

(2010) 11 AHC CK 0390
In the Allahabad High Court
Case No : Writ Petition No. 67010 of 2010

Bharat petroleum Corporation Ltd. and Another	APPELLANT
Vs	
Commissioner, Agra Division and Others	RESPONDENT

Date of Decision : 25-11-2010

Acts Referred:

Petroleum Rules, 2002 — Rule 141, 144, 151, 153(1), 54(2)

Citation : (2010) 11 AHC CK 0390

Hon'ble Judges : V.K. Shukla, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

V.K. Shukla, J.—Present writ petition has been filed by the Petitioner, questioning the validity of order dated 28.04.2007 passed by Additional District Magistrate (Finance and Revenue) Agra cancelling the "no objection certificate" accorded in favour of Petitioners company and its affirmance in appeal by the Commissioner, Agra Division, Agra, annexures -6 and 16, respectively.

2. Brief background of the case is that the Bharat petroleum Corporation Ltd. Is a Government company incorporated under Companies Act, 1913, under the administrative control of the Ministry of Petroleum & Natural Gases of Union of India and engaged in business of refining, distribution and sale of essential petroleum products, such as Motor Spirit (MS), High Speed Diesel (HSD) either directly or through its dealers from the retail petroleum outlets set up by the Petitioner on the land owned by them or taken on lease on monthly rental. By a lease dated 18.09.1969 made between Ram Gopal Mathur, Jai Gopal Mathur and Shri Kanwar Gopal Mathur sons of Dr. har Gopal Mathur therein described as a "lessor" and Burmah Shell Oil Storage & Distribution Company of India Ltd., therein described as a "lessee" and herein called as "Burmah Shell", a piece of parcel of Nazul land ad-measuring 13386 sq. feet or 1487 sq. yards or 1243.41 sq. meter being premises No. 46, Mahatma Gandhi Road, Agra, herein after referred to as the "said lease land" was leased out in favour of Burmah Shell

(Predecessor in interest of the present Petitioner, M/S Bharat Petroleum Corporation Limited for a period of 20 years commencing from 1st January, 1967 on monthly rental of Rs. 400/-with renewal for further period of 20 years to commence from the date of expiry of lease period upon same terms and conditions. Said Burmah Shell constructed a sales room, installed underground storage tanks, dispensing pump and other assets required for sale of petroleum products to the general; public on the said land.

3. There after, Burmah Shell applied for a No Objection Certificate of the Collector and obtained such certificate for setting up a Retail Outlet at 46, Mahatma Gandhi Road, Agra. The Burmah Shell also made an application to the Chief Controller of Explosives and obtained a licence for storage of the petroleum products of the aforesaid retail outlet from the said place under Petroleum rules. After the said Retail Outlet of Burmah Shell became ready for sale of Burmah Shell's product there from for selling said products license dated 14th January, 1971 (hereinafter called first dealership license) was made between the said Burmah Shell and a partnership firm namely M/s Amar Autos formed by Shri Sardar Gur Baksh Singh and Shri Amar Dev Singh, the said partnership firm was appointed as a licensee of the said Burmah Shell to enter upon the said retail outlet of the said Burmah Shell and to sell the petroleum products of Burmah Shell.

4. On 24th January, 1976 by an Act of Parliament namely Burmah Shell (Acquisition to its undertakings in India) Act, 1976, the right, title and interest of said Burmah Shell in the said leased land and the assets installed or erected on the said leased land was transferred firstly in favour of President of India and thereafter by a notification issued under the said Act of 1976 in favour of the present Plaintiff. Thus, with effect from 24th January, 1976, BPCL became a lessee of the said leased land and owner of the structure and other assets installed or erected on the said leased land. Under the provision of the said Act of 1976 read with the notification issued under the said Act of 1976, the Petitioners became the licensor (in place of Burmah-Shell) and the said partnership firm (being the licensee appointed by the aforesaid license dated 14th January, 1971) became a licensee under the Petitioners and continued to sell Petitioner's petroleum products on the terms and conditions mentioned in the license by entering upon the said leased land and using the assets belonging to the Petitioners.

5. Shri Amar Deo Singh Sahnik purchased the said property from the State of U.P. vide sale deed dated 20.03.1998 subject tenancy right of Petitioners. Prior to expiry of 20 years lease period on 31.12.1986, Petitioner served notice for renewal of lease period for another 20 years from 01.01.1987. The lease dated 18th September, 1969 had expired on 31st December, 1986, and in spite of a renewal clause contained in the said lease deed and service of notice for renewal of lease period for another 20 years from 1.1.1987, no fresh lease was executed and registered. Petitioners claim that a lot of unreasonable demands were put up

by Amar Deo Singh Sahni and they were being harassed and victimized and in order to protect their interest, filed a suit being Suit No. 23 of 2007 in the court of Civil Judge (Senior Division) Agra, inter alia, praying for an order restraining Respondent No. 5 from dispossessing the Petitioners from the said land and /or causing any damage to the structures, machinery and dispensing unit, tanks, canopy etc, in any manner whatsoever except by due process of law and said suit is pending. In the said Suit No. 23 of 2007, Shri Amardev Singh Sawhney filed a counter affidavit stating that the said second license of 1996 stood terminated and accordingly the Respondents stopped running the outlet with effect from 1.1.2007 and that they are no longer interested to sell Petitioners' product. Thereafter civil suit being Suit No. 131 of 2007 in the court of Civil Judge (Senior Division), Agra, praying for a direction against Petitioners to remove Petitioners' assets from the said retail outlet premises and the said suit is still pending. BPCL also filed suit in the court of Civil Judge (Senior Division) Agra being Original Suit No. 225 of 2007 against Amar Autos and its partners, inter alia, for a decree of permanent injunction prohibiting the deponents from interfering with the Petitioners' right to continue its possession on 46, Mahatma Ganhdi Road, Agra, and from removing and throwing the petitioners' property from the said land. The said suit is also pending.

6. The Petitioners have given entire background of the litigation in between them and it appears from the record that complaint was moved for cancellation of no objection certificate given by the Collector in respect of Premises No. 46, Mahatma Gandhi Road, Agra. On the said complaint being made, the Additional District Magistrate Finance and Revenue, Agra sent a letter to the Petitioners, asking them to submit reply by 23.04.2007. On 23.04.2007 Petitioners requested for sending copy of the complaint dated 19.03.2007. Petitioners have contended that thereafter without giving any opportunity of hearing order was passed cancelling the no objection certificate. At the juncture, writ petition No. 22180 of 2007 was filed, whereupon this Court had relegated the Petitioners to the remedy of appeal under Rule 54 (2) of the Petroleum Rules, 2002. Petitioners thereafter preferred appeal under the aforesaid Rule before the Commissioner. Said appeal has been dismissed. At this juncture, present writ petition has been filed.

7. Sri Prakash Padia, learned counsel for the petitioners, contended with vehemence that in the present case action which has been taken is totally unfair action in the backdrop of the case and no opportunity, whatsoever, had been afforded to the petitioners Corporation before passing the order impugned, as such writ petition deserves to be allowed.

8. Countering the said submissions, learned standing counsel as well as Sri S.P. Gupta, Senior Advocate, assisted by Sri Vishal Khandelwal, on the other hand, contended that opportunity had been given to the petitioners, but the petitioners deliberately failed to avail of the said opportunity and they have got no right to continue in the premises in question, as such writ petition deserves to be

dismissed.

9. Chapter VII Rule 141 of the Petroleum Rules deals with grant of licence. Rule 142 deals with period for which licence may be granted or renewed. Rule 143 deals with application for licence; rule 144 deals with no objection certificate and rule 150 deals with cancellation of no objection certificate. For ready reference the provisions of Rules 144 and 150 are being extracted as below:

144. No objection certificate.-(1) Where the licensing authority is the Chief Controller or the Controller, as the case may be, an applicant for a new licence other than a licence in forms IIII, XI, XVII, XVIII or XIX shall apply to the District Authority with two copies of site plan showing the location of the premises proposed to be licensed for a certificate to the effect that there is no objection to the applicant receiving a licence for the sit proposed and the District Authority shall, if he sees no objection, grant such certificate to the applicant who shall forward it to the licensing authority with his application Form IX.

(2) Every certificate issued by the District Authority under Sub-rule (1) shall be accompanied by a copy of the plan of the proposed site duly endorsed by him under his official seal.

(3) The Chief Controller or the Controller, as the case may be, may refer an application nor accompanied by certificate granted under Sub-rule (1) to the District Authority for his observations.

(4) If the District Authority, either on a reference being made to him or otherwise, intimates, to the Chief Controller or the Controller, as the case may be, that any licence which has been applied for should not, in his opinion, be granted, such licence shall not be issued without the sanction of the Central Government.

(5) The District Authority shall complete his inquiry for issuing NO OBJECTION CERTIFICATE (NOC) under Sub-rule (1) and shall complete the action for issue or refusal of the NOC, as the case may be, as expeditiously as possible but not later than three months from the date of receipt of application by him.

(6) ...

150. Cancellation of no objection certificate.- (1) A no objection certificate granted under rule 1244 shall be liable to be cancelled by the District Authority or the State government, if the District Authority or the State Government is satisfied, that the licensee has ceased to have any right to use the site for storing petroleum:

Provided that before cancelling a no objection certificate, the licensee shall be given a reasonable opportunity of being heard.

(2) A District Authority or a State Government cancelling a no-objection certificate shall record, in writing, the reasons for such cancellation and shall immediately furnish to the licensee and to the licensing authority concerned,

copy of the order cancelling the no objection certificate.

10. A bare perusal of the provisions quoted above would go to show that an applicant for a new licence other than a licence in forms IIII, XI, XVII, XVIII or XIX shall apply to the District Authority with two copies of site plan showing the location of the premises proposed to be licensed for a certificate to the effect that there is no objection to the applicant receiving a licence for the sit proposed and the District Authority shall, if he sees no objection, grant such certificate to the applicant who shall forward it to the licensing authority with his application Form IX. A no objection certificate granted under Rule 1244 shall be liable to be cancelled by the District Authority or the State government, if the District Authority or the State Government is satisfied, that the licensee has ceased to have any right to use the site for storing petroleum. The only rider which has been attached is that before cancelling a no objection certificate, the licensee shall be given a reasonable opportunity of being heard.

11. Hon"ble Apex Court in the case of Yogesh Kumar and others Vs. M/s. Bharat Petroleum Corpn. Ltd. and others, had an occasion to consider the matter of grant of no objection certificate and its cancellation in reference to the provisions as contained under Rule 141 and 151, and view has been taken that no objection certificate granted under Rule 141 can be cancelled whenever licensee ceases to have any authority to use the site for storing petroleum and that right could be lost by a licensee either by his tenancy or right to use the site coming to an end or for any other reason whereby, in law, right to use the site for storing petrol ceases. Paragraph 4 of the said judgment being relevant is being quoted below:

4. The High Court has rightly observed that the District Authority under Rule 151 can cancel the No Objection Certificate only when the licensee ceases to have any fight to use the site for storing petrol. However, there are certain subsequent observations made by the High Court in the impugned judgment which might lead to an inference that so long as the licensee continues to have lease-hold rights on the site, the "No Objection Certificate" cannot be cancelled at all. That does not appear to be the correct position in law. On a reading of Sub-rule (1) of Rule 151 it is clear that a "No Objection Certificate" granted under Rule 144 can be cancelled wherever the licensee ceases to have any right to use the site for storing petrol and that right could be lost by a licensee either by his tenancy or right to the use of the site coming to an end or for any other reason where-by, in law, the right to use the site for storing petrol ceases.

12. Hon"ble Apex Court in the case of C. Albert Morris Vs. K. Chandrasekaran and Others, has once again considered the matter in respect of right to the site. Paragraphs 26, 32, 34, 40, 42 and 44 of the said judgment are being extracted below:

26. Though the arguments of the learned senior counsel appearing for the appellant are attractive on the first blush yet on a careful reconsideration of the same, it has no merits. The judgments cited by the learned senior counsel

appearing for the appellant are not only distinguishable on facts but also on law. Much argument was advanced on the receipt of the rent by the landlord after the cancellation of the lease. The consensus of judicial opinion in this country is that a mere continuance in occupation of the demised premises after the expiry of the lease, notwithstanding the receipt of an amount by the quondam landlord would not create a tenancy so as to confer on the erstwhile tenant the status of tenant or a right to be in possession. In this context, we may refer to judgment of this Court in *M/s. Raptakos Brett and Co. Ltd. Vs. Ganesh Property*, of the said judgment, this Court held as under:

13. In view of the aforesaid settled legal position, it must be held that on the expiry of the period of lease, the erstwhile lessee continues in possession because of the law of the land, namely that the original landlord cannot physically throw out such an erstwhile tenant by force. He must get his claim for possession adjudicated by a competent Court as per the relevant provisions of law. The status of an erstwhile tenant has to be treated as a tenant at sufferance akin to a trespasser having no independent right to continue in possession.

32. It is also seen from Annexure R-6 (page 33 of the paper book Vol.II) which is a notice sent by the landlord's advocate to the tenant-the Appellant herein on 21.2.1997 wherein it has been clearly stated in paragraphs 2,3 & 4 which read as under:

You were a tenant under my client in the property described in the schedule hereunder. My client states that as the period of lease expired on 30.9.1996 by agreement, my client had issued a notice dated 24.8.1996 determining the lease and directing you to vacate and handover possession of the schedule mentioned property. My client states that after the determination of lease your possession amounts to that of a trespasser and you are liable to pay compensation which is to be determined after your vacating the premises.

My client states that subsequent to the notice dated 24.8.1996, you have chosen to send three Banker's cheques dated 30.11.1996, 24.12.1996 and 29.1.1997, each for Rs. 4500/-. My client states that he had not consented for your continued possession of the schedule mentioned property in any manner. Hence my client apprehends that the banker's cheques being sent are a ruse to create the appearance of continuation of tenancy.

Hence take notice that my client will encash the banker's cheques already sent by you and any that might be sent in future under protest and that the payments made by way of such cheques will be adjusted towards the compensation payable by you and take notice that encashments of any cheques already issued and that might be issued in future should not be treated or considered as consent from my client for your occupying the schedule mentioned property.

We are, therefore, of the opinion that mere acceptance of rent by the landlord-Ist Respondent herein from the tenant in possession after the lease has been determined either by efflux of time or by notice to quit would not create a

tenancy so as to confer the erstwhile tenant the status of a tenant or a right to be in possession. We answer this issue accordingly.

34. On 24.8.1996, a notice was issued to the Appellant through the landlord's advocate calling upon the tenant to vacate and hand over the vacant possession of the Scheduled mention property and also to take necessary steps for removing equipments which have been installed on behalf of the tenant in the said property. The schedule given to the said notice reads as under:

"Schedule of property"

Vacant land measuring OH. 10A, 28Ca. (approximately 11.050 sq. ft.) forming part of Rs. No. 242/2 pt. In Thattanchavady revenue, Villager No. 34, in Oulgeret Commune, Pondicherry. Metes and Bound:

Bound on the north by land belonging to small industries service Institute on the west by house and lands belonging to Dicerot Kannagi, on the South by Pondi Thindivam Road, on the east by land belonging to Bicerct Kannagi measuring 22.5 meters on the North (east to West) 30.0 meters on the west (North to South) 7.5 meters plus 7.0 meters on the south (west to east) 19.0 meters on the east (south to north) 6.1 meters on the south (west to east) and 26.02 meters on the south (south to north) all measured continuously. This encloses an area of OH. 10A 28 Ca. (approximately 11.050 sq. ft.).

The instant case is based on 7.10.1986 lease deed entered into between the Appellant-tenant and the first Respondent-landlord. It was mutually agreed between the parties under Clause (d) as follows:

(d) In addition to the show room building of size 20x10 feet already constructed by the lessee, the lessee shall have the right to construct a compressor room, store room, a bath room and latrine together with a septic tank.

From the above recital, it is crystal clear that what was leased out was a vacant land and that the lessee was given a right to construct a compressor room, store room, a bath room and latrine together with a septic tank. Therefore, in our opinion, the provisions of The Pondicherry Buildings (Lease and Rent Control) Act, 1969 cannot be invoked. The said Act was enacted on 7.6.1969 to regulate the letting of residential and non-residential buildings and the control of rents of such buildings and the prevention of unreasonable eviction of tenants there from in the Union Territory of Pondicherry. The "Building" has been defined as under:

2(4) "building" means any building or hut or part of a building or but, let or to be let separately for residential or non-residentia purposes and includes

(a) the garden, grounds and out-houses, if any, appurtenant to such building, hut or part of such building or but and let or to be let along with such building or hut;

(b) any furniture supplied by the landlord for use in such buildingor hut or part of a building or hut, but does not include a room in a hotel or boarding house;

40. We have already referred to the observations of Patanjali Shastri, J. in the judgment in *Kai Khushroo Bezonjee Capadia v. Bai Jerbai Hirjibhoy Warden and Anr.* (supra). As already noticed, the judgment in the case of *Saleh Bros. v. K. Rajendran and Anr.*, (supra) refers to the consensus of the judicial opinion as to the present controversy being in favour of the Respondent-landlord and in turn refers to the judgment in *Karmani Industrial Bank Ltd. v. The Province of Bengal and Ors.* (supra) and *Konchada Ramamurthy Subudhi L. Rs. v. Gopinath Naik and Ors.* (supra) to show that the use of the word rent does not conclude the matter under the Federal Court judgment should be confined to the facts of the case in *Saleh Bros. v. K. Rajendran and Anr.*, (supra) at page 170 and the latter paragraph referring to the judicial opinion of the High Courts of India. We have already extracted the relevant paragraphs in the above two judgments in paragraphs supra. We have already referred to the arguments advanced by both the parties in regard to the nature of tenancy and the statutory protection. It is abundantly clear from the recitals in the plaint, the schedule to the notice and to the plaint and also of the lease deed that word "leased out" was only a vacant site to put up a petrol bunk with accessory constructions thereon. The mention of a small shed in the current lease is undoubtedly belonged to the tenant himself and, therefore, the building put up by the tenant situated in the vacant site belongs to the landlord cannot be said to be the building of the landlord in order to attract the statutory protection of the Rent Control Act. This issue is, therefore, answered against the tenant.

42. The argument of Mr. L.N. Rao, learned senior counsel appearing for the Appellant that the words "right to site" appearing in Rule 153(1) of the Petroleum rules must be given liberal interpretation having regard to the public interest subserved by the Petrol bunks which are essential for the smooth flow of goods and services as also for the movement of persons. Rule 153(1) (i) of the Petroleum Rules is "right to the site" for storing petroleum. It is not the right for storing petroleum on the site. That is so because that aspect is dealt with specifically in Sub-clause (ii) of Rule 153(1) which refers to a no objection certificate, which the District authority or the State Government is required to give. No Objection Certificate which is granted under Rule 144 is the one given by the concerned authority stating that it has no objection for the storage of petroleum on the site after examining the site plan and other relevant factors. The words "right to the site" have, therefore, to be understood as referring to right to the site on which the petroleum is stored. A person can be said to have a right to something when it is possible to find a lawful origin for that right. A wrong cannot be a right of a person who trespasses on to another's land cannot be said to have a right to the land vis-a-vis the owner because he happens to be in possession of that land. Mere presence on the land by itself does not result in a right to the land. 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.

44. We now come to the last contention of Mr. L.N. Rao that the first Respondent

is not entitled to maintain the writ petition as the proceedings initiated by him before the Collector for cancellation of the No Objection Certificate is pending. The said submission cannot be accepted. While granting NOC, the Collector is not concerned about the ownership of the land. He is concerned about the location of the land and its suitability as a place for storage of petroleum. Rule 144 deals with the grant of NOC does not contemplate an enquiry into the ownership of the land nor does it require the Collector to enquire into the nature of the right claimed by the person who has applied for the NOC. We, therefore, uphold the judgment and final order passed by the Division Bench dated 7.10.2003 in Writ Appeal Nos. 1149 & 2140 of 2002 for the reasons given by us in this judgment.

13. On the parameters as set out by Hon'ble Apex Court, this much is clear that while dealing with the grant of no objection certificate, the competent authority has to see that the location of the premises was fit for storage of petroleum, whereas at the point of time of passing order of cancellation of no objection certificate, it has to see that the licensee has ceased to have any right to use the site for storing petroleum.

14. In the present case, this much is accepted position from the record of writ petition that the lease period in favour of petitioners corporation was for 20 years and the same has expired and the same has not at all been renewed till date and to the contrary record in question reflects that the respondents have made the intention very clear that they do not intend to extend the lease period any further. Lease period of the site has expired and the respondents have refused to renew the lease and have required the petitioner to surrender their possession, then in the facts of case it cannot be said that the petitioners have any right to the site. Once whatever defence had been set up by the petitioners is covered by the judgment of Hon'ble apex Court, and on admitted position lease period has come to an end, and lessor having not renewed the lease and has required the petitioner to surrender possession, then it cannot be said that the said authorities have committed any error in cancelling the no objection certificate. Satisfaction recorded is rightful satisfaction, in the facts of the present case.

15. Petitioners are emphasising on the fact that reasonable opportunity had not been afforded to them. In the present case, record reflects that show cause notice was given to them on 10.04.2007 by the Additional District Magistrate, Agra. On 23.04.2007 request was made for supply of copy of letter dated 19.03.2007. This is accepted position that on 25.04.2007 entire records were examined by the authorities of the Petitioners and even after examination of entire record, at no point of time, they said any thing in the matter nor prayed for further time to submit reply. Show cause notice was given to them asking them to show cause, they asked for the complaint and qua the same they were permitted to peruse the entire record, and thereafter no request was made for any further time, and then order impugned was passed. Thus, reasonable opportunity had been given, but the same has not been availed of. In the present case neither in the entire body of writ petition nor in the memo of appeal,

nowhere it has been mentioned that the records in question had not been examined by the Petitioners on 25.04.2007 and to the contrary record in question reflects that entire record was perused by them and deliberately no reference has been given of the said examination of record. In the facts of the case, it cannot be said that reasonable opportunity had not been afforded to the Petitioners.

16. In such a situation and in this background, present writ petition lacks substance and the same is dismissed.