
(2006) 08 CHH CK 0013
In the Chhattisgarh High Court
Case No : Second Appeal No. 546 of 1994

Bharat Petroleum Corporation Ltd.

APPELLANT

Vs

Anurag Agrawal

RESPONDENT

Date of Decision : 02-08-2006

Acts Referred:

Burmah Shell (Acquisition of Undertakings in India) Act, 1976 — Section 5(1), 5(2), 7(1), 7(3)
Caltex Acquisition of Shares of Caltex Oil Refining (India) Limited and of the Undertakings in India of Caltex (India) Limited Act, 1977 — Section 7
Civil Procedure Code, 1908 (CPC) — Section 100
Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 — Section 12, 12(1)

Citation : (2006) 3 CGLJ 448

Hon'ble Judges : Sunil Kumar Sinha, J

Bench : Division Bench

Advocate : Shrikumar Agrawal and Anand Gupta, for the Appellant; Prafull Bharat, for the Respondent

Final Decision : Dismissed

Judgement

Sunil Kumar Sinha, J.—This is the Defendant's, second appeal, who lost in both the courts below. It arises out of judgment and decree dated 22.7.1994 passed by the District Judge, Bastar, Jagdalpur, in Civil Appeal No. 5-A/1990 arising out of judgment and decree dated 26.10.1990 passed in Civil Suit No. 39-A/1989 by the Additional Civil Judge, Class-I, Jagdalpur, Distt. Bastar. This appeal was admitted for hearing on 12.9.1995 on the following substantial questions of law:

(1) Whether the lease coupled with licence granted in favour of the present Appellant was irrevocable ?

(2) If yes, whether a suit under the M.P. Accommodation Control Act was not competent ?

2. The facts, briefly stated, are that the Plaintiff filed the suit for arrears of rent and eviction from the tenanted accommodation, which is an open land, on which

the Defendant is running a retail petroleum outlet. The plaint allegations are that this land was previously owned by one Shri Abbas Ali Jama, from whom the Plaintiff had purchased it through a registered sale deed dated 28.11.1983 and consequently, he became the landlord thereof. On a need to construct a house, the Plaintiff required the said land and for this, he terminated the tenancy of the Defendant by sending a notice with effect from 31.10.1984. When the premises was not vacated, even after the said termination, the Plaintiff had to file the suit mainly based on Section 12(1)(n) of the M.P. Accommodation Control Act, 1961. The Defendant denied the claim of the Plaintiff. It was pleaded that its tenancy cannot be terminated by the said notice with effect from 31.10.1984. The Defendant pleaded that para 4(b) of the lease deed dated 10.10.1975, which was the first lease deed in relation to the said accommodation, provides that if the lessee i.e., the Defendant shall be desirous of taking a renewal of lease of the demised premises, upon the expiration of the term granted by the lease deed dated 10.10.1975, then the lessor shall on receipt of a notice in writing to that effect, grant lease i.e., a fresh lease of the demised premises for one further periods not exceeding 5 years each at the same rent and upon the same terms and conditions in all respects as contained in the lease deed dt. 10.10.1975. In fact, the Defendant claimed its right of renewal on its desire u/s 5(2) and 7(3) of The Burmah Shell (Acquisition of Undertakings in India) Act, 1976 (hereinafter referred to as the Act). Its contention was that it is not correct to interpret that the Defendant could claim only one renewal of the lease, as is being interpreted by the Plaintiff. It contended that the Defendant shall be entitled to continue to occupy and use the demised premises for such further period as it may desire notwithstanding whether a fresh lease has been executed and registered or not by the lesser. The Defendant had also taken a plea that the provisions of the M.P. Accommodation Control Act, 1961 would not be made applicable in this case in view of the provisions of the aforesaid Act.

3. The learned trial court after framing issues and recording evidence of the parties decreed the suit of the Plaintiff holding that the provisions of M.P. Accommodation Control Act were applicable in this case and the Plaintiff needed the said accommodation for constructing a house on it. It was also held that since there was a clause of renewal on desire for 5 years only in the lease deed dated 10th of October 1975 and the Defendant was holding the possession since 1st of November 1974, therefore, in any case this lease cannot be deemed to be effective after 31.10.1984 and the Defendant cannot seek protection under Sections 5(2) and 7(3) of the aforesaid Act and the lease stands terminated from the said date.

4. Against the aforesaid judgment and decree passed by the trial Court, the Defendant filed an appeal before the lower appellate Court, but the lower appellate court dismissed its appeal confirming the judgment and decree passed by the trial Court. It is against this judgment and decree, passed by the lower appellate court, the Defendant has preferred this second appeal u/s 100 of the Code of Civil Procedure.

5. Learned Counsel for the Appellant argued that the aforesaid lease granted in favour of the Defendant was irrevocable and in view of the above provisions of the Act, its right to renew on desire was protected and a suit based upon the provisions of the M.P. Accommodation Control Act was not competent. He relied on a decision of the Apex Court rendered in the matter of Bharat Petroleum Corporation Ltd. Vs. P. Kesavan and Another, .

6. Per contra, learned Counsel for the Respondent argued that in terms of the relevant provisions of the Act, only one right of renewal on desire was permissible, which shall be taken to have been availed by the Defendant/Appellant after expiry of period of first 5 years of the tenancy and by virtue of being in possession for the next 5 years also, which ended on 31.10.1984. The Appellant cannot seek protection raising the plea that the aforesaid lease granted in its favour was irrevocable. He referred to the decision of the Apex Court in the matter of Hindustan Petroleum Corporation Limited and Anr. v. Dolly Das.

7. A perusal of the lease deed (Ex.P-1) would show that it was a deed for a term of 5 years commencing from the 1st day of Nov. 1974. In Clause (b) of para 4 of the said deed, it was provided that if the lessee shall be desirous of taking a renewal lease of the demises premises upon the expiration of the terms hereby granted, then, the lessor shall on receipt of notice in writing to that effect, grant to the lessee a fresh lease of the demises premises for one further periods not exceeding 5 years each at the same rent and upon the same terms and conditions in all respects as are referred and contained herein. It also provides that the lessee shall be entitled to continue to occupy and use the demised premises for such further period as of may desire notwithstanding whether a fresh lease has been executed and registered or not by the lesser.

8. This lease deed was executed on 10th of October 1975. The Burmah Shell (Acquisition of Undertakings in India) Act, 1976 came into force on 24th of January 1976. It has been provided by Sub-section (1) of Section 5 of the aforesaid act that where any property is held in India by Burmah Shell 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. Sub-section (2) of Section 5 further provides that on the expiry of the term of any lease or tenancy referred to in Sub-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 Burmah Shell immediately before the appointed day.

9. As held by the Apex Court in Bharat Petroleum Corporation v. P. Kesavan's case (supra), Sub-section (1) of Section 5 of the Act provides for a legal fiction in terms whereof the Appellant became a lessee in respect of the leased property. The said Act is a special statute and by reason of the provisions thereof, the

right, title and interest of Burmah Shell vested in the Central Government and consequently upon the Appellant's Company. The lease of the immoveable property is also an asset and/or right in an immoveable property. The leasehold right, thus, held by Burmah Shell vested in the Appellant. By virtue of Sub-section (2) of Section 5 of the Act, a right of renewal was created in the Appellant in terms whereof in the event of exercise of its option, the existing lease was to be renewed for further term on the same terms and condition. The Apex Court held in the said judgment that the said Legislative Scheme contained in the said Act leads to only one conclusion that if the Government Company expresses its desire to renew the lease, the same would stand renewed on the same terms and conditions. The Apex Court laid down vide para 19 in the said judgment that Section 5(2) and 7(3) of the Act are required to be given its purposive meaning, having regard to the object and purport the statute seeks to achieve. The Central Government by reason of the provisions of the said Act required running business undertakings dealing in distribution and marketing of petroleum products. The leases or tenancy for outlets are, therefore, continued to be kept with the Central Government or the government company, as the case may be, so that no let or hindrance is placed in the matter of distribution of the products from established retail outlets, unless alternate arrangements are made. The Apex Court further held that in view of the above back ground, it is difficult to construe Section 5(2) of the Act as not laying down a law not contemplating automatic renewal of the lease.

10. Now the question raised is, as to how many times, the right of renewal on desire can be exercised. Admittedly, this has not been specifically mentioned in Sub-section (2) of Section 5 of the said Act nor there is any prohibition in the Act in this regard. The relevant provisions of the Act, as stated above, only contemplate about the renewal on desire on the terms and conditions on which the lease or tenancy was held by Buraiah Shell immediately before the appointed day. It no where prohibits the renewal for more than one term. While dealing with the matter of Bharat Petroleum Corpn. v. P. Kesavan's case (supra), the apex Court said in para 23 that as per the statement of the counsel appearing in that case, the . Appellant was not interested in having second renewal and the possession of the leasehold shall be handed over to the Respondent after tenure of the renewed lease. This also gives some support to the contention that more than one renewal was possible as the same was no where prohibited.

11. Learned Counsel for the Respondent vehemently relied upon the judgment of the Apex Court in Hindustan Petroleum Corporation's case (supra) and referring to para 12, he argued that in terms of Section 7 of the Caltex [Acquisition of Shares of Caltex Oil Refining (India) Limited and of the Undertakings in India of Caltex (India) Ltd.] Act, 1977 (hereinafter referred to as the Act 1977), the right to renewal was for only once which would be deemed to have been availed in this case by efflux of time. The Apex Court while dealing with the aforesaid matter said in para 12 that the Appellant gave notice of renewal in terms of the provisions of (i) the deed in the letter dated 23.5.1979 and (ii) the Act in latter

dated 13.9.1989. The Apex Court observed that in the facts and circumstances of that case, it was not necessary to examine the effect of renewal of the earlier period as even on Appellant's own showing it is invoking the statute in the latter notice and not the terms of the deed and in that situation the Apex Court observed that 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.

12. While dealing with a matter under the said Act 1977, the Division Bench of the High Court of Madhya Pradesh held in *Manohar Singh and Another Vs. Caltex Oil Refining (India) Ltd., Bombay and Others*, that the Central Government by the provisions of Sub-section (1) of Section 7 of the aforesaid Act only gets that right under a lease which the Caltex (India) had under it. So if the Caltex (India) had a right to renew the lease, the Central Government could have renewed it. In the said case, however, the lease provided for only one renewal which right had already been exercised by the Caltex (India) and in the said situation it was observed that the lease, therefore, could not have been renewed under that provision. The Division Bench said that Sub-section (3) of Section 7 of the said Act 1977, however, confers an additional power on the central government to renew or continue a lease on its expiry. The High Court said that the words "if so desired by the Central Government" as used herein are *prima facie* wide, but they should be considered in the context that Sub-section (3) is an ancillary provision to enable the Central Government to continue the business of the undertakings of the Caltex (India) after their vesting. The words "if so desired" in the opinion of the said Court read in the context mean "if so needed". The High Court said that it is quite likely that immediately after Caltex (India) were taken over by the Central Government it could not be possible to obtain suitable alternative premises for continuing business activities of the undertakings of the Caltex (India) and, therefore, the central Government had to be armed with the power to get the leases and tenancies renewed or continued after their expiry under Sub-section (3). Hence, the power under Sub-section (3) for renewing or continuing a lease/tenancy can be exercised if the subject matter of the lease or tenancy is really needed for continuing business and in this context the High Court said that the power conferred under Sub-section (3) cannot be held to be arbitrary as it can be used only for sub serving the purpose for which it has conferred. Sub-section (3) of Section 7 of the said Act 1977 is in *pari-materia* with Sub-section (2) of Section 5 of the Act of 1976.

13. Here in the present case, the lease deed contains a clause of renewal for further periods also, as referred to above. Therefore, in view of the right protected u/s 5(2) of The *Burmah Shell (Acquisition of Undertakings in India) Act, 1976*, and also in view of the agreed right to get renewal for further more terms on desire being an essential clause of the lease deed, the Appellant was only entitled on its desire for further renewal in terms of Sub-Clause (b) of Para 4 of the lease deed but it cannot be said that the lease was irrevocable and I hold it accordingly.

14. Now the question arises as to whether a right of further renewal on desire created in favour of the Appellant either by an agreement or by a statutory protection can deprive the other party from bringing a suit for eviction under the provisions of M.P. Accommodation Control Act 1961 (hereinafter referred to as the Act 1961)?

Section 12 of the aforesaid Act of 1961 provides for restrictions on eviction of tenants. Sub-section (1) of this section provides that notwithstanding anything to the contrary contained in any other law or contract, no suit shall be filed in any civil Court against the tenant for his eviction from any accommodation except on one or more of the grounds referred thereunder. The phraseology used like "notwithstanding anything to the contrary contained in any other law or contract" makes it clear that it is non-obstante clause. A clause beginning with "notwithstanding anything contained in this Act or in some particular provision in the act or in some particular Act or in any law for the time being in force", is appended to a section in the beginning, with a view to give the enacting part of the section in case of conflict an overriding effect over the provision or Act mentioned in the non-obstante clause. It is equivalent to saying that in spite of the provision or Act mentioned in the non-obstante clause, the enactment following it will have its full operation or that the provisions embraced in the non-obstante clause will not be an impediment for the operation of the enactment. The phrase "notwithstanding anything in" is used in contradistinction to the phrase "subject to". (Please see Principles of Statutory Interpretation by Justice G.P Singh, Sixth Edition, 1996. Pg.236). Hence, the provisions of this Rent Enactment has an over-riding effect. Therefore, even if there is a contract for a stipulated term, this law gives a right to the landlord, to initiate action for eviction if either of the grounds provided in Section 12(1) are available and if it is held otherwise, it would render the non-obstinate clause redundant.

15. In the instant case, as I have already held, a right of further renewal is preserved with the Defendant and this right after first renewal, at the most, can be classified as a contractual right and the fact remains that the contractual right cannot obliterate the provisions of any special statute. When the landlord seeks to enforce his right under the statute, the contract to the contrary cannot be set up as a defence because, to that extent the contract stands eclipsed by the statute.

16. Therefore, in the present facts and circumstances of this case against a contractual right of further renewal on desire, the landlord was having full right to maintain a suit for eviction u/s 12(1) of the Act 1961 and I hold that the suit filed by the landlord was maintainable. Needless to say that the two courts below have concurrently come to the conclusion that the landlord had made out a ground u/s 12(1)(n) of the Act of 1961 and on this, they have passed a decree for eviction.

17. In view of what has been stated above, there is no merit in the appeal and the same is dismissed. However, there shall be no orders as to cost.