if required forcibly. According to them the emphasis of the Learned Single Judge on following the due process under the Public Premises Act was erroneous.

22. As against this submission of the appellant, it was submitted on behalf of the respondent that the suit in the Court of Small Causes was perfectly justified. Firstly, it was pointed out that all throughout, the respondent was described in the dealership agreement as a licensee of the premises. According to them, the monthly licence fee as described in Clause 2 (a) of the agreement was nothing but the rent for the premises excluding the municipal and government charges. The respondent relies upon clause 2 (b) of the dealership agreement which reads as follows:-

" (b) The Licensees further agree to pay and discharge all rates, taxes, cesses, duties and other impositions and outgoings levied or imposed by the Municipality, Government or any other public body upon or in respect of the said premises and/ or the said facilities, provided that the Company shall pay the actual licence Fees payable to the Government for any Motor Spirit/ HSD Storage licence or licences required in connection with the said facilities under the Petroleum Act, 1934 and the Rules thereunder."

23. According to the respondent, the respondent falls within the definition of a tenant under Section 7 (15) of the MRC Act. They point out that in any case, it is not disputed that the respondent is in possession of the concerned premises as a licensee since prior to 1.2.1973 when similar such licensees in occupation of premises came be protected under Section 15 A of the then applicable

Bombay Rents, Hotel and Lodging Houses, Rates Control Act 1947 (shortly called as Bombay Rent Act), which act has been since repealed and replaced by MRC Act and which protection has been continued under the MRC Act. The Bombay Rent act recognized such licensees as 'deemed tenants' under Section 15 A and they are covered under the definition of a tenant under Section 7 (15) (a) of the MRC Act. Section 15 A of the Bombay Rent Act reads as follows:

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"15A. Certain licensees in occupation on 1st February 1973 to become tenants-

(1) Notwithstanding anything contained elsewhere in this Act or anything contrary in any other law for the time being in force, or in any contract where any person is on the 1st day of February 1973 in occupation of any premises, or any part thereof which is not less than a room, as a licensee he shall on that date be deemed to have become, for the purpose of this Act, the tenant of the landlord, in respect of the premises or part thereof, in his occupation.

(2) The provisions of sub-section (1) shall not affect in any manner the operation of sub-section (1) of section 15 after the date aforesaid]."

Section 7 (15) (a) of the MRC Act reads as follows:-

(15) "tenant" means any person by whom or on whose account rent is payable for any premises and includes, -

(a) such person, -

(i) who is a tenant, or

(ii) who is a deemed tenant, or

(iii) who is a sub-tenant as permitted under a contract or by the permission or consent of the landlord, or

(iv) who has derived title under a tenant, or

(v) to whom interest in premises has been assigned or transferred as permitted,

By virtue of, or under the provisions of, any of the repealed Acts;"

24. The respondent submitted that the order passed by the Learned Single Judge in Writ Petition No. 6689 of 2008 had confirmed the order passed by the Appellate Court which meant that the injunction granted by the Ld. Single Judge of the Court of Small Causes was continued and approved by a Judge of the High Court. It was submitted that it is true that the Leaned Single Judge did hold in Writ Petition No. 6689 of 2008, that the respondent could not seek an order for supply of petroleum products in the Court of Small Causes under Section 29 of the MRC Act. For that purpose the respondent has filed another suit in the City Civil Court at Mumbai. It was submitted by the respondent that both these suits and injunction granted by the Court of Small Causes would become infructuous, if the appellant was allowed to remove the respondent only on determination of the dealership agreement. In any case, there was nothing wrong in the Learned Single Judge observing in the

impugned order that the appellant ought to have resorted to the remedy under the Public Premises Act, whereunder the respondent will at least get an opportunity to defend its position, though in a forum chosen by the appellant.

25. We have noted the submissions of both the counsel. At the outset we must note that in the facts of this case there is no conflict between the two orders passed by the two Learned Single Judges. The Writ Petition No. 6689 of 2008 was filed by the respondent to challenge the order of the Appellate Bench of the Court of Small Causes to the extent it was against the respondent viz. that the respondent could not seek a direction for the petroleum supply in their proceeding in the Court of Small Causes. The grievance of the respondent in that writ petition was only with respect to that part of the order, and therefore, when the Learned Single Judge held that there was no reason to interfere with that order, the order will have to be read as confined to the grievance of the respondent raised before the Learned Judge. The part of the order of the Appellate Bench of the Court of Small Causes protecting the possession of the respondent was not under consideration in that Writ Petition which was filed by the respondent. Any observation by the Learned Single Judge in that order cannot be read as a determination on

the correctness or otherwise of this part of the order which was not in challenge in that proceeding.

26. As far as the other part of the order of the Appellate Bench, protecting the possession of the respondent was concerned, the same was in challenge only before the other Learned Single Judge in Writ Petition No. 8130 of 2008. That was at the instance of the appellant. In that petition the Learned Single Judge has held that the pendency of the proceeding in the Civil Court will not preclude the appellant from taking steps in accordance with due process of law, which according to the Learned Single Judge was taking steps under the Public Premises Act, if permissible.

27. When we consider all these aspects, we have to note that, even if the respondent is an agent of the appellant, the fact remains that he is in occupation of the concerned premises consisting of the rooms and the structures of the RPO situated on the particular plot of land since 1.4.1972. The appellant has authorized the respondent to be in occupation of this RPO by virtue of the dealership agreement between the parties. The respondent is not a trespasser. The 'Public Premises' are defined under the Public Premises Act as follows:-

SC. "2(e) " public premises" means -

(1) any premises belonging to, or taken on lease or requisitioned by, or on behalf of the Central Government, and includes any such premises which have been placed by that Government, whether before or after the commencement of the Public Premises (Eviction of Unauthorised Occupants) Amendment Act, 1980 (61 of 1980), under the control of the Secretariat of either House of Parliament for providing residential accommodation to any member of the staff of that Secretariat;

(2) any premises belonging to, or taken on lease by, or on behalf of -

(i) any company as defined in section 3 of the Companies Act, 1956 (1 of 1956), in which not less than fifty-one per cent of the paid up share capital is held by the Central Government or any company which is a subsidiary (within the meaning of that Act) of the first-mentioned company.

Unauthorised Occupation is defined under this Act as follows:-

SC.2 (g) "unauthorized occupation", in relation to any public premises, means the occupation by any person of the public premises without authority for such occupation, and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever."

28. The respondent is in occupation/control/charge of the premises right from 1.4.1972 and is very much claiming in the suit filed by them in the Court of Small Causes to be a tenant or a deemed tenant under the MRC Act. It is in this suit that he has obtained an interim order. In a challenge to that interim order the Learned Single Judge

has permitted the appellant to take steps in accordance with the Public Premises Act by observing that the proceedings in the Civil Court will not hinder the appellant from taking steps under the Public Premises Act, if permissible. Thus, in fact to that limited extent the order of the Learned Single Judge takes care of the submission of the appellant viz. that the respondent's suit under the MRC is mis-conceived. Not only that, but the Learned Single Judge has also observed that the "order of status quo would operate only till the Competent Authority were to pass order of eviction against the respondent in respect to the suit premises". In fact what is also material to note, as quoted earlier in para 3 (b) of their reply, the appellant themselves had contended before the Court of Small Causes that the concerned premises are Public Premises within the meaning of Public Premises (Eviction of Unauthorised Occupants) Act, 1971. In the present Special Leave Petition also the same is reiterated by them in the list of dates by stating that in May 2008, they filed the aforesaid reply to the interim application in the Court of Small Causes wherein they took the aforesaid legal position.

29. This being the position it is not possible for this Court to find any fault with the impugned order passed

by the Learned Single Judge viz. that it will be open to the respondent to take steps in accordance with the Public Premises Act which will be the due process of law, and not by any force. The termination of the dealership agreement by the appellant will render the occupation of the premises by the respondent to be unauthorised one and it will be open to the respondent to take further steps to take possession thereof though only in accordance with the due process of law. This much minimum protection has to be read into the relationship created between the parties under the clauses of the agreement noted earlier. Besides, an opportunity of being heard in a situation which affects the civil rights of an individual has to be implied from the nature of the functions to be performed by the public authority which has the power to take punitive or the damaging actions as held by a Constitution Bench of this Court in *Maneka Gandhi v. Union of India* reported in [1978 (1) SCC 248].

30. It was submitted on behalf of the appellant that in the event the respondent does not vacate the premises in spite of the termination of the agreement of dealership, the appellant will be entitled to use force to remove them, if necessary. The appellant relied upon the observations in para 85 of the judgment in *Bishna Alias Bhiswadeb Mahato*

and Others Vs. State of West Bengal reported in [2005 (12) SCC 657]. It was a criminal case wherein among other submissions the accused had submitted that they had exercised the right of private defence as regards their property leading to the incidents. In this context, it was observed in the referred paragraph 85 as follows: -

"85. Private defence can be used to ward off unlawful force, to prevent unlawful force, to avoid unlawful detention and to escape from such detention. So far as defence of land against the trespasser is concerned, a person is entitled to use necessary and moderate force both for preventing the trespass or to eject the trespasser. For the said purposes, the use of force must be the minimum necessary or reasonably believed to be necessary. A reasonable defence would mean a proportionate defence. Ordinarily, a trespasser would be first asked to leave and if the trespasser fights back, a reasonable force can be used."

To say the least, the submission based on this paragraph is totally untenable. By no stretch of imagination the respondent can be called a trespasser into the concerned premises. The respondents have been permitted to occupy the premises under the dealership agreement and have been so occupying it under the agreement with the appellant since 1st April 1972. A Submission coming from a public authority in this fashion is totally unacceptable and deserves to be rejected.

31. The appellant had relied upon the judgment in Southern Roadways Ltd., Madurai Vs. S.M. Krishnan (supra) to contend that the respondent can not claim any kind of possessory right in the premises wherein the respondent was working as an agent. There can not be much dispute with the proposition though what is material to be note is that in that case the appellant had taken a godown on lease and the respondent was put in possession for carrying on his agency business with the appellant. The appellant had terminated the agency on coming to know about the mismanagement of the business and wanted to take the possession of the godown. On being prevented, the appellant had filed a suit for a declaration of their right of carrying on business in the concerned premises and sought an injunction therein, initially in the Madras High Court and subsequently in the SLP in this Court. The appellant had not resorted to any use of force. While granting the injunction the aforesaid observations have been made.

32. In Indian Oil Corporation Ltd. Vs. Amritsar Gas Service and Others (supra), the respondent was appointed as a distributing agent of the gas cylinders in Amritsar. On receiving the complaints about the working of the distributorship, the appellant had terminated the agency.

Thereupon the respondent had moved the Civil Court whereas the appellant had sought arbitration which was granted by this Court and it was in that context that this Court has observed that on termination of the agency the only relief which could have been granted was to seek compensation for loss of earning. The method of taking the possession was not involved in either of the two cases. In neither of the two cases the possession was sought to be taken by force.

33. It is instructive to note in this behalf that in *Olga Tallis Vs. Bombay Municipal Corporation* [AIR 1986 SC 180] the question was with respect to the eviction of the hutment dwellers from the footpaths of Mumbai. Section 314 of the Bombay Municipal Corporation Act provided that the Municipal Commissioner may, without notice, cause an encroachment to be removed. It was submitted on behalf of Municipal Corporation that the footpath dwellers can be removed by use of force and even without a notice. In the judgment of the Constitution Bench, this Court held that though the section did not specifically make it mandatory, issuance of a notice was a minimum requirement. It was submitted on behalf of Municipal Corporation that the hutment dwellers can not have any defence. The relevant observations of this Court in paragraph 47 of the judgment

(as reported in AIR 1986 SC Page 180) based on authorities are as follows:-

"The proposition that notice need not be given of a proposed action because, there can possibly be no answer to it, is contrary to the well-recognized understanding of the real import of the rule of hearing.-----

-----Both the right to be heard from, and the right to be told why, are analytically distinct from the right to secure a different outcome; these rights to interchange express the elementary idea that to be a person, rather than a thing, is at least to be consulted about what is done with one."

34. This was the approach of this Court where the notice was not mandatory in the case of occupiers of footpaths. This Court held that issuance of a notice and affording of an opportunity was a minimum requirement. In the present case as stated above, the respondents are occupying the premises, may be as an agent of the appellant, right from the 1st April 1972. According to the appellant the respondent have no authority to remain on the premises after the dealership agreement is terminated. As against that the respondent has contended that respondent is a tenant and in any case a 'deemed tenant' of the premises. The respondent has moved the Court of Small Causes for the declaration and has obtained an order of status-quo. That order presently survives and is not set aside though the Learned Single Judge has observed in the

impugned order that the order of status-quo would operate only till the competent authority passes the order of eviction. The respondents have not challenged this order either by filing a Special Leave Petition or by filing any cross objections in the present appeal, and therefore it binds them. In the circumstances of the present case, the Learned Single Judge has permitted the appellant to proceed against the respondent under the Public Premises Act on the footing that after the termination of the dealership agreement the occupation would be unauthorised. He has rightly observed that the pendency of the proceeding in the Civil Court can not preclude the appellant from taking recourse to recovery of the possession of the suit premises by following due process of law including by resorting to action under the provisions of Public Premises Act, if permissible. He has, however, made it clear that in any case possession can not be obtained by force. In our view, there is no reason for this Court to take any different view. The respondent has to be afforded an opportunity of being heard, may be in the forum of the appellant, and only after obtaining an order from the competent authority the respondent can be evicted.

35. It is true that in Southern Roadways Limited (supra) this Court did observe in paragraph 22 that the

possession of the respondent in that case was on behalf of the company and not on his own right. And therefore, it was not necessary for the company to file a suit for the recovery of possession. Those observations will have to be read as laying down the law in the fact situation which emerged in that case and would apply to similar situations. The issue with respect to the premises of a Public Corporation did not arise in that matter. Besides, in the facts of the case before us, amongst others the respondent had raised the issue with respect to the nature of his licence to remain on the premises, and had also sought the protection which was available to the licensee in occupation of the premises prior to 1.2.1973. Whether the respondent was right in that contention or not is not for this Court to determine. It is for the appropriate authority to decide. That is the minimum opportunity which will be required to be provided to the respondent in the facts of the present case, when he is in occupation of the concerned premises for nearly 40 years. It is also relevant to note that even on the footing of being an agent, apart from the right to receive the compensation in a situation which could be placed under Section 205 of the Contract Act, the agent also has the right to remain on the property of the principal under Section 221 of the Contract

Act, for the reliefs which are available under that section if he makes out such a case. It is another matter that as stated above the respondent has placed his case on a higher pedestal, but even on the basis that he is a mere agent, he does have certain rights under Sections 205 and 221 of the Contract Act, and para 13 of Southern Roadways Limited (supra) specifically recognizes that. This being the position it cannot be said that the respondent does not deserve even an opportunity of being heard. What are the relevant terms of the agreement between the parties, what is their true connotation and what order could be obtained by the appellant against the respondent, or what relief at the highest the respondent would be entitled to, will have to be considered and decided before an appropriate forum.

36. It is also relevant to note that all throughout the respondent has contended that respondent has been in exclusive possession of the premises concerned, and all the employees on the premises are that of the respondent. Even in the first suit filed in the court of small causes, respondent has pointed out that there was a problem with respect to the dispensing unit once in the past in year 2002, and in consultation with the petitioner the respondent took corrective measures. The reports all throughout thereafter have been satisfactory and the

respondent has relied upon a voluminous correspondence in that behalf in paragraphs 33 to 60 of the plaint filed in the court of small causes. In the third suit bearing No. 706 of 2009 challenging the termination of the licence filed in the City Civil Court Mumbai, the respondent has specifically pleaded in paragraph 69 that the termination was without any reasons and was contrary to public policy, and was violative of Article 14 of the Constitution of India. In paragraph 77, respondent has specifically submitted that a technical fault in the machine cannot amount to manipulation and that apart it was not a case of adulteration. All these submissions of the respondent require a determination. An opportunity of being heard is something minimum in the circumstances. The proceedings before the authority under the Public Premises Act is an expeditious proceeding and that is something minimum in the circumstances. A Public Corporation from which a higher standard is expected, cannot refuse to follow this much minimum due process of law.

37. In the circumstances we have no reason to interfere with the order passed by the Learned Single Judge. We, however, make it clear that the observations made above are for the purposes of deciding the correctness or otherwise of the impugned order passed by the Learned

Single Judge and not on the merit of the rival claims. We make it very clear that in the event the appellant takes the steps under the Public Premises Act, it will be open to the respondent to plead their case before the competent authority on all counts, though it will also be open to the competent authority concerned to take its own decision on the merits of the rival contention on facts as well as on law.

38. This appeal is, therefore, dismissed though there will be no order as to costs.

.....J.
(H.L. Gokhale)

New Delhi

Dated: March 02, 2011

JUDGMENT

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2276 OF 2011

[Arising out of SLP(C) No.9134/2009]

BHARAT PETROLEUM CORPORATION LTD.APPELLANT

Versus

CHEMBUR SERVICE STATIONRESPONDENT

O R D E R

Leave granted.

In view of the divergence in views, the Registry is directed to place the matter before the Hon'ble Chief Justice of India for placing the matter before a larger Bench.

JUDGMENT

.....J.
(R.V. RAVEENDRAN)

New Delhi;
March 02, 2011.

.....J.
(H.L. GOKHALE)