Before Amol Rattan Singh, J.

DIRECTOR MARKETING BHARAT PETROLEUM CORPORATION LIMITED AND OTHERS—*Appellants*

versus

VIPIN SUKHIJA—*Respondent*

RSA No. 1611, 1617 and 1683 of 2016

June 16, 2017

A) Haryana Urban (Control of Rent and Eviction) Act, 1973— Ss. 2(h) and 13— Transfer of Property Act, 1882— Ss. 105 and 106 —Holding-over statutory tenant after expiry or termination of tenancy — That status can be conferred upon a tenant in actual physical possession of property let out, not where landlord in possession as a licensee of the tenant— Corporation took land on lease from landowner — Granted him licence to sell its products — On cancellation of licence and termination of lease of Corporation by the landowner, it cannot be presumed to be a statutory tenant holding over in possession and cannot claim protection and benefit of the provisions of Urban Rent Act— A statutory Corporation is expected to act fairly with citizens and not claim unfair benefit of technicalities —Possession of landlord, even in the capacity of licensee, after cancellation of his licence, would be treated as actual possession with the deemed possession of Corporation, no more as a tenant—Suit for mandatory injunction by landlord held maintainable and rightly decreed.

Held that the reason for termination of the licence may or may not have been valid, but that issue is not required to be gone into by this Court at all in these proceedings, such cancellation of licence not being under challenge.

(Para 62)

Further held that whether or not the reason for termination of the licence was wholly bona fide or mala fide cannot be commented upon at all by this Court, and if any action other than simple termination of the licence was invocable against the land owner/ licensee for any short fall in the products etc., obviously the Corporation would have resorted to such legal proceedings which would naturally reach (or may have already reached) their logical conclusion.

(Para 63)

Further held that this Court would answer the questions of law framed at serial nos. (i) to (iii), (v) & (vi), in paragraph 47 hereinabove, in favour of the respondent-land owner, the Corporation to the effect that at the time of the filing of his first suit, i.e. on 05.01.2009, the licence in his favour having been revoked/cancelled 6 days earlier by the appellant Corporation, its deemed possession over the suit land ceased with effect from the date of such revocation, and therefore with physical possession always having been that of the land-owners, it could no longer consider itself as a tenant over the suit property in terms of Section 2(h) of the Rent Act 1973 and consequently, for seeking removal of the structures of the erstwhile lessee/licensor, the suit as was instituted by the land owner was not without jurisdiction, and Section 13 of the Rent Act of 1973 would have no application to the suit property.

(Para 64)

B) Haryana Urban (Control of Rent and Eviction) Act, Ss. 2(h) and 13 —Transfer of Property Act, 1882 —Ss. 105 and 106— Non-Payment of rent — Only because the land owner himself was not encashing the cheques but termination of lease under any clause thereof shown before the term of lease ran out, the lease held to be subsisting.

Held that only because the land owner himself not encashing the cheques, and with nothing shown that he terminated the lease under any clause thereof before the term of the lease ran out, the lease has to be held to be subsisting at the time when the aforesaid memorandum of agreement was signed between the parties on 15.04.2003

(Para 59(i))

Raman Sharma, Advocate
for the appellants.

Anil Malhotra, Advocate
for the respondent.

AMOL RATTAN SINGH, J.

(1) These three regular second appeals all essentially arise out of a dispute emanating from a lease deed entered into between the predecessor- in-interest of the appellants in all these appeals, i.e. Bharat Petroleum Corporation Limited and the predecessor-in-interest

of the respondent, Vipin Sukhija, registered on 03.11.1966.

The lease deed was executed between Sh.Guraditta Ram and Sh.Mohan Lal Sukhija (lessors) with M/s Burmah Shell Storage and Distributing Company of India, qua land admeasuring 6972 square feet, falling on National Highway no.10, Mandi Dabwali, District Sirsa.

The lease deed was for a period of 20 years, with the monthly rental being Rs.175/-, with a clause therein that if the parties were agreed,the lease would be renewed and, as per the respondent herein, it was renewed upto 30.06.2005 with the successor of the Burmah Shell Company, i.e. the present appellant, M/s. Bharat Petroleum Corporation Limited (hereinafter referred to as the 'Company' or Corporation). The relationship of lessee and lessor between the successor company and the original lessors and their successor in interest, is admitted by the present respondent also, i.e. Vipin Sukhija.

It is also not disputed that the land owners, i.e. the lessors, also became licencees of the lessee company, as regards the sale of the products of the company, i.e. diesel, petrol and other petroleum products, which were to be sold by the lessor-licensee from the suit property itself, i.e. the aforesaid plot admeasuring 6972 square feet.

Thus, as per the respondent herein, effective control over the suit land remained with the lessors through their firm, to which the licence was granted by the appellant Corporation.

The contention of the respondent is that after the lease stood finally determined on 30.06.2005, he became the sole owner of the site and therefore, he instituted Civil Suit no.7-C of 2009 on 02.01.2009, seeking therein a decree of mandatory injunction directing the defendants (present appellants), to remove their infrastructure from the suit land.

5 days after the institution of that suit, the respondent herein also instituted Civil Suit no.29-C of 2009 on 07.01.2009, seeking a decree of permanent injunction restraining the Corporation and its employees (defendants) from interfering in his ownership and possessory rights overthe suit land.

21 days thereafter, i.e. on 28.01.2009, the appellant Corporation filed Civil Suit no.72-C of 2009, seeking a decree of mandatory and permanent injunction against the present respondent, injuncting him from dispossessing the Corporation from the suit property by force, and

from causing any damage to the structure, machinery, dispensing units, tanks, canopy etc. and from interfering in any manner whatsoever, except in due course of law, over the suit property. A further direction was also sought that the defendant (present respondent) be directed to remove the wall erected on the site, on the side of the "GT road". A consequential relief of permanent injunction, restraining the defendant from causing any type of interference in the statutory tenancy rights of the Corporation (plaintiff in that civil suit), was also sought.

(2) Though all the suits are seen to be decided on the same date by the same Court, i.e. the Additional Civil Judge (Sr.Div.), Dabwali, on 29.03.2014, separate judgments have been passed in each suit.

Both the suits of the land owner, i.e. respondent Vipin Sukhija, bearing numbers 7-C and 29-C of 2009, were decreed in his favour, whereas the suit filed by the appellant Corporation, bearing no.72-C, was dismissed. The appellant Corporation therefore filed 3 appeals against the aforesaid judgments and decrees of the learned Civil Judge, which were all dismissed vide separate judgments on the same date, i.e. 30.11.2015, by the learned Ist Appellate Court, i.e. the Additional District Judge, Sirsa.

Hence these 3 regular second appeals have come to be filed by the appellant Corporation against the impugned judgments and decrees of the Courts below.

For convenience, the following table is being drawn up so as to depict as to which suit relates to each appeal before the Ist Appellate Court, as also in second appeal before this Court.

Civil Suit no.7-C of 2009 **Plaintiff :** Vipin Sukhija **Relief sought** : Mandatory injunction for removal of infrastructure **Relief granted:** suit decreed in favour of the plaintiff on	**Civil Suit no.29-C of 2009 Plaintiff :** Vipin Sukhija **Relief sought** : Permanent injunction restraining the defendants from interfering into the ownership and possessory rights of the plaintiff in the suit land **Relief granted:** suit decreed in favour of the plaintiff on 29.03.2014	**Civil Suit no.72-C of 2009** **Plaintiff:** Bharat Petroleum Corp.Ltd. **Relief sought** : Mandatory and permanent injunction restraining the defendant from dispossessing the plaintiff from the suit property, from causing any type of interference in the tenancy rights of the plaintiff over suit property or by causing any damage to the property and directing the defendant to

29.03.2014		remove the wall and restraining the defendant **Relief granted:** suit dismissed on29.03.2014
Ist appeal: Civil appeal no.144 of 2014 **Appellant:** M/s Bharat Petroleum Corp.Ltd. **Result**: Appeal	**Ist appeal**: Civil appeal no.145 of2014 **Appellant:** M/s Bharat PetroleumCorp.Ltd. **Result**: Appeal dismissed on 30.11.2015	**Ist appeal**: Civil appeal no.96 of2014 **Appellant:** M/s Bharat PetroleumCorp.Ltd. **Result**: Appeal dismissed on30.11.2015
2nd appeal: RSA-1683-2016 **Appellant**: M/s Bharat Petroleum Corp.Ltd.& Ors.	**2nd appeal**: RSA-1611-2016 **Appellant**: M/s Bharat Petroleum Corp.Ltd.& Ors.	**2nd appeal**: RSA-1617-2016 **Appellant**: M/s Bharat PetroleumCorp.Ltd.& Ors.

(3) Though all 3 appeals came up for hearing on the same date before this Court, on 21.04.2016, whence notice of motion was issued in all3 of them, with notice having been accepted in Court by learned counsel for the common respondent in each appeal on that date itself, and thereafter the appeals have been heard together and common arguments have also been addressed, (the question being essentially the same), however, at this stage it is proper to give the facts separately from the judgments of the Additional Civil Judge, in each suit, the issues having been framed separately and each suit having been disposed of by a separate judgment as already said.

RSA-1683-2016

(4) This second appeal arises out of the first suit instituted by the respondent herein on 02.01.2009, bearing Civil Suit no.7-C of 2009.

As per the respondent-plaintiff (hereinafter referred to as the land owner), Guraditta Ram and Mohan Lal were his predecessors-in-interest, who owned and possessed the suit property (fully described in the head note of the plaint), comprising of land measuring 6972 square feet situated on the National Highway, Mandi Dabwali, as already noticed earlier. To repeat, a lease, bearing no.710, registered on

03.11.1966, was entered into between those land owners and M/s Burmah Shell Company (India) Limited, whereby it was agreed that if after 20 years of the initial lease period, the lessee, i.e. the company, was desirous of renewing the leasedeed, it would express such desire to the lessor not less than 2 months in advance of the date of expiration of the lease, by a notice in writing, upon which the lessor would grant to the Corporation a renewed lease for afurther period of 20 years.

Though the lease deed was formally reduced to writing vide the aforesaid deed on 03.11.1966, it is the common ground of the parties that the initial period of lease was actually from 01.07.1965 till 30.06.1985, it having been thereafter extended till 30.06.2005.

(5) As per the land owner, the extension of lease was agreed to as the Burmah Shell Company had given a licence to the firm of which his predecessors-in-interest were partners, to operate the retail outlet of thecompany and it was for this reason that the lease money was only for a nominal sum (as per the plaintiff/ land owner) of Rs.175/- per month, as the firm was a major beneficiary on account of the operation of the retail outlet of the company.

As per the land owner, the relationship between the parties as lessor or lessee, was strictly governed by the provisions of the Transfer of Property Act, 1882, despite the other relationship of licensor and licensee between the lessee and lessor respectively.

(6) The plaintiff/ land owner thereafter contended in his plaint that he was now the sole proprietor of the firm M/s Kanshi Ram Guraditta Ram, as also the owner of the suit plot and therefore the lessor. He further contended in his suit that since the lease had not been renewed after 30.06.2005, therefore, the defendant Bharat Petroleum Corporation Limited was no longer a lessee and was wholly in unathorised occupation of the premises and was required to vacate the same.

(7) Yet further, it was averred that the action of the Companys' Territory Manager (Retail), issuing a notice dated 30.11.2007 suspendingthe supply of the petroleum products to the retail outlet, was also wholly unjustified and without the authority of law, to which notice the land owner/licensee had duly replied on 11.12.2007, followed by another letter dated 08.07.2008, despite which nothing had been heard from, or on behalf of, the company, though in response to another letter dated 28.11.2008, the Territory Manager, Rewari, had stated that the company was a lawful tenant

on the property since 1965 and that the property would be governed by the provisions of the Haryana Urban (Control of Rent & Eviction) Act, 1973 (hereinafter referred to as the "Rent Act"), and that the notice issued by the land owner under Section 106 of the Transfer of Property Act was not applicable to the premises.

(8) It was further contended by the plaintiff / land owner that his firm enjoyed a 'high reputation' amongst the consumers and inhabitants of Mandi Dabwali and its surrounding area, who had immense faith in thefirm, as regards the maintenance of the quality of the products received fromthe company.

(9) Thus, according to the land owner/ plaintiff, by the letter dated 13.12.2008 of the Territory Manager, the company was creating hurdles by not vacating the premises, thereby giving him the cause of action to institute the suit.

In the suit, other than seeking mandatory injunction against the company, by a direction to remove its infrastructure from the suit land, the land owner- plaintiff also sought mesne profits @ Rs.25,000/- per month, w.e.f. 01.07.2005, for usage of the land by the company.

The plaintiff also sought an ad-interim injunction by way of a direction to the defendant Corporation, restraining it from giving the site to any other person for dealing in the sale of petrol, diesel and other products.

(10) Upon notice issued to the company and its officers (defendants), a written statement was filed, not denying the initial lease and extension of the lease period upto 30.06.2005, submitting thereafter that the Corporation had become a statutory tenant on the site in dispute, as it falls within the municipal limits of Mandi Dabwali, with the Rent Act applying to the suit property.

It was further contended that the Corporation had been paying rent to the land owner and prior to him to his predecessors-in-interest and as such, the possession of the Corporation over the suit property was legal and valid, as a statutory tenant, who was entitled to continue to retain such possession.

(11) As regards stopping the supply of petroleum products to the retail outlet run by the land owner, it was stated that there were irregularities on the part of the plaintiff, who, in violation of the rules and regulations of the Corporation, had directly sold diesel to another party and consequently, after hearing the plaintiff-land owner, his

dealership had been cancelled by the Corporation on 30.12.2008.

(12) It was next averred in the written statement that the structures upon the suit land were raised with the consent of the plaintiff and that the Corporation had spent a huge amount for developing the retail outlet.

Other than the aforesaid averments, additional objections with regard to the non-maintainability of the suit, the land owner/plaintiff having no cause of action or locus standi, and him being estopped by his own act and conduct from filing the suit, were also taken by the Corporation in its written statement.

(13) A replication having been filed to the aforesaid written statement, controverting its contents and reasserting those of the plaint, the following issues were framed by the learned Additional Civil Judge:-

> "1. Whether predecessors in interest of the plaintiff were owners in possession of the suit land as detailed and described in the head note of the plaint and whether the same was leased out by them to Burmah Shell storage and distributing company of India Ltd. Vide lease deed dated 03.11.1966 which was extended upto 30.06.2005?OPP
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> a. Whether the lease deed was not extended by plaintiff through his predecessor-in-interest with the defendants and so the defendants are no more lesseeover the suit land and so they are in unauthorised occupation of the same?OPP
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> b. In case issues no.1 and 2 are decided in favour of the plaintiff then whether the plaintiff is also entitled to relief of mandatory as well as permanent injunction as prayed for?OPP
>
> c. Whether the suit filed by the plaintiff is not maintainable in the present form?OPD
>
> d. Whether the plaintiff has not approached the Court with clean hands?OPD
>
> e. Whether the suit has not been properly valued for the purposes of court fees and jurisdiction?OPD
>
> f. Whether the defendants have concealed the dealership of the plaintiff vide its order dated 30.12.2008?OPD (Sic.

"Cancellation of dealership").

g. Relief."

(14) In support of his suit, the land owner-plaintiff examined himself as PW1, one Suresh Kumar as PW-2 and an employee of the company, Navsharad Yadav as PW3. By way of documentary evidence, he tendered the following:-

Application under RTI Act	Ex.P1
Letter dated 28.01.2009	Ex.P2
Letter dated 05.01.2009	Ex.P3
Letter dated 29.01.2009	Ex.P4
Affidavit	Ex.P6
Letter dated 30.12.2008	Ex.P7
Letter dated 18.04.2009	Ex.P8
Letter dated 09.05.2009	Ex.P9
Letter dated 30.05.2009	Ex.P10
Letters/record of Bharat Petroleum Corporation Ltd.	Ex.PW3/1 to PW3/6

(15) The defendant Corporation also examined the aforesaid Navsharad Yadav as DW1 but other than the said witnesses' affidavit byway of his examination-in-chief, no documentary evidence was led in civil suit no.7-C of 2009.

(16) Upon appraisal of the evidence before it, the learned trial Court found that other than the plaintiff-land owner reiterating the contents of his plaint, PW2 Suresh Kumar had proved the summoned record in the form of Exs. P1 to P4 aforesaid from the office of the Deputy Commissioner, and that the signatures on the said documents were also identified by this witness (who is seen to be a Reader in the office of the District Collector).

As per the judgment of the trial Court, Navsharad Yadav, who was the Assistant Manager (Sales) of the Corporation, when he appeared as PW3, he proved the record of the Corporation and further deposed that cheques regarding lease money had been given but that he had not produced any record with regard to that. This witness is further seen to have deposed that as per a letter, Ex.PW3/1, the land owner stated that he had not received any lease money, though thereafter, this

witness is seen to have testified that licence fee was to be recovered from the dealer (land owner) and that the Corporation had spent Rs.50 lacs on the petrol pump, which was within the limits of the Municipal Committee.

It is further noticed by the learned trial Court that this witness had admitted that the amount demanded from the sales of the plaintiff, was his licence fee and was not in respect of the material on the site.

(17) Thereafter, it has been noticed by that Court, that while testifying as DW1, this witness, Navsharad Yadav, reiterated the contents of the written statement and in cross-examination admitted that an application had been filed (by the Corporation), before the Deputy Commissioner, Sirsa, for taking possession of the suit property; however, he denied knowledge of whether the Deputy Commissioner had dismissed the application or not.

The witness also admitted that the plaintiff was the owner in possession of the suit property and had raised a wall on the same and that the Corporation had not lifted the material from the petrol pump, and it was due to that reason that the plaintiff has raised the aforesaid wall.

As per the learned trial Court, this witness also admitted that at the time of the cancellation of the licence of the land owner, verification had been done with regard to lifting of the material from the petrol pump, which was the duty of the Corporation.

(18) The learned Additional Civil Judge went on thereafter to discuss as to whether the Corporation had become a statutory tenant on the suit property after determination of the lease on 30.06.2005, and held that in order to become a statutory tenant, the tenant should continue to remain in possession of the suit property after termination of the lease, but with the admission of DW1 that the plaintiff was the owner in possession of the suit property and though as per the terms and conditions of the licence the possession would remain with the Corporation, however, with the cancellation of the licence, the possession could not be held to be with it (the company).

Consequently, as it no longer remained in possession of the suit property, therefore the corporation was not entitled to the protection ofbeing a statutory tenant thereon.

(19) A further finding was recorded by that Court that as the plaintiff had not received cheques (towards rent) after 2002, and it had

also been admitted that he was the owner of the land on which the petrol pump was installed, it had to be concluded that the company was not in possession of the suit property after the cancellation of the licence and even though at the time of cancellation it had not actually lifted unutilised petroleum products, despite stating that it would, the position with regard to possession of the property did not change.

(20) An argument having been raised on behalf of the Corporation that the suit was not maintainable under Order 2 Rule 2 CPC as the plaintiff had also filed a suit for permanent injunction, that argument was rejected on the ground that the suit for permanent injunction was filed by the landowner / plaintiff in his capacity as a lessor, with the suit in question, (i.e. Civil Suit no.7-C of 2009), having been instituted in his capacity as alicensee.

(21) Thus, having held that the Corporation was not in possession of the suit property, it was further held that therefore, it was obliged to remove its infrastructure from the suit land and since admittedly no lease money had been received by the land owner/ plaintiff since 2002, though the petrol pump continued to work till 2008, the land owner would also be entitled to mesne profits uptil the date of the removal of the infrastructure from the land by the Corporation, to the tune of Rs.20,000/- per month, from the date that the licence was cancelled, i.e. 31.12.2008.

(22) With the primary issues (issues no.1 to 3) having been decided in favour of the land owner-plaintiff, the remaining issues with regard to maintainability of the suit, the plaintiff having not approached the Court with clean hands, there being lack of jurisdiction, improper court fee having been affixed and cancellation of the dealership, were also decided against the defendant Corporation, holding that it had failed to discharge its onus to prove any of the said issues.

(23) On the aforesaid findings, the suit of the plaintiff, i.e. Civil Suit no.7-C of 2009, was decreed in his favour, directing the defendants to remove their infrastructure from the suit land, further holding that the plaintiff-land owner was entitled to receive mesne profits from 31.12.2008 till the date of removal of the infrastructure, @ Rs.20,000/- per month. The defendant Corporation was also directed to hand over the vacant possession of the suit property after removing all the structures existing on it, holding that such structures were existing without the authority of law after the lease had expired on 30.06.2005.

(24) The respondent Corporation having filed Civil Appeal no.144 of 2014 against the aforesaid judgment and decree, that too was dismissedby the learned Ist appellate Court, which first referred to clauses 10 and 3 of the lease deed dated 03.11.1966 (Ex.P5). The said clauses read as follows:-

> "3. Upon the expiration or sooner determination hereof the lessers shall deliver possession of the plot of land to the lessor and shall with all reasonable dispatch remove therefrom all buildings structures plant and other property belonging to them." xxxx xxxx
>
> xxxx xxxx xxxx
>
> "10. If the lessees shall be desirous of renewing this present lease and of such desire shall have given to the lessor not less than two months's notice in writing priorto the expiration hereof the lessor shall grant to them a renewed lease of the said plot of Land for a further period of Twenty years to commence from the date of expiry hereof at the same terms and conditions in all respects as are reserved and contained herein(excluding only this present covenant for renewal)."

The judgment of a Division Bench of this Court, in ***N.H.Thadani*** versus ***Chief Settlement Commissioner***[1] was also cited, wherein it was held that if a tenant under a lease for a definite term retains possession of the premises after the expiration of the term, it was open to the land owner to either treat him as a tenant or to turn him out as a trespasser.

The difference between a tenancy-at-will and a tenancy-by -sufferance was also brought out by their Lordships, holding that in the case of the former the tenant holds the property by right, even though such right may be 'precarious' in nature, with the relationship of the lessor and lessee subsisting between the parties, whereas in the case of a tenancy-by-sufferance, the tenant holds the property against the will and permission of the land owner and has no estate at all in the premises. It was further held that such a tenant comes in to the property by right but holds over without any right and consequently, stands very nearly on the same footing as a trespasser.

(25) The learned lower appellate Court next went on to notice

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[1] 1958 PLR 62

that the application, Exs.P1 to P4, filed before the Deputy Commissioner, showed that the possession of the premises in dispute was with the plaintiff- land owner, who had not received any lease amount, and as such, he had not extended the lease.

On that reasoning it was held by that Court, that therelationship of lessor and lessee had ceased between the parties, and the relationship of licensee and licensor was also terminated on 30.12.2008 (by the Corporation).

A judgment of the Supreme Court in ***Rahul Yadav and another*** versus ***M/s Indian Oil Corporation Limited***[2]**,** was held to be not applicable to the facts of the present case, in view of the fact that the finding in that case was given in respect of the provisions of the Public Premises (Eviction of Unauthroised Occupants) Act 1971, with the lease in that case being in continuance, but it having already expired on 30.06.2005 in the instant case, without extension thereof.

(26) Hence, finally holding that the land owner/ plaintiff had 'constructive possession' over the suit property, with the symbolic possession of the appellant Corporation also being no possession in the eyes of law, it only being on account of the lien retained with the infrastructure.It was further held that in terms of clause 3 of the lease deed, such infrastructure was to be in any case removed.

(27) Thus, on the aforesaid reasoning, further holding that the suit was maintainable in terms of the judgment of this Court in ***Shyam Lal*** versus ***Deepa Dass Chela Ra Chela Garib Dass***[3]**,** the first appeal of the appellant Corporation was dismissed.

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(28) This second appeal eventually arises out of Civil Suit no.29-C of 2009 instituted on 07.01.2009, by which the land owner, Vipin Sukhija, sought a decree of permanent injunction, restraining the defendant Corporation and its employees from interfering in his ownership and possessory rights over the suit property.

After giving the same details with regard to the lease deed executed in 1966 and the licence issued to firm, it was further averred that the plot in dispute, bearing khasra no.1902/2/1 and a part of khasra no.1902/2, was owned and possessed by the wife of the plaintiff.

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[2] 2015(3) RCR (Civil) 818

[3] 2010(4) I.C.C. 797

Contending in this suit also that the Corporation had suspended the supplies of petroleum products on 16.11.2007 in an arbitrary manner, the further contention of the plaintiff-land owner was that an admission had been obtained from him, under the pretext of restoration of the supply of the product, which was not binding upon him.

It was further averred that this suit was based on an entirely new cause of action, i.e. other than the suit for mandatory injunction filed 5 days earlier, because on 05.01.2009 the plaintiff had gone to the office ofthe Senior Sales Officer of the respondent Corporation, at Hisar, to know about the restoration of the supply of diesel etc., during the course of which the officer told him that there was no question of restoration of the supplies and in fact the Corporation would even take over his land and premises, with specific instructions from the Corporation to the said officer, to do so.

Consequently it was contended, that the second suit had been instituted due to the said 'threat' on 07.01.2009.

(29) In response to the notice issued to the Corporation, it again filed its written statement reiterating what it had stated in the written statement filed in response to the first suit, including that it had become a statutory tenant, further taking an objection under Order 2 Rule 2 CPC, on the ground of the first suit being pending, with the plaintiff having intentionally split up the claim in order to pressurize the Corporation for the restoration of his dealership, which had already been cancelled vide an order dated 30.12.2008.

(30) It was further contended that the land owner-plaintiff had impliedly consented to the renewed tenancy of the Corporation on the site in dispute by his own act and conduct, and that the rent was being paid regularly even after the expiry of the lease, which the land owner had never objected to.

The same additional objections with regard to non-maintainability, lack of cause of action etc. as had been taken in response to the first suit, were also taken in the second suit, with dismissal of the suit prayed for.

Upon a replication having been filed by the plaintiff, the following issues were framed by the learned Additional Civil Judge:-

> "1. Whether predecessors in interest of the plaintiff were owners in possession of the suit land as detailed and described in the head note of the plaint and whether the

same was leased out by them to Burmah Shell storage and distributing company of India Ltd. Vide lease deed dated 03.11.1966 which was extended upto 30.06.2005?OPP

a. Whether after the expiry of lease deed in favour of defendant company, plaintiff has become the sold owner of the suit land?OPP

b. In case issues no.1 and 2 are decided in favour of the plaintiff then whether the plaintiff is also entitled to relief of mandatory as well as permanent injunction as prayed for?OPP

c. Whether the suit filed by the plaintiff is not maintainable in the present form?OPD

d. Whether the plaintiff has not approached the Court with clean hands?OPD

e. Whether the suit has not been properly valued for the purposes of court fees and jurisdiction?OPD

f. Whether the defendants have concealed the dealership of the plaintiff vide its order dated 30.12.2008?OPD

g. Whether the suit filed by the plaintiff is barred under Order 2 rule 2 CPC?OPD

h. Relief."

(31) In this suit also, the plaintiff-land owner examined himself, Suresh Kumar and Navsharad Yadav as PWs 1 to 3, whereas the defendant Corporation also again examined only Navsharad Yadav as DW1.

The testimonies of the witnesses on both sides are also shown, in the judgment, to be the same as the testimonies of these witnesses in the first suit.

(32) Thereafter, very short reasoning was given by the learned Additional Civil Judge, decreeing it in favour of the plaintiff, which essentially is seen to be a summary of the reasoning given by that Court, while decreeing the first suit.

(33) As regards issue no.8, as to whether this suit was barred under Order 2 Rule 2 CPC, that issue is seen to have been decided along with issues no.4 to 7, simply stating that the onus to prove all these issues was on the defendants and in view of the discussion on

issues no.1 to 3, they were being decided against the defendant-Corporation.

(34) Civil Appeal no.145 of 2014 having been filed by the Corporation against the said judgment and decree, the Ist Appellate Court, after reiterating the facts of the case as per the pleadings of the parties and noticing the issues framed, the principal issue argued before that Court is seen to be the non-maintainability of the second suit in terms of Order 2Rule 2 CPC, which however was also rejected by the Ist Appellate Court, on the ground that the second suit for permanent injunction was actually filed on 06.01.2009 with the cause of action having arisen to the land owner- plaintiff on 05.01.2009, when his possession was threatened by the appellants-defendants upon his visit to the office of the Corporation at Hisar, on that date.

(35) Thereafter, giving exactly the same reasoning as it had for dismissing the appeal against the judgment and decree in the first suit, by citing clause 3 of the lease deed dated 03.11.1966, the appeal in the second suit was also dismissed by the lower appellate Court.

RSA-1617-2016

(36) This second appeal arises out of Civil Suit no.72-C of 2009, instituted by the Corporation through its Territory Manager, seeking a decree of mandatory and permanent injunction, as already noticed, thereby restraining the land owner (defendant in this case) from dispossessing the Corporation from the suit property by force or by causing any damage to the structures, machinery etc. on the suit land.

A further direction for removal of the wall erected towards the main road was also sought by the Corporation, along with a 'temporary mandatory injunction' for removal of the wall and consequential permanent injunction restraining the land owner from causing any type of interferencein the statutory tenancy rights of the Corporation.

(37) The basic facts even in this suit were as given in the two suits filed by the land owner, as regards the execution of the lease deed on 03.11.1966, etc. However, the Corporation further went on to state that at the time of execution of the lease deed in question, with the predecessors-in-interest of the land owner, another lease deed, bearing no.711, was also executed on the same date, with one Smt. Parmeshwari Devi in respect of an area admeasuring 3000 square feet, for a term of 15 years, with the monthly rental in that case being Rs.100/-. That lease is also stated to have been extended for a period of 20 years after the expiry of the initial 15 years.

As stated by the Corporation in its written statement filed in reply to the two suits of the land owner, it was also stated in its plaint, that as the land falls within the municipal limits of Dabwali, its tenancy was protected under the Rent Act of 1973.

It was further contended that the predecessor company of the Corporation, (M/s. Burmah Shell) had invested a substantial amount of money in the development of the retail outlet on the land, by installing pumps, oil storage tanks, dispensing units, sales rooms etc., to facilitate the sale of petroleum products to the general public.

The Corporation was also stated to have been vested the rights earlier vested in the predecessor company, by an Act of Parliament, namely the Burmah Shell Acquisition of Undertakings in India Act of 1976, w.e.f. 24.01.1976.

(38) Further, it was submitted that in any case renewal of the lease deed w.e.f. 01.07.1985 had been accepted by the land owner, upon a letterof the Corporation dated 21.03.1985, on the same rental and terms and conditions as were given in the existent lease deed. Such consent for renewal of the lease for 20 years is stated to have been given by the land owner vide his letter dated 25.07.1990.

(39) Therefore, contending that the Corporation had been in occupation of the suit land since 1965, and being a statutory tenant in terms of the Rent Act, it had also requested the land owner many times to remove the wall erected by him, but upon his refusal to do so the suit came to be instituted on 28.01.2009 (i.e. 21 days after the second suit of the land owner and 26 days after his first suit).

(40) Upon notice being issued in the suit instituted by the Corporation, the land owner reiterated what he had stated in his two suits, with regard to the expiry of lease on 30.06.2005, further stating that he had thereafter re-entered in the premises in his capacity as owner in possessionon 01.07.2005, and had manifested his intention to re-enter as such owner, by not having received any rent thereafter from the Corporation.

As per the land owner, the factum of his having re-entered as a owner of the suit premises, was proved by the application dated 06.01.2009 filed by the Corporation before the Deputy Commissioner, Sirsa, seeking that they be allowed to take possession of the site on 09.01.2009. However, it was contended that the Deputy Commissioner refused to provide police help, in view of the fact that the lease was not extended after 30.06.2005and as such, any taking over of the site

would have been with the Corporation being in the capacity of a traspasser.

(41) It was further contended by the landowner in his written statement, that the suspension and termination of the licence for the sale of petroleum products was wholly an arbitrary act of the Corporation, he never ever having been charged with adulteration of products.

The Corporation having become a statutory tenant after theexpiry of the lease deed was obviously denied by the landlord, and upon taking additional objections with regard to non-maintainability of the suit etc., dismissal thereof was prayed for.

(42) A replication having been filed by the Corporation to the aforesaid written statement of the land-owner, the following issues were framed by the learned Additional Civil Judge:-

> "1. Whether the plaintiff is in lawful permissive possession over the suit property as shown and detailedin the site plan of the suit property situated in the revenue estate of Nai Dabwali, Tehsil Dabwali, Distt. Sirsa?OPP
>
> a. In case issue no.1 is decided in favour of the plaintiff then whether the plaintiff is also entitled to consequential relief of mandatory as well as permanent injunction as prayed for?OPP
>
> b. Whether the suit filed by the plaintiff is not maintainable in the present form?OPD
>
> c. Whether the plaintiff has not approached the Court with clean hands?OPD
>
> d. Whether the lease period relating to the suit property between the plaintiff and defendant expired on 30.06.2005?OPD
>
> e. Relief."

(43) In this suit also, the Corporation examined only one witness, though different to the witness examined by it in the suits of the land owner. Sudarshan Mukhija, Assistant Sales Manager, was examined as PW1. By way of documentary evidence, a site plan, a list of assets, a terminationletter and the lease deed, were exhibited as Exs.P1 to P4.

The landlord (defendant in this case), examined himself as DW1 and Suresh Kumar (Reader in the office of the Deputy Commissioner), as DW2, as also Navsharad Yadav, the employee of the Corporation, whom he had also examined as a witness in his own suit.

(44) Upon appraisal of the evidence, it was first noticed by the learned trial Court that even the witness of the Corporation, i.e. Sudarshan Mukhija, in his cross-examination had admitted that after 30.06.2005 the lease deed was never renewed and the cheques, Mark A to Mark H, had not been encashed by the land owner. However, otherwise this witness testified in terms of the plaint, stating that the Corporation was a statutory tenant.

The land owner is shown to have testified in terms of what he has contended in his own suit and in his written statement in this suit, with DW2 Suresh Kumar again proving the signatures of the Superintendent on Ex.D1, issued by the office of the Deputy Commissioner upon information sought under the RTI Act.

DW3 Navsharad Yadav testified that the cheques sent to the land owner were returned by him after 2002, also admitting that after 2005 no fresh lease deed was executed.

(45) Upon the aforesaid evidence, again giving almost exactly the same reasoning as was given to decree the second suit of the plaintiff, i.e. a synopsis of the reasoning given in the judgment in the first suit, the learned trial Court dismissed the suit of the Corporation.

(46) The Corporation having appealed against that judgment and decree, the Ist appellate Court, again after noticing the pleadings, the issues framed and the evidence led, first noticed that the land owner had also filed two suits earlier which were also subject matter of appeals filed by the Corporation. Thereafter, that Court also, on the same reasoning as given for dismissal of the appeals in the judgments in favour of the land owner in his two suits, dismissed the appeal of the Corporation against the judgment and decree in its own suit also.

(47) Consequently, these three 2nd appeals have come to be filed before this Court by the Corporation.

The three common questions of law that have been framed for consideration of this Court, in each appeal, are follows:-

> (i) Whether the appellant-respondent became a statutory tenant after expiry of the lease on 30.06.2005?

(ii) Whether the appellant-respondent could be evictedonly under the provisions of the Haryana (Control of Rent & Eviction) Act, 1973?

(iii) Whether the occupation of the plaintiff-respondent over the site in dispute after termination of the license on 30.12.2008, is illegal?

Other than these questions, in the appeal eventually arising out of the second suit filed by the land owner, i.e. the one seeking permanent injunction after he was allegedly threatened that the Corporation would take over the land itself, an additional question of law has been framed as follows:-

"(iv) Whether the instant suit was barred under Order 2 Rule2 CPC?"

In the appeal arising out of the suit filed by the Corporation, seeking mandatory and permanent injunction, in addition to the three common questions of law, the following two questions have been framed:-

(v) Whether the respondent-defendant can claim possession after expiry of the lease when he admittedly was a licensee being a dealer of the appellant over the site?

(vi) Whether the impugned judgment and decree is the outcome of an incorrect appreciation of facts and law and thus suffers from perversity?"

(48) As a matter of fact, Mr. Raman Sharma, learned counsel appearing for the appellant Corporation, essentially argued on the Corporation having become a statutory tenant over the suit land after thefinal expiry of the extended lease period on 30.06.2005 and as such that it could only have been ousted by invoking the relevant provisions of the Rent Act of 1973 and not the Transfer of Property Act, 1882.

His second argument was that the provisions of Sections 106 and 107 of the Transfer of Property Act never having been made applicable to the State of Haryana, the notice issued under the said Act, by the land owner to the Corporation for eviction from the land, was wholly *non est*.

(49) Thus, after referring to the undisputed facts of the case, with regard to the execution of the lease on 03.11.1966 w.e.f. 01.07.2005

and its expiry on 30.06.2005, Mr. Sharmas' first argument was that the land owner / lessor was admittedly also a licensee on the suit land and therefore possession over the suit land continued to be that of the licensor, i.e. the Corporation, even after the expiry of the lease deed on 30.06.2005, and in that situation the provisions of the Rent Act 1973 would be fully applicable to the suit property, it admittedly having come within the area included in the jurisdiction of the Municipal Council, Mandi Dabwali.

Mr. Sharma submitted that though a specific plea had beentaken by the Corporation in its written statement in reply to the two suits of the land owner, as also in its own suit, with regard to the applicability of the aforesaid Rent Act, no specific issue was framed by the Courts below onthat aspect and it was dealt with in a very perfunctory manner by the Courts below, in fact referring to a judgment pertaining to the Punjab Security of Land Tenures Act, 1953, which would not have applicability to property falling under the purview of the aforesaid Rent Act.

(50) On his contention that the Rent Act, 1973, would apply to the suit property, learned counsel referred to Section 2(h) of the said Act wherein a tenant has been defined as follows:-

> *"***2. Definitions.-** In this Act, unless there is anything repugnant in the subject or context,--
>
> XXX XXX XXX
>
> (h) "tenant" means any person by whom or on whose account rent is payable for a building or rented land and includes a tenant continuing in possession after the termination of his tenancy and in the event of such person's death, such of his heirs as are mentioned in the Schedule appended to this Act and who were ordinarily residing with him at the time of his death, but does not include a person placed in occupation of a building or rented land by its tenant, except with the written consent of the landlord, or person to whom the collection of rent or fees in a public market, cart-stand or slaughter-house or of rent for shops has been framed out, or leased by a municipal, town or notified area committee;"

Mr.Sharma also referred to the definition of "urban area" in clause (i) of the aforesaid Act, which is defined to mean any area administered by a municipal committee, notified area committee,

Faridabad Complex Administration, or any area notified by the State Government to bean urban area for the purpose of the Rent Act, 1973.

He also referred to the definition of "rented land", as contained in clause (f), which reads as follows:-

> (f) "rented land" means any land let separately for the purpose of being used principally for business or trade ;

(51) In support of his contention that the suit property would be governed by the Rent Act and not the Act of 1882, Mr. Sharma relied upona judgment of a co-ordinate Bench of this Court in ***Smt.Shobhya Rani and others*** versus ***Moti Ram and others***[4], wherein it was held, in the context of that case, that even after the expiry of a lease, "possession of the plaintiff/tenant do not become unlawful over the demised property andhe continued to hold the property as tenant, being protected under the provisions of the Haryana Rent Act."

Learned counsel also relied upon a judgment of a Constitution Bench, in ***V.Dhanapal Chettier*** versus ***Yasodai Ammal***[5]**,** wherein it was held as follows:-

> "Even if the lease is determined by a forfeiture under the Transfer of Property Act the tenant continues to be a tenant, that is to say, there is no ferfeiture in the eye of law. The tenant becomes liable to be evicted and forfeiture comes into play only if he has incurred the liability to be evicted under the State Rent Act, not otherwise. In many State statutes different provisions have been made as to the grounds on which a tenant can be evicted and in relation to his incurring the liability to be so evicted. Some provisions overlap those of the Transfer of Property Act. Some are new which are mostly in favour of the tenants but some are in favour of the landlord also. That being so the dictum of this Court in Raj Brij case (1951 SCR 145: AIR 1951 Supreme Court 115 : 1951 SCJ 238) comes into play and one has to look to the provisions of law contained in the four corners of any State Rent Act to find out whether a tenant can be evicted or not. The theory of double protection or additional protection, it seems to us, has been stretched too far and without a proper and due

[4] 2010(4) PLR 144
[5] (1979) 4 SCC 214

consideration of all its remifications."

Mr. Sharma next referred to a judgment of a Full Bench of this Court, in ***Ram Kishan and others*** versus ***Sheo Ram and others***[6]**,** to submit that the provisions of the Transfer of Property Act, 1882, are not applicable to the States of Punjab and Haryana.

(52) In response to the aforesaid arguments, Mr. Anil Malhotra, learned counsel appearing for the respondent-land owner, first submitted that even as per the suit of the Corporation itself, i.e. Civil Suit no.72-C of 2009, the Corporation has itself, in its plaint, referred to the relationship between the parties as that of a lessee and of lessor and not a tenant and landlord. In this respect, he has referred to paragraph 4 in the said plaint, from the records of courts below.

He next submitted that in the aforesaid background, after the lease expired, the relationship of lessor and lessee stood extinguished and the landlord thereafter already being in physical possession of the suit property, he undoubtedly running a petrol pump on it, the Rent Act cannot apply. He submitted that even as a licensee of the Corporation, the licence was only for selling products of the Corporation, and not as regards occupation of the land itself.

Mr.Malhotra submitted that even that relationship (of Licensor and Licencee) came to an end by termination of the licence on 30.12.2008, not at the instance of the landlord, but at the instance of Corporation itself. Hence, with the landlord continuing to be in possession of his own land and with the licence to sell products of the company also having been terminated, the Corporation cannot even be taken to be in deemed possession of the suit premises in any manner whatsoever.

Learned counsel further submitted that within 3 days after cancellation of the licence, i.e. on 02.01.2009, the respondent-landlord had filed a suit seeking a decree of mandatory injunction to the Corporation to remove its infrastructure, it no longer being even a licensor qua its products.

(53) Mr.Malhotra next referred to the lease deed itself, Ex.P4 in the Civil Suit no.72-C of 2009 filed by the Corporation, specifically pointing to its preamble and clauses 4 and 10, to submit that the relationship of lessor and lessee ceased as submitted hereinabove, after expiry of the extended period of 20 years on 30.06.2005; and though

[6] 2008(1) RCR (Civil) 334

the structures erected uponthe leased land remained the property of the Corporation as contained in clause 4 of the lease deed, they were required to be immediately thereafter removed, the Corporation not being the owner of the land beneath such structures. He submitted that it was in fact from those structures alone, that the petroleum products of the company were sold and the Corporation was not the licensor of the land itself.

Mr. Malhotra next referred to Clause 3 of the lease deed as has been reproduced by the learned Ist appellate Court in the appeal filed by the Corporation in the first suit, wherein it has been stated that the lessee "shall deliver possession of the plot of the land to lessors and shall with any reasonable despatch removed therefrom all buildings, structures, plant and other property belonging to them", upon expiration of the lease.

Learned counsel submitted that, therefore, the physical possession of the property actually being with the landlord, who even erected a wall thereupon which the Corporation sought demolition of, showed that it was not in actual physical possession of the suit property soas to take advantage of the Rent Act, 1973.

(54) Mr.Malhotra further submitted that as the Courts below have also held, since the Corporation also moved an application before the Deputy Commissioner on 05/06.01.2009 (Ex.P3 in Civil Suit no.7-C of 02.01.2009), seeking police help in order to "take over the site on 09.01.2009", in any case it showed that the possession of the site was actually never with the Corporation.

He further pointed to the reply of the Deputy Commissioner dated 28.01.2009 (Ex.P2, in Hindi), stating therein that when the Corporation itself had cancelled the licence of the firm M/s Kanshi Ram Guraditta Ram, and the lease over the land had also not been renewed after 30.06.2005, with civil litigation already pending, the Corporation was required to produce an existent lease deed. In other words, it was in the absence of such a deed, learned counsel submitted, that police help had been refused.

(55) All in all, learned counsel for the respondent-landlord submitted that with physical possession not being with the Corporation after the expiration of the lease deed, it could not claim the status of a statutory tenant in terms of Section 2(h) and Section 13(i) of the Rent Act, 1973.

He further submitted that in the alternative (without admitting to

any kind of tenancy after 30.06.2005), that if at all the Corporation was to be treated by this Court as a tenant, it would be a tenant-at-sufferance, which actually a trespasser. He cited a judgment of a Division Bench of this Court in ***Punjab State Electricity Board*** versus ***State of Punjab***[7], wherein after discussing the entire law on the subject, including the judgments in ***M.C. Chockalingam*** versus ***V.Manickavasagam***[8] and ***Kewal Chand Mimani (Dead) by LRs.*** versus ***S.K.Sen***[9]**,** describing therein a tenant at sufferance, it was eventually held that a tenant on a public premises who retains possession after expiration of the lease, without the consent of the landlord, is a tenantat sufferance and is liable to be evicted by adopting summary procedure.

Mr.Malhotra submitted that though the premises in question is not a public premises, the principle would still remain the same.

He next relied upon a judgment of the Supreme Court in ***C.M.Beena and another*** versus ***P.N.Ramachandra Rao***[10]**,** wherein it was held as follows:-

> "A contractual licence confers no more than a permission on the occupier to do some act on the owner's land which would otherwise constitute a trespass. If exclusive possession is not conferred by an agreement, it is a licence." ".....the fundamental difference between a tenant and a licensee is that a tenant, who has exclusive possession, has an estate in land, as opposed to a personal permission to occupy. If, however, the owner of land proves that he never intended to accept the occupier as tenant, then the fact that the occupier pays regular sums for his occupation does not make the occupier a tenant."

Learned counsel submitted that even in the light of the aforesaid observation, the land owner having made his intention very clear by not accepting rent from the year 2002, that he did not wish to induct the Corporation as a tenant on the land, his own licence can only be termed to be a licence to sell products of the Corporation, even if the structures constructed upon the land belong to the Corporation, but with actual possession being not that of the Corporation but of the

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[7] 2003(1) RCR (Civil) 48
[8] (1974) 1 SCC 48
[9] 2001 (3) RCR (Civil) 746
[10] AIR 2004 SC 2103

landlord himself.

(56) Lastly, Mr. Malhotra submitted that in fact even any symbolic possession of the Corporation over the suit land that was in physical possession of the land owner, stood terminated once the licence was revoked and therefore Section 13 of the Rent Act of 1973 would not apply, whereby eviction of a tenant can only be sought in terms of the said provision.

In this respect Mr.Malhotra relied upon the following judgments:-

1. ***C. Albert Morris*** versus ***K. Chandrasekaran and Ors.***[11]**,**

2. ***G. Mohamed Thajf and another*** versus ***The Bharath Petroleum Corpn., Chennai-40***[12]**,**

3. ***N.H. Thadani*** versus ***Chief Settlement Commissioner***[13]

4. ***Balwant Rai Agarwal versus Bharat Petroleum Corporation***[14]

5. ***Bharat Petroleum Corporation Limited*** versus ***Rama Chandrashekhar Vaidya and another***[15]**.**

6. ***Delhi Development Authority*** versus ***M/s Anant Raj Agencies Pvt. Ltd.***[16]

7. ***C.M. Beena and Anr.*** versus ***P.N. Ramachandra Rao***[17]**,**

8. ***Punjab State Electricity Board*** versus ***State of Punjab***[18]**,**

9. ***Ms Panch Raghou Taank Ramnivas Sarda and Co.*** versus ***Hindustan Petroleum Corporation Ltd. and another***[19]

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[11] **(**2006) (1) SCC 228
[12] 2001(1)CTC 10
[13] AIR 1958 Punjab 314
[14] 2011(6) R.C.R. (Civil) 1089
[15] (2014) 1 SCC 657
[16] AIR 2016 SC 1806
[17] AIR 2004 SC 2103
[18] AIR 2003 P&H 80
[19] AIR 2014 Chattisgarh 178

10. ***Bharat Petroleum Corpn. Ltd.*** versus ***Maddula Ratnavalli & Ors.*[20].**

Yet further he has referred to various other judgments also, in which the appellant Corporation itself has been ordered to be evicted, either by an order of this court, or by the Supreme Court.

Therefore, learned counsel for the respondent in all these appeals, submitted that the appeals deserve to be dismissed.

(57) In rebuttal, Mr. Raman Sharma first of all submitted that the land owner was a licensee in terms of the licence granted, vide a memorandum of agreement dated 15.04.2003 (Ex.DW2/15, also shown as Ex.DW25 with the record of Civil Suit no.72-C of 2009 filed by the Corporation), wherein it is specifically stipulated that the company reserves its right to take back the whole or any portion of the premises or the facilities, or to alter them at any time during the continuance of the licence, and as such, the land owner remained in possession of the land leased out by him to the Corporation, only because of the licence granted to him by the lessee to remain on that land; and with that licence not revoked till 30.12.2008, then even at the time of expiry of the lease on 30.06.2005, the Corporation was in possession of the land and consequently it became a statutory tenant thereupon in terms of Section 2(h) of the Rent Act 1973. Hence, as per the learned counsel, eviction of any tenant under that Act can only be in terms of Section 13 thereof, and not by way of a notice issued under the Transfer of Property Act, or by way of a civil suit filed thereafter, again invoking the provisions of the T.P. Act.

In that context, Mr. Sharma cited a judgment of the Supreme Court in ***Biswabani Pvt. Ltd.*** versus ***Santosh Kumar Dutta***[21].

(58) Having heard learned counsel for the parties and having considered the judgments of the learned Courts below, the primary question of law that obviously arises for consideration on this Court, in terms of which arguments have also been addressed, is as to whether the appellant Corporation can be considered to be a tenant on the suit property even after expiration of the lease on 30.06.2005, in terms of Section 2(h) of the Haryana Urban (Control of Rent & Eviction), Act 1973, and consequently, could eviction from the suit premises have only been made by resorting to Section 13 of that Act,

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[20] (2007) 6 SCC 81

[21] 1980 (1) R.C.R. (Rent) 263

or whether the Corporation was actually not in possession of the suit property and therefore the Rent Act is inapplicable to the facts of the case and on that premise, the suits filed by the land owner, seeking mandatory and permanent injunction, were suits that were maintainable and were correctly decreed in his favour by the learned Courts below?

All other questions of law, barring one, framed by learned counsel for the appellant, are actually encompassed within the aforesaid question and consequently would be dealt with as a whole.

The only question which is not contained therein is as to whether the suit for permanent injunction, instituted on 07.01.2009 by the land owner, i.e. 5 days after his first suit seeking mandatory injunction, would be barred or not under Order 2 Rule 2 CPC.

As already stated, no arguments whatsoever were addressed onthis issue, possibly due to the fact that even if the second suit is held to be barred by this Court, eventually it would make no difference to the outcome of these appeals, because if it is held that the Corporation is a tenant in termsof Section 2(h) of the Rent Act 1973, obviously on merits itself both the suits of the plaintiff would be dismissed. Conversely, if it is held that it is not a tenant, then even if the second suit seeking permanent injunction is to be dismissed as being barred under Order 2 Rule 2 CPC, the first suit seeking mandatory injunction for removal of the infrastructure of the Corporation from the suit land, would serve the purpose of the land owner, with no occasion for a decree of permanent injunction arising, with him already being in physical possession, unless of course subsequently also the Corporation attempts to interfere in the land owners' possession, for which obviously any suit at that stage would lie, but that situation not reallyexpected by anybody to arise.

Hence that question of law is not gone into, not having been pressed and it also being inconsequential.

(59) Coming then to whether or not the Corporation did become a statutory tenant on the suit land after the admitted expiration of the term of the lease on 30.06.2005, at least in terms of the lease deed, Ex.P4, registered on 03.11.1966.

(60) To go on to consider the question of the Corporations' tenancy under the Rent Act, it first needs to be noticed that it is also not denied by even learned counsel for the landlord, that a memorandum of agreement was entered into between the parties on 15.04.2003, by

which a licence was granted to the land owner to "enter upon the said premises and to use infrastructure and material lying therein and to sell the products of theCorporation."

Paragraph 1 of the said memorandum reads as follows:-

> "Subject to the conditions contained hereinafter the Company hereby grants License upto the Licensees for a period of 15 (fifteen) years from Fifteenth day of April 2003 and during the continuance of this Licence to enter upon the said premises and to use the Motor Spirit and / or HSD 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 the which are hereinafter for brevity referred to as "the said facilities") for the purpose of the sale of MotorSpirit and / or HSD, Motor Oils, Greases and otherMotor 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 premisesor the said facilities or alter them at any time during the continuance of this Licence at its sole discretion."

Very obviously, the aforesaid memorandum of agreement was entered into at a time when the lease was subsisting between the parties and though the Corporation had been tendering the rent amount fixed under the lease, the land owner was admittedly not encashing those cheques, since 2002. However, only because the land owner himself not encashing the cheques, and with nothing shown that he terminated the lease under any clause thereof before the term of the lease ran out, the lease has to be held to be subsisting at the time when the aforesaid memorandum of agreement was signed between the parties on 15.04.2003.

In this context, since the Corporation, i.e. the lessee, admittedly had a right to the usage of the suit land, possession thereof would most definitely be deemed to that of the Corporation, with the land owner having agreed, under his signatures, vide the said memorandum, to use the premisesas a licensee to sell the products of the Corporation.

Thus, as regards the status of the Corporation as a lessee with deemed possession, that cannot be refuted.

Seen from that perspective, the question then is as to whether,

after the lease expired, i.e. w.e.f. 01.07.2005, can such deemed possessionbe construed as possession in terms of Section 2 (h) of the Rent Act of 1973?

That may also seen to be so as no fixed period of the licence is given in the memorandum of agreement, with the licence being revocable at the instance of licensor, i.e. the Corporation, upon any breach of the terms and conditions therein, specifically those contained in clause 13 of the agreement. Thus, the land owner remained a licensee even on 01.07.2005.

In such a situation it may not have been otherwise deniable that the Corporation continued to be a tenant in possession after the termination of the tenancy (in this case after the expiry of the lease deed), in terms of Section 2(h) of the Rent Act 1973.

To that extent, of course, Mr. Raman Sharma, learned counsel for the appellant Corporation is correct, that if the Corporation is held tohave become a tenant continuing to be in possession, eviction from the suit premises could only have been sought under the provisions of Section 13 of the Rent Act and not by way of a civil suit.

(61) However what is peculiar to the present case is that the land owner did not seek possession of the suit property by eviction of the Corporation, but sought removal of the infrastructure thereupon and thereby vacant possession.

In his notice dated 28.11.2008 the land owner is stated to have sought release of a land and vacation thereof by removing the equipment, dispensing units, storage tanks etc. belonging to the Corporation. Thus,even with physical possession of the suit property, the land owner most definitely did ask for vacant possession thereof, about 3 years and 5 months after the period of lease had expired, i.e. vide a notice stated to have been issued on 28.11.2008, which was actually in response to a letter dated 30.11.2007 issued by the Corporation, suspending the supply of petroleum products, which notice actually led to cancellation of the licence on 30.12.2008, vide a letter (Ex.P7 with the first suit of the plaintiff).

(62) The next question that however arises thereafter, is as to whether the Corporation could continue to take advantage of that situation even when it was not in actual physical possession, though admittedly structures owned by it stood on the suit land, but with the control and physical possession being that of the land owner, whose licence was revoked on 30.12.2008. Thus as of that date, the

memorandum of agreement dated 15.04.2003 stood terminated along with the licence, and therelationship of licensor and licensee ceased.

The issue that then arises is would the Corporation still be a tenant on the suit land and thereby be liable to be evicted only in terms of Section 13 of the Rent Act 1973?

(63) There is thus a situation where the Corporation continued to be a tenant after termination of the lease on account of it being in deemed possession of the suit land, with the land owners' firm being a licensee thereupon, but subsequently with the termination of the licence, the deemed possession existed only because of the existence of structures belonging to the Corporation, but physical possession of the suit land was that of the land owner himself.

One view of the matter would be that the tenancy having continued by virtue of such deemed possession, even after the lease had expired, it would be deemed to have continued even thereafter.

However, in the opinion of this Court, it would be an extremely unfair interpretation to hold to that effect, when the licence had been terminated by the Corporation itself, and actual possession continued to be that of the land owner.

This Court would rather err in favour of the land owner in holding that once a notice had been given by him for the structures to be removed and vacant possession to be given to him, and at the time of filing of the suit, on 05.01.2009, the relationship of licensor and licensee also had ceased by action of the licensor (Corporation), the Corporation cannot be held to be in possession of the suit property and consequently a tenant thereupon, further also because it was not in actual physical possession before that also.

(64) The reason for termination of the licence may or may not have been valid, but that issue is not required to be gone into by this Court at allin these proceedings, such cancellation of licence not being under challenge. However, with the appellant being a statutory Corporation, it would be appropriate to also refer to the judgment cited by Mr.Malhotra, learned counsel for the respondent-land owner, in ***Bharat Petroleum Corporation Ltd.*** versus ***Maddula Ratnavalli & others***[22]**.**

(65) That was an appeal before the Supreme Court also arising

[22] (2007) 6 SCC 81

out of a civil suit filed against the appellant Corporation by the land owner, seeking its eviction from the premises, in which their Lordships observed as follows:-

> "13. Appellant-company is a 'State' within the meaning of Article 12 of the Constitution of India. It is, therefore, enjoined with a duty to act fairly and reasonably. Just because it has been conferred with a statutory power, the same by itself would not mean that exercise thereofin any manner whatsoever will meet the requirements of law. The statute uses the words "if so desired by the Central Government". Such a desire cannot be based upon a subjective satisfaction. It must be based on objective criteria. Indisputably, the 1976 Act is a special statute. It overrides the provisions of Section 107 of Transfer of Property Act. The action of the State, however, must be judged on the touchstone of reasonableness. Learned counsel for both the parties have relied upon a 3 Judge Bench decision of this Court in **Bharat Petroleum Corporation Ltd. v. P. Kesavan & Anr. [(2004) 9 SCC 772]** wherein this Court held :
>
> The said Act is a special statute vis-a-vis the
>
> Transfer of Property Act which is a general statute. By reason of the provisions of the said Act, the right, title and interest of Burmah Shell vested in the Central Government and consequently in the appellant Company. A lease of immovable property is also an asset and/or right in an immovable property. The leasehold right, thus, held by Burmah Shell vested in the appellant. By reason of sub-section (2) of Section 5 of the Act, a right of renewal was created in the appellant in terms whereof in the event of exercise of its option, the existing lease was renewed for a further term on the same terms and conditions. As noticed hereinbefore, Section 11 of the Act provides for a non obstante clause."
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> XXX XXX XXX
>
> 16. An executive action must be informed by reason. An unfair executive action can only survive for a potent reason. An action which is simply unfair or unreasonable would not be sustained. Objectivesatisfaction must be the basis for

> an executive action. Even subjective satisfaction on the part of a State is liable to judicial review. The 'State' acting whether as a 'landlord' or a 'tenant' is required to act bona fide and ot arbitrarily, when the same is likely to affectprejudicially the right of others.
>
> XXX XXX XXX
>
> 30. In the instant case, the concurrent finding of fact is that the desire of the appellant was not bona fide. In any event, possession of the lease holding has already been delivered. Respondents have received possession after a long struggle. It is, therefore not a case where we should interfere with the impugned judgment particularly in view of the finding of fact arrived at by the courts below.
>
> 31. For the aforementioned reasons, these appeals are dismissed with costs. Counsel's fee assessed at Rs. 50,000/."

(66) Hence, other than the reasoning given by this Court in paragraph 61 hereinabove, even in the light of the above observations of the Supreme Court, pertaining to an appeal filed by the present appellant itself, this Court would hold that a statutory Corporation must be seen to be fair to a citizen and not unreasonable, unjust and arbitrary.

Thus, whether or not the reason for termination of the licence was wholly bona fide or mala fide cannot be commented upon at all by this Court, and if any action other than simple termination of the licence was invocable against the land owner/ licensee for any short fall in the products etc., obviously the Corporation would have resorted to such legal proceedings which would naturally reach (or may have already reached) their logical conclusion.

Yet, as regards the possession of the suit property, this Court would hold that with physical possession of the premises having always been with the land owner, even in the capacity of a licensee, after cancellation/revocation of licence, his physical possession would be treated as actual possession, with the deemed possession of the Corporation over the suit land having wholly ceased with such revocation/cancellation. Undoubtedly, the structures thereupon continue to be those of the Corporation, which it was required to remove even in terms of the lease deed dated 03.11.1966, once all relationship of licensor and licensee had ceased.

(67) Hence this Court would answer the questions of law framed at serial nos. (i) to (iii), (v) & (vi), in paragraph 47 hereinabove, in favour of the respondent-land owner, the Corporation to the effect that at the time of the filing of his first suit, i.e. on 05.01.2009, the licence in his favour having been revoked/cancelled 6 days earlier by the appellant Corporation, its deemed possession over the suit land ceased with effect from the date of such revocation, and therefore with physical possession always having been that of the land-owners, it could no longer consider itself as a tenant overthe suit property in terms of Section 2(h) of the Rent Act 1973 and consequently, for seeking removal of the structures of the erstwhile lessee/licensor, the suit as was instituted by the land owner was not without jurisdiction, and Section 13 of the Rent Act of 1973 would have no application to the suit property.

The issue framed by learned counsel, reproduced at serial no. (iv) in para 47, not having been pressed and already having been held to be inconsequential to the outcome of these appeals, (see para 57 above), it is not gone into.

(68) That having been said, the other issue raised by Mr. Raman Sharma, to the effect that the Transfer of Property Act, 1882, is not applicable to the State of Haryana, needs to be looked at, though eventually that would also make no difference as would be seen.

In this context, it is necessary to state here that learned counsel for the appellant has erred in stating that the said Act is not applicable at all to the State of Haryana, because as noticed by the Supreme Court in ***Shyam Lal*** versus ***Deepa Dass Chela Ram Chela Garib Dass***[23]**,** Section 107 of the Transfer of Property Act, 1882, was notified by the State Government of Punjab to be applicable to that State (including the present State of Haryana), vide a gazette notification dated 26.03.1955, w.e.f. 01.04.1955, by which Sections 54, 107 and 123 of the said Act were made applicable to the State.

After reorganisation of the State in 1956, when the State of PEPSU ceased to exist, it having been merged into the State of Punjab, another gazette notification dated 15.05.1957 was also issued by the State Government, extending the said provisions of the Act of 1882 to the erstwhile areas of PEPSU, as had merged into the State of Punjab.

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[23] (2016) 7 SCC 572

Thus, the said provisions continued to remain in force evenafter the State of Haryana came into being on 01.11.1966, with no notification revoking the applicability of the said provisions seen to have been issued by the Government of Haryana. In fact, vide a notification dated 05.08.1968, the Government of Haryana also made the provisions of Section 59 of the Act of 1882 applicable to the State.

(69) It needs to be noticed that by Section 107 of the Transfer of Property Act, any lease of immovable property, from year to year or any term exceeding one year, can only be made by way of a registered instrument.

It is not denied by either party that the instrument dated 31.11.1966, creating a lease between the parties in respect of the suit land w.e.f. 01.07.1965, is a registered instrument and therefore admissible in evidence, even in terms of Section 49 of the Registration Act, 1908.

(70) Even had the said provisions of the Transfer of Property Act not been applicable to the State of Haryana, it would still have made no difference to the present case, because once it has been held that the appellant-Corporation, not being in physical possession of the suit property and not even in deemed possession after cancellation of the plaintiffs' licence, it cannot be held to be a statutory tenant in terms of the Rent Act of 1973, the remedy with the respondent-plaintiff for getting the structures existent on his land removed, was by way of a civil suit only, which he has availed of.

Hence, the contention of learned counsel for the appellant in these appeals on that score, is also wholly unfounded.

(71) The only question which has not been touched upon in this judgment is as to whether the *mesne profits* awarded by the learned trial Court and upheld by the lower appellate Court by dismissal of the first appeal, are sustainable or not.

The issue not having been argued before this Court and even in the grounds of appeal in RSA No. 1683 of 2016, it not seen to have been raised, nothing further needs to be said with regard thereto, except to the effect that though physical possession remained with the respondent- plaintiff throughout, however, with the infrastructure on the suit land not having been removed by the appellant-Corporation, even after the licence was terminated by it w.e.f. 30.12.2008, the awarding of *mesne profit* itself is not seen to be without reason, and

with the quantum awarded at least not seen to be challenged, nothing further need be said on that.

(72) Consequently, in view of what has been held hereinabove, all three appeals filed by the appellant Corporation are dismissed, upholding the judgments and decrees of the learned Courts below. Costs of Rs.5000/- are also imposed on the appellant in each appeal.

A photocopy of this judgment be placed on the file of the other connected cases too.

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