

A.F.R**Reserved on:** 27. 11.2019**Delivered on:** 19.12.2019**Court No. - 1****Case :-** WRIT - C No. - 36576 of 2019**Petitioner :-** Puneet Kumar Singh**Respondent :-** Bharat Petroleum Corporation Ltd. And Another**Counsel for Petitioner :-** Tarun Agrawal**Counsel for Respondent :-** Vikas Budhwar, Utkarsh Tripathi, Vijay Kumar Rai**Hon'ble Ramesh Sinha, J.****Hon'ble Ajit Kumar, J.****(Delivered by Ramesh Sinha, J.)**

1. Heard Sri Tarun Agrawal, learned counsel for the petitioner and Sri Vikas Budhwar, learned counsel for respondent Corporation.
2. Invoking extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, the petitioner herein has challenged the order dated 2.11.2019, whereby candidature of the petitioner for the allotment of retail outlet dealership of petroleum products, in connection with advertisement dated 25.11.2018, has been rejected.
3. In narrow compass the facts of the case can be drawn like this that petitioner pursuant to advertisement dated 25.11.2018 issued by Bharat Petroleum Corporation Ltd, namely, respondent no. 1, invited application for allotment of retail outlet dealership of the petroleum product in district Chandauli for allocation at old National Highway No. 2 between Varanasi and Chandauli. The petitioner applied vide application dated 24.12.2018 filling up online application form. Petitioner submitted the documents in respect thereof which included the lease document relating to the land offered by the petitioner falling in Khasra No. 154 with a dimension of 35X35 metres total measuring to 1575 square metres.
4. The piece of land offered by the petitioner vide his application

(hereinafter referred to as the Land in question) was obtained by the petitioner under a lease agreement executed and registered on 14/15.12.2018 for a period of 29 years and 11 months by the original tenure-holder Mangla Singh and thus, in view of the detail submitted by the petitioner, petitioner's application was entertained in Group-I category and having been selected in the draw of lots, he became entitled for consideration for allotment of retail outlet dealership.

5. In the meanwhile, it appears that, some complaint was made regarding offer of land by the petitioner to be not a valid offer and consequently a notice was issued to the petitioner by the Territory Manager Retail (Varanasi) on 10.6.2019 asking him to confirm as to whether the land offered by him was already subject matter of lease agreement between the tenure-holder Mangla Singh and one M/S. B.S.C.-C&C- "JV" (hereinafter referred to as original lessee) executed and registered on 20.11.2017 and was in subsistence till 19.11.2019. He was asked to submit reply within ten days.

6. The petitioner did submit a reply explaining away that the land though formed part of the lease agreement between tenure-holder and one original lessee but in view of surrender of land measuring 1925 square meters by the lessee on 15.9.2018 Mangla Prasad the tenure-holder got the right to execute a fresh lease of 1575 square meters out of the surrendered part. The petitioner appended with his reply dated 19.5.2019 the confirmation letter.

7. Having thus, received the reply of the petitioner the Territory Manager enquired from the Deputy Registrar, Sadar, Chandauli as to whether the second lease dated 15.12.2018 was valid in face of the fact that there already existed a lease dated 25.5.2018 in favour of one original lessee and whether the surrender letter amounted to a valid surrender and as to whether on the basis of such letter of surrender a subsequent lease could have been executed. The Deputy Registrar, Chandauli in his reply dated 28.6.2019 declined to answer the questions

on the ground that the he does not enjoy any authority under the Registration Act, 1908 to enquire into the validity of written instrument and so far as the letter dated 15.9.2018 issued by the original lessee Satish Kumar in respect of lease deed numbers 53077/2018 and 5282 of 2018 is concerned no legal opinion can be expressed in respect of the legal effect of such letter.

8. It appears that on the same date i.e., 22.6.2019 the Territory Manager also enquired from the original lessee as to whether this letter was issued by Satish Kumar and in reply to that the authorized signatory of original lessee wrote to the Territory Manager that such letter is a valid one to the best of his knowledge and was issued by his office.

9. It appears that considering the reply of the petitioner submitted on 19.6.2019, the reply of the Deputy Registrar and that of Satish Kumar and having visited the site, the Land Evaluation Committee submitted report that the land did not meet the required norms and consequently the candidature of the petitioner was rejected vide order dated 27.7.2019.

10. The order dated 27.7.2019 came to be challenged before this Court vide Writ Petition No. 26050 of 2019 and as the order was absolutely non-speaking except referring to some report of the Land Evaluation Committee which was not discussed in the order and similarly orders were passed by the Corporation in some other matters challenged in a number of writ petitions filed before this Court all were heard and decided together by common judgment dated 13.8.2019 with Writ C No. 24484 of 2019 (Ansar Ali Vs. Union of India and 2 others) quashing the order impugned including the one dated 27.7.2019 (*supra*). The matter was remitted to the authority to consider afresh by supplying copy of the reports to the respective petitioners inviting their objections and then to decide the same by means of a reasoned and speaking order.

11. In view of the judgment of the High Court dated 13.8.2019 (*supra*), the respondents issued noticed to the petitioner on 4.10.2019 inviting

objection and the petitioner submitted reply on 10.10.2019. Having considered the reply of the petitioner, this time the respondent-Corporation again rejected the candidature of the petitioner by a detailed order dated 2.11.2019 on the ground that in view of Clause-7 of the lease deed dated 25.5.2018 and Section 111(e) and Section 111 (f) of the Transfer of Property Act, the surrender under the letter dated 15.09.2018 would not amount to absolute surrender and consequently the offer of a piece of land would not be one referable to Group-I category and thus the candidature of the petitioner would be liable to be considered under Group-III category. Thus the candidature of the petitioner as such in Group-I category came to be rejected.

12. Assailing the order impugned now, the arguments advanced by learned counsel for the petitioner is three fold:-

(A) The lease was validly executed and registered and no one having put it to challenge the title and possessory rights to the extent as provided for under the lease were intact and valid on the date offer was made, for a period of 29 years and 11 months and such being the position on the date of submission of application by the petitioner, the offer of the petitioner was a valid offer of piece of land as defined under Group-A category and, therefore, the respondents were not justified in rejecting the same;

(B) The surrendered part of the lease under the letter dated 15.9.2018 (hereinafter referred to as letter) was a valid surrender in the light of the provision contained under Section 111 (e) and Section 111 (f) of the Transfer of Property Act, 1872 (hereinafter referred to as T.P. Act, /) and the interpretation thereof by the respondent Corporation is erroneous in law;

(C) A mere condition prescribed under the surrender letter as “ *Just in case there is some emergency space requirement for me and in case the surrender plot remain unused by you, I may use it temporarily*” would not make the surrender bad and resultantly the subsequent lease is not invalid

so as to reject the candidature of the petitioner in Group-A I category, in other words the argument is that the surrender letter was a valid one per provision contained in Para-7 of the lease deed dated 25.5.2018.

13. Thus advancing the above arguments further, on the argument A, learned counsel for the petitioner has placed reliance upon Clause 4 (V) of the Guidelines as contained under the Brochure dated 24.11.2018 framed for selection of dealers for Regular and Rural Retail Outlets (for short Brochure). Clause-5 of the Brochure as it defines Groups I, II and III is reproduced hereinunder:

“Group 1: Applicants having suitable piece of land in the advertised location/area either by way of ownership/ long term lease for a period of minimum 19 years 11 months or as advertised by the OMC.

Group 2: Applicants having Firm Offer for a suitable piece of land for purchase or long term lease for a period of minimum 19 years 11 months or as advertised by the OMC.

Group 3: Applicants who have not offered land in the application.”

14. The above provision has been quoted to the extent it is necessary for the appreciation of the argument of the petitioner referable to Group-I.

15. It is submitted by the learned counsel that since he had a valid lease agreement *qua* a of piece of land with a dimension of 35 metres X 45 metres and it being not questioned either by the lessor or by the original lessee who had surrendered that piece of land and since the lease was for a period of 29 years 11 months, a period more than required one, in favour of the petitioner to bring him within the ambit and scope of Group-I. He submits that it is not disputed that the land fell in Khasra 154 and was part of transfer by registered document and that too by a tenure-holder, the mere complaint by a third party would not make the offer of piece of land within Group-I category as bad. So according to him in view of the definition of land provided under Clause 4 (V), the petitioner being eligible candidate his application was rightly entertained and having been

selected in draw of lots, he was right in offering the land for allotment of dealership of the petroleum products under the letter dated 7.2.2019.

16. The argument B and C since relate to the issue of surrender and part of surrender of lease rights by the original lessee referable to Section 111 (e) and 111 (f) of the Act, 1882 and the scope of para-7 of the lease deed dated 25.5.2018 both being related to each other the legal argument is that surrender of part of lease rights was valid and so also the subsequent lease in favour of the petitioner. Learned counsel for the petitioner has relied upon various authorities of the High Court and the Supreme Court in support of his argument. He has drawn attention of the Court to Section 111 Sub-sections (e) and (f) Act No. 87 of 1882. For the appreciation of the argument so advanced, the two clauses are reproduced hereunder:

“(e) by express surrender; that is to say, in case the lessee yields up his interest under the lease to the lessor, by mutual agreement between them;

(f) by implied surrender;”

17. It has been argued by learned counsel for the petitioner that a bare reading of Clauses (e) and (f) clearly provide that the legislative intent is to acknowledge surrender of lease rights by act of specific written document or by implied surrender to wit by consent and, therefore, he argues that since Clause-7 of the lease deed prescribes for surrender of lease rights, entitling the lessee to take such an action in the light of the provision as contained in Clause (e) and (f). He contends that if original lessee had written letter, expressing relinquishment of his lease rights in respect of lease land, it would be a valid one.

18. He has placed reliance upon paragraph-27 of the Judgment of Apex Court in the case of ***H.K. Sharma v.. Ramlal (2019) 4 Supreme Court Cases 153***. Paragraph-27 relied upon by the petitioner's counsel, of the judgment is reproduced hereunder:

“27. This Court in ShanMathuradas Manganlal & Co. V Nagappa Shankarappa Malage considered the scope of Clauses (e) and (f) of Section 111 of the TP Act and

laid down the following principle in para 19 as under: (SCC P. 665)

“19. A surrender under clauses (e) and (f) of Section 111 of Transfer of Property Act, is an yielding up of the term of the lessee’s interest to like a contract by mutual consent on the lessor’s acceptance of the act of the lessee. The lessee cannot, therefore, surrender unless the term is vested in him; and the surrender must be to a person in whom the immediate reversion expectant on the term is vested. Implied surrender by operation of law occurs by the creation of a new relationship, or by relinquishment of possession. It the lessee accepts a new lease that in itself is a surrender. Surrender can also implied from the consent of the parties or from such facts as the relinquishment of possession by the lessee and taking over possession by the lessor. Relinquishment of possession operates as an implied surrender. There must be a taking of possession, not necessarily a physical taking, but something amounting to a virtual taking of possession. Whether this has occurred is a question of fact.”

19. In support of his contention he has further relied upon the judgment of Calcutta High Court in the Case of **Abdul Majid v. Hari Charan Hilder and others 53 Ind. Cas 17 (MANU/ WB/0200/1917)** and has placed reliance on paragraphs 2 and 3, wherein concurrent view has been expressed by two Judges. Paras 2 and 3 run as under:

“ 2. It is contended on behalf of the plaintiff appellant that the surrender was not really a surrender, but a sale, because there was consideration, the consideration being the rent for which a decree had been obtained and accrued since the date of suit. It appears to me that there is no reason for saying that it was not a surrender to the landlord; no authority has been shown to us for holding that the surrender must be by instrument registered. For these reasons this appeal must be dismissed with costs.

3. I agree. Under Section 111 of the Transfer of Property Act, a lease of Immovable property determines, by express surrender, that is to say, by the lessee yielding up his interest under the lease to the lessor, by mutual agreement between them. It is found that in this case the lessee did surrender her interest by mutual agreement, and it seems to me that it makes no

difference that the mutual agreement was by reason of a consideration that was received from the tenant by the landlord. The Transfer of Property Act does not require a registered document in such cases and no authority has been shown to us in support of this contention.”

20. Learned counsel for the petitioner has drawn our attention on para-16 of the judgment in the case of ***Elias Meyer v. Manoranjan Bagchi and others*** 22c WN 441 (MANU/ WB/0534/1918). Para 16 of the judgment runs as under:

“16. In this country a surrender or relinquishment does not require to be in writing but can be inferred from the acts of the parties. This is well illustrated by the case of Chundermani Byabhsa v. Shambu Chandra Chukerbutty [1864] W.R. 270, a decision which has never been question in this Court.”

21. Reliance has also been placed upon a judgment of Andhra Pradesh High Court in the Case of ***Konijeti Venkayya and ors v. Thammana Peda Venkata Subbarao and others*** AIR 1957 AP 619 (MANU/ AP/ 0347/1955). Counsel for the petitioner has vehemently argued that in India lease rights are surrendered orally also and at times even such relinquishment can be inferred from the conduct of the parties. He has tried to distinguish the Indian legal position from English one where the statute requires for surrender to be documented one evidencing the *factum* of surrender. He has relied upon para-6, 13 and 17 of the judgment (*supra*) which are reproduced hereinunder:

“6. On a surrender by the lessee, a lease of immovable property comes to an end. It has to be ascertained whether there was an actual surrender or surrender in fact by the plaintiff of his leasehold right under Exhibit B-8 in favour of the lessor, his father. In England it has been held that where the subject- matter of the lease is a reversion, it is a ‘ a matter, lying in grant, and not in livery, and of which therefore, there could be no valid surrender in fact otherwise than by deed.’ Lyon v. Reed (1844) 153 ER 118 126 (E). under Section 111(e) of the Transfer of Property Act if a lessee yields up his interest under the lease to the lessor by mutual agreement between them, there is an express surrender or

surrender in fact. In India, a surrender may be oral and may be inferred from the acts and conduct of the parties there being no statutory provision like Section 3 of the English Statute of Frauds that a surrender should be evidenced by a document in writing or like Section 3 of 8 and 9 Vic. C. 106 requiring a deed for the purposes. See Elias. Myer V. Maoranjana 22 Cal W/N 441: (AIR 1919 Cal 694) (F) Brojo Nath V. Maheswar 28 Cal LJ 220; (AIR 1918 Cal 233) (1) (G) Chunder Monee Nya Busan V. Sham-buchandra Chukerbutty 1884) WR CR 270 (H) and Narasimma V. Lakshmana ILR 13 Mad 124 126, 127 (I).

13. *According to English Decisions a fresh lease accepted by a lessee during the continuance of a prior lease operates as a surrender of the original lease because by accepting the new lease, the lessee is a party to an act the validity of which he is, by law, afterwards stepped from disputing and which would not be valid if the first lease continued to exist and the lessor was not in a position to upt the lessee in possession at the date of the new lease. The law attributed the ofrce of estoppel to certain acts of notoreity such as livery of sees in, entry, acceptance of an estate See Parke B. in (1844) 153 ER 118 127 (E) and Chitty, J. in Wallis V. Hands 1893 2 CH 75 at PP 79 and 82 (o). The grant of new lease to a stranger with the tenants' assent and change of possession at about the time of the new lease were held to bring the case within the scope of the doctrine of implied surrender. The insistence on delivery of possession by the old lessee and the assumption that the lessor was in possession at the date of the new lease and delivered possession under the new lease was due to the fact that, in England, it was for a long time considered necessary that a lessor should be in possession of the land intended to be leased. I twas therefore decided by the English Courts that where a lessee assented to a lease being granted to Anr. And also gave up possession to the new lessee there was a surrender by operation of law. Davision V. Gent (1857) 1 H & N 744 (p), 189 & 2 CH 75 at pp 79 and 82 (o). This requirement of the English common law that the lessor should have been in possession and given possession to the lessee at the time of the lease was dispensed with by Section 4 (2) of the Law of property Act, 1925, but it influenced the course of decision In England. Another consideration which weighed with the English Courts in holding that*

an assent by the tenant to the new lease would not amount to a surrender by operation of law without actual delivery of possession to the new tenant was adverted to by Chitty, J., in 1893 2 CH 75 PP. 79 and 82 (o), in these terms:

To hold that mere oral assent to new lease operates as surrender in law would be a' most dangerous doctrine; it would practically amount to a repeal of the Statute of frauds and would let in all the mischief against which the statute is intended to guard; the policy of that statute is carried still further by the Statute 8 and 9 Vic. C.106, Section 3 which requires a deed in cases where formerly a mere writing would have sufficed.

17. It was argued for the Respondent that even if Exhibits B-8 and B-12 were inconsistent or incompatible, the operation of Exhibit B-8 would remain suspended only during 1947-1948 at the end of which the term of Exhibit B012 would expire and that Exhibit B-8 would continue to be in force from 1948-1949 onwards till 1962-1963 according to its tenor. Reliance was placed on the following observation of Ramesam J in (MANU/ TN/ 0049/292: ILR 48 Mad 815, 819 AIR 1925 Mad 127, 1278) (N).

22. Then again, learned counsel for the petitioner submits that in the case of **Jamuna Oil Mills v. The Addl. District Judge and others 1978 AWC 413 All (MANU/UP/ 0547/1978)**. Paragraphs 34 and 35 run as under:

“34. To begin with it, it will be proper to give in brief the requirements of express or implied surrender of tenancy rights. Section 111 of the Transfer of Property Act lays down, amongst others, that a tenant can surrender his or her rights expressly or impliedly. Woodfall in his book on ‘ Landlor and Tenant’, 27th ED. P. 362 says that “an implied surrender can also be by the conduct of both the parties” He writes “the term surrender by operation of law or implied surrender (there being no distinction is the expression used to describe all those cases where the law implies surrender from unequivocal conduct of both parties which is inconsistent with the continuance of the existing tenancy;

35. In Amar Krishna v. Nazir Hasan AIR 1939 Oudh 257 at page 267 it was observed:

An implied surrender takes place either by the creation of new relationship between the lessor and the lessee such as the acceptance of a new lease which must operate as implied surrender of the old one or in other ways based on the consent of the parties or by the relinquishment of possession by the lessee and taking over possession by the lessor which would lead to the inference of an implied surrender of the lease.”

23. Placing reliance upon another judgment in the case of **T.K. Lathika v. Karsandas Jamandas AIR 1995 SC 3335, (MANU/SC/0535/1999)**. Learned counsel for the petitioner has placed emphasis on paragraphs 11,12,13, and 15 which are reproduced hereunder:

“11. The principle which governs the doctrine of implied surrender of a lease is that when certain relationship exist between two parties in respect of a subject matter and a new relationship has come into existence regarding the same subject matter, the two sets cannot co-exist, being inconsistent and incompatible between each other, i.e. if the latter can come into effect only on termination of the former, then it would be deemed to have been terminated in order to enable the latter to operate. A mere alteration or improvement or even impairment of the former relationship would not ipso facto amount to implied surrender. It has to be ascertained on the terms of the new relationship vis- a-vis the erstwhile demise and then judge whether there was termination of the old jural relationship by implication.

12. The following passage in the Halsbury’s Law of England, 4th Edn. Vol 27 at page 355, is apposite:

449. Surrender by change in nature of tenant’s occupation. A surrender is implied when the tenant remains in occupation of the premises in a capacity inconsistent with his being tenant, where, for instance, he becomes the landlord’s employee, or where the parties agree that the tenant is in future to occupy the premises rent free for life as a license. An agreement by the tenant to purchase the reversion does not itself effect a surrender, as the purchase is conditional on a good title being made by landlord.

13. In Hill and Redman’s Law of Landlord and Tenant (16th Edn.) at page 451 it is observed that “ a surrender does not follow from a mere agreement made during the

tenancy for the reduction or increase of rent, or other variation of its terms, unless there is some special reasons to infer a new tenancy, where, for instance, the parties make change in the rent under the belief that the old tenancy is at an end.

15. *In Krishna Kumar Khemka V. Grindlays Bank MANU/SC/0200/1991: [1990] 2 SCR 961 a two-judge Bench of this Court held thus:*

Surrender of a part does not amount to implied surrender of the entire tenancy and the rest of the tenancy remains untouched....

Likewise the mere increase or reduction of rent also will not necessarily import a surrender of an existing lease and the creation of a new tenancy”

24. Justifying the part of surrender of land as legally sustainable and accordingly defending letter dated 15.9.2018 and consequently subsequent lease deed dated 14/15.12.2018, learned counsel for the petitioner has cited the Supreme Court Judgment in the Case of ***Krishna Kumar Khemka v. Grindlays Bank P.L.C. and others (1990) 3 Supreme Court Cases 669*** where the Apex Court vide paragraphs 8 and 9 has held thus:

“8. Learned counsel for the respondents, on the other hand, submitted that there was no new tenancy and surrender of flat Nos. 1 and 2 by the Grindlays and retaining two more flats does not amount to a new tenancy at least so far as Grindlays is concerned and a reduction of rent also does not create new tenancy inasmuch as the rent is that they had to pay was only for two flats in respect of each (sic which) their tenancy continues.

9. *In Woodfall’s Law of Landlord and Tenant, (25th edn., p. 969 paragraph 2079 reads as under:*

“2079. Implied surrender of part only. If a lessee for years accepts a new lease by indenture of part of the lands, it is a surrender for that part only, and not for the whole; and though a contract for years cannot be so divided, as to be avoided for part of the years and to subsist for the residue, either by act of the party or act in law; yet the land itself may be divided, and the tenant may surrender one or two acres, either expressly or by

act of law, any the lease for the residue will stand good and untouched.”

In Halsbury’s Law of England(4th end., Volume 27) paragraph 449 reads and under:

“449. Surrender by change in nature of tenant’s occupation. A surrender is implied when the tenant remains in occupation of the premises in a capacity inconsistent with his being tenant, where, for instance, he becomes the landlord’s employee, or where the parties agree that the tenant is in future to occupy the premises rent free for life as a licensee. An agreement by the tenant to purchase the reversion does not of itself effect a surrender, as the purchase is conditional does not itself being made by the landlord.”

In Foa’s General Law of Landlord and Tenant (7th edn.) by Judge Forbes, paragraph991 reads thus:

91. Lease of part- It has been held that acceptance of a new lease of part only of the demised premises operates as a surrender of that part and no more; but any arrangement between landlord and tenant which operates as a fresh demise wil work a surrender of the old tenancy, and this may result from an agreement under which the tenant gives up part of the premies and pays a diminish rent for the remainder- and it may result from the mere alteration in the amount of rent payable. Where one only of two or more lessees accepts a new lease, it is a surrender only of his share.”

In Hill and Redman’s Law of Lanlord and Tenant (16th edn. On page 451) it is observed:

“Any arrangement between the landlord and tenant which operates as a fresh demise will work a surrender of the old tenancy and this may result from an agreement under which the tenant gives up part of the premises and pays a diminished rent for the remainder, provided a substantial difference is thereby made in the condition of the tenancy. But a surrender does not follow from a mere agreement made during the tenancy for the reduction or increase of rent, or other variation of its terms, unless there is some special reason to infer a new tenancy, where, for instance, the parties make the change in the rent in the belief that the old tenancy is at an end.”

From the above passages it can be inferred that surrender of a part does not amount to implied

surrender of the entire tenancy and the rest of the tenancy remains untouched. We shall now examine the cases cited. In Konijeti Venkayya V. Thamma Pedav Venkata Subbaro Viswanatha Sastri, J. referred to the abovementioned passage from Woodfall's Law of Landlord and tenant and observed that the principle of law is stated correctly."

25. Finally defending the lease deed executed in favour of the petitioner by the original tenure holder, learned counsel for the petitioner has relied upon the judgment of the Apex Court in the Case of ***ITC Ltd v. State of U.P. (2011) 7 Supreme Court Cases 493*** wherein it has been held that unless and until a duly executed and registered lease deed is questioned and canceled by competent court of law, it will have all legal effects and can not by itself amount to be bad by any unilateral action even at the end of lessor. Learned counsel has placed reliance upon legal position held by the Supreme Court in paragraph 30 of the said judgment which runs as under:

"30. A lease governed exclusively by the provisions of the Transfer of property Act, 1882 ("the TP Act, for short) could be canceled only by filing a civil suit for its cancellation or for a declaration that it is illegal, null and void and for the consequential relief of delivery back possession. Unless and until a court of competent jurisdiction grants such a decree, the lease will continue to be effective and binding. Unilateral cancellation of a registered lease deed by the lessor will neither terminate the lease nor entitle the lessor to seek possession. This is the position under private law. But where the grant of lease is governed by a statute or statutory regulations, and if such statute expressly reserves the power of cancellation or revocation to the lessor, it will be permissible for an authority, as the lessor, to cancel a duly executed and registered lease deed, even if possession has been delivered, on the specific grounds of cancellation provided in the statute."

26. A careful reading of the aforesaid citation reveals that even the lessor does not have the right to unilaterally terminate the lease and seek possession so long as the existing rights the lease has not been

surrendered by the lessee. The lessor would not get any right out of his action except in those cases where the statutory regulation reserves the right of cancellation or revocation in favour of the lessor. So it is a statutory authority which enjoys the right to cancel the lease even unilaterally in cases where possession has been delivered to the lessee, provided of course, where grounds for cancellation are part of terms and condition of the lease.

27. Learned counsel for the petitioner has urged that in the present case, it is just a complaint by complainant a third party, and neither lessor nor, the original lessee who had surrendered part of the lease land making way for a subsequent lease in favour of the petitioner, has questioned the subsequent lease. The factual position of surrender followed by subsequent lease has created indefeasible rights favour of the petitioner and would not automatically get rendered as bad so as to reject his candidature on that count. He argues, therefore, the piece of land so long as it is a subject matter of a valid conveyance, until, of course cancelled or set aside or declared *non est* or bad by a competent court of law, the authorities were not justified in holding that the lease itself was bad.

28. On the question of condition being led in the surrender letter on right to re-entry in case of emergency or in case of non use of land, it is argued that this right stood extinguished the moment a subsequent lease got executed by the lessor. He submits that the execution of the subsequent lease, the petitioner being lessee herein entered into possession and the contingency as stipulated in the letter of surrender stood evaporated. It is further submitted that the lessee of the original lease had a contract of transfer in his favour from the original lessor and any terms and condition would be intra party on the principle of privity of contract between the two and it is admitted to the original lessee and the lessor and it has not been doubted at all even by the Corporation that the original lessee prior to the execution of subsequent lease on 15.12.2018 did not re-enter the land and so, those conditions would not be any more

binding either upon the lessor or upon the petitioner and to the limited extent described under the lease agreement the rights, title have flown in favour of the petitioner from the lease agreement and the rights and interest of the original lessor have even got extinguished *qua* the land and the land has to be taken as a clean land free from all encumbrances to be taken within the definition of land under Clause 4 (V) of the Brochure as of Group-I category.

29. He submits that the complaint was absolutely baseless and the Corporation was not justified in questioning the lease deed and, therefore, he submits that the order impugned is not sustainable in the eyes of law and is liable to be quashed.

30. *Per contra* the argument advanced by the learned counsel for the respondent Corporation Sri Vikas Budhwar is that in view of the provision contained under the Registration Act which came into force in the year 1908, the legal position prior to the said order would not be applicable. In the present case according to him, a document that conveys transfer of immovable property is necessarily required to be registered under Section 17 of the said Act failing which the document is inadmissible in law and a document which is inadmissible in law cannot create any right or title in the eyes of law and thus the argument is that letter of surrender dated 15.9.2018 cannot be a valid surrender within the meaning and scope of the provisions of Transfer of Property Act, 1882 read with relevant provision of registration under the Indian Registration Act, 1908.

31. The second argument advanced by the learned counsel for the respondent is that Clause-7 of the lease agreement does not talk of part surrender of lease and since the original lessee pursuant to the lease agreement dated 25.5.2018 was bound by the terms and conditions contained therein, he was not justified in surrendering lease rights in respect of the part of the property in variation to the conditions prescribed under the lease agreement and if at all it could have been, it ought to have been a registered one.

32. The third argument advanced by learned counsel appearing on behalf of the Corporation is that it is well within the rights of the Corporation to determine whether a land is suitable or not for the purposes of setting up retail outlet of the petroleum products. He submits that though dealership offer by the respondent Corporation is on the basis of owned dealership retail outlets, in the present case, but the Corporation would be the best judge to determine that a particular land is a suitable land for the purposes of investment. He submits that investment is long drawn one and, therefore, it has to be secured one. He submits that merely because the land is as per the measurement and located at the site itself would not make it suitable in every sense of word, meaning thereby, he argues, if the document *qua* land creates an impression of any likelihood of civil litigation relating to rights and title of the land property, the Corporation would be justified in not treating such land to be suitable land. Thus according to him merely because lessor and the original lessee have not questioned the title, it would hardly matter as in case if the documents relating to the lease or title of land are such that may make it questionable in court of law at an future point of time resulting in a long drawn civil litigation.

33. It is argued that the Corporation, may be a public sector Corporation, but if it is doing business then it is the best judge to ensure its business prospects. Merely because an advertisement has been issued inviting application and one is selected in draw of lots, would not create any indefeasible right in his favor to claim for allotment of dealership as a rule.

34. On the legal point raised by Sri Vikas Budhwar that if a lease deed is executed and it's surrendered is sought and the surrender of rights is in part of the lease property, it cannot be as part relinquishment is not contemplated either under the original lease agreement or under Section 111 of T.P. Act 1882 and if at all it is done, it is in variation to the clause of lease agreement and so it is required to be registered. Sri Budhwar has

drawn attention of the Court towards Clause-7 of the original lease deed dated 25.5.2018 executed by the tenure holder Mangal Singh in favour of Ms. B.S.C.- C&C-JV. Clause-7 of the original lease deed dated 25.5.2018 is reproduced herein under:

“7. That the lessee shall be at liberty to vacate to determine this agreement by giving notice of two months in writing to the lessor expiring at any time during the currency of this period.”

35. A bare reading of the Clause 7 clearly reveals that lessee shall be at liberty to vacate to determine this agreement by giving notices of two months in writing to the lessor during the currency of the lease period. It is argued that it talks of whole surrender of the lease as it refers to determination of the lease itself. Sri Budhwar has also taken us to Clause-8 of the lease deed which runs as under:

“8. That if lessee become unable to complain the above terms and condition the lessor will able to compensate his loss from the lessee company property situated at the above plot (land)”

36. Clause-8 of the lease shows that the lease has been executed on the terms and conditions is styled as such *“hereinafter mentioned which is agreed by the parties as follows”* shows that the terms and condition bound the lessee to act in the manner in which they are provided. He argues that since the lease did not provide for the part surrender of the land, the surrender letter dated 15.9.2011 would not amount to a lawful surrender.

37. Advancing the argument further he submits that under Section 111(e) what is contemplated is the surrender of the entire interest under the lease. He has relied upon paragraph-10 of the judgment in the case of ***Tirath Ram Gupta v. Gurubachan Singh and another AIR 1987 Supreme Court 770*** which runs as under:

“The lessee has a right to transfer by sub-lease even a part of his interest in the property as provided in [Section 108\(j\)](#) of the Transfer of Property Act. A transferee from the lessee has a right to claim the benefit of contract to the lessee's interest, vis-a-vis the landlord, (vide [Section 108](#) second paragraph of clause (c) of the [Transfer of Property Act](#)) Thus a sub-lessee who has obtained a part of the interest of the head tenant will be entitled to claim the benefit of the contract vis-a-vis the lessor, as the lessee (head tenant) cannot surrender the lease in part. [Section 111\(e\)](#) contemplates a surrender of the entire interest under the lease and not a part of the interest alone. Moreover, a lease can be determined only by restoring possession in respect of the entire property which was taken on lease (see [Section 108\(m\)](#)). [Section 115](#) of the Transfer of Property Act provides that the surrender of a lease does not prejudice an under-lease of the property or in part thereof previously granted by the lessee. The lessee, having parted with a part of the interest in the property in favour of the sub-lessee, cannot surrender that part of the property which is in the possession of the sub-lessee for he cannot restore possession of the same to the lessor apart from the fact that he can terminate the contract of lease only as a whole and not in respect of a part of it. Having regard to all these factors, even without going into the question of the partial surrender of lease being vitiated by collusion, it is not open to the appellant in law to contend that the second respondent is entitled to and had validly surrendered a portion of the lease-hold property and the first respondent, being the sub-tenant is bound by the surrender and should deliver possession.”

38. He further argues that mere act or conduct of the party whether in writing or otherwise would not amount to determination of lease unless such intention to surrender in the existing lease is incorporated in writing any subsequent agreement is acknowledgment of the consent of the lessee in that regard. He therefore, seeks to urge that a surrender has to be in writing and that has to be a registered one and it should be in respect of entire property. He has placed reliance upon the Judgment of Supreme Court in the Case of **H.K. Sharma Vs. Ram Lal (2019) 4 Supreme Court Cases 153** in which vide paragraphs 23 to 35 the Court has held thus:

“23. in other words, the question that arises for consideration is when the lessor enters into an agreement to sell the tenanted property to his lessee during the subsistence of the lease, whether execution of such agreement would ipso facto result in determination of the lease and sever the relationship of lessor and the lessee in relation to the leased property.

24. In our considered opinion, the aforementioned question has to be decided keeping in view the provisions of Section 111 of the TP Act and the intention of the parties to the lease- whether the parties intended to surrender the lease on execution of such agreement in relation to the tenanted premises or they intended to keep the lease subsisting notwithstanding the execution of such agreement.

25. Chapter V of the TP Act deals with the leases of immovable property. This chapter consists of Section 105 to Section 117.

26. A lease of an immovable property is a contract between the lessor and the lessee. Their rights are governed by Sections 105 to 117 of the TP Act read with the respective State rent laws enacted by the State. Section 111 of the T Act deals with the determination of lease. Clauses (a) to (h) set out the grounds on which a lease of an immovable property can be determined. Clauses (e) and (f) with which we are concerned here provide that a lease can be determined by an express surrender; in case, the lessee yields up his interest under the lease to the lessor by mutual agreement between them whereas clause (f) provides that the lease can be determined by implied surrender.

27. This Court in Shah Mathuradas Manganlal & Co. V. Nagappa Shankarappa Malage considered the scope of clauses (e) and (f) of Section 111 of the TP Act and laid down the following principles in para 19 as under: (SCC p. 665)

“19. A surrender under clauses (e) and (f) of Section 111 of Transfer of Property Act, is an yielding up of the term of the lessee's interest to him who has the immediate reversion or the lessor's interest. It takes effect like a contract by mutual consent on the lessor's acceptance of the act of the lessee. The lessee cannot, therefore, surrender unless the terms vested in him; and the sur-

render must be to a person in whom the immediate reversion expectant on the term is vested. Implied surrender by operation of law occurs by the creation of a new relationship, or by relinquishment of possession. It the lessee accepts a new lease that in itself is a surrender. Surrender can also be implied from the consent of the parties or from such facts as the relinquishment of possession by the lessee and taking over possession by the lessor. Relinquishment of possession operates as an implied surrender. There must be a taking of possession, not necessarily a physical taking, but something amounting to a virtual taking of possession. Whether this has occurred is a question of fact.”

28. *It is in the light of the aforementioned legal principle, the question involved in this case has to be examined.*

29. *Perusal of agreement to sell dated 13.5.1993 (Annexure P-1) shows that though the agreement contains 9 conditions but none of the conditions provides, much less in specific terms, as to what will be the fate of the tenancy. In other words, none of the conditions set out in the agreement dated 13.5.2003 can be construed for holding that the parties intended to surrender the tenancy rights.*

30. *A fortiori, the parties did not intend to surrender the tenancy rights despite entering into an agreement of sale of the tenanted property. In other words, if the parties really intended to surrender their tenancy rights as contemplated in clauses (e) or (f) of Section 111 of the TP Act while entering into an agreement to sell the suit house, it would have made necessary provision to that effect by providing a specific clause in the agreement. It was, however, not done. On the other hand, we find that the conditions set out in the agreement do not make out a case of express surrender under clause (e) or implied surrender under clause (f) of Section 111 of the TP Act.*

31. *It is for this reason, the law laid down by this court in R.Kanthimathi has no application to the facts of this case and is therefore, distinguishable on fact. Indeed it will be clear from mere perusal of para 4 of the said decision quoted hereinbelow:(SCC p.341)*

“4. As aforesaid, the question for consideration is , whether the status of tenant as such changes on the exe-

cution of an agreement of sale with the landlord. It is relevant at this junction first to examine the terms of the agreement of sale. The relevant portions of the agreement of sale recorded the following:

'I the aforesaid Mrs Bratrict Xavier hereby agree out of my own free will, to sell, convey and transfer the property to you Mrs. R. Kanthimathi wife of Mr. S. Ramaswami, 435 Trichy Road, Coimbatore for a mutually agreed sale consideration of Rs. 25,000/

I shall be proceeding to Coimbatore and shall execute the sale deed and present the same for admission and registration before the Registering Authority, accepting and acknowledge payment of the balance of consideration of Rs. 5000 (Rupees five thousand only) at the time of registration and shall complete the transaction for sale and conveyance as the property demised has already been surrendered to your possession.

(emphasis in original)

The words highlighted in italics of the agreement were construed by their Lordships for holding that these italicised words in the agreement clearly indicate that the parties had really intended to surrender their tenancy rights on execution of the agreement of sale and bring to an end their jural relationship of the landlord and tenant.

32. *As observed supra, such is not the case here because we do not find any such clause or a clause akin thereto in the agreement dated 13-5-1993 and nor we find that the existing conditions in the agreement discern the intention of the parties to surrender the tenancy agreement either expressly or impliedly.*

33. *In the light of the foregoing discussion, we are of the considered opinion that the tenancy in question between the parties did not result in its determination as contemplated under Section 111 of the TP Act due to execution of the agreement dated 13-5-1993 between the parties for sale of the suit house and the same remained unaffected notwithstanding execution of the agreement dated 13-5-1993*

34. *A fortiori, the respondent (lessor) was rightly held entitled to file an application against the appellant (lessee) under Section 21 (1) (a) of the U.P. Act and*

seek the appellant's eviction from the suit house after determining the tenancy in question.

35. Before parting, we make it clear that we examined the terms of the agreement dated 13-5-1993 only for deciding the question as to whether the execution of agreement, in any manner, resulted in determination of the existing tenancy rights between the parties in relation to the suit house in the context of the TP Act and the U.P. Act and not beyond it.”

39. On the question of agreement that varies essential terms of existing registered lease, it must be registered one. The learned counsel for the respondent has drawn our attention to Section 107 of the Transfer of Property Act and Section 17 of Registration Act. Which are reproduced hereunder:

“107. A lease of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made only by a registered instrument.”

“Section 17 - Indian Registration Act, 1908
(1) The following documents shall be registered, if the properties to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, of the Indian Registration Act 1866, or the Indian Registration Act 1871, or the Indian Registration Act 1877, or the this Act came or comes into force, namely:-

(a) instruments of gift of immovable property;

(b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees, and upwards, to or in immoveable property;

(c) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest; and
(d) leases of immoveable property from year to year, or

for any term exceeding one year, or reserving a yearly rent;

(e) non-testamentary instruments transferring or assigning any decree or order of a court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immoveable property (Added by Act No. 21 of 1929); PROVIDED that the State Government may, by order published in Official Gazette, exempt from the operation of this sub-section any leases executed in any district, or part of a district, the terms granted by which do not exceed five years and the annual rent reserved by which do not exceed fifty rupees. (2) Nothing in clauses (b) and (c) of sub-section (1) applies to -

(i) any composition-deed; or

(ii) any instrument relating to shares in a joint stock company, notwithstanding that the assets of such company consists in whole or in part of immovable property; or

(iii) any debenture issued by any such company and not creating, declaring, assigning, limiting or extinguishing any right, title or interest, to or in immovable property except insofar as it entitles the holder to the security afforded by a registered instrument whereby the company has mortgaged, conveyed or otherwise transferred the whole or part of its immovable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures; or

(iv) any endorsement upon or transfer of any debenture issued by any such company; or

(v) any document not itself creating, declaring, assigning, limiting or extinguishing any right or title or interest of the value of one hundred rupees and upwards to or in immovable property, but merely creating a right to obtain another document which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest; or

(vi) any decree or order of a court [except a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject-matter of the suit or proceedings] (Substituted by Act No. 21 of 1929 for the words 'and any award');

(vii) any grant of immovable property by government; or

(viii) any instrument of partition made by a revenue officer; or

(ix) any order granting a loan or instrument of collateral security granted under the Land Improvement Act 1871, or the Land Improvement Loans Act 1883; or

(x) any order granting a loan under the Agriculturists Loans Act 1884, or instrument for securing the repayment of a loan made under that Act; or

[(x-a) any order made under the Charitable Endowments Act 1890 (6 of 1890) vesting any property in a treasurer of Charitable Endowments or divesting any such treasurer of any property; or] (Inserted by Act No. 39 of 1948)

(xi) any endorsement on a mortgage-deed acknowledging the payment of the whole or any part of the mortgage-money, and any other receipt for payment of money due under a mortgage when the receipt does not purport to extinguish the mortgage; or

(xii) any certificate of sale granted to the purchaser of any property sold by public auction by a civil or revenue officer.

Explanation: A document purporting or operating to effect a contract for the sale of immovable property shall not be deemed to require or ever to have required registration by reason only of the fact that such document contains a recital of the payment of any earnest money or of the whole or any part of the purchase money. (Inserted by Act No. 2 of 1927)

(3) Authorities to adopt a son, executed after the 1st day of January 1872, and not conferred by a will, shall also be registered.

40. From the bare perusal of the aforesaid provision, it is urged, it is quite clear that every document which conveys transfer of immovable property needed to be registered and unless such document is registered, it does not at all or in anyway conveys the title may be in the limited scope of the document so executed. Learned counsel for the respondent has placed reliance upon para-3 of the judgment of Supreme Court in the Case of **Sunil Kumar Roy v. Bhowra Kankanee Collieries Ltd. And others AIR 1971 Supreme Court 751** which runs as under:

“3. Mr. B. Sen for the appellant sought to raise the question about the admissibility of Exh. A-4 for want of registration. In the first place this contention cannot be entertained so long as the finding of the High Court on the only point which was canvassed before it about the reduction of the rate of royalty is not set aside. The High Court had held after an examination of the evidence that it had not been proved that there was any change in the market condition in July or in December 1953 to call for a reduction in the rate of royalty or that there was any mutual lessor or the lessee for such reduction which was to become effective from July 1952. No attempt was made by Mr. Sen to persuade us to reverse this conclusion. Even on the assumption that a mutual arrangement or agreement as evidenced by Exh. A-4 was arrived at between the appellant and the Eastern Coal Co. Ltd., we are unable to agree that any reduction in the rate of royalty could have been effected by means of Exh. A-4 which had not been registered under the provisions of the Indian Registration Act. It is well settled by now that a document which varies the essential terms of the existing registered lease, such as the amount of rent, must be registered: See Durga Prasad Singh V. Rajendera Narain Bagchi, (1910) ILR 37 Cal 293 which was approved by the Full Bench in Lalit Mohan Ghosh v Gopal Chuck Coal Company (1912) ILR 39 Cal 294 (FB) decision of the Madras High Court in Obai Goundan v. Ramalinga Ayyar, (1899) LIR 22 mad 217, taking a contrary view has not been followed by the High Courts in India and the consistent view that has been taken in that registration of an agreement is necessary which reduces the rent of an existing registered lease. See Mulla on Indian Registration Act, 7th Edn. Pages 75-76.

41. Learned counsel for the respondents has placed reliance upon paragraphs 12 and 15 of the Judgment of the Supreme Court in the Case of **Chandrakant Shankarao Machale v. Parubhai Bahiru Mohite (dead)** (2008) 6 Supreme Court Cases 745. Paras 12 and 15 runs as under:

“12. The deed of mortgage dated 28-2-1983 was a registered document. The terms of a registered document could be varied or altered only by another registered document. A finding of fact has been arrived at that the appellant could not prove his possession as a tenant. We have noticed hereinbefore that the appellant was put in possession a a mortgagee. It was, therefore, in our opinion, impermissible in law to change his status from a mortgagee to that of a lessee by reason of an unregistered deed of lease (eve if we assume that the same had been executed.)

15. The deed of mortgage was a registered one. It fulfilled the conditions of a valid mortgage. Its terms could not have been varied or altered by reason of an unregistered document so as to change the status of the parties from mortgagee to a lessee. [See S. Saktivel V. M Venugopal pillai (SCC p. 108, para 6: AIR paras 6-7)].

42. Counsel for the respondent has further placed emphasis upon paragraph 31 of the judgment of the Supreme Court in the case of **K.B. Saha and sons private limited v. Development Consultant Limited** (2008) 8 Supreme Court Cases 564. Para 31 runs as under:

“31. The High Court in the impugned judgement relied on a decision of the Allahabad High Court in Ratan Lal V. Hari Shanker to hold that since the appellant wanted to extinguish the right of the respondent with the help of the unregistered tenancy, the same was not a collateral purpose. In Ratan lal case while discussion the meaning of the terms “ collateral purpose” the High Court had observed as follows: (AIR pp. 180-81, para 4)

“4. The second contention was that the partition deed, even if it was not resisted could certainly be looked into for a collateral purpose... but the collateral purpose has a limited scope and meaning. It cannot be used for the purpose of saying that the deed created or declared

or assigned or limited or extinguished a right to immovable property... term "collateral purpose" would not permit the party to establish any of these acts from the deed."

43. Counsel for the respondent has further placed reliance upon the judgment of the Madras High Court in the case of **B. Ahmed Marcair v. Muthuvliappa Chettiar 1961 AIR (Madras) 28** in which vide paragraphs 7 and 8 the court held thus:

*"7. In this connection the learned District Munsif has pertinently pointed out the implications of the decision in **Gopal Chandra Das v Harendra Natha datta, 63 Ind Cas 483 (Cal)**. In that case the Calcutta High Court held that though no writing was ordinarily necessary in this country for surrendering a tenancy if the original lease is registered the surrender of a portion of the tenancy with an abatement of rent can only be effected by a registered instrument as in such a case the surrender involves a variation of the original contract of tenancy. The Calcutta High Court has also held that oral evidence as regards such surrender is inadmissible under Section 92 of the Evidence Act. This decision has been cited with the approval in the well-known commentaries on the Transfer of Property Act by Chitale and Annaji Rao, Third Edition (1950) page 1861.*

*8. When the facts lead to the conclusion that there was sufficient interruption, substantial Interference – it need not be physical exposition (?) (Sic (dispossession) to the quiet enjoyment of the lessee of the demised land under the lessor assured to the lessee under Section 108 C of the Transfer of Property Act what are the consequences which flow? The Courts below have rightly relied on the decision in **Dhunput Singh v. Mohamed Kazim , ILR 24 Cal 296** and held that the lessee in this case can plead that his obligation to pay rent or balance of rent due to the lessor be held under suspension or must be held to have abated by reason of the conduct of the lessor. The effect of partial eviction by a lessor has been dealt with in the following passage at page 659 under Section 108(L) in Mulla's Transfer of Property Act Fourth Edition (by C.J. S.R.Das)*

"If the premises are let for one rent, the rule of English law is that the eviction of the lessee by the lessor from

part of the demised premises suspends the rent for the whole. The reason of the rule given in the earlier cases is that the landlord being in feudal times the defender and protector of the tenant should not be encouraged to disturb him. In later cases the reason given is that the landlord is not entitled to apportion his wrong. Judicial decisions in India on this point have not been uniform. In some cases this rule of English law has been followed and it has been held that if the rent is an entire rent for all the property leased, eviction by the lessor of the lessee from part of the property leased suspends the whole rent.”

44. Yet another judgment in that regard relied upon by learned counsel for respondent is of Calcutta High Court in the case of **M.S. Ram Singh v. Bijoy Singh Surana AIR 1972 Calcutta 190** wherein the Court in paras 19, 20 and 21 has held thus:

“19. Mr. Banerjee referred to the decision in Bengal Coal Co. Ltd V. Nonoranjan Bagchi AIR 1919 Cal 694 in which it was observed that a surrender or relinquishment does not require to be in writing but may be inferred from acts of parties. In Abdul Majid V. Hari Charan Halder AIR 1919 Cal 840, it was held that a surrender is not required to be by an instrument registered. The same view was taken in Sari Debi V. Sailabala Dasi AIR 1920 Cal 858 in which it was held that even though the original tenancy was created by the registered lease, its surrender would be valid if it is accepted and acted upon by the landlord. But in the present case, as the surrender was by instrument in writing it was compulsory registrable as was held in Nadig Neelakanta Rao V. state of Mysore. AIR 1960 Mys 87. It was held that as the instrument of surrender purports to extinguish the rights of the tenant, valued at over Rs. 100.- it is compulsorily registrable.

20. Mr. Ghosh disputed the contention and in his turn contended on the authorities of this Court cited above, that as the surrender was accepted and acted upon as also evidenced by Exs 6 and 7, no further instrument was necessary. He further contended that surrender was not an extinguishment of interest in immovable property as contemplated in Cl. (B) of Section 17 (1) of the said Act but as it was relinquishment of the lessee's interest, Cl. (b) of Section 17 (1) was not attracted. Further the

interest of the original tenant was that of a monthly tenant and such tenancy does not require registration under Cl. (d) and its surrender accordingly did not require registration. Mr. Ghosh also contended that the EX. 7 did not by itself create declare or extinguish any right as would appear reading the document as a whole and accordingly it came under the exception in Cl. (b) of sub-section (2) of S.17. On that ground the decision in Nadig Neelkanta Ra, AIR 1960 Mys 87 (supra) was sought to be distinguished.

21. As we have seen surrender is an extinguishment of the lessee's interest and there is no dispute that value of the interest would be over Rs. 100/-. the document recites a surrender in praesenti and even if the surrender purports to be effective on a further date, it would make no difference on this aspect for the purposes of registration. Clause (b) of Section 17 (1) includes all instruments which purport or operate to create, assign, limit or extinguish whether in present or in future any right, title or interest of value of Rs. 100/- and upwards to or in immovable property. Apart from the surrender as evidenced by the document Ex.7 and the evidence in support thereof there is no other pleading or evidence in support of oral surrender nor it is dependent on any subsequent document. The document Ex. 7, as we have seen, purports to extinguish the interest of the lessee in his tenancy, and though a surrender on a future date as contended it is an invalid surrender, for the purpose of Section 17(1) of the Indian Registration Act the document is compulsorily registrable and is not excepted by any of the provision of the Act.

45. Placing reliance upon the judgment of Allahabad High Court in the case of **Ratan Lal and others Vs. Hari Shanker and others AIR 1980 Allahabad 180**. It is contended by the learned counsel for the respondent that mere family arrangement cannot be itself a document to create rights in favour of the beneficiaries which otherwise is required under law to be compulsorily registrable. Learned counsel for the respondent has placed reliance upon paragraph -5 of the judgment which is reproduced hereunder:

“Learned counsel then contended that the deed could be treated to be a family arrangement was not compul-

sorily registrable. This was not compulsorily registerable. This contention, in my opinion, is not correct. The Supreme Court in the case of *Kale V. By. Director of Consolidation*, (AIR 1976 SC 807), held that a family arrangement in case it is oral needs no registration, but if the terms thereof were reduced into writing, it became imperative to have the document registered and unless it was registered, it could not be looked into. The pleas of family arrangement is sought to be derived from Exhibit-1. That document is in writing. Even if it was treated to be a family arrangement, it required registration, and having not been registered, it could not be looked into for the purposes of showing it to be a family arrangement.

46. He has relied upon a judgment of the Madras High Court in the case of *Ranganatha Gounder v. Perumal Nattar* AIR 1999 Madras 133 wherein vide paragraph-3 of the judgment the Court has held thus:

“3. Mr.V Raghavachari, learned Counsel appearing for the petitioner, therefore contended that the order of the Court below is bad in law and the document shall not be received in evidence. Mr. K. Kannan, learned counsel appearing for the respondent would state that there is no legal right in favour of the defendant as a lessee when he executed the document in question and when that is so, he cannot validly transfer or extinguish any such alleged right in the property. Therefore, according to him, the document is not hit by Secs. 17 (1) (b) and 49 (c) of the Act. In elaborating this argument, he would add that there is no lease document between the parties and, therefore, there is no legal right in the defendant. Applying my mind to the argument of the learned Counsel for the respondent, I find that no foundation is laid for such an argument. It must be noticed that the plaintiff himself relies upon this document. Mr. V. Raghavachari, in support of his contention that this document requires compulsory registration and in the absence of the same, it shall not be received in evidence, brought to my notice three judgments viz. *Rangayya Appa Rau v. Kameshwara Rau*, (1897) ILR 20 Mad 367: 7 m ad LJ 59 (DB); *Neelakanta Rao. Vs. Sate of Mysore*, AIR 1960 Mys 87 (DB) and *M.S. Ram Singh V. B.S. Surana*, AIR 1972 Cal 190 (DB). In the first case, the plaintiff was a Zamindar and the defendant was a tenant. He sues for declaration of his title and for

possession of certain land of which the first defendant had been in possession as a tenant. It appears that the tenant having fallen into difficulties executed a document on the 20th June, 1888 addressed to the plaintiff in the following terms:

“ To the Zamidar, (sic) & C, relinquishment report put in by Govindarazulau Kameswara Rau, cultivator of Gurazada. Being unable to cultivate the 16 acres 84 cents of dry land and 7 acrs and 87 cents of wet land, 24 acres and 72 cents in all which I have been cultivating in the village of Gurazada, and finding it inconvenient to pay the arrears on it, I have relinquished the rights to the Sirkar (i.e. Zamidar). I agree to the removal of that land from the village accounts in my name for Fasli 1298 and to your disposing of the same at your pleasure without may having anything to do with the arrears of Rs. 600 and odd due thereon. This relinquishment report is put in with consent.”

The Courts below refused to admit that document for want of registration. In that context, the learned Judges of this Court held that the document referred to above was one given for consideration which moved from the plaintiff to the defendant, that is the waiver by the former of his right to the arrears of rent amounting to Rs. 600 due at the time of relinquishment, which is clear from the terms of the instrument itself and therefore, it requires registration. In Neelakanta Rao v. state of Mysore (AIR 1960 Mys 87) (referred above) , the question that was considered is whether the surrender deed executed between the tenant in favour of the landlord requires registration or not. The learned Judges have held as follows:

“A surrender deed executed by the tenant in favour of the landlord in respect of this tenancy the due of which exceeds Rs. 100 is clearly an instrument which purports to extinguish the right of the tenant, the value of which is over Rs. 100/- and as such comes within Cl. (B) of Sec. 17 91) and therefore is compulsorily registable. Such a document if not registered, cannot be received in evidence of the transaction of surrender affecting the property in view of S.49, Registration Act.”

This was followed in the last judgment referred to above, In the case on h and, there is no dispute that the value of the property is more than Rs. 100/- since the

plaintiff himself valued the suit properties at Rs. 300/-. Therefore, I have no hesitation to hold that the document dated 22-6-1995 stated to be entered into between the defendant and the plaintiff in O.S. No. 859 of 1995 on the file of Additional District Munsif, Villupuram, is compulsorily registrable and as it is not so done, it is inadmissible in evidence. Civil Revision petition is allowed. No costs Consequently C.M.P. No. 17480 of 1998 is dismissed.”

47. Learned counsel for the respondent has finally relied upon the judgment of the Apex Court in the case of ***Kale and others v. Deputy Director of Consolidation and others*** to argue that the family arrangement though have been held to be binding amongst the members of the family but such family arrangements may not be having any binding effect in respect of third party who is a stranger to the same and further no arrangement in respect of the strangers who are not part of the family would amount to a valid settlement creating rights, can be permitted to do away with the condition of registration of such a document. Further he has argued that even in cases of family settlement where it is sought to be reduced in writing then it is compulsorily required to be registered one. He submits that an oral family settlement may have a mutual binding effect and to that extent it may determine the rights of the parties to which they mutually agreed but when it is sought to be documented to have a force of law then it is required to be registered one. He has placed reliance upon paragraph-4 of the judgment of the Apex Court in which speaking for himself and for the majority V. R. Krishna Iyer, J and Murtaza Fazl Ali, J observed thus:

“(4) It is well settled that registration would be necessary only if the terms of the family arrangement are reduced into writing. Here also, a distinction should be made between a document containing the terms and recitals of a family arrangement made under the document and a mere memorandum prepared after the family arrangement had already been made either for the purpose of the record or for information of the court for making necessary mutation. In such a case the memorandum itself does not create or extinguish any rights in immovable properties and therefore does not fall within

the mischief of Section 17(2) (sic (Section 17 (1) (b)?) of the Registration Act and is, therefore not compulsorily registrable;”

48. Thus, the judgment of the High Court was set aside on the ground that it did not acknowledge the oral settlement between the parties for the reason that parties on account of some oral settlement/ some mutual settlement that was sustainable but then the High Court erred in law in rejecting such compromise only for being unregistered. It is argued by learned counsel for the respondent that the Apex Court took the view on account of the fact that mutation petition before the Assistant Commissioner did not carry any terms of the family settlement but was merely in the nature of memorandum. Justice R.S. Sarkaria though gave a separate judgment but agreed to the findings returned by the majority on the ground that since the petition did not itself create or decline any right *qua* the immovable property above the value of Rs. 100/- or more was not hit by Section 17(b) of the Registration Act.

49. It has been finally submitted by the learned counsel appearing for respondent Corporation that since the condition prescribed under the alleged surrender letter amounted to variation of the conditions of the original lease, and so it was of necessity required to be registered in view of Section 17 of the Registration Act, 1908. Learned counsel for the respondent has further sought to distinguish the legal position prior to 1908 from post 1908 when Indian Registration Act came into force.

50. On the consideration of business prospects and discretion of the Corporation to consider the land as suitable or not, learned counsel for the petitioner has argued that evaluation of credentials and land evaluation at the site is primary function of the committee constituted for such purpose and the committee so constituted conducts its affairs very fairly in the presence of the applicant and after such exercise being conducted if it is found that the land is not suitable, Corporation has no reason to disagree unless there exists any element of bias, mala fides or arbitrariness

reflected from the action and the decision taken by the committee. The judgment of committee *qua* suitability of site on the spot and wisdom of the Corporation's officials in the evaluation of the report *qua* suitability of land should not be ordinarily permitted to be questioned because it is the ultimate interest of the Corporation which is at the stake and not the person who has applied for the allotment of dealership. It is argued that to the extent of fairness in action, one can always plead for right to be considered but where no such element is detectable, one cannot claim the allotment as a rule merely because one has been selected in the draw of lots.

51. It is argued by the learned counsel for the respondent Corporation that since the lease itself has become questionable even if not by institution of civil proceedings at the end of lessor or lessee but the papers and the document that have been executed did have the elements to make it questionable in a court of law, and so the Corporation cannot be compelled to set up petrol pump unit for the sale of petroleum products compulsorily over such place.

52. Having heard learned counsels for the parties and their arguments advanced across the bar and having perused the records and having considered the merits in this case, two points emerge:

(A) Whether the piece of land offered by the petitioner is a subject matter of a valid lease deed, and so an offer of land deserves to be considered under Group-I?

(B) Whether the suitability of the land determined by the Corporation can be questioned and discretion of the respondent Corporation in the facts and circumstances of the present case, should be judicially reviewed in the absence of any *mala fides* or arbitrariness.

53. Now coming to the question that relates to the lease document of the petitioner dated 14/ 15.12.2018 presented by the petitioner seeking allotment of the retail outlet dealership, it is needed to be examined as to

whether the rights created under the said lease agreement could be said to be a valid one and to that extent the lease to be held valid so as to hold the respondent's stand to the contrary as incorrect.

54. Lease has come to be defined under the Transfer of Property Act as a transfer of a right to enjoy such property, made for certain time, expressed or implied or in perpetuity in consideration of price paid or promised (Section 105 T.P. Act). So virtually transfer of property and interest therein by means of lease deed could be time specific or in perpetuity. A lease can, of course, be in the form of a written contract or as per the local usage (106 TP Act) . However, whether time specific or in perpetuity a lease has to be made only by a registered instrument but it should be accompanied by delivery of possession by the lessor in favour of the lessee (107 TP Act).

55. The rights and liabilities of the lessor as per Section 108 of the T.P Act are governed by the terms and condition that are contained in the lease document and so also they guide the future course of action for the purposes of determination of lease except as provided for under Section 111 of the T.P. Act, or to further create such lease in favour of a third party.

56. The argument advanced in the present case centers around the provision contained under Section 111 of the T.P. Act especially clauses (e) and (f) that talk of express and implied surrender of lease. Learned counsel for the petitioner has argued first in favour of clause (e) of Section 111 and since the surrender letter has been objected to by the respondent being not a registered document as it varies the terms and conditions of the lease by conduct of dividing/ partitioning two property by lessee, alternatively it has been argued that the letter of surrender and thereafter no objection by the original lessee in respect of subsequent lease executed by the tenure-holder in favour of the petitioner, would amount to implied surrender.

57. Learned counsel for the petitioner has drawn our attention to paragraph-27 of quoted hereinabove in the case of **H.K. Sharma (supra)** where implied surrender of lease has been discussed referring to another judgment of the Apex Court in the Case of Shah Mathurdas Maganlal & Co, that creation of a new relationship or relinquishment of the possession, is an act indicative of implied surrender of the lease and therefore, it is argued that since by the letter dated 15.9.2018 the original lease virtually surrendered certain area of the lease property in favour of the tenure holder lessor, it would amount to be a valid surrender in view of Section 111 and as such the relinquishment of the right would not require to be registered on one hand, and the second is that since the original lessee did not put any objection to the subsequent lease of a part of land in favour of the petitioner on 14/15.12.2018, such a conduct would be deemed as it would amount to be an implied surrender.

58. We have carefully gone through the judgment of the Apex Court and we find that the Apex Court has held vide paragraph 29 that the lease rights since are governed by the terms and condition contained therein and if the subsequent agreement did not provide about the fate of tenancy earlier created, such subsequent agreement would not amount to surrender of tenancy rights created under the lease and thus, vide paragraphs 32 and 33 the Court has held thus:

“32. As observed supra, such is not the case here because we do not find any such clause or a clause akin thereto in the agreement dated 13-5-1993 and nor we find that the existing condition in the agreement discern the intention of the parties to surrender the tenancy agreement either expressly or impliedly.

33. In the light of the foregoing discussion, we are of the considered opinion that the tenancy in question between the parties did not result in its determination as contemplated under Section 111 of the TP Act due to execution of the agreement dated 13-5-1993 between the parties for sale of the suit house and the same remained

unaffected notwithstanding execution of the agreement dated 13-5-1993.”

59. Applying the above principle to the facts of the present case, we find that in this case the term of the lease did not provide any such surrender or transfer of part of the land and, therefore, it is difficult to accept the letter of the lessee dated 15.9.2018 to be a letter referable to clause-7 of the lease agreement as the said clause does not talk of the part surrender of the lease rights *qua* land, or right in respect of part of the land or the relinquishment of rights in respect of any specific part of the land, nor, does it talk of part specific surrender of land nor, as to how part of land came to identified to justify any part specific surrendered of the lease rights. No such measurement was carried out on the spot to partition the land lawfully by a lessee in the absence of such right being conferred under the lease agreement to provide it a separate regular revenue number so as to hold that there was a consent or agreement between the original lessee and lessor to vary the lease in the manner in which it is stated to be done on account of the letter issued by the original lessee.

60. Coming to the judgment in the case of *Abdul Majid (supra)* it again refers to the mutual agreement of the rights as a whole while relinquishment or surrender has come to be recognized under Section 111 of T.P. Act and that it cannot be read to be recognized part surrender of the lease rights. In cases where the part cannot be identified except when undertaken in accordance with provision of revenue laws and if the land falls in a revenue village the partition, therefore, unless it is identifiable in law with due exercise of act of partition, the part surrender of rights would amount to varying the condition of the lease agreement unilaterally and the legal position being very much clear that the document that acknowledges any relinquishment of rights in variation to the term of lease it is required to be registered. Such rights would not acquire validity by mere oral consent of the parties. The Apex Court judgment in the case of Sunil Kumar (*supra*) is very much attracted and applicable here in

this case that the document that varies the essential terms of the existing registered lease is required to be registered under Section 17 of the Registration Act.

61. The doctrine of implied surrender as has come to be discussed by Andhra Pradesh High Court in its judgment in the case of **Konijeti Venkayya (supra)** also talks of a fact position where the subsequent agreement or mutual agreement has come to be reached between the parties in respect of lease property. Interest that has been held to be valid in the said case would not be attracted in the setting of the facts of the present case where there is no such surrender of wholesome lease rights at any point of time. It is a case where the surrender is guided by an act of partitioning the land which condition is not there in the present case to be taken as a right conferred upon the lessee under the original lease agreement, inasmuch as Clause 7 of the original lease agreement also does not stipulate any such situation where lease rights can be relinquished in part.

62. In our view judgment in the cases of **Jamuna Oil Mills (supra)** and **T.K. Lathika (supra)** would not be attracted as well in the present case. The land lord and tenant relationship which has come to be discussed in the said case is in respect of the tenanted premises as a whole the area of land that had been surrendered and not any part of the interest being transferred or relinquished in respect thereof.

63. Learned counsel appearing for the petitioner has vehemently urged that in the light of the judgment of the Apex Court in the case of Krishan Kumar Khemka (*supra*) the part surrender of the lease has come to be recognized and acknowledged as valid in law and a mere part surrender would not amount to surrender of entire lease rights. It is interesting to note that in the said case the Court was virtually dealing with the rights of the lessor because the lessee who had the tenanted premises of four flats had come to relinquish rights in respect of two flats duly identified as separate property and then in respect of remaining two flats the Court ob-

served that it would be a surrender of rights in respect of part of the property and the Court, therefore, held that surrender of a part of the lease property would not amount to implied surrender of the entire tenancy and the rest of the tenant would remain untouched. Grindlays Bank that was the tenant of the four flat and had surrendered two flat only which was treated to be a partial surrender and therefore, in that fact background the Court held that they would continue to enjoy the tenancy in respect of the two remaining flats in their possession.

64. It is not disputed by the parties that the lease agreement is governed under the Transfer of Property Act and, therefore, if the lease rights can be created by a registered document and the document does not create any right that the lease property can be partitioned and any part surrender thereof can be made by the lessee and the property is identified as one and the same, in our considered opinion lessee cannot be permitted partition it in the absence of express condition so as to relinquish interest in part.

65. The judgment in the case of State of H.P. Vs. Kishan Lal (*supra*) very clearly holds that Section 111 (e) contemplates surrender of the entire interest under the lease and not a part of the interest alone. It is worth noticing that the judgment of the Apex Court in the Case of H.P v. Kishan Lal by a two judge bench has not been referred to and discussed in the case of Krishan Kumar Khemka (*supra*) relied upon by learned counsel for the petitioner.

66. In the case of *H. K. Sharma Vs. Ram Lal (supra)* the Apex Court had categorically held that a subsequent agreement *ipso facto* would not result in determination of lease. The question therefore, is what are the terms and conditions provided in the lease and any act bringing an end to the agreement between the original lessor and the lessee has to be seen and given validity if mutually agreed in tune with terms and condition of the original lease agreement.

67. Coming to the issue of registration of a document as it is argued by the learned counsel for the respondent Corporation that the lease surrender letter dated 9.6.2018 was required to be registered one in order to create any right in favour of the lessor, to execute a subsequent lease, we find that while the lease agreement is necessarily required to be registered under Section 107 of the Transfer of Property Act, Section 17 of the Registration Act provides that non testamentary instruments that purport, decline or limit or extinguish rights in immovable property are required to be registered. Since in the present case, it has been argued by the learned counsel for the respondent Corporation that the doctrine of implied surrender would not be attracted as a part of property is sought to be surrendered or in other words part of interest in the property is sought to be relinquished, the letter which has set into motion a subsequent lease was necessarily required to be registered one and since it is not a registered document, it cannot create any right in favour of the lessor to execute a subsequent agreement in respect of that property or part of the property surrendered.

68. He also argues that while the rights and properties are governed under the lease agreement in between the parties if a document is not registered which is otherwise required to be compulsorily registered, then on that count any subsequent document has come to be executed, the Corporation being third party is not bound by such agreement nor, there can it be compelled to acknowledge and admit that such a subsequent lease agreement as valid one. If any document is not required for any collateral purposes and was definitely meant to create rights to further create a third party right, such document of necessity, is required to be registered under the law. The Collateral purpose it is argued, as defined under the said judgment, would not be for the purposes of creating or assigning or limiting or extinguishing any right in the immovable property. Collateral purpose has also come to be defined in the Ratan Lal and others (supra) by Allahabad High Court wherein it was held that parties in a

family arrangement that create right by putting them down in writing would not amount a collateral purpose and such document is required to be necessarily registered. So also the Madras High Court in the Case of Raghunath G (supra) and the same has remained reiterated by the Apex Court in the case of Kalu and other (supra). It is therefore, rightly argued that since the letter of the original lessee is sought to create a new kind of right in favour of the lessor, relinquishing the rights in part of the property, it would require to be registered in law.

69. What the petitioners have sought to urge is that the letter dated 15.9.2018 should be read in evidence as an act of surrender of lease, cannot be accepted in the light of legal principle discussed above. It is a case where the petitioner wants the Corporation to read a document which is otherwise inadmissible in evidence for want of due registration. Act of surrender under the letter dated 15.9.2018 is an express act and not guided by any mutual agreement and therefore, to that extent it being unilateral document creating right in favour of the lessor by means of alleged relinquishment of interest by the original lessee, it cannot be binding on the Corporation, a third party and the Corporation cannot be held to have manifestly erred in rejecting the letter that entitled the original tenure holder to create a further lease.

70. The legal position that emerges out from the above discussions can be summarized as under:

- (i) Every transfer of rights and interest by a lease agreement to be time specific or in perpetuity is required to be in writing.
- (ii) Every transfer of rights and interest in immovable property for a period beyond one year under lease agreement is required to be by registered instrument.

(iii) A lease agreement lays down terms and condition granting rights and interest of lessee and any variation done by the lessee is permissible in writing only and such document is also required to be registered.

(iv) Section 111 (e) and (f) contemplate relinquishment of rights and interest whether by express act or implied as required in law but such relinquishment should be of lease rights in its entirety as it determine the base as a whole.

(v) Part relinquishment of interest and rights *qua* leased property is recognized in India but that would be (a) subject to lease agreement (b) if lease property can be divided and identifiable, in other words part relinquishment/ surrender should be part specific and this position should be discernable from the terms of lease.

(vi) Division of a holding/ land or property under a lease if identified as one, it would amount to varying the terms and conditions of lease and, so is necessarily required to be registered.

(vii) Any mutual agreement to permit part surrender of property under a lease except when it provides for that, unless registered, will not bind a third party, as having no evidentiary value thereof and no rights can flow in favour of a third person.

71. In view of the above we are of the view that the lease deed if it has come to be rejected by the Corporation for not creating sufficient right in favour of the petitioner so as to accept offer of land, a subject matter of the lease agreement for the purpose of allotment of retail outlet dealership, nothing wrong has been committed and therefore the question-A stands answered in negative against the petitioner.

72. So far as the other question regarding the discretion of the Corporation, we are of the view that the Corporation is in the best position to decide which land suits to its business prospects and the discretion ex-

exercised in that regard has to be seen only from the view that the corporation would be interested in providing its investment only in safe and secured land. If the Corporation has found that the document pertaining to the land are not absolutely clean in the sense that there exists chances of litigation in future *qua* the land in which investment is to be made, the Corporation is in best position to understand to take decision as to whether the investment should be made or not over such land. So the suitability of the land lies within the domain and the discretion of the Corporation.

73. The Indian Oil Corporation being a public sector corporation and huge public money being involved in the matter any investment of the public money in a property that may turn out to be disputed in future would be against the public policy also and, therefore, we are of the opinion that for the purpose of suitability of land the discretion exercised by the Corporation in the normal circumstances be not interfered with unless it is found to be an act absolutely arbitrary hit by Article 14 of the Constitution or for *mala fides* in exercise of the discretion by the Corporation.

74. An exercise of evaluation and decision making is subject to judicial review in the event an action is vitiated for *bias*, *mala fides* and in violation of principles of natural justice. Even evaluation of credentials if vitiated for utter ignorance of laws or by whimsical action, would invite interference but where a document becomes a matter of contentious issue and involves complicated question of facts *qua* title and needed adjudication by a civil court for its valid declaration as involving valuable rights of parties, Corporation, a third party would be justified in keeping its hand off. Case in hand has the element to invite long drawn civil litigation in future and so if corporation decides to term such land as not suitable, we do not find any fault with the Corporation.

75. From the discussions that we have made above, we do not find that the discretion exercised by the Corporation is in any manner arbitrary or

capricious one so as to warrant interference by this Court under Article 226 of the Constitution. Consequently the writ petition fails and is dismissed with no order as to cost.

Order Date :- 19.12.2019

Nadeem Ahmad

(Ajit Kumar,J.) (Ramesh Sinha,J.)