



WP(C) NO. 39399 OF 2025

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C.R.

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE M.A.ABDUL HAKHIM

MONDAY, THE 12<sup>TH</sup> DAY OF JANUARY 2026 / 22ND POUSHA, 1947

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PETITIONER/S:

1 CHOORAPILAN JAMEELA  
AGED 58 YEARS  
W/O POOKODAN SUBAIR, POOKODAN HOUSE, VAZHIKADAVU,  
MANIMOOJI P.O., MALAPPURAM,, PIN - 679333

2 POOKODAN NOUSHAD  
AGED 37 YEARS  
S/O POOKODAN SUBAIR, POOKODAN HOUSE, VAZHIKADAVU, MANIMOOJI  
P.O., MALAPPURAM, P [BOTH PARTIES ARE REPRESENTED BY POWER  
OF ATTORNEY HOLDER POOKODAN SUBAIR 67 YEARS, S/O MOIDEEN,  
POOKODAN HOUSE, VAZHIKADAVU, MANIMOOJI P.O.,  
MALAPPURAM, PIN - 679333

BY ADV SRI.K.M.SATHYANATHA MENON

RESPONDENT/S:

1 PADAVANNA SHAMSEER  
AGED 48 YEARS  
S/O MOHAMMED, PADAVANNA HOUSE, KOVILAKAM ROAD, MANJERI P.O.,  
MALAPPURAM, P NOW RESIDING AT PADAVANNA HOUSE, VARAKKULAM,  
MANIMOOJI P.O., MALAPPURAM, PIN - 679333

2 M/S INDIAN OIL CORPORATION LTD.,  
REPRESENTED BY ITS CHAIRMAN, INDIAN OIL BHAVAN, G-9 ALYAVAR,  
JUNG MARG, BHANDRA, MUMBAI, MAHARASHTRA, PIN - 400051



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3 CHIEF DIVISIONAL RETAIL MANAGER  
INDIAN OIL CORPORATION LTD, KOZHIKODE DIVISIONAL OFFICE, 2ND FLOOR, PMK TOWERS, CIVIL STATION P.O., KOZHIKODE, PIN - 673030

4 DEPUTY CHIEF CONTROLLER OF EXPLOSIVES  
KENDRIYA BHAVAN, BLOCK C-2, 3RD FLOOR, KAKKANAD, ERNAKULAM DISTRICT, PIN - 682037

BY ADVS.  
SRI.P.MARTIN JOSE  
SHRI.NITHIN GEORGE  
SHRI.M.V.HARIDAS MENON  
SHRI.RITHU JOSE  
SRI.P.PRIJITH  
SRI.THOMAS P.KURUVILLA  
SRI.R.GITHESH  
SMT.ANNA LINDA EDEN  
SHRI.AJAY BEN JOSE  
SRI.MANJUNATH MENON  
SMT.ANAVADYA SANIL KUMAR  
SMT.ANJALI KRISHNA  
SRI.S.SREEKUMAR (SR.)  
SMT. G. SHEEBA, GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 12.01.2026, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



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JUDGMENT

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1. Petitioners have filed this Writ petition seeking a Writ of Mandamus to the Respondents to vacate and deliver possession of the leased premises covered by Ext.P1 Registered Lease Deed dated 21.01.2004 in favour of the Respondent No.1 and seeking a Writ of Mandamus to the Respondent No.4 to cancel the Explosive License issued in favour of the Respondent Nos.1 to 3 for conducting Petroleum Retail Outlet in the leased premises to the Respondent No.1 as per Ext.P1 Lease Deed.

2. I heard the learned Counsel for the Petitioners, Sri.K.M.Sathyanaatha Menon, learned Senior Counsel for the Respondent No.1, Sri. S. Sreekumar, instructed by Adv.Sri.Martin Jose P., and the learned Counsel for the



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Respondent Nos.2 and 3, who are the Oil Marketing Company and its Chief Divisional Retail Manager, Sri.Nithin George.

3. The contention of the Counsel for the Petitioners is that the tenure of Ext.P1 Lease Deed is over by 31.01.2024 on completion of the lease period of 20 years, and hence the Respondents 1 to 3 have no right to continue in the leased premises. The conduct of the Petroleum Outlet in the leased premises by the Respondents is illegal. In such case, this Court has ample power under Article 226 of the Constitution of India to direct the Respondents to vacate the unauthorized occupation of the Respondents 1 to 3. Learned Counsel relied on the decision of the Hon'ble Supreme Court in ***C. Albert Morris v. K. Chandrasekaran and Others [(2006) 1 SCC 228]***, the decision of this Court in ***T.M.Biju v. Indian Oil Corporation Limited and Others [2024 ICO 2567]***, which is confirmed in the Ext.P6 judgment of the Division Bench in ***W.A. No.537/2025***, and the decision of the



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Bombay High Court in *Vijay v. Indian Oil Corporation Limited and Others [MANU/MH/2380/2023]* in support of his contentions. The learned Counsel invited my attention to the terms of settlement between the Petitioners and the Respondent No.1 which are incorporated in Ext.P2 judgment of this Court, in which the Respondent No.1 agreed that he shall follow the Rental Agreement and he will not raise any objection to the terms and conditions in the Rental Agreement and that he shall abide by the conditions in the Agreement without fail. In the Ext.P1 Lease Deed, he has agreed to surrender and deliver peaceful possession of the leased premises to the Lessors on determination of the lease, removing all installations and restoring the premises to its original state and condition.

4. The learned Counsel for the Respondent No.1 contended that the prayers in the Writ Petition are not maintainable. The Petitioners have to approach the Civil Court to evict the



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Respondent Nos.1 to 3 from the premises. The decisions relied on by the learned Counsel for the Petitioners are clearly distinguishable on facts. In those cases, the Lessee was the Oil Marketing Company, which comes within the definition of 'State' under Article 12 of the Constitution of India, which is amenable to the Writ jurisdiction of this Court, whereas the Respondent No.1 Lessee is a private individual, who is not amenable to the Writ jurisdiction of this Court. There is a procedure for cancelling the License issued under the Petroleum Rules, 2002, and the Petitioners cannot bypass the said procedure and seek direction to cancel the license. The Petitioners have already filed a Commercial Suit before the Civil Court for recovery of possession of the leased premises and for other reliefs, and the same has been pending consideration. The learned Senior Counsel invited my attention to Rule 152 of the Petroleum Rules, 2002, in this regard. At any rate, the Petitioners cannot



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seek the Writ of Mandamus without a demand to the Respondent No.4 for cancellation of the license and the refusal of the Respondent No.4 to cancel the license.

5. The learned Counsel for the Respondent Nos.2 and 3 advanced arguments supporting the contentions of the learned Senior Counsel for the Respondent No.1 and also cited the decisions of the Hon'ble Supreme Court in *Hindustan Petroleum Corporation Ltd. and Another v. Dolly Das* [(1999) 4 SCC 450] and *Roshina T. v. Abdul Azeez K.T. and Others* [(2019) 2 SCC 329] to substantiate the point that a Writ Petition is not maintainable when the dispute is between private parties and when constitutional or statutory rights are absent.

6. I have considered the rival contentions.

7. Ext.P1 Registered Lease Deed dated 21.01.2004 executed by the Petitioners in favor of the Respondent No.1 is for a period of 20 years from 01.02.2004, and the same expired on



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31.01.2024. The Lease was for conducting a Petroleum Retail Outlet by the Respondent No.1 in the leased premises of 30 Cents after putting up the necessary constructions for the same. Respondent No.1 is given the right to sublease the premises to Respondent No.2 Oil Marketing Company as per Ext.P1 Lease Deed. Admittedly, Respondent No.1 has been conducting a Petroleum Retail Outlet in the leased premises as a dealer of Respondent No.2. There is nothing on record to prove that there is any sublease in favour of the Respondent No.2. It is the Respondent No.1 who is in possession of the leased premises and it is the Respondent No.1 who is to be evicted from the leased premises on expiry of the Ext.P1 Lease Deed. The Petitioners have filed this Writ Petition claiming that the Writ Petition is maintainable before this Court for eviction in view of the decisions of this Court in *T.M. Biju (supra)* and the Ext.P6 judgment. In those cases, the eviction was sought against the



Oil Marketing Company by the landowner. As rightly pointed out by the learned Senior Counsel for the Respondent No.1 and the learned Counsel for the Respondent Nos.2 and 3, the Oil Marketing Company therein was an instrumentality of the State and hence comes within the definition of 'State' within the meaning of Article 12 of the Constitution of India. Since Respondent No.1, who is a private individual, has been in possession of the leased premises, it is the Respondent No.1 who is to be evicted from the leased premises and not the Respondent No.2 Oil Marketing Company. Hence, the first prayer for eviction of the Respondent No.1 could not be granted in this Writ Petition, and hence the said prayer is disallowed.

8. The second prayer in the Writ Petition is for a Writ of Mandamus to the Respondent No.4 to cancel the Explosive License issued to the Respondent Nos.1 to 3. The Petitioners have produced Ext.P5 Reply from the Vazhikkadavu Grama Panchayath under



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the Right to Information Act, 2005, which shows the Petroleum Retail Outlet of the Respondent No.1 has not submitted any Application for License for the year 2025-26. Respondent No.1 has not filed Counter Affidavit disputing the averments in the Writ Petition.

9. The contention of the learned Senior Counsel for the Respondent No.1 is that only if there is refusal from the Respondent No.4, statutory authority, the Petitioners can seek a Writ of Mandamus against the Respondent No.4 and at any rate, the Petitioners can seek direction to consider Ext.P7 by the Respondent No.4. Of course, it is well settled that this Court can issue a Writ of Mandamus only if the Petitioners have made their demand and the Respondent Authority has refused the said demand. The Petitioners have made their Demand as per Ext.P7 dated 16.09.2025 to the Respondent No.4. The Petitioners have filed this Writ Petition on 22.10.2025. The



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Petitioners have filed this Writ Petition since the Petitioners did not receive any Reply from the Respondent No.4 on Ext.P7. The Petitioners have waited for a reasonable period of one month after the submission of the Ext.P7 Petition. When the Authority does not respond to the demand of the Petitioners within a reasonable time, it is well within the right of the Petitioners to seek a Writ of Mandamus against such Authority, treating that the Authority has refused the demand of the Petitioners.

10. License for storing petroleum in tanks for a Petroleum Retail Outlet is issued by the Respondent No.3 in Form XIV under Section 141 read with Article 5 of the First Schedule of the Petroleum Rules, 2002. Rule 152 of the Petroleum Rules provides that every license granted under the said Rules shall stand cancelled if the licensee ceases to have any right to the site for storing petroleum. On expiry of the Ext.P1 Lease Deed, the Respondent No.1 ceases to have the right to the site for



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storing petroleum. The contention of the learned Senior Counsel for the Respondent No.1 is that, as per the Proviso to Rule 152(1), the holder of a license is entitled to an opportunity of being heard before cancelling the license. I am unable to accept the said contention. The said Proviso is applicable only in the case of suspension or cancellation of license under Clause (iii) of Rule 152(1) by the Licensing Authority for any contravention of the Act or of any rule thereunder or of any condition contained in such license or by order of the Central Government, if it is satisfied that there are sufficient grounds for doing so. When the licensee ceases to have any right to the site for storing petroleum, the license stands cancelled automatically without any formal order for the same by the Licensing Authority in view of Clause (iii) of Rule 152(1). Hence, the question of following a procedure for cancellation or granting an opportunity of hearing to the Respondent No.1 does not arise.



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11. In **C. Albert Morris (supra)**, the Landlord approached the High Court seeking a Writ of Mandamus directing that the license of the tenant to carry on the petrol bunk shall not be renewed, as the tenant has lost his right to the site on expiry of the Lease Deed. The learned Single Judge allowed the Writ Petition, holding that a "right" only meant a "legal right to continue in occupation or possession without interruption" and that the possession of the site did not entitle him to renewal and that the tenant could be dispossessed only under the due process of law. The Division Bench confirmed the judgment of the learned Single Judge, holding that the Licensee is not a lawful tenant and that the possession was not a legal possession and that the earlier suit filed by the landlord would not in any manner prevent him from seeking a writ remedy. The Hon'ble Supreme Court upheld the judgment of the High Court holding that a person can be said to have a right to something when it is possible to find a



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lawful origin for that right; that a wrong cannot be a right of a person who trespasses on to another's land and a trespasser cannot be said to have a right to the land vis-à-vis the owner because he happens to be in possession of that land; that mere presence on the land by itself does not result in a right to the land; that such presence on the premises may ripen into a right by reason of possession having become adverse to the true owner by reason of the passage of time and possession being open, uninterrupted, continuous and in one's own right; that any right which the dealer has over his site was the right which he had acquired in terms of the lease; that when that lease expired and when the landlord declined to renew the same and also called upon the erstwhile tenant to surrender possession, the erstwhile lessee could no longer assert that he had any right to the site and that his continued occupation of something which he had no right to occupy cannot be regarded as source of a



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right to the land of which he himself was not in lawful possession.

12. In view of the decision in *C. Albert Morris (supra)*, the Petitioners are entitled to get their second prayer seeking a Writ of Mandamus to the Respondent No.4 to cancel the Explosive License issued in favour of the Respondent Nos.1 to 3 for conducting a Petroleum Retail Outlet in the leased premises.

13. Accordingly, this Writ Petition is allowed in part, issuing a Writ of Mandamus to the Respondent No.4 to cancel the Explosive License issued in favour of the Respondent Nos.1 to 3 for conducting the Petroleum Retail Outlet in the leased premises covered by the Ext.P1 Lease Deed.

Sd/-

**M.A. ABDUL HAKHIM**

JUDGE

Shg/



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APPENDIX OF WP(C) NO. 39399 OF 2025

**PETITIONER EXHIBITS**

<b>Exhibit P1</b>	A TRUE COPY OF THE REGISTERED LEASE DEED NO.336/2004 DATED 21.01.2004 EXECUTED BY THE PETITIONERS WITH THE 1ST RESPONDENT FOR CONDUCTING PETROLEUM OUTLET OF INDIAN OIL CORPORATION
<b>Exhibit P2</b>	A TRUE COPY OF THE JUDGMENT DATED 04.12.2009 IN W.P. [C] NO. 27291/2009
<b>Exhibit P3</b>	A TRUE COPY OF THE COMMON JUDGMENT DATED 30.01.2024 IN W.P. [C] NO. 3063/2024 AND W.P. [C] NO. 2720/2024
<b>Exhibit P4</b>	A TRUE COPY OF THE JUDGMENT DATED 06.08.2025 IN OP[C] NO.2225/2024
<b>Exhibit P5</b>	A TRUE COPY OF THE REPLY DATED 20.9.2025 GIVEN UNDER THE RIGHT TO INFORMATION ACT TO SRI. SUBAIR, WHICH WAS OBTAINED BY THE PETITIONERS
<b>Exhibit P6</b>	A TRUE COPY OF THE JUDGMENT DATED 04.08.2025 IN W.A. NO.537/2025
<b>Exhibit P7</b>	A TRUE COPY OF THE PETITION FILED BY THE PETITIONERS DATED 16.9.2025 BEFORE THE 4TH RESPONDENT
<b>Copy of Power of Attorney</b>	COPY OF POWER OF ATTORNEY