
(2013) 07 MAD CK 0374

In the Madras High Court

Case No : S.A. No.488 of 2012 and M.P. No.1 of 2012

B. Lakshmi

APPELLANT

Vs

M/s Bharat Petroleum Corporation Ltd.

RESPONDENT

Date of Decision : 10-07-2013

Acts Referred:

Citation : (2013) 3 MadWN(Civil) 673

Hon'ble Judges : Mr. G. Rajasuria, J.

Bench : Single Bench

Advocate : Mr. V.P. Sengottuvel, Advocate, for the Appellants; Mr. O.R. Santhanakrishnan, Advocate, for the Respondent No. 1; Ms. K. Subhashini, Advocate, for the Respondent Nos. 2 to 4

Final Decision : Disposed Off

Judgement

Mr. G. Rajasuria, J.—This Second Appeal is focussed animadverting upon the judgment and decree dated 18.11.2011 passed in A.S.No.44 of 2010 by the learned Additional District and Sessions Judge, FTC-IV, Coimbatore at Tiruppur in confirming the judgment and decree passed in O.S.No.641 of 2003 dated 30.10.2009 by the learned Additional Sub Court, Tiruppur.

2. The parties are referred to hereunder according to their litigative status and ranking before the trial Court.

3. A summation and summarisation of the germane facts absolutely necessary for the disposal of this Second Appeal, would run thus:

The plaintiffs three in number filed the suit as against D1 and also the three other defendants D2 to D4, setting out various averments in the plaint, which could tersely and briefly be set out thus:

The three plaintiffs and the three defendants namely D2 to D4 are the absolute owners of the suit property. While so, D1 became a tenant of the suit vacant site measuring an extent of 9825 sq.ft. described in the schedule of the plaint vide

the lease deed dated 24.08.1964 and the period of lease was 20 years with effect from 01.08.1963. Subsequently for another period of 20 years the lease got extended. After the expiry of the lease period, the plaintiffs wanted the suit property to be vacated and possession handed over to them. Despite notice to D1 to quit and deliver the vacant possession of the suit property, there was no positive response. The lease period came to an end by 31.07.2003 itself. Hence the suit.

4. Per contra, D1 filed the written statement setting out various pleas, the gist and kernel of them would run thus:

The provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 [hereinafter referred to as "the Act"] are applicable to the facts and circumstances of the case and accordingly, the plaintiffs were not entitled to get their case processed before the civil court in view of the embargo as contained in Section 15 of the Act. The first defendant being a Government Company is entitled to the protection under the Act. Even though the contractual period of tenancy expired by 31.07.2003, D1 expressed its option to get the lease renewed for twenty more years, but that was not accepted by the plaintiffs unjustifiably. The question of paying damages for use and occupation would not arise. Accordingly, they prayed for the dismissal of the suit.

5. Issues were set down for trial by the trial Court .

6. During trial, the third plaintiff/Sathyamoorthy examined himself as P.W.1 along with P.W.2/Balakrishnan and Exs.A1 to A5 were marked; and on the defendants" side, on Raghavendravar was examined as D.W.1.

7. The trial Court upheld the contention of the defendants that the provisions of the Act were applicable and accordingly, dismissed the suit, as against which the appeal was filed for nothing but to be dismissed by the appellate Court confirming the judgment and decree of the trial Court.

8. Challenging and impugning the judgments and decrees of both the Courts below, this Second Appeal has been focussed on various grounds and also suggesting the following substantial questions of law:

"(a) Whether the Courts below are right in dismissing the suit for eviction as not maintainable, by holding that the suit property is a public premises defined under the Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Act, 1975 and the landlord has to approach the estate officer under the said Act?

(b) Whether the Courts below are right in holding that the suit is not maintainable, when the Hon"ble Supreme Court in its judgment in BPCL v. N.R.Vairamani reported in 2004(5) CTC 74 accepted the plea of BPCL that the remedy available for a landlord to get possession of land leased out to BPCL on expiry of lease period, is only by way of a suit for eviction?

(c) Whether the Courts below are right in holding that the suit property is a

public premises defined under the provisions of the Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Act, 1974, when the object and scope of the said Act is to deal with a person in unauthorized occupation of a public premises defined under the said Act?

(d) Whether the Courts below are right in dismissing the suit when the 1st respondent/1st defendant being a state defined under Article 12 of the Constitution of India is expected to behave like an ideal person and should have vacated and handed over possession of the suit schedule mentioned property on expiry of renewed lease period which came to an end on 30.07.2003, as it being a public sector undertaking and had knowledge of law and cannot claim ignorance of law?

(e) Whether the concurrent decision of the Courts below in rejecting the suit and thereby permitting 1st defendant Public sector undertaking to continue to be in possession of the suit property even after expiry of lease period got renewed pursuant to the judgment and decree dated 21.10.1992 made in the suit filed by the 1st defendant O.S.No.429/1986 on the file of the District Munsif Court, Tiruppur, claiming right of statutory renewal under Sec 5 (2) r/w Sec 7(3) of Burmah shell (Acquisition of Undertakings in India) Act, 1976, will not amount to permitting an illegality to continue?

(f) Whether the Courts below are right in rejecting the landlord's prayer for damages for use and occupation of the suit property after expiry of renewed leased period, which came to an end on 30.07.2003 when such possession has been held to be a trespass which is most unfortunate and unjustified?"

(extracted as such)

9. After hearing both sides, this Court thought fit to formulate the following substantial questions of law to the knowledge of both sides.

(1) Whether both the fora below were justified in holding that the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 Act are applicable to this case, if not, whether the first defendant is liable to vacate and hand over vacant possession of the suit property as prayed for in the plaint?

(2) Whether the plaintiffs are entitled to get damages for use and occupation from D1, adjudged by the Court, for recovering the same?

(3) Whether there is any perversity or illegality in the judgments and decrees of both the Courts below?

10. Heard both.

In re the applicability of the provisions of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, to this case:

11. The learned counsel for the appellants/plaintiffs inviting the attention of this Court to Section 2(c) and (e) of the Act, would pyramid his argument to the

effect that here the facts and circumstances cannot be brought within the four corners of the definition as contained in Section 2(c) and (e) of the Act, because the first defendant admittedly became the tenant in respect of the premises and started doing business in petroleum outlet. The provisions of the Act are not for the purpose of protecting the Government or the Government company as lessee, under the private owner/lessor and it only enables the Government or the Government Company, if at all in their leasehold premises, they leased out the said premises in turn to any other person than the Government Company or the Government could evict their lessee by invoking the said Act. It is quite axiomatic and obvious that the Government or the Government Company from their own premises also evict unauthorized occupants by invoking the said Act.

12. Per contra, the learned counsel for D1 reiterated the stand as set out in the written statement filed by D1 and he would also proceed to hold that both the fora below properly adjudged the lis, warranting no interference.

13. The learned counsel for D2 to D4 would make her submissions supporting the case of the plaintiffs.

14. A poring over and perusal of the judgments of both the fora below, would indicate and exemplify that both the fora below misunderstood the definitions of "premises" and "public premises" respectively as contained in Section 2(c) and 2(e) of the Act, which is extracted hereunder:

"2(c) "premises" means any land or any building or part of a building and includes,-

(i) garden, grounds and outhouses, if any, appertaining to such building or part of a building, and

(ii) any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof;

(d)

(e) "public premises" means--

(1) any premises belonging to, or taken on lease or requisitioned by, or on behalf of, the Central Government, and includes any such premises which have been placed by that Government, whether before or after the commencement of the Public Premises (Eviction of Unauthorised Occupants) Amendment Act, 1980 (61 of 1980), under the control of the Secretariat of either House of Parliament for providing residential accommodation to any member of the staff of that Secretariat;

....."

15. Obviously and axiomatically both the Courts below were carried away by the plea taken by D1 as though any property taken by the Government or Government Company under lease also would be covered under the Act as

against the Government or Government Company. The entire Act should be read for proper understanding including the object. Certain excerpts from the objects and reasons concerning the Act, are extracted hereunder for ready reference:

"Statement of Objects and Reasons.-- The Public Premises (Eviction of Unauthorized Occupants] Act, 1958 was enacted to provide for a speedy machinery for the eviction of unauthorised occupants of public premises. Section 5 of the Act provides for taking possession of the public premises which are in unauthorised occupation of persons. Section 7 of the Act provides for the recovery of rent or damages in respect of public premises from persons who are in unauthorised occupation thereof. The Act, as it originally stood, did not debar the Government from taking recourse to civil Courts to seek the aforesaid reliefs."

16. My mind is reminiscent and redolent of the decision of the Hon"ble Delhi High Court reported in AIR 2000 Del.439(D.B.), Nisha v. Punjab National Bank ; certain excerpts from it would run thus:

"9. We have considered the arguments advanced by both the parties and have also gone through the records. We are of the opinion that view taken by the learned trial Court is not a correct view in law and calls for interference. In fact the whole approach of the learned trial Court is misdirected. The PP Act treads altogether different field as is clear from the preamble of the said Act. The Act was enacted to provide for eviction of unauthorised occupants from public premises and for certain incidental matters. The purpose was to enact law as would be clear from the statement of objects and reasons, to take speedy action to evict unauthorised occupants of public premises and the Government did not want to rely upon the ordinary process of law which often involves considerable delay. The intention was to provide speedy machinery for the eviction of persons who are in unauthorised occupation of public premises keeping in view at the same time the necessity of complying with the provisions of the Constitution. The whole genesis of this Act presupposes that the premises in question are public premises belonging to the Government/statutory authority. They are in occupation of a person who is or has become unauthorised occupant of these premises and Government/statutory authority wants him to be evicted. Thus the premises are to be in occupation of a person who is not the Government/statutory authority itself but other than the Government/statutory authority to whom in fact the premises were given/allotted by the Government/statutory authority who trespassed into the premises belonging to the Government. The Statute has conferred a right of speedy recovery of possession on the Government or statutory bodies from persons occupying their premises. It is in this context that the definition of public premises as contained in Section 2(3) of the PP Act is to be understood. Here the premises would either belong to or taken on lease by the Government/statutory authority. The occupant of such premises, who has now become unauthorised occupant, would be a person other than the Government/statutory authority. And, now Government/statutory authority wants such person to be evicted from the public premises. Therefore,

while interpreting definition of unauthorised occupant as contained in Section 2(g) of the PP Act would be a person other than Government/statutory authority. The very essence of legislating PP Act is to enable Government/statutory authority to evict "unauthorised occupants" from "public premises" and by no stretch of imagination one can conceive of a situation where Government/statutory authority itself is in "unauthorised occupation" of the "public premises". Therefore, PP Act would not at all govern the proceedings filed by a private landlord/owner against the Government/statutory authority as tenant. These proceedings would be governed by the provisions of Transfer of Property Act or Delhi Rent Control Act as the case may be. The machinery which is provided under the PP Act is to enable Government/statutory authority to evict a person in unauthorised occupation of the premises and such "person" has necessarily to be a person other than Government/statutory authority. It was never intended that in a lease between private landlord/owner and the Government/statutory authority (as tenant), landlord will be entitled to invoke the machinery provided under the provisions of PP Act to evict Government or statutory authority treating it to be a "person" in "unauthorised occupation" of the public premises. Therefore, the whole approach adopted by the learned Trial Court is erroneous whereby it has relegated the plaintiff/appellant to the remedy provided under the provisions of PP Act by directing it to approach an Estate Officer for the eviction of the respondent. It is not realised that this course would eventually do more harm to the Government/statutory authority.

10. In fact learned counsel for the plaintiff had urged before the trial Court that object of the PP Act was to provide summary remedy to the Government-Company/Bank/Corporation so as to avoid them from lengthy procedure of regular Civil Courts as was clear from the objects and preamble. However, this contention was rejected by the learned trial Court observing that when the language of a particular enactment was plain and clear, resort to object and preamble for interpreting same was absolutely uncalled for. The reasoning given by the learned trial Court in rejecting this argument is clearly fallacious. As observed above, the object of the statute namely PP Act is to enable Government/statutory authority to evict another person, to whom the premises were given by the Government/statutory authority and has become unauthorised occupant now or who is a trespasser, and therefore, unauthorised occupation by the public premises, to evict such a person. It was never intended to use this Act by third person against Government statutory authority treating Government/statutory authority treating Government/statutory authority as unauthorised occupation of the premises. The Act is to be interpreted keeping in view this intention of the legislature. In fact the legislature has specifically enacted Transfer of Property Act and Rent Control Act, which amongst other govern the relationship between lessor or lessee where lessor is a private person and lessee may be a private person or Government/statutory authority. The interpretation given by the trial Court would lead to absurd results and give even the private landlords right to evict Government/statutory authority, by adopting speedy

machinery provided under said Act and it would result in clearly crossing the boundaries earmarked for the PP Act.

12. Legislation in a modern State is actuated with some policy to work some public evil or to effectuate some public benefit. "The legislation is primarily directed to the problems before the legislation based on information derived from past and present experience. This intention is to be kept in mind while interpreting a particular statute. It was not the intention of the legislature, the type at hand i.e., allowing the private person to use machinery provided under the PP Act against Government or statutory authority. The intention of legislature assimilates two aspects: in one aspect it carries the concept of "meaning" i.e., what the words mean and in another aspect, it conveys the concept of "purpose and object" or the "reason or spirit" pervading through the statute. While interpreting the statute both literal and purposive approaches are combined i.e. true of legal meaning of enactment is to be derived by considering the meaning of the words used in the enactment in the light of any discernible purpose or the object which comprehends the mischief and it's remedy to which the enactment is directed. In *State of Himachal Pradesh v. Kailash Chand Mahajan*, reported in AIR 1992 SC 1277 the Supreme Court propounded the aforesaid principle in the following words: [Paras 76 and 77]:

"Mr.Kapil Sibal, learned counsel for, the first respondent would submit that legislative intention has not been brought out clearly. In this connection we will do well to refer to Francis Bennion's *Statutory Interpretation* (1984 Ed.) at page 237. The distinction between the legislative intention and the purpose or object of the legislation has been succinctly summarised as under:-

The distinction between the purpose or object of an agreement and the legislative intention governing it is that the former relates to the mischief to which the enactment is directed and its remedy, while the latter relates to the legal meaning of the enactment."

Thus there is a great distinction between the two. While the object of legislation is to provide a remedy for the malady. On the contrary, the legislative intention relates to the meaning from the exposition of the remedy as enacted. For determining the purpose of object of legislation, indeed, it is permissible to look into the circumstances which were prevalent at the time when the law was enacted and which necessitated the passing of that enactment. For the limited purpose of appreciating the background and the antecedents factual matrix leading to the legislation it is open to the Court to look into the statement of "Objects and Reasons" of the Bill which accentuated the statement to provide a remedy for the then existing malady.

13.

14.

15. We have two separate enactments viz. Transfer of Property Act and PP Act.

Both have their own respective fields. The players who have to play in the respective fields are different. The players of this litigation have necessarily to play on the field carved out by harmonious construction of the two statutes. Having regard to the subject and object of the statute namely PP Act we are of the view that the machinery provided under the PP Act for eviction of unauthorised occupants was not intended to cover the case in hand. It was the intention of legislature to equip the Government/statutory authority with such machinery for speedy eviction of unauthorised occupants and not to deal with the situations where Government/statutory authority is at receiving end and the machinery under the PP Act utilised against them. PP Act is meant to come to the aid of the Government/statutory authority and it was never conceived that the forum which has to come to the rescue of the Government/statutory authority would be utilised against the Government/statutory authority."

The object of the said Act is to protect the interest of the Government and the Government Company relating to their own lands and the premises and also their leasehold premises as against the trespassers and also their tenants and licencees, who occupied the premises and continuing unauthorisedly after the expiry of the lease/licence. No where it is found stated that the Government or the Government Company itself could become an unauthorised occupant after the expiry of lease of the lease or licence in their favour and that the third party private owner should evict them by resorting to the Act. Such an interpretation is totally untenable and not akin to reason. Both the fora below failed to see the wood for trees and threw the baby along with the bath water. Scarcely could it be stated that the Act was passed as against Government and Government Companies. To say the least, D1 being a Public Sector Company should not have taken such a plea and the Courts below should not have allowed themselves to be misguided and misled by D1. I believe that hereafter the Courts below would not go to this much extent of deciding a lis unreasonably. Wherefore, I am having no hesitation in setting aside the judgments and decrees of both the fora below.

In re D1's liability to vacate the premises:

17. The next phase of my analysis would be on the fact as to whether the plaintiffs are entitled to get D1 evicted. It is not in controversy that the three plaintiffs and the three defendants (D2 to D4) happened to be the owners of the suit property concerned. Since D2 to D4 did not co-operate with the plaintiffs for filing the suit, those persons were arrayed as defendants in the suit. The trial Court itself placing reliance on the exhibits marked on the side of the plaintiffs, would hold that the initial period of 20 years got renewed for another period of twenty years, which got expired by 31.07.2003 itself. It is not in dispute that even before the expiry of the tenancy period by 31.07.2003, intimation was given to the first defendant by the plaintiffs vide Ex.A4 for vacating the premises. However, as per Ex.A3, D1 opted to get the lease period extended by 30 more years. The trial Court in its judgment simply referred to Section 5(2) read with

7(3) of the Burmah shell (Acquisition of Undertakings in India) Act, 1976, ignoring the fact that in Ex.A3, the letter dated 22.05.2003, there is no such reference to the said Act. Not to put too fine a point on it, absolutely there is nothing to show that from 31.07.2003 the lease was extended either for 20 years or 30 years. A fortiori, the question of D1 remaining in possession as a lease holder does not arise. Hence in this view of the matter, this Court would have no hesitation to order eviction of D1 from the premises as prayed for in the suit.

In re quantification of damages for use and occupation:

18. Regarding quantification of damages for use and occupation with effect from 01.08.2003 onwards till delivery of possession of the suit property, evidence is absolutely necessary. The appellant filed M.P.No.1 of 2012 under Order 41 Rule 27 of CPC for reception of additional documents for the purpose of getting the damages for use and occupation assessed by this Court, in view of the fact that both the fora below did not advert to the said fact and dismissed the suit on the ground of maintainability.

19. At this juncture, I call up and recollect Order 20 Rule 12 of CPC which amply provides for enquiry being conducted separately for assessing the damages for use and occupation.

20. Accordingly the plaintiffs could adduce evidence before the trial Court in support of their claim for damages for use and occupation and D1 also would be entitled to adduce rebuttable evidence as the case may be. It would not be proper for the Second appellate Court to entertain evidence afresh on that aspect and assess the quantum.

21. On balance,

(1) The first substantial question of law is answered to the effect that both the fora below were not justified in holding that the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 Act are applicable to this case. The first defendant is liable to vacate and hand over vacant possession of the suit property as prayed for in the plaint.

(2) The second substantial question of law is answered to the effect that the lower Court is directed to conduct enquiry as per Order 20 Rule 12 of CPC concerning the damages for use and occupation by D1 from 01.08.2003 till delivery of possession of the suit property.

(3) In view of the ratiocination adhered to above, I hold that both the Courts below decided the suit and the appeal erroneously.

22. In the result the appeal is allowed ordering eviction of D1 from the suit property and D1 is mandated to deliver vacant possession of the suit property of the plaintiffs after removal of the superstructures thereon.

23. The plaintiffs are at liberty to approach the lower Court for quantification of

damages for use and occupation with effect from 01.08.2003 till the date of delivery of possession by D1 in favour of the plaintiffs. To put this judgment on an even keel, inasmuch as already in the plaint itself there is a prayer for quantification of damages for use and occupation, I direct the lower Court itself to commence the enquiry on that aspect on appearance of the parties before the trial Court.

24. The parties are directed to appear before the lower Court on 23.08.2013.

25. In order to disambiguate the ambiguity if any, I would highlight and spotlight that here the decree of the High Court is only relating to eviction of D1 from the suit property and the rest of the claim for damages for use and occupation in the plaint shall be adjudged by the trial Court.

26. The learned counsel for D1 on hearing the pronouncement of the judgment would make an extempore submission seeking a year's time for vacating the premises. However, the learned counsel for the plaintiffs, would object to the same. I am of the considered view that till the end of this year time could be granted for D1 to vacate and hand over vacant possession of the suit property to the plaintiffs. However an affidavit to that effect shall be filed within 15 days from the date of receipt of a copy of this order by D1, as otherwise, the time granted for eviction would not enure to his benefit. The lower Court shall enquire into the damages for use and occupation within a period of three months from 23.08.2013 after entertaining evidence on both sides and hearing them thereon.

27. Accordingly, this Second Appeal is allowed with costs. Consequently connected miscellaneous petition is closed.