(2002) 01 MAD CK 0078

In the Madras High Court

Case No : Civil Miscellaneous Appeal No. 1646 of 2001

Bharat Petroleum Corporation Ltd., Bharat Bhavan, Coimbatore and P.N. Murthi	APPELLANT
Vs	
P. Devarajulu, Ammani Ammal, Sri Valli, S. Vikram by guardian mother Srivalli and CDCGS and MS Limite (Chinthamani)	RESPONDENT

Date of Decision : 28-01-2002

Acts Referred:

Essential Commodities Act, 1955 — Section 2
Petroleum Rules, 1976 — Rule 153

Citation : (2002) 01 MAD CK 0078

Hon'ble Judges : A. Ramamurthi, J

Bench : Single Bench

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

Final Decision : Dismissed

Judgement

A. Ramamurthi, J.—Defendants 1 and 2 in O.S.No.838 of 2001 on the file of Sub Court, Coimbatore have preferred the present appeal

aggrieved against the orders passed in I.A.No.708 of 2001 dated 10.10.2001.

2. The case in brief is as follows:- The respondents / plaintiffs filed a suit directing the defendants jointly and severally to pay Rs.5,30,000/=

together with interest from the date of suit till date of payment as damages for use and occupation of the property and also for permanent injunction

restraining them from in any manner conducting or carrying any petrol bunk or any other business in the suit property . They also filed I.A.No.708

of 2001 claiming the relief of temporary injunction restraining them and their men from conducting the petrol bunk or any other business in the suit property till the disposal of the suit. The plaintiffs are the absolute owners of the suit property and under the lease deed dated 11.12.1961 the

predecessors-in-interest have let out the property in favour of Burma Shell Oil Storage and Distributor Company of India Limited for running a

petrol bunk and the lease is for a period of 20 years. But they had taken the bunk only upto 1976 and thereafter the Burmah Shell Acquisition and

Undertaking of India Act was notified and by virtue of operation of law, the Burmah Shell was vested with the Central Government. As per the

Central Government Notification dated 24.01.1976 all rights vested with Government of India transferred to the 1st respondent who became the

lessee by operation of law. As per the statutory right, the lease dated 06.09.1961 was transferred and vested in favour of the 1 st respondent by

operation of law. In view of operation of law, the 1 st respondent has acquired a right to remain in possession for 20 years from 1961 which

comes to an end by 30.06.2000. As per the said Act, the 1st respondent acquired the right to run the business upto 30.06.2000. From

01.07.2000, all rights over the property got extinguished and there is no holding over or licence to remain in possession as per the Act. An option

was conferred under the Act seeking one time extension of lease which cannot be extended beyond that period. It is a legal right and by operation

of law, the lease was renewed. The 1st defendant had exercised the said option for renewal for a period of 20 years from 1980 which expires by

30.06.2000. The judicial decisions categorically held that if any one remains in possession beyond the stipulated extended period, they are only

rank trespassers and they cannot claim any legal right to remain in possession. The 1st defendant just about 3 months before expiry of the period

instituted a suit in O.S.No.535 of 2000 on the file of Sub Court, Coimbatore and claimed that the 1st defendant can be evicted only under due

process of law and he is entitled to do the business even after 01.07.2000. On that basis, the order of injunction was granted in I. A.No.392 of

2000 and after contest, that petition was dismissed. The 1st defendant preferred C.M.A.No.113 of 2000 before the District Court, Coimbatore

and the appeal was also dismissed. The 1st defendant is a trespasser and he has no right to remain in possession. It is pertinent to state that in

cases of similar nature were decided by the Apex Court and High Court and it is found that the company in possession under extension of one period lease on the basis of the Act cannot remain in possession after expiry of the period. There is no absolute tenancy right and no benefit under

Tamilnadu City Tenants Protection Act can be claimed. The Division Bench also observed that it is not necessary to get the eviction from the

appropriate Court. In any event, the defendants cannot continue the business in the suit property after 01.07.2000 as they are trespassers.

3. The 1st defendant is not paying any rent from 1987 onwards and they are liable to pay damages for use and occupation. There is no legal basis

for them to remain in possession. The 2nd defendant making use of his position and status as Territorial Manager of the 1st defendant allowed the

3rd defendant to continue the business of petrol bunk in the suit property on behalf of the 1st defendant with a view to cause obstruction to the

convenient enjoyment of the pathway across the suit property. A trespasser under law cannot do any business. Making use of the unlawful

possessory right the defendants as trespassers are continuing the business and enriching unlawfully. The plaintiffs had repeatedly warned the

defendants not to obstruct movement of plaintiffs'' vehicles under the guise of running the business in the suit property. The 2nd defendant is solely

responsible for illegal occupation. The plaintiffs estimate a minimum sum of Rs.20,000/= per month as damages for use and occupation. Unless the

order of injunction is granted against the respondents and their men, the rights over the suit property will be seriously affected. Hence, the petition.

4. The respondents filed application to vacate the order of interim injunction. The respondents are also entitled to claim benefits under the City

Tenants Protection Act since the superstructure was put up by them. After getting the ad-interim injunction without notice to them and upon false

representation, came with the aid of the police and stopped the entire operation of the outlet. The orders of High Court, Chennai, which have been

cited by the petitioners have been stayed by the orders of the Supreme court. In view of the false representation made by the petitioners, the entire

order of injunction granted is liable to be vacated. There is no justification for the ad-interim injunction to continue in respect of the entire property.

5. The learned Judge after hearing the parties, allowed the application filed by the petitioners in I.A.708 of 2001 and dismissed I.A. No.724 of

2001 filed by the respondents. Aggrieved against this, defendants 1 and 2 have come forward with the present appeal.

6. Heard the learned counsel for the parties.

7. There is no dispute that the plaintiffs instituted the suit against the defendants claiming a particular amount by way of damages and also sought

the relief of permanent injunction restraining the defendants and their men from carrying on petrol business in the said premises. The plaintiffs also

filed I.A.No.708 of 2001 claiming ad interim injunction and they were also granted ad-interim injunction. It is admitted that the defendants were

lessees of the property and they were carrying on business in petrol till 30.06.2000. According to the plaintiffs, on and after 01.07.2000 the

defendants are rank trespassers in the property and they cannot be construed to be in legal possession of the property so as to enable them to get

licence from the competent authority for the purpose of doing business in petrol. By virtue of the operation of law only, an option was given to the

lessees and they have exercised the option to renew the lease period for a period of 20 years and it expired by 30.06.2000. Since by operation of

law only, the lease period was extended, after the expiry, the defendants are only rank trespassers in the property and they cannot carry on any

business to the disadvantage of the plaintiffs.

8. Per contra, the learned counsel for the defendants / appellants contended that the defendants were lessees in the property and they were dealing

in essential commodity, namely, petrol. Even after the expiry of the period, they are lessees holding over the property. Moreover, what was leased

out was only a site and the superstructure was put up by them and hence, they are entitled to claim benefit under the benevolent provisions of the

City Tenants Protection Act. No doubt, there were decisions to the effect by this Court that if there was renewal of lease by operation of law, after

the expiry of the period their possession can be termed as only a ''rank trespassers''; but the matter is now pending in the Apex Court and they

have also obtained an order of status quo relating to possession of the property. Apart from that, the Division Bench of this Court also referred to

a Larger Bench and as it is pending adjudication, they cannot be now made use of by the plaintiffs to restrain the defendants from carrying on

business which they have already carried on.

9. The trial court after hearing the parties and on the basis of the documents, allowed the application filed by the plaintiffs and dismissed the

application filed by the defendants. Aggrieved against this only, the defendants have come forward with the present appeal. Learned counsel for

the appellants mainly contended that the lower court misdirected itself in holding that the Corporation should not be allowed to run business of

petroleum products in the suit property inasmuch as they are rank trespassers. The suit property was taken on lease by their predecessors-in-title

viz., Burmah Shell Oil Storage and Distributing Company of India Limited in and by lease dated 11.12.19 61 for the purpose of carrying of sale

and distribution of petroleum products.The said lease was for a period of 20 years commencing from 01.07.1960. Well before the expiry of the

lease, in terms of Section 5(2) and 7(3) of Act 2 of 1976, the Corporation exercised its statutory option to renew the lease for a further period of

20 years commencing from 01.07.1980 to 30.06.2000. Even though there is no subsisting lease in favour of the Corporation inasmuch as the

Corporation is a statutory tenant entitled to protection u/s 9 of the City Tenants Protection Act. The lower court ought to have seen that petrol is a

essential commodity as defined in Section 2(e) of the Essential Commodities act and the grant of interim injunction has caused not only severe loss

and hardship to the Corporation but also to the motoring public. The lower court erred in placing reliance on the Petroleum Rules 1976 - Rule 153

which deals with suspension and cancellation of licences in coming to the conclusion that the possession by the Corporation cannot be considered

as a valid and legal one. Hence, the order passed by the court below is liable to be set aside.

10. As adverted to, the plaintiffs have come forward with a specific case that after the expiry of the lease period i.e. 30.06.2000 the defendants

are only rank trespassers in the property and they cannot be allowed to carry on any business. But the learned counsel for the appellants

contended that although by operation of law the lease was renewed for a period of 20 years, they are statutory tenants in the property and

whatever business they were already carrying on cannot be restrained by an order of the Court. It is admitted that against the decisions of the

Court, the matter was taken to the Apex Court and the Petroleum Corporation had obtained an order of status quo relating to possession of the

property. But this does not mean that the Petroleum Corporation is entitled to carry on business as before in the very same property. Further more, the question whether their possession can be considered as legal or rank trespassers is a matter that can be decided only in the course of trial. For

the purpose of this application, the only thing that has to be considered is whether the defendants can be restrained from carrying on business in the

petroleum products in the suit property pending disposal of the suit.

11. It is admitted that the defendants already filed a suit and also filed an application claiming the relief of permanent injunction. Although the

defendants were granted ad-interim injunction, after hearing the parties admittedly the interim injunction was vacated. The defendants preferred

Civil Miscellaneous Appeal before the District Court and that appeal was also dismissed. Not satisfied with that, the defendants preferred civil

revision petition before this Court and although it is pending, there is no interim order to enable the defendants to carry on business in the suit

property. When once it is admitted that the relief of injunction claimed by the defendants at a later point of time was not allowed, it is suffice to

come to a conclusion that the defendants have no prima facie case and the balance of convenience is not in their favour. On the other hand, the

plaintiffs have filed the suit as well as application and after hearing both sides, the trial court has granted the relief of temporary injunction restraining

the defendants from carrying on business in petroleum products. When the earlier application filed by the defendants claiming the relief of injunction

was dismissed and there is no interim order in their favour, it is no longer open to the defendants to contend that since possession is with them, they

can carry on any business; more so, in petroleum products. Further more, for carrying on business in petroleum products, licence has to be

secured from the competent authorities and they can issue the licence only if their possession is lawful. But now there is a conflicting version or

stand between the parties relating to the nature of possession. The plaintiffs claimed that the possession of the defendants is only in the nature of

rank trespassers and it is a litigious possession and hence, not entitled to claim as a matter of right to run any business in the said property. The

defendants were not able to establish that their possession was lawful. Considering the fact that only by operation of law, the lease agreement was

renewed for a further period of 20 years and having come to and end, it is a matter to be decided only in the course of trial as to whether the lease can be renewed for a further period or whether such a right or option is available to the lessees. As on date, it is prima facie evident that the

possession of the defendants is only in the nature of litigious possession and this being so, it is clear that they are not entitled to carry on business of

petroleum products.

12. Both sides relied upon number of decisions; but they relate mainly to the merits of the case. It is not necessary to go into the decisions as they

are not relevant to consider the appeal relating to temporary injunction. The plaintiffs have positively established that they have got a prima facie

case and the balance of convenience is in their favour and, as such, entitled to the relief of temporary injunction. It has also come out on record that

the defendants have not carried on any business during 1980-89 and it is not seriously disputed. It is further stated that for the last 4 months also,

the defendants are not carrying on business in petroleum products. If the order of interim injunction is granted to the plaintiffs, no prejudice will be

caused to the defendants also since the hardship, if any, caused to them can also be compensated in terms of money by way of damages. When

there is dispute relating to the legal status of possession of the defendants, I am of the view that as a matter of right, the defendants cannot claim

that they are entitled to carry on any business in the suit property.

The trial court has rightly considered the rival contentions of the parties and as it is a well considered order, no interference is called for.

13. For the reasons stated above, the appeal fails and is dismissed. No costs. Consequently, CMP No.21809 of 2001 is also dismissed.

