

(2009) 12 MAD CK 0014

In the Madras High Court

Case No : OSA. No. 445 of 2009 and M.P. No. 1 of 2009

Bharat Petroleum Corporation Ltd. and Others

APPELLANT

Vs

H.A. Mohd. Alumuddin and Others

RESPONDENT

Date of Decision : 22-12-2009

Acts Referred:

Burmah Shell (Acquisition of Undertakings in India) Act, 1976 — Section 2, 5(2)
Madras City Tenants Protection Act, 1922 — Section 12, 2, 2(4), 3, 9, 9
Presidency Small Cause Courts Act, 1882 — Section 41
Transfer of Property Act, 1882 — Section 107

Citation : (2010) 1 LW 930

Hon'ble Judges : Prabha Sridevan, J;M. Sathyanarayanan, J

Bench : Division Bench

Advocate : O.R. Santhanakrishnan, for the Appellant; R. Parthasarathy, for the Respondent

Final Decision : Dismissed

Judgement

Prabha Sridevan, J.—The Appellants filed Section 9 application under the Madras (Chennai) City Tenants Protection Act, 1921 (in short

"the Act). Learned Single Judge, after hearing the matter in detail, came to the conclusion that the application was barred by limitation and hence

dismissed the application. Therefore, they have filed this appeal.

2. The Appellants claimed to be "tenants" under the Respondents according to Section 2(4)(ii)(b) of the Act. They claimed that the superstructure

over the Schedule II property had been put up by the predecessor-in-title of the Appellants/Defendants 1 to 3. According to them, the tenancy

commenced long before the applicability of the Act as early as 1.6.1969, and that therefore they are in actual physical possession of the suit

property. It is also stated by them that ""Global Agencies"" which is admittedly

the entity in possession is a licensee and they have been granted permission by the Appellant to carry on the business as a dealer of the first Respondent/first Defendant Corporation. Therefore, pending C.S. No.

121 of 1998 for ejectment, this application has been filed in the year 2009.

3. In the counter affidavit, the Respondents contended that the application u/s 9 of the Act is hopelessly barred by limitation. A specific ground was

taken that the protection under the Act was available only to the tenants who are in actual physical possession of the property and that admittedly,

the applicants are not running the Petrol Pump outlet and admittedly a third party is in occupation of the same as a licensee and hence the

application should be dismissed on that ground also. Further it was seriously disputed whether the applicants had put up superstructure in the

Schedule II mentioned property.

4. To this, a reply was filed by the Appellants that the applicants were under the statutory protection of the provisions of Burmah Shell (Acquisition

of Undertakings in India) Act, 1976 (Act 2 of 1976) (1976 Act in short) from 1.6.1989 till 31.5.2009. The application was filed on 8.6.2009, on

which date, the Court reopened after summer vacation and as such the present application is not barred by limitation.

5. When the matter was listed for admission, learned Counsel for the Appellants was directed to serve notice on the counsel for the Respondents.

6. Heard the learned Counsel for the Appellants and the learned Counsel for the Respondents.

7. Since the Appellants had a statutory protection under 1976 Act, as it is a special statute, it will override the provisions of Transfer of Property

Act. Admittedly, this ground was not raised earlier. In Bharat Petroleum Corporation Ltd., v. Maddula Ratnavalli and Ors. reported in (2008) 2

MLJ 561 : 2008 (1) L.W. 165 (SC) , the Supreme Court held that since the 1976 Act is a special statute, it will override the provisions of Section

107 of Transfer of Property Act. This was because Section 5(2) of 1976 Act gave a right of renewal, which is a special right and Section 11 of the

1976 Act also provides for a non-ob-stante clause.

8. In this case, apart from stating that the Appellants had a statutory protection under the 1976 Act and therefore, the Tamil Nadu City Tenants

Protection Act cannot be invoked, the learned Counsel did not explain how the

provisions of the 1976 Act will override the City Tenants

Protection Act. Even in the decision in 2008 2 MLJ 561, the Supreme Court observed that whatever right, title and interest, the company had,

would vest in the Central Government after the 1976 Act came into force and that therefore the lease of immovable property would also vest with

the Appellants. What follows is that if Burma Shell company which was the original tenant, was "a tenant" as defined by the City Tenants

Protection Act had any right, the Appellants will have the same right; because after the 1976 Act, the right, title and interest of the Burmah Shell

vested in the Central Government and consequently in the Appellant company. Whatever rights or liabilities the Burmah Shell had, they will now be

enjoyed by the Appellant company. There is no provision in the 1976 Act which can be construed as contrary to the provisions of City Tenants

Protection Act, for us to hold that the 1976 Act will override the City Tenants Protection Act.

9. As regards the question of limitation, learned Counsel submitted that since they had statutory protection till 30.5.2009, it was not necessary to

file the application earlier. He relied on Meghraj Vs. Jesraj Kasturjee and Another, wherein it was held that a written application for condoning the

delay is not necessary and the duty of the Court is to render justice, even without a separate application. In the present case, there is no plea, not

even a tacit one, for condonation of delay except for the so called explanation, as set out in Paragraph 4 of the reply affidavit filed to the

application.

4. I deny the allegation in para 3 that the present application is barred by limitation. On the other hand I state that the present application is not

barred by limitation and I crave leave to refer to the affidavit filed in the above application wherein it has been stated that since the

applicants/Defendants were under statutory protection under the provisions of Act 2/1976 from 1.6.1989 till 31.5.2009, the application has been

filed on 8.6.2009 on which date the court reopened after summer vacation. As such, the present application is not barred by limitation and hence

perfectly maintainable

10. The 1976 Act neither explicitly nor impliedly prevent the Appellants from exercising their rights under the City Tenants Protection Act.

Therefore, the mere statement that they had the statutory protection from 1.6.1989 to 31.5.2009 does not explain the delay. The protection that

they had may at best be a right to insist upon renewal. If the Appellants were entitled to file an application u/s 9 of "the Act", the Central Act did

not place any embargo on this right and therefore the application filed beyond time must be held to be barred by limitation.

11. In Hindustan Petroleum Corporation Ltd., v. Devaraj Chordia reported in AIR 2005 Mad 284 relating to a similar Public Sector Undertaking

governed by ESSO (Acquisition of Undertaking in India) Act (4 of 1974) which is in pari materia with Burmah Shell Act which is the 1976 Act,

the Division Bench of this Court bemoaned the fact that the Public Sector Undertaking had ignored the law and had continued in possession for

sixteen years beyond the term of lease. In that case too, as in the case on hand the undertaking was let in as a tenant in 1969.

12. There is no doubt that the Appellants are not in actual physical possession of the property, so they cannot maintain the petition u/s 9 of the Act.

Without actual physical possession, the benefits under the City Tenants Protection Act cannot be claimed. This has been held so in the following

decisions:

1. P. Ananthakrishnan and Anr. v. Dr. G. Ramakrishnan and Anr. reported in AIR 1987 SC 1272 : (1987) 2 SCC 429

2. S.R. Radhakrishnan and Others Vs. Neelamegam,

3. Hindustan Petroleum Corporation Ltd. Vs. Spencer and Company Ltd.,

4. Hamsa Patel and Others Vs. S. Balakrishnan and Another,

5. Malini Parthasarathy v. Hindustan Petroleum Corporation Limited (2007) 2 MLJ 416 : 2007 (1) CTC 67

6. R. Chandramouleeswaran and Others Vs. P. Vasudevan and Others,

7. P.R. Aithala alias P. Ramakrishna Aithala Vs. Hindustan Petroleum Corporation Limited

13. The Supreme Court in P. Ananthakrishnan's case (cited supra) held as follows:

Section 9 confers an additional statutory right on a tenant against whom suit for ejectment is filed to exercise an option to purchase the demised

land through the medium of Court on fulfilment of conditions specified therein, it is not an absolute right, as the Court has discretion to grant or

refuse the relief for the purchase of the land. The tenant has no vested right in the property, instead it is a privilege granted to him by the statute which is equitable in nature.

14. In S.R. Radhakrishnan's case(cited supra), the Supreme Court held as follows:

14. ...As already noted, Section 9 read with Section 3 of the Act makes it imperative that the tenants should be in possession of the premises with

respect to which the right to purchase is sought to be exercised. If a tenant is not to hand over possession of the suit premises to the landlord at the

time of ejectment there is no question of payment of any compensation to him u/s 3 of the Act. If he is not entitled to compensation u/s 3 of the

Act, he cannot invoke Section 9 of the Act.

15. In P.R. Aithala alias P. Ramakrishna Aithala v. Hindusthan Petroleum Corporation Limited (cited Supra), the Division Bench of this Court

considered the definition of the word ""Tenant"" appearing in Section 2(4) of the Madras City Tenants' Protection Act, 1921 and held in Paragraph

11 as follows:

Therefore, the long line of decisions referred to above clearly point out one thing and that is, if a tenant wants to get the benefit u/s 9 of the Tamil

nadu Tenants Protection Act, he must be in actual physical possession of the land and building and the tenant or his predecessors in interest ought

to have erected that building

Therefore, it has been repeatedly held that without being in actual physical possession, no one can claim benefits u/s 9 of the Tamil Nadu Tenants'

Protection Act.

16. Considering the facts and circumstances of the case, we are of the view that when the summons was served on the Appellant, there was no

statutory bar or nothing prevented the Appellants from filing a petition u/s 9 of the Act which ought to have been filed within one month from the

date of receiving summons. The suit was filed in the year 1998 and the application was filed eleven years thereafter. There is no denial that the first

Appellant received summons on 16.4.1998 and Appellants 2 to 4 had received summons on 11.3.1998 and yet the application u/s 9 was filed only

on 8.06.2009.

17. Sections 2 and 9 of the Tamil Nadu City Tenants Protection Act read as follows:

Section 2: Definitions-In this Act, unless there is anything repugnant in the subject or context-

(4) "Tenant" in relation to any land-

(i) means a person liable to pay rent in respect of such land, under a tenancy agreement express or implied, and

(ii) includes -

(a) any such person as is referred to in Sub-clause (i) who continues in possession of the land after the determination of the tenancy agreement,

(b) any person who was a tenant in respect of such land under a tenancy agreement to which this Act is applicable under Sub-section (3) of

Section 1 and who or any of his predecessors in interest had erected any building on such land and who continues in actual physical possession of

such land and building, notwithstanding that-

(i) Such person was not entitled to the right under this Act by reason of the proviso to Section 12 of this Act as it stood before the date of the

publication of the Madras City Tenants' Protection (Amendment) Act, 1972 (Tamil Nadu Act IV of 1972), or

(2) a decree for declaration or a decree or an order for possession or for similar relief has been passed against such person on the ground that the

proviso to Section 12 of this Act as it stood before the date of the publication of the Madras City Tenants' Protection (Amendment) Act, 1972

(Tamil Nadu Act IV of 1972) disentitled such person from claiming the rights under this Act, and

(c) The heirs of any such person as is referred to in Sub-clause (i) or Sub-clause (ii) or (ii)(b);

but does not include a sub-tenant or his heirs).

Section 9"" APPLICATION TO COURT FOR DIRECTING THE LANDLORD TO SELL LAND:

(1)(a)(i) Any tenant who is entitled to compensation u/s 9 against whom a suit in ejectment has been instituted or proceeding u/s 41 of the

Presidency Small Causes Courts Act, 1882, taken by the landlord may, (within one month of the date of the publication of Madras City Tenants

Protection Amendment Act, 1979 in the Tamil Nadu Government Gazette or of

the date with effect from which this Act is extended to the
municipal town township or village in which the land is situate or within (one
month) after the service on him of summons apply to the Court for an
order that the landlord shall be directed (to sell) for a price to be fixed by the
Court; the whole or part of the extent of and specified in the
application
emphasis supplied

Therefore, Section 9 application is hopelessly time barred. It is also admitted in
the affidavit that it is ""Global Agencies"" which is in possession of
the premises. Therefore, it is clear that Appellants are not in possession.

18. The Appellants claim that they are tenants as defined u/s 2(4)(ii)(b) of the
Act, as seen from the grounds of appeal where they have stated that
the Appellants are ""tenants"" under the meaning of Section 2(4)(ii)(b) of the
Tamil Nadu City Tenants Protection Act"".

19. In the aforesaid paragraphs, we have given reasons (a) why the Section 9
application is time barred and (b) why the Appellants are not tenants
as defined u/s 2(4)(ii)(b) of the Act. The original Side appeal is dismissed. No
costs. Consequently. M.P. No. 1 of 2009 is also dismissed.