

(2010) 07 MAD CK 0217

In the Madras High Court

Case No : CRP NPD (MD) No. 1156 of 2010 and MP (MD) No. 1 of 2010

Bharat Petroleum Corporation Ltd.

APPELLANT

Vs

Jeyapaul and Others

RESPONDENT

Date of Decision : 20-07-2010

Acts Referred:

Madras City Tenants Protection Act, 1922 — Section 2(4), 9, 9(1)

Citation : (2010) 07 MAD CK 0217

Hon'ble Judges : A. Selvam, J

Bench : Single Bench

Advocate : O.R. Santhakrishnan, for the Appellant; M. Vallinayagam, for the Respondent

Final Decision : Allowed

Judgement

A. Selvam, J.—The concurrent orders passed in I.A. No. 50 of 2009 in Original Suit No. 93 of 2006 by the Principal District Munsif Court, Tirunelveli and in CMA. No. 6 of 2010 by the principal Sub Court, Tirunelveli are being challenged in the present civil revision petition.

2. The respondents herein as plaintiffs have instituted Original Suit No. 93 of 2006 on the file of the trial Court for the reliefs of recovery of possession, past and future damages wherein the present revision petitioner has been shown as sole defendant. During pendency of the same, the revision petitioner/defendant as petitioner has filed I.A. No. 50 of 2009 u/s 9 of the Chennai City Tenants' Protection Act, 1921. The trial Court after considering the rival contentions raised on either side has dismissed the petition. Against the dismissal order, the revision petitioner/petitioner/ defendant as appellant has filed CMA. No. 6 of 2010 on the file of the first appellate Court.

3. The first appellate Court after hearing both sides and upon reappraising the available evidence, has dismissed CMA. No. 6 of 2010 and thereby confirmed the order passed in I.A. No. 50 of 2009 in Original Suit No. 93 of 2006. Against the

concurrent orders passed by the Courts below, the present civil revision petition has been preferred at the instance of the petitioner/defendant as revision petitioner.

4. Before perpending the rival submissions made by either counsel it has become shunless to perorate something about Original Suit No. 93 of 2006, Original Suit No. 93 of 2006 has been instituted for the reliefs of recovery of possession, past and future damages wherein the present revision petitioner has been described as a tenant of the plaintiffs.

5. The revision petitioner/petitioner/ defendant has filed the petition in question u/s 9 of the said Act, wherein it has been stated that the revision petitioner/petitioner/ defendant has put up structure in the suit property and the revision petitioner/petitioner/defendant is in continuous physical possession and enjoyment of the same. Under the said circumstances, the revision petitioner/petitioner/defendant is entitled to get the benefits available u/s 9 of the said Act.

6. On the side of the respondents/plaintiffs a detailed counter has been filed, wherein it is stated that originally a lease has come into existence for a period of 20 years and the same expired in the year 1983 and thereafter a renewal has been made for a period of 20 years and the same has become expired in the year 2003. After the expiry of statutory renewal, the petitioner is not a statutory tenant nor a contractual tenant and further the petitioner is not in actual possession and enjoyment of the suit property and one R.S & Co. has been enjoying the same and therefore, the present petition is not legally maintainable u/s 9(1)(a)(ii) of the said Act and therefore, the present petition deserves to be dismissed.

7. The Courts below have concurrently found that the revision petitioner/petitioner/defendant is not in actual physical possession of the suit property as per Section 2(4)(ii)(b) of the said Act and therefore, the benefits available cannot be extended to the revision petitioner/petitioner/ defendant and ultimately dismissed the petition.

8. The main point that has now winched to the fore in the present civil revision petition is as to whether the revision petitioner/petitioner/defendant is entitled to get the benefits available u/s 9 of the Chennai City Tenants Protection Act, 1921.

9. The learned Counsel appearing for the revision petitioner has emphatically contended that the present petition has been filed u/s 9 of the said Act and the Courts below have erroneously found that the revision petitioner is not in actual physical possession of the suit property and a similar matter has been dealt with by the Honourable Apex Court in Civil Appeal No. 5903 of 2006, wherein the Honourable Apex Court has dealt with the entire provision of Section 9 of the said Act and ultimately remanded the matter to the Division Bench of this Court with a specific direction to find out as to whether the appellant therein is entitled to get the benefit available u/s 9(1)(a)(i) of the said Act and therefore, the present matter is also liable to be remitted by way of setting aside the

concurrent orders passed by the Courts below.

10. In order to controvert the argument advanced by the learned Counsel appearing for the revision petitioner, the learned Counsel appearing for the respondents has also equally contended that even though the present petition has been filed u/s 9 of the said Act, in the affidavit it has been specifically stated that the revision petitioner is in actual physical possession of the suit property. But, in fact the revision petitioner has not been in possession and enjoyment of the suit property and its dealer has been enjoying the same and therefore, the benefit available u/s 9(1)(a)(ii) of the said Act cannot be extended to the revision petitioner and the Courts below have concurrently rejected the claim of the revision petitioner and therefore, the concurrent orders passed by the Courts below are not liable to be interfered with.

11. As rightly pointed out by the learned Counsel appearing for the respondents, in the affidavit filed along with the petition in question it is stated that the revision petitioner has been enjoying the suit property along with superstructure and therefore, the revision petitioner is a tenant u/s 2(4)(ii)(b) of the said Act.

12. It is an everlasting principle of law that for invoking 2(4)(ii)(b) of the said Act, there must be an actual physical possession of such land and building.

13. In the instant case, on the side of the respondents it has been clearly proved that the revision petitioner is not in actual physical possession of the property in question as contemplated under the said section.

14. The learned Counsel appearing for the respondents has drawn the attention of the Court to the decision reported in P. Ananthakrishnan Nair and Another Vs. Dr. G. Ramakrishnan and Another, , wherein at paragraph-11, the Honourable Apex Court has observed as follows:

Whenever an application is made by a tenant before the court for issuance of direction to the landlord for the sale of the whole or part of the land to him, the court is under a mandatory duty to determine the minimum extent of the land which may be necessary for the convenient enjoyment by the tenant. This determination can obviously be made only after an enquiry is held by the court having regard to the area of the demised land and the extent of superstructure standing thereon, and the tenant's need for the land for the beneficial enjoyment of the superstructure which he may have constructed thereon. The enquiry presupposes that the tenant making the application has been in the occupation of the land and the superstructure wherein he may be either residing or carrying on business, and on his eviction he would be adversely affected. The policy underlying Section 9 of the Act, is directed to safeguard the eviction of those tenants who may have constructed superstructure on the demised land, so that they may continue to occupy the same for the purposes of their residence or business, Section 9(1)(b) ordains the court to first decide the minimum extent of the land which may be necessary for the convenient enjoyment by the tenant, it therefore contemplates that the tenant requires the land for the convenient

enjoyment of the property. If the tenant does not occupy the land or the superstructure or if he is not residing therein or carrying on any business, the question of convenient enjoyment of the land by him could not arise. The court has to consider the need of the tenant and if it finds that the tenant does not require any part of the land, it may reject the application and direct eviction of the tenant, in that event the landlord has to pay compensation to the tenant for the superstructure.

15. Even from cursory look of the observation made by the Honourable Apex Court, it is easily discernible that for invoking the provision of Section 9(1)(a)(ii) of the the said Act, the tenant in question must be in actual physical possession of the property in dispute as contemplated u/s 2(4)(ii)(b) of the said Act. To put it in nutshell, if the property in dispute is in actual possession and enjoyment of any sub tenant or tenants, the said section cannot be invoked.

16. In Civil Appeal No. 5903 of 2006 before the Honourable Supreme Court, the learned Senior counsel appearing for the appellant therein has raised the main point to the effect that the appellant therein is entitled to get benefits available u/s 9(1)(a)(ii) of the said Act. The Honourable Apex court after considering the rival arguments, has come to a definite conclusion that the appellant therein is not in actual physical possession of the property in dispute and therefore not entitled to get benefits available under the said section.

17. The learned Senior counsel has alternatively argued that the appellant therein is entitled to get benefit which is available u/s 9(1)(a)(i) of the said Act. The Honourable Apex Court has finally observed as follows:

We are further of the opinion that where the lessee is in actual physical possession of the land over which he has made construction then he is entitled to an additional benefit given by Section 9(1)(a)(ii) of the Act, However, if the lessee who has made construction on the land let out to him but was not subsequently in possession of the same, as is the case of the appellants in the present case, then he is not entitled to the benefit of Section 9(1)(a)(ii) though he may be entitled to the benefit of Section 9(1)(a)(i). These are the questions on which the Division Bench of the High Court will record a finding.

18. The ultimate corollary of the Honourable Apex court is to find out as to whether the tenant in question is entitled to get benefit available u/s 9(1)(a)(i) of the said Act.

19. It is not an exaggeration to say that the facts and circumstances mentioned in the decision rendered by the Honourable Apex Court are similar to set of the facts and circumstances of the present case. Since the Honourable Apex court has remanded Civil Appeal No. 5903 of 2006 to the Division Bench of this Court for deciding the above legal aspect, it is not incumbent on the part of this Court to come to a definite conclusion that the revision petitioner/petitioner/defendant is not entitled to get any of the benefit available under the said section, Therefore, it is apropos to set aside the concurrent orders passed by the Courts

below and to remand the matter to the file of the trial Court.

20. In fine, this civil revision petition is allowed without cost, Connected Miscellaneous petition is closed. The concurrent orders passed in IA. No. 50 of 2009 in Original Suit No. 93 of 2006 by the Principal District Munsif Court, Tirunelveli and in CMA. No. 6 of 2010 by the Principal Sub Court, Tirunelveli are set aside and the petition filed in I.A. No. 50 of 2009 in Original Suit No. 93 of 2006 is remitted to the file of the Principal District Munsif Court, Tirunelveli. The Principal District Munsif court, Tirunelveli is directed to keep the petition in question till findings to be given by the Division Bench of this Court as directed by the Honourable Apex Court in Civil Appeal No. 5903 of 2006.