(2011) 11 CHH CK 0009

In the Chhattisgarh High Court

Case No : Second Appeal No. 698 of 2000

Amiya Kumar Datta APPELLANT

Vs

M/s. Hindustan Petroleum Corporation Ltd. and Others RESPONDENT

Date of Decision : 09-11-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
ESSO (Acquisition of Undertakings in India) Act, 1974 — Section 3, 4, 5, 5(1), 5(2)
Transfer of Property Act, 1882 — Section 105

Citation : (2012) 1 CGBCLJ 80

Hon'ble Judges : T.P. Sharma, J

Bench : Division Bench

Advocate : R.P. Agrawal, with Mr. Sharad Gupta and Mr. Rakesh Dubey, for the Appellant; Vivek Verma, Advocate for Respondent No. 1 and Mr. Anand Kumar Gupta, Advocate, for the Respondent

Judgement

T.P. Sharma, J.—By this second appeal u/s 100 of the Code of Civil Procedure, 1908, the appellant has challenged legality and propriety of the judgment & decree dated 08.05.2000 passed by the 2nd Additional District Judge, Ambikapur in Civil Appeal No. 16A/98 reversing the judgment & decree of decreeing the suit filed on behalf of the appellant herein, dated 02.04.1998 passed by the 3rd Civil Judge Class-II, Ambikapur in Civil Suit No. 145/96, whereby learned Civil Judge Class-II has decreed the suit for eviction. Present second appeal has been admitted on following substantial question of law-

i. Whether, lower appellate Court was justified in holding that respondent No. 1 could avail the benefit of renewal both under the agreement of lease as also u/s. 5 (2) of the ESSO Act. 1974 one after another?

ii. Whether, after exercising the option of renewal twice, provisions of Section 5 (2) of the ESSO Act could be invoked after a lapse of 20 years for extending the period of lease?

2. As per plaint allegation, the plaintiff is owner of land bearing plot No. 243/2,

area 24.80 acres situate at Namanakala, Ambikapur. Part of aforesaid land was given on lease on 27.03.1964 for one year to defendant/respondent No. 1 with condition for three times renewal of lease. Lease was finally terminated on 26.03.1984 and after termination of lease, the appellant herein/plaintiff has not accepted the rent. After termination of lease, the respondent were under obligation to remove their structure from the plot, but they have failed to remove the same. Vide letter dated 22.02.1994, respondent No. 1 herein informed the plaintiff that in accordance with the provisions of Sections 5 & 7 (3) of the Esso (Acquisition of Undertakings in India) Act. 1974 (Act No. 4 of 1974) (for short ''the Esso Act''), lease has already been renewed for further twenty-nine years which was not legally possible and the respondents are trespassers over the property. On the aforesaid basis, suit for recovery of possession and damages has been filed.

3. By per plaint allegation, the plaintiff is owner of land bearing plot No. 243/2, area 24.80 acres situate at Namanakala, Ambikapur. Part of aforesaid land was given on lease on 27.03.1964 for one year to defendant/respondent No. 1 with condition for three times renewal of lease. Lease was finally terminated on 26.03.1984 and after termination of lease. The appellant herein/plaintiff has not accepted the rent. After termination of lease, the respondents were under obligation to remove their structure from the plot, but they have failed to remove the same. Vide letter dated 22.02.1994, respondent No. 1 herein informed the plaintiff that in accordance with the provisions of Sections 5 & 7 (3) of the Esso (Acquisition of Undertakings in India) Act. 1974 (Act No. 4 of 1974) (for short ''the Esso Act''), lease has already been renewed for further twenty-nine years which was not legally possible and the respondents are trespassers over the property. On the aforesaid basis, suit for recovery of possession and damages has been filed.

4. by filing written statement, respondent No. 1 herein has admitted lease and conditions of lease, but has specifically pleaded that it has paid rent and in accordance with Sections 5 & 7 (3) of the Esso Act, period of lease has already been renewed for further period of twenty-nine years commencing from 29th March, 1984 and, therefore, the plaintiff/appellant is not entitled for eviction from the suit property.

5. By filing separate written statement, respondent No. 2 herein has supported the case of respondent No. 1 herein.

6. On the basis of averments made by the parties, issues were framed and after providing opportunity of hearing to the parties, the trial Court has decreed the suit which was challenged, the lower appellate Court has reversed the judgment & decree passed by the trial Court and dismissed the civil suit.

7. I have heard Mr. R.P. Agrawal, learned Senior Advocate with Mr. Sharad Gupta & Mr. Rakesh Dubey, leaned Advocates for the appellant; Mr. Vivek Verma. Learned counsel for respondent No. 1; and Mr. Anand Kumar Gupta, learned

counsel for respondent No. 2 perused judgments & decrees and records of both the Court below.

8. Mr. R.P. Agrawal, learned Senior Advocate appearing on behalf of the appellant, submitted that interpretation of lease deed Ex. P-1 is the paramount consideration in the present case. Mr. R.P. Agrawal further submitted that vide Ex. P-1 lease was granted in favour of Esso Standard Eastern Inc. on 27.03.1964 for a term of one year on monthly rent of Rs. 200/- payable on quarterly basis on or before 15th day of second month of each quarter with a condition for renewal of lease for three times which has been expressly agreed in terms of clauses (d) & (e) of para 3 of the said lease. As per para 1 and clauses (d) & (e) of para 3 of the lease agreement Ex. P-1, total period of lease including three renewals was thirty years. For renewal of lease, the respondents were under obligation to comply the conditions mentioned in clauses (d) & (e) of para 3 of lease deed Ex. P-1 i.e. to make written request two calendar months before the expiry of the term and there should not be any breach or non-observance of any of the conditions/covenants. Before expiry of such first renewal i.e. 26.03.1974, the Esso (Acquisition of Undertakings in India) Act. 1974 (Act No. 4 of 1974) came into force from 13th March, 1974 and assets & liabilities were stand transferred to and vested in the Central Government. As per Sections 5 & 7 (3) of the Esso Act, it was renewable in accordance with original terms of lease for one time at the instance of the Central Government. As per the aforesaid provisions of the Esso Act, the respondents were under obligation to apply for renewal of lease well within two months before the expiry of terms of lease i.e. 26.03.1974 showing that there was no breach or non-observance of any of the covenants on the part of the respondents which was sine qua non, but the respondents have never applied for renewal. The lease was not automatically renewable without complying/following the terms of lease. Therefore, after 26.03.1974 status of the respondents was only of trespassers and there was no enforceable contract or agreement between the parties. From 26.03.1974 the appellant was entitled for recovery of possession and damages. While decreeing the suit, the trial Court has rightly considered the claims and terms of agreement, but by reversing the judgment & decree of the trial Court, the lower appellate Court has committed illegality. Finding of the lower appellate Court that respondent No. 1 herein can avail the benefit of renewal under the agreement of lease and also u/s 5 (2) of the Esso Act. Was wholly unjustified and illegal, and lease was not renewable even in terms of Section 5 (2) of the Esso Act.

9. Mr. R.P. Agrawal placed reliance in the matter of Trade Centre Developers and Builders Pvt. Ltd. and Another Vs. Union of India and Another, , in which the Bombay High Court has held that option conferred by the provisions of Section 5 (2) of the Esso Act would be exercised once in accordance with the terms and conditions of existing tease. Mr. R.P. Agrawal further placed reliance in the matter of Hindustan Petroleum Corp. Ltd. Vs. Chandulal Dipchand Kale, Bom., in which Aurangabad Bench of the Bombay High Court has held that in accordance with Section 5 (2) of the Esso Act, one time extension of lease was made compulsory

for giving proper time frame to Government Company to make alternative arrangements if lease agreement did not get any further extension, government Company remaining in possession after statutory compulsory period was over can be evicted by landlord. Mr. R.P. Agrawal also placed reliance in the matter of Hindustan Petroleum Corporation Ltd. and Another Vs. Dolly Das,), in which the Supreme Court in similar case of acquisition off shares of Caltex Oil Refining (India) Ltd. and of the Undertakings in India of Caltex (India) Ltd. Act, 1977, has held that renewal of lease could only be for one time and no more, Mr. R.P. Agrawal relied upon the matter of Bharat Petroleum Corporation Ltd. Vs. Khatanand Alias K. Anand Saraf and Others, in which this Court in case of Burmah Shell (Acquisition of Undertakings in India) Act, 1976 has held that right of renewal under the Act was only one time right.

10. Mr. R.P. Agrawal also submitted that the provisions of Section 5 (2) & 7 (3) of the Esso Act are pari Materia to Section 5 of the Burmah Shell (Acquisition of Undertakings in India) Act, 1976 and Section 7 & 5 of the Caltex [Acquisition of Shares of Caltex Oil Refining (India) Ltd. and of the Undertakings in India of Caltex (India) Ltd.] 1977. Mr. R.P. Agrawal contended that originally the lease was for one year renewable for three times only subject to conditions imposed. The lease was not for thirty years and, therefore, in any case, it was renewable for only one year from 26.03.74 for the period from 27.03.1974 to 26.03.1984. The period of deeming lease has already been expired. Therefore, the appellant is entitled for eviction of such premises.

11. Mr. Vivek Verma, learned counsel for respondent No. 1, opposed the appeal and submitted that there was no privity of contract of contract between the appellant and respondent No. 2, lease was for thirty years as held by the trial Court and lease was to expire on 27.03.1994, before expiry of such date, the Esso Act came into force and in accordance with Section 5 (2) & 7 (3) of the Esso Act. Lease stands automatically renewed by operation of law for next thirty years. Therefore, the appellant is not entitled for eviction of suit property.

12. Mr. Anand Kumar Gupta, learned counsel for respondent No. 2, also vehemently opposed the appeal and submitted that originally the lease was for thirty years and was to expire on 26.03.1974. The trial Court has also held the lease was for thirty years. On 13.03.1974 the Esso Act came into force, Notice given by the appellant was premature. In accordance with the provisions of Sections 5 (2) & 7 (3) of the Esso Act, nothing was required at the instance of any of the parties and by operation of law, the lease was renewed for next thirty years. Lease for more than one year requires registration u/s 105 of the Transfer of Property Act. Vide letter dated 22.04.1994, respondent No. 2 has desired for renewal of lease and has exercised its power u/s 7 (3) of the Esso Act to renew the lease for further period of thirty years with effect from 29.03.1994 which was by operation of law. Therefore, no registration of lease Deed was required.

13. Mr. Anand Kumar Gupta placed reliance in the matter of Bharat Petroleum Corporation Ltd. Vs. P. Kesavan and Another, in which the Supreme Court in case

of acquisition and requisition of the Burmah Shell (Acquisition of Undertakings in India) Act. 1976 which is pari material to the provisions of Section 5 (2) & 7 of the Esso Act, has held that mere expression off the desire to renew the lease by Central Government or appellant was enough to renew the lease by Central Government or appellant was enough to renew the lease by Central Government or appellant was enough to renew the lease or tenancy referred to in Section 5 (1) on the same terms and conditions, nothing more was required to be shown on their part. It was further held that in case of transfer of property by operation of law, provisions of the Transfer Property Act. 1882 or the Registration Act. 1908 have no application.

14. It is not disputed that the lease deed Ex. P-1 was effective and binding upon present parties. Para 1 of Ex. P-1, the lease deed, reads as follows:-

The Landlord hereby lets and the tenant hereby takes all that piece of land situate at Village Namana Kalan, in the Registration sub-Disrict of Ambikapur District Surguja and more particularly described in the schedule hereto and delineated on the plan hereto annexed being thereon surrounded by a red colour boundary line together with all ways passages, lights drains, sewers, water courses, rights easement, advantages and appurtenances whatsoever to the said piece of land belonging or therewith usually held or enjoyed and together also with the right for the tenant to instal erect and maintain in and upon the said piece of land. Roadways and pathways and underground tank (s) and delivery pump (s) connected with the said tank (s) and shelter for an attendant and any other building, erection or equipment whether of a permanent or temporary nature for the purpose of storing selling or otherwise carrying on trade in petrol, petroleum products, oil and kindred motor accessories and any other trade or business that can conveniently be carried on therewith to hold the demised premises upto the tenant from the day of 27th March 1964 for the term of one year (determinable as hereinafter provided) at the monthly rent of Rs. 200/- payable on a quarterly basis on or before 15th day of the second month of each quarter.

15. Conditions required to be complied by the tenant have been mentioned in para 2 of the agreement. Likewise, conditions required to be complied by the landlord have been mentioned in para 3 of the agreement. Clauses (d) & (e) of para 3 of the agreement relate to renewal of lease. Clauses (d) & (e) of para 3 of the agreement, Ex. P-1, read thus.

(d) That the landlord will on the written request of the tenant made 2 calendar months before the expiry of the term hereby created and if there shall not at the time of such request be any existing breach or non-observance of any of the covenants on the part of the tenant hereinbefore contained grant to it a lease of the demised premises for a further term of 9 years at Rs. 200/- per month and thereafter two successive further terms of 10 years each at Rs. 220/- per month and at Rs. 245/- per month for the respective renewal periods excluding any further option for renewal of the lease.

(e) That the landlord will not sell or agree to sell his title and interest in the premises hereby demised until the expiration of 30 days after he shall have given to the tenant notice of his intention to sell which notice shall state the price at which the landlord shall intend to sell and shall given an option to the tenant to purchase the demised premises at the said price such option to be exercised within a period of 30 days from the date of receipt of such notice.

16. The lease deed was operative from 27.03.1964. As per para 1 of the lease deed, lease was for one year, but in case the tenant complies with the conditions mentioned in clauses (d) & (e) of para 3 of the agreement, lease was renewable for three times (first for nine years, second for ten years and third for ten years) excluding any further option for renewal of lease. It was a lease agreement between Mr. Amulya Kumar Dutta (since deceased) i.e. father of the appellant herein and Esso Standard Eastern, Inc., a corporation duly organized under the laws of the State of Delaware, United States of America and having an office in the city of New York, State of New York, and a branch at (inter alia) 6, church Lane, Calcutta-1.

17. The Esso Act came into force from 13th March, 1974 and on the appointed day, in accordance with Section 3 of thee Esso Act, the right, title and interest of Esso, in relation to its undertakings in India, shall stand transferred to, and shall vest in, the Central Government. Provisions relating to lease have been specifically made in Section 5 of the Esso Act which read as follows:-

5. Central Government to be lessee or tenant under certain circumstances -(1) Where any property is held in India by Esso under any lease or under any right of tenancy the Central Government shall, on and from the appointed day, be deemed to have become the lessee or tenant, as the case may be, in respect of such property as if the lease or tenancy in relation to such property had been granted to the Central Government, and thereupon all the rights under such lease or tenancy shall be deemed to have been transferred to and vested in the Central Government.

(2) On the expiry of the term of any lease or tenancy referred to in sum-section (1), such lease or tenancy shall, if so desired by the Central Government be renewed on the same terms and conditions on which the lease or tenancy was held by Esso immediately before the appointed day.

18. Section 7 of the Esso Act confers power upon the Central Government direct vesting of the undertakings of Esso in a Government company Section 7 of the Esso Act reads thus.

7. Power of Central Government to direct vesting of the undertakings of Esso in a Government company. - (1) Notwithstanding any contained in section 3, 4 and 5, the Central Government may, if it is satisfied that a Government company is willing to comply, or has complied, with such terms and conditions as that Government may think fit to impose direct, by notification, that the right, title and interest and the liabilities of Esso in relation to any undertaking in India

shall, instead of continuing to vest in the Central Government, vest in the Government company either on the date of the notification or on such earlier or later date (not being a date earlier than the appointed day) as may be specified in the notification.

(2) Where the right, title and interest and the liabilities of Esso in relation to its undertakings in India vest in a Government company under sub-section (1) the Government company shall, on and from the date of such vesting, be deemed to have become the owner, tenant or lessee, as the case may, in relation to such undertakings, and all the rights and liabilities of the Central Government in relation to such undertakings shall, on and from the date of such vesting, be deemed to have become the right and liabilities, respectively, of the Government company.

(3) The provisions of sub-section (2) of section 5 shall apply to a lease to a lease or tenancy, which vests in a Government company, as they apply to a lease or tenancy vested in the Central Government and reference therein to the "Central Government" shall be construed as a reference to the Government company.

19. Undisputedly, respondent No. 1 is a Government company and the Central Government has directed vesting of the undertakings of Esso in respondent No. 1. By enacting the Caltex (Acquisition of Shares of Caltex Oil Refining (Incia) Ltd. and of the Undertakings in India of Caltex (India) Ltd., 1977, the right, title and interest of Caltex in relation to its undertakings in India have been transferred and vested in the Central Government. Likewise, by enacting the Burmah Shall (Acquisition of Undertakings in India) Act. 1976, the right, title and interest of M/s. Burmah Shell Company in relation to its undertakings in India have been transferred and vested in the Central Government.

20. Aforesaid oil refining companies were running a business also in India, but by the aforesaid Acts. Their rights, titles and interests have been transferred and vested in the Central Government, thereafter, by and under the provisions of the said Acts, their rights, titles and interests have been vested in the Government company. Section 7 of the Caltex Act. 1977 and Section 5 of the Burmah Shell Act, 1976 are pari material to Section 5 (2) of the Esso Act. In all the Acts, one time renewal of lease has been provided, virtually, to provide breathing period to the new company.

21. While dealing with the effect of the provisions of Section 7 of the Caltex Act, 1977, the Supreme Court in Dolly Das''s case (supra) has observed in para 12 as follows:-

12. The lease had been granted with effect from 01.10.1969 in favour of M/s. Caltex (India) Ltd. and on the coming into force of the Act on 23.04.1977 the appellant had stepped into its shoes and from that day onwards the appellant has been in possession of the same till now. The crucial question whether the option for renewal either in terms of the lease deed or in terms of the Act had been availed of or not is the controversy between the parties now. Litigation

between the parties has been going on from 1993 onwards. On the expiry of the term the deed provides for renewal for two terms of 10 years each on the same terms and conditions except for enhancement of rent and execution of fresh deed modifying the clause relating to renewal. The appellant gave notice of renewal in terms of the provisions of (i) the deed in the letter dated 23.05.1979, and (ii) the Act in the letter dated 13.09.1989. Now it is not necessary to examine the effect of renewal for the earlier period as even on the appellant''s own showing it is invoking the stature in the latter notice and not the terms of the deed. If that is so, the appellant could seek for renewal only in terms of Section 7 of the Act which enabled it to renew the deed for a period of one term as originally granted. A covenant for renewal is not treated as a part of the terms prescribing the period of lease but only entitles a lessee to obtain a fresh lease. Renewal of lease could only be fore one term and no more, but nevertheless it could be contended that the covenant for renewal was also part of the lease and, therefore, stood incorporated in the renewed lease arising under the Act. However, in the peculiar facts of this case, we think that it is not necessary to enter upon the merits of the controversy regarding the effect of clause 3 (g) or the lease deed or the rights available under the Act for renewal of the lease period. We are of the opinion that the ends of justice in this case will be met if we modify the order of the High Court in the following terms:

(1) The appellant does not have power to claim exercise of option for any renewal of the lease beyond 30.09.1999;

(2) The appellant seeks for and is granted time to hand over vacant possession of the premises in question to the respondent on or before 31.03.2000, however, subject to filing of the usual undertaking in this Court within a period of four weeks from today;

(3) Rent payable is as per the terms of the lease deed, that is, Rs. 1920 per month which shall be paid till the date of handling over the vacant possession;

(4) If any arrears of rent, as stated above, have not been paid, the same shall be paid within a period of three months from today; and

(5) The order made by the High Court to the extent it is inconsistent with our order shall stand set aside.

22. In the matter of Trade Centre (supra), the Bombay High Court has held that renewal of lease on the same terms and conditions is for one time, the provisions are made so as to give breathing time to the company to organize its affairs. In Chandulal''s case (supra), Aurangabad Bench of the Bombay High Court has also taken same view.

23. In P. Kesavan''s case (supra), the Supreme Court has held that the provisions of the Transfer of Property Act, 1882 have no application in a case where a transfer of property takes place by operation of law. A transfer which takes place by operation of law, therefore, need not meet the requirement of the provisions

of the Transfer of Property Act or the Indian Registration Act. 1908. The lease automatically stands renewed by operation of law. The purpose of making such provision in the Esso Act was to avoid hindrance in matter of distribution of products from the established retail outlets till alternative arrangement are made.

24. In the light of provisions of Section 5 (2) & 7 (3) of the Esso Act, lease was renewable on the same terms and conditions for one time. In the present case, the only substantial question is as to what was the period of lease and what would be he period of renewal in accordance with Sections 5 (2) & 7 (3) of the Esso Act. The trial Court has decreed the suit but the lower appellate Court has allowed the appeal and dismissed the suit.

25. As per Section 5 (2) of the Esso Act and desire of the Central Government for renewal of lease on the expiry of term of lease, the lease is renewable on the same terms and conditions on which the lease or tenancy was held by Esso immediately before the appointed day.

26. The lease was renewable for one time to give breathing time to the Central Government or its undertakings for making alternative arrangement. For renewal of lease desire of the Central Government or its undertaking was the only condition. Ex. P-1, terms of agreement of lease, is unambiguous. As per para 1 of Ex. P-1, the lease was only for one year, but it was renewable in accordance with clauses (d) & (e) of para 3 of the agreement for three more times. The Esso Act came into force on 16.03.1974. The period of lease was over on 26.03.1965. It appears that the lease renewed for nine years in accordance with clause (d) of para 3 of the agreement (Ex. P-1) from 27.03.1965 to 26.03.1971. Before expiration of renewal of the terms of lease i.e. 26.03.1974 the Esso Act came into force from 13.03.1974. In these circumstances, at the option/instance of the Central Government or its undertaking, the lease was renewable for one year i.e. from 27.03.1974 to 26.03.1975.

27. As per pleading and submission of the respondents, by operation of law, the lease was renewed for thirty years because the lease was for thirty years. Submission of the respondents is contrary to the terms of the agreement Ex. P-1 and as per para 1 of the lease deed, it was only for one year. First renewal was up to 26.03.1974. As per submission of the respondents, the provisions of Section 5 (2) of the Esso Act were applicable only after completion of thirty years i.e. since 27.03.1974. If submission of the respondents is considered as true, then till 26.03.1994 the respondents were under obligation to apply in writing for renewal before two months of each expiry for renewal of lease showing that during such period of renewal of lease there was no breach or non-observance of any of the covenants on the part of the respondents, but the respondents have failed to apply and prove such. Even otherwise, if it is considered that after coming into force of the Esso Act after expiry of the period of lease it was renewed for thirty years in terms of Section 5 (2) of the Esso Act, then it would be operative from 17.03.1974 and would expire on 26.03.2004.

28. As per the agreement, first period of renewal expired on 26.303.1974. In accordance with Section 5 (2) of the Esso Act, it was renewable for one year which expired on 26.03.1975 and thereafter, the appellant was entitled for vacant possession of the suit property. Even otherwise, it submission and pleading of the respondent is accepted, then the period of thirty years had expired on 26.03.2004 and after 26.03.2004, the respondents are not having any right to continue possession over the suit property.

29. Consequently, substantial question of law No. 1 is decided as negative. The respondents are not entitled for renewal of lease one after another and were entitled for renewal for once. Substantial question of law No. 2 is also decided as negative. After lapse of twenty years of the period of renewal of lease, the respondents were entitled for renewal.

30. On the basis of finding on the substantial questions of law formulated for the decision of this appeal, the appeal deserves to be allowed and the suit deserves to be decreed.

31. In the present case, lease was for supply for essential commodity i.e. petroleum products which is necessary for public and Government authorities. This is not the case where after obtaining lease the respondents have installed the petrol pump or have started sale and distribution of petroleum products, but they have installed the petrol pump under the lease agreement. Therefore, grant of some time for making alternative arrangement for supply of such essential commodity would be just and reasonable in the present case. Otherwise supply or petroleum products for the area would be collapsed.

32. For the foregoing reasons, the appeal in allowed. Judgment & decree dated 8.05.2000 passed by the 2nd Additional District Judge, Ambikapur in Civil Appeal No. 16A/98 are hereby set aside. Suit filed on behalf of the appellant herein/ plaintiff for eviction is decreed on the following terms:-

(1) The plaintiff is entitled for vacant possession of the suit premises.

(2) If respondent No. 2 herein files undertaking to vacate the premises on or before 31st of March, 2012 and agrees to pay damages to the appellant herein @ Rs. 5,000/- per month, the respondents herein may continue their possession till 31.03.2012.

(3) The respondents herein shall pay rent and dues within thirty days from today to the appellant herein.

33. The respondents shall bear their own costs of the suit as well as of the appeal and also the costs of the appellant.

34. Advocate fees as per schedule. Decree be drawn up accordingly.

