C. ALBERT MORRIS

v.

K. CHANDRASEKARAN AND ORS.

OCTOBER 26, 2005

[DR. AR. LAKSHMANAN AND ALTAMAS KABIR, JJ.]

Petroleum Rules, 1976—Rules 144 and 153(1)—Lease of vacant Land—For installation of retail outlet of-petrol—Accessory construction put up by tenant—Installation after getting No Objection Certificate from State—After expiry of lease suit for eviction—Dismissal thereof for default—Landlord approaching the authorities for seeking cancellation of permission to tenant to store petroleum and also seeking revocation of No Objection Certificate—Writ petition seeking non-renewal of licence to carry on petrol bunk as the tenant had lost right to the site—Allowed by High Court and upheld in writ appeal—In appeal, held: Mere continuance in occupation of the demised premises after expiry of the lease, notwithstanding receipt of an amount by the landlord would not create a tenancy so as to confer on the erstwhile tenant the status of tenant or a right to be in possession—The word 'right' used is s. 153(1) only means a legal right to continue on the Land—Juridical possession or litigious possession do not connote a valid legal right to continue in possession under the rule—Unless the person seeking a licence is in a position to establish a right to the site, he would not be entitled to hold or have his licence renewed—Since the leased premises was a vacant land, and the constructions thereon belonged to the tenant, he was not a statutory tenant in view of the construction on the site—Rent Control and Eviction—Pondicherry Buildings (Lease and Rent Control) Act, 1969.

The appellant was the dealer of the second respondent. The said dealership was being carried on in the leased site belonging to the first respondent-landlord. Government had granted No Objection Certificate under Rule 144 (1) of the Petroleum Rules, 1976 for the installation of the retail outlet of petrol and HSD. First respondent had only leased vacant site to put up a petrol bunk with accessory constructions thereon. Respondent-landlord filed a suit for decree of eviction and possession of the leased land. The same was dismissed for default. Landlord filed application for restoration of the suit. During pendency landlord again issued a notice of termination of lease.

A The defence of appellant-tenant was that he was a statutory tenant governed by the Rent Control Act as during renewal of the lease deed there were super-structures. Landlord also approached the authorities seeking revocation of the No Objection Certificate granted to the appellant. He also sought a Writ of Mandamus before High Court seeking direction that the licence of the appellant to carry on petrol bunk shall not be renewed. He contended that the B same was liable to be cancelled under Rule 153(1) of the Petroleum Rules as the appellant had lost right to the site. The Writ Petition was allowed. It held that though the possession of the site did not entitle the appellant for renewal, he could be dispossessed only under due process of law. In writ appeal, Division Bench confirmed the order of Single Judge holding that though the possession C was illegal but the filing of suit did not prevent the first respondent from seeking a writ remedy. Hence the present appeal.

Dismissing the appeal, the Court

HELD: 1. A mere continuance in occupation of the demised premises D after the expiry of the lease, notwithstanding the receipt of an amount by the quondam landlord would not create a tenancy so as to confer on the erstwhile tenant the status of tenant or a right to be in possession. Mere acceptance of rent by the landlord-respondent herein from the tenant in possession after the lease has been determined either by efflux of time or by notice to quit would not create a tenancy so as to confer the erstwhile tenant the status of E a tenant or a right to be in possession. [792-A, B; 799-G]

Bhawanji Lakhamshi and Ors. v. *Himatlal Jamnadas Dani and Ors.*, [1972] 2 SCR 890; *Raptakos Brett & Co. Ltd.* v. *Ganesh Property.*, [1998] 7 SCC 184; *Saleh Bros.* v. *K. Rajendran and Anr.*, AIR (1970) Madras 165; *R.V. Bhupal Prasad* v. *State of A.P. and Ors.* [1995] 5 SCC 698; *Karmani Industrial* F *Bank Ltd.* v. *The Province of Bengal and Ors.*, AIR (1951) SC 285 and *Konchada Ramamurty Subudhi (dead) by his L.Rs.* v. *Gopinath Naik and Ors.*, AIR (1968) SC 919, relied on.

Kai Khushroo Bazonjee Capadia v. *Bai Jerbai Hirjibhoy Warden and* G *Anr.*, AIR 1949 FC 124, referred to.

1.2. Any right which the dealer has over his site was the right which he had acquired in terms of the lease. When that lease expired and when the landlord declined to renew the same and also called upon the erstwhile tenant to surrender possession, the erstwhile lessee could no longer assert that he H had any right to the site. His continued occupation of something which he

had no right to occupy cannot be regarded as source of a right to the land of which he himself was not in lawful possession. [806-F] A

1.3. The word "right" used in Rule 153(1) of the Petroleum Rules, 1976 only means a legal right to continue on the land. The term "juridical possession" or "litigious possession" do not connote a valid legal right to continue in possession within the meaning of Rule 153 of the Petroleum Rules, 1976. The occupation without consent is wrongful occupation. [802-C, D] B

M.C. Chockalingam and Ors. v. *V. Manickavasagam and Ors.*, [1974] 1 SCC 48, relied on. C

1.4. Rule 153(1) (i) of the Petroleum Rules is "right to the site" for storing petroleum. It is not the right for storing petroleum on the site. That is so because that aspect is dealt with specifically in sub-clause (ii) of Rule 153(1) which refers to a no objection certificate, which the District authority or the State Government is required to give. No Objection Certificate which is granted under Rule 144 is the one given by the concerned authority stating that it has no objection for the storage of petroleum on the site after examining the site plan and other relevant factors. The words "right to the site" have, therefore, to be understood as referring to right to the site on which the petroleum is stored. A person can be said to have a right to something when it is possible to find a lawful origin for that right. A wrong cannot be a right of a person who trespasses on to another's land cannot be said to have a right to the land *vis-a-vis* the owner because he happens to be in possession of that land. Mere presence on the land by itself does not result in a right to the land. Such presence on the premises may ripen into a right by reason of possession having become adverse to the true owner by reason of the passage of time and possession being open uninterrupted, continuous and in one's own right. [806-B, C, D E] D E F

1.5. It cannot be said that the landlord's assent should be inferred from the conduct of the landlord who had filed the suit for ejectment, but did not pursue the same. This suit was withdrawn with liberty to file a fresh suit on the same cause of action, liberty which the Court has granted. The possession of this site by the erstwhile lessee does not ripen into a lawful possession merely because the landlord did not proceed with the suit for ejectment at that time, but reserved the right to bring such a suit at a later point of time. That cannot amount to an assent on his part to the continued occupation of the landlord under cover of a right asserted by the erstwhile lessee. The words G H

A "right to the site" in Rule 153(1) (i) must, therefore, be given their full meaning and the effect that unless the person seeking a licence is in a position to establish a right to the site, he would not be entitled to hold or have his licence renewed. [807-B, C]

2.1. What was leased out was a vacant land and that the lessee was given
B a right to construct a compressor room, store room, a bath room and latrine together with a septic tank. Therefore, the provisions of The Pondicherry Buildings (Lease and Rent Control) Act, 1969 cannot be invoked. The said Act was enacted to regulate the letting of residential and non-residential buildings and the control of rents of such buildings and the prevention of
C unreasonable eviction of tenants therefrom in the Union Territory of Pondicherry. [801-B, C]

Bhuneshwar Prasad and Anr. v. *United Commercial Bank and Ors.*, [2000] 7 SCC 232, relied on.

2.2. It is also mentioned in the plaint that the appellant/tenant herein
D is not a statutory tenant or tenant holding over since he has been clearly apprised that no rent will be received from him subsequent to the determination of the tenancy and that any amount that might be paid by him will be adjusted towards compensation for illegally occupying the schedule mentioned property. It was also submitted that the first defendant was given
E possession of a vacant site only and no building was leased out by the plaintiff. [802-B]

2.3. It is abundantly clear from the recitals in the plaint, the schedule to the notice and to the plaint and also of the lease deed that the word "leased out" was only a vacant site to put up a petrol bunk with accessory constructions
F thereon. The mention of a small shed in the current lease is undoubtedly belonged to the tenant himself and, therefore, the building put up by the tenant situated in the vacant site belongs to the landlord cannot be said to be the building of the landlord in order to attract the statutory protection of the Rent Control Act. [804-A, B]

G 3. It cannot be said that the first respondent is not entitled to maintain the writ petition as the proceedings initiated by him before the Collector for cancellation of the No Objection Certificate is pending. While granting NOC, the Collector is not concerned about the ownership of the land. He is concerned about the location of the land and its suitability as a place for storage of petroleum. Rule 144 deals with the grant of NOC does not
H contemplate an enquiry into the ownership of the land nor does it require the

Collector to enquire into the nature of the right claimed by the person who has applied for the NOC. [807-F, G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1027 of 2005.

From the Judgment and Order dated 7.10.2003 of the Madras High Court in W.A. No. 1149 of 2002.

L.N. Rao, S. Aravindh and V. Ramasubramanian for the Appellant.

R. Sundaravardhan, R. Nedumaran, Ashok Panigrahi and Rajiv Rufus for the Respondent No. 1.

Ashok Bhan, T.A. Khan, V.K. Verma and D.S. Mahra for the Respondent No. 3.

Mukul Rohtagi, Sr.Adv., Sanjay Kapur, Rajeev Kapur, Sanjeev Kumar and Ms. Subhra Kapur for the Respondent No. 2.

The Judgment of the Court was delivered by

DR. AR. LAKSHMANAN, J. The above appeal is directed against the final judgment and order of the High Court of Judicature at Madras dated 7.10.2003 in Writ Appeal No. 1149 of 2002 thereby dismissing the same.

The short facts which are relevant for the disposal of this appeal are as under:

The appellant-C. Albert Morris is the tenant of the first respondent-K. Chandrasekaran (landlord) vide a lease deed for ten years culminating in the year 1966. The appellant is the dealer of the second respondent. The Hindustan Petroleum Corporation Ltd. The said dealership is being carried on in the leased site belonging to the first respondent. The Government of Pondicherry granted No Objection Certificate under Rule 144(1) of the Petroleum Rules, 1976 for the installation of retail outlet of petrol and HSD. The said No Objection Certificate mentioned the details and description of the location of the said outlet. As already noticed, the appellant entered into a lease deed with the first respondent-landlord for a period of ten years. The purpose of the lease was clearly mentioned as for running a petrol bunk. On 15.5.1992, the landlord issued notice to the appellant seeking vacant possession of the property. The appellant caused a reply notice to the same denying the various allegations. Consequently, the landlord filed O.S. No. 58 of 1994 on the file

A of the Principal sub-Judge, Pondicherry praying for a decree of eviction and possession. The said suit was dismissed for default and non-prosecution. The landlord, however, filed an application for restoration of the said suit. During the pendency of the application of the restoration, the landlord again issued a notice of termination of lease entered into between the appellant and the first respondent-landlord. The appellant caused a reply notice to the B landlord. The appellant-tenant also raised the defence that during the renewal of the lease deed, there were super-structures on the same and hence the appellant is a statutory tenant governed by the Rent Control Act and hence the notice is wholly illegal. On 4.12.1996, the landlord then approached the 3rd respondent-the Joint Chief Controller of Explosives (South Circle), Shastri C Bhawan, Chennai seeking to cancel the permission granted to the appellant for the storage of petroleum. The landlord also approached the authorities at Pondicherry to revoke the No Objection Certificate granted in the name of the appellant.

While so, the landlord sought for a writ of mandamus before the High D Court directing that the licence of the appellant to carry on petrol bunk shall not be renewed. It was his contention that the appellant had lost his right to site and hence was liable to be cancelled under Rule 153 (1) of the Petroleum Rules, 1976. In reply to the writ petition, the appellant put forth the following submissions:

E

1. That the right to site envisaged under the Petroleum Rules is synonymous to the right of mere possession as the licence to trade in petroleum and also the No Objection Certificate for storage were still valid and not cancelled under the law;

2. That the appellant was a tenant holding over and not a tenant F at sufferance or a trespasser as put forth by the landlord;

3. That the tenant is also a statutory tenant and hence entitled to the protection of the Rent Acts.

The above submissions of the appellant did not find favour with the G learned single Judge of the High Court who allowed the writ petition filed by the landlord purely relying upon the decisions based on the Cinematograph Act to conclude that a "right" only meant a "legal right to continue in occupation or possession without interruption" and that the possession of the site did not entitle him for renewal. However, the learned single Judge held that the appellant could be dispossessed only under the due process of law.

H

Aggrieved by the same, the appellant approached the Division Bench of the High Court by way of an appeal. The Division Bench upheld the order of the learned single Judge but on different reasons. The Division Bench gave a finding that the appellant is not a lawful tenant and that the possession was not legal possession and that the earlier suit filed by the landlord would not be in any manner prevent him from seeking a writ remedy. The Bench also held that the provisions of Rule 144 of the Petroleum Rules does contemplate any enquiry into the right of the lessee to hold the property and the same is not a bar to the writ petition. Consequently, the Division Bench confirmed the judgment of the learned single Judge. Aggrieved by the dismissal of the writ appeal, the appellant has preferred this appeal.

We heard Mr. L.N. Rao, learned senior counsel appearing for the appellant and Mr. R. Sundaravardan, learned senior counsel appearing for respondent No. 1, Mr. Mukul Rohtagi, learned senior counsel appearing for respondent No. 2 and Mr. Ashok Bhan, learned counsel appearing for respondent No. 3.

Mr. L.N. Rao made the following submissions:

Mr. L.N. Rao invited our attention to Rule 153(1) of the Petroleum Rules which reads as under:

> "153. *Suspension and cancellation of licence.*—(1) Every licence granted under these rules shall
>
> (i) stand cancelled, if the licensee ceases to have any right to the site for storing petroleum;
>
> (ii) stand cancelled, if the no-objection certificate is cancelled by the District Authority or the State Government in accordance with sub-rule (1) of rule 151;
>
> (ii) be liable to be suspended or cancelled by an order of the licensing authority for any contravention of the act or of any rule thereunder or of any condition contained in such licence, or by order of the Central Government if it is satisfied that there are sufficient grounds for doing so:
>
> Provided that —
>
> (a) before suspending or cancelling a licence under this rule, the holder of the licence shall be given an opportunity of being heard;

A (b) the maximum period of suspension shall not exceed three months; and

(c) the suspension of a licence shall not debar the holder of the licence from applying for its renewal in accordance with the provisions of rule 149.

B (2) Notwithstanding anything contained in sub-rule (1), an opportunity of being heard may not be given to the holder of a licence before his licence is suspended or cancelled in cases -

(a) where the licence is suspended by a licensing authority as an interim measure for violation of any of the provisions of the act C or these rules, or of any conditions contained in such licence and in his opinion such violation is likely to cause imminent danger to the public:

Provided that where a licence is so suspended, the licensing authority shall give the holder of the licence an opportunity of being heard D before the order of suspension is confirmed; or

(b) where the licence is suspended or cancelled by the Central Government, if that government considers that in the public interest or in the interest of the security of the State such opportunity, should not be given.

E

(3) A licensing authority or the Central Government suspending or cancelling a licence under sub-rule (1), shall record its reasons for so doing in writing."

Mr. L.N. Rao submitted that the "*right*" mentioned in Rule 153(1) of the F Petroleum Rules will have to be interpreted in a widest manner possible and it is synonymous to the mere right of possession as the provision itself does not classify the nature of right. Thus the same would stand to be differently interpreted than the position contemplated under the Cinematograph Act. He placed reliance on the line of cases starting from *M/s. East India Hotels* G wherein this Court categorically asserted that the right to remain in possession would also include the right to carry on the business for which it was allowed and hence the appellant was entitled to renewal of his licence as the same was not validly cancelled by any authority. Our attention was also drawn to the Black's Law Dictionary which explains "*right*" as something that is due to a person by just claim, legal guarantee, a power privilege or immunity H secured by a person by law, a legally enforceable claim, a recognised and

protected interest the violation of which is wrong, the interest, claim or ownership that one has in tangible or intangible property. Thus even going by this meaning the right of the appellant is a right of possession as accepted by the Courts below and as laid down by this Court in *East India Hotels* case the right to possession will and should also include the right to carry on the activity contemplated by such possession. Thus the appellant cannot be said to have lost the right to the site as envisaged by Rule 153(1) of the Petroleum Rules.

Mr. L.N. Rao further submitted that the appellant is a tenant holding over and that the conduct of the first respondent establishes acquiescence on his behalf for having received the rents but not taking any steps for eviction for more than 10 years. He cited the judgment in *Kai Khushroo Bezonjee Capadia* v. *Bai Jerbai Hirjibhoy Warden and Anr.*, AIR (1949) FC 124. In the said judgment, it has been held that whenever rents are submitted as rents and the same has been received by the landlord and that his conduct to acquiesce with the continuance of tenancy then it is not necessary that the payments should be made only as rents as such. Any payment equivalent to the rental amounts and voluntary receipt of the same by the landlord and also his conduct of not seeking to throw the tenant out would conclusively assert the right of the appellant as a tenant holding over.

He also invited our attention to the judgment of this Court in *Bhawanji Lakhamshi and Ors.* v. *Himatlal Jamnadas Dani and Ors.*, [1972] 2 SCR 890 which according to him would categorically assert that where the conduct of the parties is such that there is an offer of rent and acceptance then there arises a relationship of tenancy. At any rate, the appellant can never be called as a trespasser or a tenant at sufferance.

Further, Mr. L.N. Rao relied on the judgment of this Court in *Bhuneshwar Prasad and Anr.* v. *United Commercial Bank and Ors.*, [2000] 7 SCC 232. This Court after following both the judgments of *Kai Khushroo Bezonjee Capadia* v. *Bai Jerbai Hirjibhoy Warden and Anr.*, (supra) and also that of *Bhawanji Lakhamshi and Ors.* v. *Himatlal Jamnadas Dani and Ors.* (supra) held that if the conduct proves a relationship of landlord and tenant then the tenant is entitled to the consequent protection under law.

It was further submitted that the appellant is not entitled to usurp jurisdiction of the High Court under Art. 226 of the Constitution of India to issue a mandamus not to renew the licence and that the High Court ought not to have entered into this aspect even before the concerned authority

A expresses its mind as to whether the licence issued is liable to be cancelled or not. Therefore. the High Court is in error in pre-judging the issue.

Concluding his arguments, Mr. L.N. Rao submitted that the appellant is a statutory tenant on the basis of the recitals of the lease agreement wherein the property leased out was not a vacant site alone. Even at the time of the B agreement, there was a shed put up by the appellant pursuant to his earlier agreement of tenancy. Hence. although the Schedule mentions as vacant land the recitals clearly mention the presence of shed and hence the appellant has raised the plea of statutory tenancy.

Mr. R. Sundaravardan, learned senior counsel appearing for respondent C No.1 made the following submissions:

It is contended that the use of the word "rent" does not lead to an inference of a fresh concluded contract in the absence of an offer and acceptance of a fresh contract which are lacking in the instant case. The D landlord has expressly and unequivocally manifested his intention that whatever amount that was received by him after the efflux of time the lease concerned was only towards damages for use and occupation and not towards rent.

According to the learned senior counsel, the term "*right*" has to be construed as only a legal right and not a right to continue on the land without E the consent of the landlord as the tenant. The word "right" is used in Rule 153(1)(i) of the Petroleum Rules, 1976 only to mean a legal right to continue on the land. It was submitted that the term "juridical possession" or "litigious possession" do not connote a valid legal right to continue in possession within the meaning of Rule 153 of the Petroleum Rules, 1976. All occupation without consent is wrongful occupation. According to him, reference to *Kai* F *Khushroo Bezonjee Capadia* v. *Bai Jerbai Hirjibhoy Warden and Anr.* (supra) is not apposite to the facts of the case. Instead in *Bhawanji Lakhamshi and Ors.* v. *Himatlal Jamnadas Dani and Ors.* (supra), the observations of Patanjali Shastri, J. in the judgment of *Kai Khushroo Bezonjee Capadia* v. *Bai Jerbai Hirjibhoy Warden and Anr.*, (supra) were relied on. The judgment in the case G of *Saleh Bros.* v. *K. Rajendran and Anr.*, AIR (1970) Madras 165 refers to consensus of judicial opinion as to present controversy being in favour of the landlord and in turn refers to *Karmani Industrial Bank Ltd.* v. *The Province of Bengal and Ors.*, AIR (1951) SC 285 to show that the user of the word "rent" does not conclude the matter and that the judgment in the case of *Kai Khushroo Bezonjee Capadia* v. *Bai Jerbai Hirjibhoy Warden and Anr.*, H (supra) should be confined to the facts of the case vide paragraphs 12 to 18

at page 170 of *Saleh Bros.* v. *K. Rajendran and Anr.*, (supra) and the latter paragraph referring to the uniform judicial opinion of the High Courts of India. The Federal Court judgment turned upon the facts of the case; the landlord was pitted against the main lessee and an official receiver who threatened to take possession and, therefore, he had no option but to take the sub-lessee as a lessee.

Replying to the argument of Mr. L.N. Rao, in regard to the statutory protection, Mr. R. Sundaravardan submitted that there is no question of any statutory protection in this case as the term of the lease deed in question which is in effect a continuation of original lease of 1984 makes it abundantly clear that what was leased out was only a vacant site to put up a petrol bunk with accessory constructions thereon. The mention of a small shed in the current lease which belongs to the lessee himself cannot be said to be the building of the landlord. The basic and dominant object of the lease is to effect a petrol bunk at the instance of the lessee which could be achieved by the lease of vacant site only.

Mr. Mukul Rohtagi, learned senior counsel appearing for respondent No.2—The Hindustan Petroleum Corporation Limited, invited our attention to the Preamble of the Petroleum Act, 1934 which reads as under:

> "An Act to consolidate and amend the law relating to the import, transport, storage, production, refining and blending of Petroleum."

For effectuating the purpose of the said Act, the Petroleum Rules, 1976 have been framed.

For the purposes of storing petroleum in tank(s), an applicant has to apply, under Rule 144 of the Petroleum Rules, 1976, to the District authority with two copies of the site plan showing the location of the premises proposed to be licenced for a certificate to the effect "that there is no objection to the applicant receiving a licence for the site proposed". The District Authority is thus required to consider and grant no objection certificate after considering the suitability of the site proposed.

Under Rule 153(1) of the Petroleum Rules, 1976, every licence granted under these Rules shall stand cancelled, if the licensee ceases to have any right to the site for storing petroleum. The purpose of Rule 153(1) is that the licence should be cancelled once the licensee is evicted from the site. The authority, while exercising its power under Rule 153 of the Petroleum Rules,

A 1976, is not required to consider and decide whether the licensee is in rightful possession or not. The purpose of obtaining the licence and the "No Objection Certificate", under the Petroleum Rules, has to be understood keeping in mind the object and purpose of the Petroleum Act.

It was submitted that to invoke Rule 153, the right to use the site and B possession of the licensee should have ceased/come to an end. In this case, however, the licensee is still in possession and is not liable to be evicted, without following due process of law.

It was further submitted that the issue whether the licensee has any statutory protection, is not required to be decided in the proceedings under C Section 153(1) of the Petroleum Rules, 1976. Admittedly, the designated authority under the Petroleum Rules is not competent to decide whether the licensee is a protected tenant or whether the notice to quit has been validly issued. The term "right" as used in Rule 153(1) cannot be construed as only a legal right, as alleged by the first respondent. The purpose and object of D the Petroleum Act and the Rules framed thereunder is not to empower the authorities designated therein, to determine whether the licensee has a legal right or not.

The first respondent/landlord has no role whatsoever or locus standi to contest the present proceedings. The present dispute arises only between the E authority designated under the petroleum Rules and the licensee.

It was submitted that the first respondent by withdrawing the suit of eviction and accepting the further rent has impliedly permitted the appellant to continue as a tenant and further affirmed the tenancy. The possession/right to the site, of the appellant, on the said site hence continues.

F

It was submitted that the Federal Court in the case of *Kai Khushroo Bezonjee Capadia* v. *Bai Jerbai Hirjibhoy Warden and Anr.*, (supra) held as under:

> "....If now the landlord accepts rent from such person or otherwise G expresses assent to the continuance of his possession, a new tenancy comes into existence as contemplated by Section 116 of the Transfer of Property Act, and unless there is an agreement to the contrary, such tenancy would be regarded as one from year to year or from month to month in accordance with the provisions of Section 116 of H the Act."

Reliance was placed on the judgment of this Court in *Bhawanji Lakhamshi and Ors.* v. *Himatlal Jamnadas Dani and Ors.* (supra) wherein the aforementioned passage was referred to, had affirmed the ratio laid down by the Federal Court in the case of *Kai Khushroo Bezonjee Capadia* v. *Bai Jerbai Hirjibhoy Warden and Anr* (supra). A

Mr. Ashok Bhan, learned counsel appearing for respondent No.3 submitted that the licence was granted on 30.11.1984 according to the procedures and Rules as laid down in the Petroleum Act and on the basis of "No Objection Certificate" dated 6.7.1984 which was issued by the Additional District Magistrate, Pondicherry vide Certificate No. 4834/84/F. It was submitted that the third respondent does not have the jurisdiction to enquire into contractual intricacies amongst third parties. The Division Bench of the High Court granted interim stay of the order dated 11.2.2002 passed by the single Judge. Subsequently, the third respondent stayed its earlier order dated 8.5.2002. The writ appeal was finally disposed of on 17.10.2003 upholding the order of the single Judge. In pursuance of this order, the third respondent cancelled the licence on 17.12.2003. Against the order passed by the Division Bench, the appellant preferred this appeal wherein this Court granted stay of the operation of the judgment and order dated 7.10.2003 of the High Court. Therefore, the third respondent vide another order dated 9.2.2004 stayed its earlier order dated 17.12.2003. It was further submitted that the disputes are between the appellant and respondent No.1. As per the Petroleum Rules, 1976, the third respondent is the licensing authority. He shall grant such licence only on receipt of a "No Objection Certificate" from the District Authority who happens to be the Additional District Magistrate. The third respondent does not have the jurisdiction to go into the legalities and rights of the other third parties. It confines its domain to the objections of the District Authority. The question of right to the site in dispute is *pendente lite* and the third respondent is only following the order passed by the Courts. In view of the submissions made, learned counsel pleaded that this Court may pass such orders as deemed fit in the interest of justice and equity. B C D E F

We have carefully considered the rival submissions. We have been taken through the pleadings, the annexures, the documents filed along with the appeal and the judgments of the High Court. G

Though the arguments of the learned senior counsel appearing for the appellant are attractive on the first blush yet on a careful reconsideration of the same, it has no merits. The judgments cited by the learned senior counsel H

A appearing for the appellant are not only distinguishable on facts but also on law. Much argument was advanced on the receipt of the rent by the landlord after the cancellation of the lease. The consensus of judicial opinion in this country is that a mere continuance in occupation of the demised premises after the expiry of the lease, notwithstanding the receipt of an amount by the quondam landlord would not create a tenancy so as to confer on the erstwhile B tenant the status of tenant or a right to be in possession. In this context, we may refer to judgment of this Court in *Raptakos Brett & Co. Ltd.* v. *Ganesh Property,* [1998] 7 SCC 184. In paragraph 13 of the said judgment, this Court held as under:

> C "In view of the aforesaid settled legal position, it must be held that on the expiry of the period of lease, the erstwhile lessee continues in possession because of the law of the land, namely that the original landlord cannot physically throw out such an erstwhile tenant by force. He must get his claim for possession adjudicated by a competent Court as per the relevant provisions of law. The status of an erstwhile D tenant has to be treated as a tenant at sufferance akin to a trespasser having no independent right to continue in possession."

The following judgments may also be beneficially looked into in support of the above submission:

E The judgment in *Saleh Bros.* v. *K. Rajendran and Anr.*, (supra) which deals with the receipt of rent subsequent to the notice determining lease and pending adjudication suit and as to whether receipt of rent by itself amounts to waiver. In paragraphs 12, 19,20 & 31, this Court held as under:

> F "Para 12. The receipt of rent may only create a presumption and cannot by its own force amount to a waiver. Section 113 consists of two limbs: (a) the express or implied consent of the person to whom notice is given and (b) "the act of the person giving the notice showing the intention to treat the lease as subsisting". In order to constitute a waiver, both the limbs must concurrently operate, which G means, that an act by itself and of its own force, without reference to the intention of the parties, cannot bring about a waiver. So much is quite clear from the plain language of the section, which embodies the basic principles, and I find no justification for reading the Illustrations as being repugnant to the section. Every effort should be made to interpret the Illustration in conformity with the main section. The H principle underlying Section 116 of the Act will also apply in applying

Section 113 as this is also a case of continuance of the lease restoring the old tenancy. A

Para 19—I shall next refer to another recent decision of the Supreme Court, in (1968) 2 Andh WR (SC) 42: (1968) 2 SCJ 291: (1968) 2 Mad LJ (SC) 42 = (AIR 1968 SC 471). In that decision, too, the Supreme Court pointed out that under Section 113 of the Transfer of Property Act the act which operates as a waiver must show an intention to treat the lease as subsisting and other party's consent, express or implied therefor. In that case the tenants, who were holding over, issued, on 12th August, 1953, a notice to the landlord of their intention to vacate the premises on 31st August, 1953. But by their letter, dated 26th August they withdrew that notice. The landlord did not agree to the withdrawal of the notice and insisted that the lease had been determined under Section 111 (h) of the Transfer of Property Act. Dealing with the question of waiver, the Supreme Court observed as follows:- B C

"Clearly Section 113 contemplates waiver of the notice by any act on the part of the person giving it, if such an act shows an intention to treat the lease as subsisting and the other party gives his consent..... express or implied therefor. The law under the Transfer of Property Act on the question in hand is not different from the law in England. Once a notice is served determining the tenancy or showing an intention to quit on the expiry of the period of the notice, the tenancy is at an end, unless with the consent of the other party to whom the notice is given the tenancy is agreed to be treated as subsisting." D E

Para 20—"The question therefore is, *quo animo* the rent was received, and what the real intention of both parties was?" F

Para 3—The decision in *Kai Khurshroo* v. *Bai Jerbai,* (1949) FCR 262 = (1949) FLJ 168 = AIR 1949 FC 124, turned upon the peculiar facts of that case and there was a difference of opinion, Patanjali Sastri, J., as he then was, taking a different view. There, after notice to quit, defendants 2 and 3 who claimed to be sub-tenants insisted upon continuing in possession and paid the rent month after month. The majority took the view that the landlord had obvious motive in receiving the payments of rent after a particular period i.e. the appointment of a receiver of the property of the mortgagor at the instance of his mortgagee. Having regard to the uniform view taken in all the decisions, both Indian and English, I am not inclined to interpret this decision G H

of the Federal Court as an authority for the position that the payments and receipt of rent as such in every circumstance would amount to waiver, whatever may be the circumstances of the case and the intention of the lessor".

In the case of *Bhawanji Lakhamshi and Ors.* v. *Himatlal Jamnadas Dani and Ors.* (supra), this Court observed as under:

"The act of holding over after the expiration of the term does not create a tenancy of any kind. If a tenant remains in possession after the determination of the lease, the common law rule is that he is a tenant on sufferance. A distinction should be drawn between a tenant continuing in possession after the determination of the term with the consent of the landlord and a tenant doing so without his consent. The former is a tenant at sufferance in English Law and the latter a tenant holding over or a tenant at will. In view of the concluding words of section 116 of the Transfer of Property Act, a lessee holding over is in a better position than a tenant at will. The assent of the landlord to the continuance of possession after the determination of the tenancy will create a new tenancy. What the section contemplates is that on one side there should be an offer of taking a new lease evidenced by the lessee or sub-lessee remaining in possession of the property after his term was over and on the other side there must be a definite consent to the continuance of possession by the landlord expressed by acceptance of rent or otherwise. In *Kai Khushroo Bezonjee Capadia* v. *Bai Jerbai Hirjibhoy Warden and Anr.* the Federal Court had occasion to consider the question of the nature of the tenancy created under Section 116 of the Transfer of Property Act and Mukherjea J. speaking for the majority said, that the tenancy which is created by the "holding over" of a lessee or under-lessee is a new tenancy in law even though many of the terms of the old lease might be continued in it, by implication; and that to bring a new tenancy into existence, there must be a bilateral act. It was further held that the assent of the landlord which is founded on acceptance of rent must be acceptance of rent as such and in clear recognition of the tenancy right asserted by the person who pays it. Patanjali Sastri J., in his dissenting judgment, has substantially agreed with the majority as regards the nature of the tenancy created by section 116 of the Transfer of Property Act, and that is evident from the following observations:-

"Turning now to the main point, it will be seen that the section postulates the lessee remaining in possession after the determination of the lease which is conduct indicative, in ordinary circumstances of his desire to continue as a tenant under the lessor and implies a tacit offer to take a new tenancy from the expiration of the old on the same terms so far as they are applicable to the new situation, and when the lessor assents to the lessee so continuing in possession, he tacitly accepts the latter's offer and a fresh tenancy results by the implied agreement of the parties. When, further, the lessee in that situation tenders rent and the lessor accepts it, their conduct raises more readily and clearly the implication of an agreement between the parties to create a fresh tenancy." A B C

In the case of *R.V. Bhupal Prasad* v. *State of A.P. and Ors.,* [1995] 5 SCC 698, in paragraphs 8 & 9 this Court observed as under:

"Para 8—Tenant at sufferance is one who comes into possession of land by lawful title, but who holds it by wrong after the termination of the term or expiry of the lease by efflux of time. The tenant at sufferance is, therefore, one who wrongfully continues in possession after the extinction of a lawful title. There is little difference between him and a trespasser. In Mulla's Transfer of Property Act (7th Edn.) page 633, the position of tenancy at sufferance has been stated thus: A tenancy at sufferance is merely a fiction to avoid continuance in possession operating as a trespass. It has been described as the least and lowest interest which can subsist in reality. It, therefore, cannot be created by contract and arises only by implication of law when a person who has been in possession under a lawful title continues in possession after that title has been determined, without the consent of the person entitled. A tenancy at sufferance does not create the relationship of landlord and tenant. At page 769, it is stated regarding the right of a tenant holding over thus: The act of holding over after the expiration of the term does not necessarily create a tenancy of any kind. If the lessee remaining in possession after the determination of the term, the common law rule is that he is a tenant on sufferance. The expression "holding over" is used in the sense of retaining possession. A distinction should be drawn between a tenant continuing in possession after the determination of the lease, without the consent of the landlord and a tenant doing so with the landlord's consent. The former is called a tenant by sufferance in the language of the English D E F G H

A law and the latter class of tenants is called a tenant holding over or a tenant at will. The lessee holding over with the consent of the lessor is in a better position than a mere tenant at will. The tenancy on sufferance is converted into a tenancy at will by the assent of the landlord, but the relationship of the landlord and tenant is not established until the rent was paid and accepted. The assent of the B landlord to the continuance of the tenancy after the determination of the tenancy would create a new tenancy. The possession of a tenant who has ceased to be a tenant is protected by law. Although he may not have a right to continue in possession after the termination of the tenancy, his possession is juridical.

C Para 9—The question then is what is the meaning of the expression "lawful possession". This was considered by this Court in a leading decision on the right to grant licence under the Cinematographic Act and the Madras Cinemas Rules in *M.C. Chockalingam* v. *V. Manickavasagam.* Rule 13 of the Madras Rules required the licensee D in lawful possession, when he had applied for renewal after the expiry of the lease of the licensee. The Court observed thus: (SCC p. 57, para 15).

"Turning to Rule 13, even in the first part if the applicant for the licence is the owner of the property he has to produce before the E licensing authority the necessary records not only relating to his ownership but also regarding his possession. It is implicit, that the owner having a title to the property, if he can satisfy the licensing authority with regard to his possession also, will indeed be in 'lawful possession', although the word 'lawful' is not used in the first part. It is in that context that the word 'possession' is even not necessary F to be qualified by 'lawful' in the first part of Rule 13. If, however, the applicant for the licence is not the owner, there is no question of his showing title to the property and the only requirement of the law is to produce to the satisfaction of the authority documentary evidence with regard to his lawful possession of the property. The word 'lawful', G therefore, naturally assumes significance in the second part while it was not even necessary in the first part. The fact that after expiry of the lease the tenant will be able to continue in possession of the property by resisting a suit for eviction, does not establish a case in law to answer the requirement of lawful possession of the property within the meaning of Rule 13. Lawful possession cannot be established

H

without the concomitant existence of a lawful relationship between the landlord and the tenant. This relationship cannot be established against the consent of the landlord unless, however, in view of a special law, his consent becomes irrelevant. Lawful possession is not litigious possession and must have some foundation in a legal right to possess the property which cannot be equated with a temporary right to enforce recovery of the property in case a person is wrongfully or forcibly dispossessed from it. This Court in *Lallu Yeshwant Singh* case had not to consider whether judicial possession in that case was also lawful possession. We are clearly of opinion that juridical possession is possession protected by law against wrongful dispossession but cannot *per se* always be equated with lawful possession."

In the case of *Karmani Industrial Bank Ltd.* v. *The Province of Bengal & Ors.*, (supra), this Court held as under:

"Apart from the fact that the appellants did not set up in any of their letters a case of holding over, we have to see whether the plea can be said to have been successfully made out by them. There is no doubt that the appellants have established that the rent was paid on their behalf up to 31.3.1938, & it was accepted by respondent 1. It has also been established that this payment was made by a cheque & that cheque has been cashed by the Government. Section 116, T.P. Act, on which reliance was placed on behalf of the appellants runs as follows:

"If a lessee or underlessee of property remains in possession thereof after the determination of the lease granted to the lessee, & the lessor or his legal representative accepts rent from the lessee or underlessee, or otherwise assents to his continuing in possession, the lease is, in the absence of an agreement to the contrary, renewed from year to year, or from month to month, according to the purpose for which the property is leased....."

The section was construed by the *F.C. in K.B. Capadia* v. *Bai Arbai,* 1949 O.C.R. 262, & it was held that where rent was accepted by the landlord after the expiration of the tenancy by efflux of time, S.116 applied even though the landlord accepted the amount remitted to him as "part deposit towards his claim for compensation for illegal use & occupation, & without prejudice to his rights". It is to be noted that in that case rent had been accepted after the expiry of the tenancy.

A In our judgment, the present case cannot be governed by that decision, because of the fact, which in our opinion is important, that here the payment of rent up to 31.3.1938, was made not after the date of expiry of the lease, but on 5.4.1937, nearly a year before the expiry of the lease. A reference to S. 116, T.P. Act, will show that for the application of that section, two things are necessary: (1) the lessee should be in B possession after the termination of the lease; & (2) the lessor or his representative should accept rent or otherwise assent to his continuing in possession. The use of the word 'otherwise' suggests that acceptance of rent by the landlord has been treated as a form of his giving assent to the tenant's continuance of possession. There can C be no question of the lessee "continuing in possession" until the lease has expired, & the context in which the provision for acceptance of rent finds a place clearly shows that what is contemplated is that the payment of rent & its acceptance should be made at such a time & in such a manner as to be equivalent to the landlord assenting to the lessee continuing in possession."

D

In the case of *Konchada Ramamurty Subudhi (dead) by his L.Rs.* v. *Gopinath Naik and Ors.*, AIR (1968) SC 919, this Court held as under:

"Where the suit for ejectment of tenant after termination of tenancy, having been dismissed, a compromise decree was passed in the E appellate court, enabling the decree-holder, by its terms to execute the decree if the judgment-debtor failed to pay "rent" for any three consecutive months.

Held the compromise deed did not create a lease but a license. It was difficult to impute to the decree-holder an intention to create a F fresh tenancy while the fact that he brought the suit showed that his intention was to eject the judgment-debtor after having purported to terminate the tenancy. The fact that the word 'rent' had been used in the compromise deed was not conclusive as in its wider sense rent meant any payment made for the use of land or buildings and thus G included the payment by a licensee in respect of the use and occupation of any land or buildings. The period of five years granted under the deed to the judgment-debtor for continuation of the possession also did not militate against the construction that the compromise only created a license for the decree-holder had lost in the trial court and it was only in the court of appeal that the compromise

H

was arrived at". A

It is also seen from Annexure R-6 (page 33 of the paper book Vol.II) which is a notice sent by the landlord's advocate to the tenant-the appellant herein on 21.2.1997 wherein it has been clearly stated in paragraphs 2,3 & 4 which read as under:

B

> "You were a tenant under my client in the property described in the schedule hereunder. My client states that as the period of lease expired on 30.9.1996 by agreement, my client had issued a notice dated 24.8.1996 determining the lease and directing you to vacate and handover possession of the schedule mentioned property. My client states that after the determination of lease your possession amounts C to that of a trespasser and you are liable to pay compensation which is to be determined after your vacating the premises.
>
> My client states that subsequent to the notice dated 24.8.1996, you have chosen to send three Banker's cheques dated 30.11.1996, 24.12.1996 and 29.1.1997, each for Rs. 4500/-. My client states that he D had not consented for your continued possession of the schedule mentioned property in any manner. Hence my client apprehends that the banker's cheques being sent are a ruse to create the appearance of continuation of tenancy.
>
> Hence take notice that my client will encash the banker's cheques E already sent by you and any that might be sent in future under protest and that the payments made by way of such cheques will be adjusted towards the compensation payable by you and take notice that encashments of any cheques already issued and that might be issued in future should not be treated or considered as consent from my F client for your occupying the schedule mentioned property."

We are, therefore, of the opinion that mere acceptance of rent by the landlord-Ist respondent herein from the tenant in possession after the lease has been determined either by efflux of time or by notice to quit would not create a tenancy so as to confer the erstwhile tenant the status of a tenant G or a right to be in possession. We answer this issue accordingly.

We shall now consider whether the appellant is a statutory tenant on the basis of the recitals of the lease agreement. It is seen from the Schedule to the Plaint in O.S.No. 569 of 2004 filed by the landlord that only a vacant site was lease out. The Schedule reads thus: H

A *"Schedule of Property"*

In Pondicherry RD, oulgret Sub. RD., Thattanchavady Revenue Village, the *vacant site* covering an extent of OH. 10A.28CA (approximately 11050 sq. ft.) within R.S.No. 242/2 pt. And bounded on the north by land belonging to Small Industries Service Institute, Extension Centre, on the West by house B and land belonging to Diderot Kannagi, on the South by Pondy-Tindivana, Highway, on the cast by land belonging to Diderot Kannagi acquired by the Agricultural Marketing Committee measuring 22.5 metres on the north (east to west), 30 meters on the West (north to south), 7.5 meters plus 27 meters on the south (west to east), 19 meters on the east (south to north) 6.1 meters C on the south (west to east), and 26.2. meters on the east (south to north) all measured continuously."

On 24.8.1996, a notice was issued to the appellant through the landlord's advocate calling upon the tenant to vacate and hand over the vacant possession of the Scheduled mention property and also to take necessary D steps for removing equipments which have been installed on behalf of the tenant in the said property. The schedule given to the said notice reads as under:

"Schedule of property"

E *Vacant land* measuring OH. 10A, 28Ca. (approximately 11.050 sq. ft.) forming part of Rs.No.242/2 pt. In Thattanchavady revenue, Villager No. 34, in Oulgeret Commune, Pondicherry.

Metes and Bound:

F Bound on the north by land belonging to small industries service Institute on the west by house and lands belonging to Dicerot Kannagi, on the South by Pondi Thindivam Road, on the east by lands belonging to Bicerct Kannagi measuring 22.5 meters on the North (east to West) 30.0 meters on the west (North to South) 7.5 meters plus 7.0 meters on the south (west to east) 19.0 meters on the east (south to north) G 6.1 meters on the south (west to east) and 26.02 meters on the south (south to north) all measured continuously. This encloses an area of OH. 10A 28 Ca. (approximately 11.050 sq. ft.)."

The instant case is based on 7.10.1986 lease deed entered into between the appellant-tenant and the first respondent-landlord. It was mutually agreed H

between the parties under clause (d) as follows: A

> "(d) In addition to the show room building of size 20x10 feet already constructed by the lessee, the lessee shall have the right to construct a compressor room, store room, a bath room and latrine together with a septic tank."

B

From the above recital, it is crystal clear that what was leased out was a vacant land and that the lessee was given a right to construct a compressor room, store room, a bath room and latrine together with a septic tank. Therefore, in our opinion, the provisions of The Pondicherry Buildings (Lease and Rent Control) Act, 1969 cannot be invoked. The said Act was enacted on 7.6.1969 to regulate the letting of residential and non-residential *buildings* and the C control of rents of such buildings and the prevention of unreasonable eviction of tenants therefrom in the Union Territory of Pondicherry. The "Building" has been defined as under:

> "2(4) "building" means any building or hut or part of a building or but, let or to be let separately for residential or non-residential D purposes an d includes-
>
> (a) the garden, grounds and out-houses, if any, appurtenant to such building, hut or part of such building or but and let or to be let along with such building or hut;
>
> E
>
> (b) any furniture supplied by the landlord for use in such building or hut or part of a building or hut, but does not include a room in a hotel or boarding house;"

The term *"landlord"* and *"tenant"* have also been defined. The terms landlord includes the person who is receiving or *is entitled to receive the rent* F *of a building.* The term *"tenant"* means any person by whom or on whose account rent is payable for a building.

This apart, the landlord has filed O.S. No. 569 of 2004 with the following prayer in the plaint which reads thus:

G

> "(i) directing for the ejectment that this Court may be pleased to pass a mentioned property *after removal of super structures*;
>
> (ii) directing the first defendant to pay the cost of the suit;
>
> (iii) Granting leave to the *plaintiff to file a separate suit for recovery of compensation* from the first defendant for his illegal occupation H

A of the schedule mentioned property and

(iv) Granting such further or other relief as this Court might deem fit and proper under the circumstances of the case."

It is also mentioned in the plaint that the appellant/tenant herein is not a statutory tenant or tenant holding over since he has been clearly apprised B that no rent will be received from him subsequent to the determination of the tenancy and that any amount that might be paid by him will be adjusted towards compensation for illegally occupying the schedule mentioned property. It was also submitted that the first defendant was given possession of a vacant site only and no building was leased out by the plaintiff.

C

Interpretation of Rule 153 by the learned senior counsel appearing for the appellant, in our opinion, has no merits. The word "right" used in Rule 153(1) of the Petroleum Rules, 1976 only means a legal right to continue on the land. It is seen from the judgments referred to in this appeal by us clearly hold that the term *"juridical possession"* or *"litigious possession"* do not D connote a valid legal right to continue in possession within the meaning of Rule 153 of the Petroleum Rules, 1976. We are, therefore, of the opinion that the occupation without consent is wrongful occupation. This Court had occasioned to interpret the expression lawful possession, its meaning, nature and significance in the case of *M.C. Chockalingam and Ors.* v. *V. Manickavasagam and Ors.*, [1974] 1 SCC 48. The special significance in the E context of Section 5(1) of the Madras Cinemas (Regulations) Act, 1955 was also considered by this Court. The main question was whether a tenant, who is not a statutory tenant, is entitled to claim to be in lawful possession of the premises on determination of the tenancy, on expiry of the lease. This Court interpreted Rule 13 in paragraph 15 of the judgment which is reproduced F hereunder:

> "Para 15—Turning to Rule 13, even in the first part if the applicant for the licence is the owner of the property he has to produce before the licensing authority the necessary records not only relating to his ownership but also regarding his possession. It is implicit, that the G owner having a title to the property, if he can satisfy the licensing authority with regard to his possession also, will indeed be in 'lawful possession', although the word 'lawful' is not used in the first part. It is in that context that the word 'possession' is even not necessary to be qualified by 'lawful' in the first part of Rule 13. If, however, the H applicant for the licence is not the owner, there is no question of his

showing title to the property and the only requirement of the law is to produce to the satisfaction of the authority documentary evidence with regard to his lawful possession of the property. The word 'lawful', therefore, naturally assumes significance in the second part while it was not even necessary in the first part. The fact that after expiry of the lease the tenant will be able to continue in possession of the property by resisting a suit for eviction, does not establish a case in law to answer the requirement of lawful possession of the property within the meaning of Rule 13. Lawful possession cannot be established without the concomitant existence of a lawful relationship between the landlord and the tenant. This relationship cannot be established against the consent of the landlord unless, however, in view of a special law, his consent becomes irrelevant. Lawful possession is not litigious possession and must have some foundation in a legal right to possess the property which cannot be equated with a temporary right to enforce recovery of the property in case a person is wrongfully or forcibly dispossessed from it. This Court in *Lalu Yeshwant Singh's* case (supra) had not to consider whether juridical possession in that case was also lawful possession. We are clearly of opinion that juridical possession is possession protected by law against wrongful dispossession but cannot *per se* always be equated with lawful possession."

We have already referred to the observations of Patanjali Shastri, J. in the judgment in *Kai Khushroo Bezonjee Capadia* v. *Bai Jerbai Hirjibhoy Warden and Anr.* (supra).

As already noticed, the judgment in the case of *Saleh Bros.* v. *K. Rajendran & Anr.*, (supra) refers to the consensus of the judicial opinion as to the present controversy being in favour of the respondent-landlord and in turn refers to the judgment in *Karmani Industrial Bank Ltd.* v. *The Province of Bengal & Ors.* (supra) and *Konchada Ramamurthy Subudhi (dead) by L.Rs.* v. *Gopinath Naik and Ors.*, (supra) to show that the use of the word rent does not conclude the matter under the Federal Court judgment should be confined to the facts of the case in *Saleh Bros.* v. *K. Rajendran and Anr.*, (supra) at page 170 and the latter paragraph referring to the judicial opinion of the High Courts of India. We have already extracted the relevant paragraphs in the above two judgments in paragraphs supra.

We have already referred to the arguments advanced by both the

A parties in regard to the nature of tenancy and the statutory protection. It is abundantly clear from the recitals in the plaint, the schedule to the notice and to the plaint and also of the lease deed that word "leased out" was only a vacant site to put up a petrol bunk with accessory constructions thereon. The mention of a small shed in the current lease is undoubtedly belonged to the tenant himself and, therefore, the building put up by the tenant situated in B the vacant site belongs to the landlord cannot be said to be the building of the landlord in order to attract the statutory protection of the Rent Control Act. This issue is, therefore, answered against the tenant.

This Court in the case of *Bhuneshwar Prasad and Anr.* v. *United* C *Commercial Bank and Ors.* (supra) considered the case of an agreement creating a fresh tenancy within the meaning of Section 116 of the Transfer of Property Act and held that it can be inferred from the conduct of the parties. This Court approved the judgment in *Kai Khushroo Bezonjee Capadia* v. *Bai Jerbai Hirjibhoy Warden and Anr.* (supra) and distinguished on facts the judgment of this Court in *Bhawanji Lakhamshi and Ors.* v. *Himatlal* D *Jamnadas Dani & Ors.* (supra). In paragraph 7 of the said judgment, this Court observed as under:

> "Para 7—Mr. Sanyal, learned Senior Counsel appearing for the appellants contends that Section 116 of the Transfer of Property Act would not be attracted merely on acceptance of rent. Reliance is E placed upon a decision of the Federal Court in *Kai Khushroo Bezonjee Capadia* v. *Bai Jerbai Hirjibhoy Warden.* We agree that to bring a new tenancy into existence within the meaning of Section 116, there should be an agreement as the section contemplates that on one side, there should be an offer of taking a fresh demise evidenced by the F lessee's continuing occupation of the property after the expiry of the lease and on the other side, there must be a definite assent to this continuance of possession by the lessor/landlord and that such an assent of the landlord cannot be assumed in cases of tenancies to which the rent Restriction Acts apply on account of the immunity G from eviction which a tenant enjoys even after the expiry of lease. IN such cases, the landlord cannot eject him except on specified grounds mentioned in the Rent Restriction Acts and thus the acceptance of rent by the landlord from a statutory tenant, whose lease has already expired, would not be taken as evidence of a new agreement of tenancy and it would not be open to such a tenant to urge that by H acceptance of rent, a fresh tenancy was created. We do not expect a

lessor not to accept the rent when, in view of the protection granted by the rent restriction laws, without existence of one or the other ground, he is precluded from seeking eviction of the lessee and in such a case, there would be no question of creation of tenancy from month to month. Under these circumstances, mere acceptance of amount equivalent to rent or the standard rent would not attract Section 116. Assent to the lessee continuing in possession would be absent in such cases. However, an agreement creating fresh tenancy within the meaning of Section 116 can be implied from the conduct of the parties. In *Ganga Dutt Murarka* v. *Kartik Chandra Das* while affirming the dictum laid down in Khushroo case it was held that apart from an express contract, conduct of the parties may undoubtedly justify an inference that after determination of the contractual tenancy, the landlord had entered into a fresh contract with the tenant, but whether the conduct justifies such an inference must always depend upon the facts of each case. In *Bhawanji Lakhamshi* v. *Himatlal Jamnadas Dani* again the question that came up for consideration was as to whether a fresh tenancy was created or not by acceptance of rent by the lessor after the termination of the tenancy by the efflux of time. This Court declined the prayer to reconsider *Ganga Dutt Murarka* case and held that acceptance by the landlord from the tenant, after the contractual tenancy had expired, of amounts equivalent to rent or an amount which was fixed as standard rent did not amount to acceptance of rent from a lessee within the meaning of Section 116 of the Transfer of Property Act. The present is not a case of acceptance of amounts equivalent to rent or amounts fixed as standard rent but acceptance of increased rent. It was also observed that: (SCC p. 394, para 13)

"We do not say that the operation of Section 116 is always excluded whatever might be the circumstances under which the tenant pays the rent and the landlord accepts it."

The whole basis of Section 116 is that a landlord is entitled to file a suit for ejectment and obtain a decree for possession and, therefore, his acceptance of rent after expiry of lease is an unequivocal act referable to his desire to assent to the tenant continuing possession. It would be absent in cases where there are restrictions as contemplated by rent laws. In such cases, therefore, it is for the tenant where it is said that the landlord accepted the rent not as a statutory tenant but

A only as a legal tenant indicating his assent to the tenant's continuing possession, to establish it.

The argument of Mr. L.N. Rao, learned senior counsel appearing for the appellant that the words "right to site" appearing in Rule 153(1) of the Petroleum rules must be given liberal interpretation having regard to the B public interest sub-served by the Petrol bunks which are essential for the smooth flow of goods and services as also for the movement of persons. Rule 153(1) (i) of the Petroleum Rules is "right to the site" for storing petroleum. It is not the right for storing petroleum on the site. That is so because that aspect is dealt with specifically in sub-clause (ii) of Rule 153(1) which refers C to a no objection certificate, which the District authority or the State Government is required to give. No Objection Certificate which is granted under Rule 144 is the one given by the concerned authority stating that it has no objection for the storage of petroleum on the site after examining the site plan and other relevant factors. The words "right to the site" have, therefore, to be understood as referring to right to the site on which the petroleum is D stored. A person can be said to have a right to something when it is possible to find a lawful origin for that right. A wrong cannot be a right of a person who trespasses on to another's land cannot be said to have a right to the land *vis-a-vis* the owner because he happens to be in possession of that land. Mere presence on the land by itself does not result in a right to the land. Such E presence on the premises may ripen into a right by reason of possession having become adverse to the true owner by reason of the passage of time and possession being open uninterrupted, continuous and in one's own right.

In our opinion, any right which the dealer has over his site was the right which he had acquired in terms of the lease. When that lease expired and F when the landlord declined to renew the same and also called upon the erstwhile tenant to surrender possession, the erstwhile lessee could no longer assert that he had any right to the site. His continued occupation of something which he had no right to occupy cannot be regarded as source of a right to the land of which he himself was not in lawful possession. As observed by G this Court in the case of *M.C. Chockalingam and Ors.* v. *V. Manickavasagam and Ors.* (supra), litigious possession cannot be regarded as lawful possession. As rightly pointed out by the Division Bench of the High Court the right referred to in this Rule has necessarily to be regarded as right which is in accordance with law and the right to the site must be one which is capable of being regarded as lawful. We have already referred to *Bhawanji Lakhamshi* H *and Ors.* v. *Himatlal Jamnadas Dani and Ors.* (supra) wherein this Court held

that the act of holding over after the expiration of the term does not create a tenancy of any kind. A new tenancy is created only when the landlord assents to the continuance of the erstwhile tenant or the landlord agrees to accept rent for the continued possession of the land by the erstwhile tenant. The contention of Mr. L.N. Rao that the landlord's assent should be inferred from the conduct of the landlord who had filed the suit for ejectment, but did not pursue the same, has no force. This suit was withdrawn with liberty to file a fresh suit on the same cause of action, liberty which the Court has granted. The possession of this site by the erstwhile lessee does not ripen into a lawful possession merely because the landlord did not proceed with the suit for ejectment at that time, but reserved the right to bring such a suit at a later point of time. That cannot amount to an assent on his part to the continued occupation of the landlord under cover of a right asserted by the erstwhile lessee. The words "right to the site" in Rule 153(1) (i) must, therefore, in our opinion, be given their full meaning and the effect that unless the person seeking a licence is in a position to establish a right to the site, he would not be entitled to hold or have his licence renewed. We have already rejected the contention of Mr. L.N. Rao that the appellant-tenant is a statutory tenant for the reasons recorded earlier. The lease deed is very clear as to what was leased. The lease was of vacant land. That is evident from the recitals in the plaint, legal notice, lease deed etc. It is, therefore, not in dispute that the lease of land is not covered by the statute, The Pondicherry Buildings (Lease and Rent Control) Act, 1969 in force extending protection to tenants.

We now come to the last contention of Mr. L.N. Rao that the first respondent is not entitled to maintain the writ petition as the proceedings initiated by him before the Collector for cancellation of the No Objection Certificate is pending. The said submission cannot be accepted. While granting NOC, the Collector is not concerned about the ownership of the land. He is concerned about the location of the land and its suitability as a place for storage of petroleum. Rule 144 deals with the grant of NOC does not contemplate an enquiry into the ownership of the land nor does it require the Collector to enquire into the nature of the right claimed by the person who has applied for the NOC. We, therefore, uphold the judgment and final order passed by the Division Bench dated 7.10.2003 in Writ Appeal Nos. 1149 & 2140 of 2002 for the reasons given by us in this judgment.

The appeal stands dismissed. However, there shall be no order as to costs.

K.K.T. Appeal dismissed.