
(1992) 04 AP CK 0005
In the Andhra Pradesh High Court
Case No : Writ Petition No. 14082/87

Agrimmcor Pvt. Ltd.

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 30-04-1992

Acts Referred:

ESSO (Acquisition of Undertakings in India) Act, 1974 — Section 5(2), 7(3)

Citation : (1992) 2 ALT 462 : (1992) 2 APLJ 229

Hon'ble Judges : B. Subhashan Reddy, J

Bench : Single Bench

Advocate : Ghanta Rama Rao, for the Appellant; P.V. Sanjay Kumar, for 2nd Respondent, for the Respondent

Final Decision : Allowed

Judgement

B. Subhashan Reddy, J.—This Writ Petition questions the vires of Sections 5(2) and 7(3) of the ESSO (Acquisition of Undertaking in India) Act, 1974, as being arbitrary and unconstitutional and to set aside the consequential letter of the 2nd respondent-Corporation dated 17-3-1987 seeking option of extension of lease for a further period of 10 years with effect from 1-4-1987.

2. The petitioner is the owner of the site on which the petrol and diesel bunks were installed by the lessee i.e. Esso Estern Inc, a limited company incorporated in U.S.A. The lease period was 10 years with effect from 1-4-1967 subject to the condition of a renewal for a period of 10 years. According to the terms of lease, the initial rent for the first 5 years was Rs. 400/- per month which was increased to Rs. 450/- per month for the second five years. The renewal clause contained that it was subject to increase in rents @ Rs. 500/- per month, in case, option was exercised. Before the expiry of the lease period, the above Act came into force. u/s 5(1) of the above Act, an option as exercised by the original lessee was exercised and the second option is exercised perforce in view of Section 5(2) of the Act.

3. Two contentions are raised on behalf of the petitioner; firstly, that the provisions contained u/s 5(2) and 7(3) of the Act are unconstitutional as they are not in furtherance of Directive Principles of State Policy and as such, the protection under Article 31-C of Constitution is not available and secondly, even assuming that the said provisions are *infra vires* the Constitution, the authority should exercise the powers in conformity with fair-play.

4. In so far as the first contention is concerned, these provisions were already scrutinized by way of judicial review by this Honourable Court. In *Mustafa Hussain Vs. Union of India (UOI) and Another*, , a Division Bench of this Court has up-held the constitutional validity of the above provisions and the contentions as are advanced before me were also advanced before the said Bench, but were negatived. In the result, the above provisions were held to be *intra vires* the Constitution. As such, the first argument is rejected.

5. In so far as the second aspect is concerned, it is not demonstrated before this court as to how the action in seeking renewal offends fair-play. The Act empowers the authorities to extend the lease and the said power is exercised. Before exercising the said power, the Act does not contemplate of issuing any notice to show cause or to conduct any enquiry or to pass any reasoned order. The Act empowers exercise of option for one renewal and not more. As such, beyond 31-3-1997, the 2nd respondent cannot exercise its option and has to hand-over the actual physical and vacant possession of the site in question to the petitioner on 1-4-1997. There is yet another aspect with regard to the arbitrariness in exercising the option only in the context of the quantum of rent. As could be seen from the recitals of the lease-deed, the same provides escalation in rent at periodical intervals as mentioned *supra*. For the renewal, the condition was increase in rent to Rs. 500/- per month. May be, that is the rent for the period from 1-4-1977 to 31-3-1987. But, when the 2nd respondent had exercised the option for a period of further 10 years, the rental escalation clause has got to be taken into consideration as the same is also an essential condition of renewal.

6. The argument advanced by Mr. P.V. Sanjay Kumar, the counsel for the 2nd respondent that the rental escalation clause cannot be a condition precedent for renewal and that it cannot be an essential condition of lease, is rejected. I hold that the condition with regard to increase in rents in the event of the option for extension of lease being exercised, is an essential condition of lease and it cannot be over-looked or ignored. If the 2nd respondent is not prepared to increase the rents, the same would be arbitrary and on that count, the action of the 2nd respondent in exercising for extension of lease is fit to be set aside. But, at this juncture, Mr. P.V. Sanjay Kumar, appearing for the 2nd respondent had fairly accepted before this court after obtaining instructions from his client, that the 2nd respondent is prepared to pay Rs. 600/- per month from 1-4-1987 to 31-3-1997 and as such, I refrain myself from setting aside the action of the 2nd respondent in extending the lease.

7. In the result,

(1) I hold that Sections 5(2) and 7(3) of the Esso (Acquisition of Undertakings in India) Act, 1974, are intra vires the Constitution;

(2) that the 2nd respondent shall pay rent to the petitioner @ Rs. 500/- per month for the period from 14-1977 to 31-3-1987 and then @ Rs. 600/- per month from 1-4-1987 to 31-3-1997 and the differential amount should be paid within two months from the date of the receipt of this order; and

(3) on 1-4-1997, the 2nd respondent shall hand-over the actual physical and vacant possession of the site in question to the petitioner.

8. The Writ Petition is disposed of with the above directions. Each party shall bear their own costs.