

(2005) 08 MAD CK 0019

In the Madras High Court

Case No : C.R.P. (NPD) No.1815 of 2002 and C.M.P. No. 18952 of 2002

Bharat Petroleum Corporation Ltd.

APPELLANT

Vs

Mrs. M. Nirmala and Mr. M. Naveen Kumar

RESPONDENT

Date of Decision : 25-08-2005

Acts Referred:

Burmah Shell (Acquisition of Undertakings in India) Act, 1976 — Section 5, 7
Madras City Tenants Protection Act, 1922 — Section 12, 9

Citation : (2005) 08 MAD CK 0019

Hon'ble Judges : AR. Ramalingam, J

Bench : Single Bench

Advocate : Krishna Srinivasan for S. Ramasubramaniam and Associates, for the Appellant; R. Alagar, Senior Advocate for K.V. Ananathakrishnan, for the Respondent

Final Decision : Dismissed

Judgement

AR. Ramalingam, J.—Aggrieved against the order passed by the I Additional Judge, City Civil Court, Chennai in C.M.A.No.131 of 2001

preferred against the order passed by the XI Assistant Judge, City Civil court, Chennai in I. A.No.6547 of 1996 in O.S.No.8922 of 1995 to the

effect that the revision petitioner viz., M/s.Bharat Petroleum Corporation Limited cannot be a tenant without express or implied continuance of

tenancy arrangement with the respondents viz., Nirmala and Naveen Kumar and their predecessors in title and that if at all the revision petitioner

can be construed as trespasser and consequently, liable to be evicted and there is no question of benefits u/s 9 of the Tamil Nadu City Tenants

Protection Act and thereby the order passed by the XI Assistant Judge, City Civil court, Chennai in I.A.No.6547 of 1996 in O.S. No.8922 of

1995 has been set aside, the present revision has been filed.

2. Learned counsel appearing for the revision petitioner, after taking me through the relevant material records, submitted that the I Additional Judge

has been carried away by the rulings reported in VAIRAMANI, N.R. v. UNION OF INDIA 2001 (1) CTC 1 and MOHAMED THAJF, G. v.

BHARATH PETROLEUM CORPORATION LTD. (2001(1) CTC 10) in and by which, it has been held that on the strength of Sections 5 and 7

of the Burmah Shell (Acquisition of Undertaking in India) Act, 1976, renewal of lease can be claimed only once and it cannot be for second term

and that when there is termination of lease by efflux of time, mere payment of rent by the tenant and receipt of the same by the landlord

subsequently cannot create fresh tenancy or the status of the rent payer as tenant and consequently allowed the C.M.A and set aside the order of

the XI Assistant Judge, City Civil Court. He further submitted that the very same above said rulings, particularly, the ruling reported in 2001 (1)

CTC 1 (in Writ Appeal No.2302 of 1999 rendered by a Division Bench of this Court), has been set aside by a Division Bench of the Honourable

Supreme Court in the ruling reported in Bharat Petroleum Corporation Ltd. and Another Vs. N.R. Vairamani and Another, indicating therewith

that the dispute upon the question of availability of benefits u/s 9 of the Tamil Nadu City Tenants Protection Act cannot be gone in a writ petition

and those matters have to be decided by the appropriate forum viz., Civil Court after due enquiry. He further submitted that on this score itself, the

order of the I Additional Judge, City Civil Court in the C.M.A has to be set aside and the revision has to be allowed. Further, he relied upon the

ruling of the Honourable Supreme court reported in BHARAT PETROLEUM CORPORATION LIMITED v. P.KESAVAN AND ANOTHER

2004 (2) CTC 736 and submitted that as per the Burmah Shell (Acquisition of Undertaking in India) Act, 1976, the revision petitioner viz., Bharat

Petroleum Corporation Limited can become the statutory tenant of the premises in question and there is no need for formal document for renewal

of lease and the provisions of Transfer of Property Act has no application for transfer of property by virtue of operation of law under the said Act

and thereby it is not open for the respondents/landlords to deny the status of Bharat petroleum Corporation Limited as a statutory tenant of the

premises in question and consequent right to claim the benefits of the Tamil Nadu City Tenants Protection Act and thereby the revision petitioner is

entitled to get the benefits u/s 9 of the Tamil Nadu City Tenants Protection Act and consequently, the order passed by the I Additional Judge, City

Civil Court, Chennai deserves to be set aside and this revision has to be allowed.

3. On the other hand, the learned counsel appearing for the respondents submitted that the rulings relied on the side of the revision petitioner viz.,

Bharat Petroleum Corporation Ltd. and Another Vs. N.R. Vairamani and Another, and 2004(2)CTC 736 have mainly dealt with the question of

maintainability of the revision petition with reference to the availability of benefits u/s 9 of the Tamil Nadu City Tenants Protection Act and by

operation of law also the revision petitioner can acquire the status of a statutory tenant and there is no need for formal renewal of lease deed and

Transfer of Property Act has no application when there is Special Act which would prevail upon the general Act. He further submitted that the

facts and circumstances of the case on hand have to be analysed and appreciated depending upon the rival contentions to find out whether the

revision petitioner viz., Bharat petroleum Corporation Limited can be a tenant within the meaning of Tamil Nadu City Tenants Protection Act and

thereby claim the benefits u/s 9 of the said Act or not.

4. In this regard, the learned counsel appearing for the respondents/landlords pointed out that as per section 5 of the Burmah Shell (Acquisition of

Undertaking in India) Act, 1976, no doubt, the leasehold right of the said Company vests with the Central Government with effect from 24.1.1976

and that as per section 7 of the said Act, there is power for the Central Government to transfer the acquired company and its rights to any

Government Company and thereby in that way, the revision petitioner viz., Bharat Petroleum Corporation Limited has come into picture through

the Central Government and change of name has come into force with effect from 1.8.1977. He also pointed out that at no point of time, the lessor

viz., the landlords conceded for renewal of lease and instead the request for renewal made by the revision petitioner has been refused by the

landlords.

5. Moreover, the counsel for the landlords, with emphasis, pointed out that the revision petitioner cannot claim the benefits u/s 9 or 12 of the Tamil

Nadu City Tenants Protection Act for the reasons that the original lease itself is only from 1959 and the present revision petitioner is not in actual

and physical possession of the premises on the date of filing of the petition u/s 9 of the Tamil Nadu City Tenants Protection Act and after

amendment of the Tamil Nadu City Tenants Protection Act, there is no question of availability of benefits u/s 12 also inasmuch as the lease itself

has come into existence long after the qualifying date viz., 12.9.1955 and that therefore, there is no ground for claiming the benefits u/s 9 of the

Tamil Nadu City Tenants Protection Act as indicated in the ruling reported in S.R. Radhakrishnan and Others Vs. Neelamegam, wherein the

Honourable Supreme Court has stipulated important condition viz., the tenant claiming benefits u/s 9 of the Tamil Nadu City Tenants Protection

Act should be in actual physical possession and mere legal or constructive possession is not enough. It is more so because the right u/s 9 of the

Tamil Nadu City Tenants Protection Act is in the form of protection and privilege for the tenant and such right is not an absolute one and it is

subject to certain conditions only. In other words, the requirement of the tenant for convenient enjoyment and the extent of land necessary for that

purpose, etc. are playing main role of importance for granting the discretionary relief by the court u/s 9 of the Tamil Nadu City Tenants Protection

Act. He further pointed out that in the case on hand, the revision petitioner viz., Bharat Petroleum Corporation Limited has not only specifically

averred in its reply notice dated 24.11.1995 to the effect that "'our business is run by our dealers on our behalf under a licence ... surrendering the

site would not only cause undue hardship to the consumers but also cause irreparable loss to the dealers and their workmen for want of

employment'", but also averred in the written statement filed in O.S.No.8922 of 1995 as "'if the defendant is evicted from the suit property it would

not only cause undue hardship to the consumers but also cause irreparable loss to the dealers and their workmen for want of employment'".

6. These specific averments thus go to indicate that the revision petitioner, as such, is not in physical, personal and immediate possession of the

premises within the meaning of Tamil Nadu City Tenants Protection Act and instead the actual possession of the premises is admitted to be with

the dealers of the revision petitioner and such actual possession of the dealer either as a licensee or otherwise, cannot be construed as physical and

immediate possession of the revision petitioner itself. It is more so when there is no bar for the revision petitioner viz., Bharat Petroleum

Corporation Limited to possess the premises by itself and have direct transaction of business by its own employees without seeking or invoking

dealership to third parties. The definition of ""Tenant"" in the Tamil Nadu City Tenants Protection Act does not include the ""sub-tenant"" or his heirs.

It is further to be pointed out that Central Government and Bharat Petroleum Corporation Limited controlled by Central Government are different

entities. Therefore, as rightly pointed out with emphasis by the counsel for the respondents/landlords, I am also of the considered view that the

main and important aspect of physical possession is lacking and consequently, the revision petitioner, as such, cannot claim the right of benefits u/s

9 of the Tamil Nadu City Tenants Protection Act.

7. No doubt, the order passed by the I Additional Judge in the C.M. A is based upon the rulings of this Court, but, those rulings have been

reversed by the Honourable Supreme Court, as observed supra. Yet the facts and circumstances of this case remain to show that the revision

petitioner has no right to claim the benefits u/s 9 of the Tamil Nadu City Tenants Protection Act even though the revision petitioner has got

statutory right to claim the status of a tenant and that it does not mean that he continues to be the tenant within the meaning of Tamil Nadu City

Tenants Protection Act and thereby claim the benefits u/s 9 of the Tamil Nadu City Tenants Protection Act.

8. Accordingly, in all, I am satisfied that this revision has no merits and the same is dismissed. No costs. The connected C.M.P. is also dismissed.