

(2000) 12 MAD CK 0108
In the Madras High Court

G. Mohamed Thaif and Another	APPELLANT
Vs	
The Bharath Petroleum Corporation Ltd. and Another	RESPONDENT

Date of Decision : 02-12-2000

Acts Referred:

Burmah Shell (Acquisition of Undertakings in India) Act, 1976 — Section 5, 7

Citation : (2001) 1 MLJ 335

Hon'ble Judges : S. Jagadeesan, J

Bench : Division Bench

Judgement

S. Jagadeesan, J.—The petitioners have filed this writ petition for the issuance of a writ of mandamus directing the respondents to deliver

possession of the property in T.S.No. 301/3 Municipal Ward No. 13, Revenue Ward No. 3 in Erode town Ward B, Block 2, T.S.No. 51/2.

2. The petitioners are the owners of the said property of an extent of 14740 Sq.ft Originally, the said property belonged to their father, who leased

out the site to the Burma Shell Oil Storage and Distributing Company of India Limited for a period of twenty years from 1.10.1958. The lease

came to an end by efflux of time by 30.9.1978. By that time, the Central Government enacted Burma Shell Acquisition of Undertakings in India

Act, (hereinafter referred to as the Act). As per the notification under the Act, the rights of the Burma Shell Oil Storage and Distribution Company

came to be vested with the first respondent the Bharath Petroleum Corporation Limited.

3. As the period of lease expired by efflux of time, the petitioners' father filed a writ petition W.P.No. 4730 of 1979 before this Court for the relief

of recovery of possession. Pending the said writ petition, the father of the petitioners died and the petitioners herein were brought on record as the

legal representatives. In the said writ petition, it was contended that as per Sections 5 and 7 of the Act, there can be only one renewal, and the first respondent herein has failed to pay fair rent and therefore, they are liable to surrender possession. The writ petition was partly allowed by an order dated 28.10.1992 by the learned single Judge directing the Central Government to issue proper directions to the Central Public Works Department to determine the fair and reasonable rent. The first respondent herein preferred a writ appeal in W.A.No. 76 of 1993, which was ultimately dismissed on 17.9.1997. Now that the renewal of lease for another twenty years granted to the first respondent came to an end by efflux of time by 30.9.1998, the present writ petition has been filed for recovery of possession on the ground that the first respondent is not entitled for further renewal and they are liable to surrender possession.

4. The first respondent herein filed a counter-affidavit stating that the petitioners failed in their earlier attempt i.e., in W.P.No. 4730 of 1979 and as such, the present writ petition is not maintainable. Further, in the earlier writ petition, the first respondent herein claimed the benefit of the City Tenants Protection Act and the question was left open giving liberty to the first respondent herein to claim such relief, as and when the petitioners go to the civil court. Now, by filing this writ petition, it is not open to the petitioners to deprive of such right of the first respondent herein. Hence, the writ petition is liable to be dismissed.

5. The second respondent, who is the distributing agent entrusted with the site, filed a counter affidavit stating that they expressed willingness for the renewal of lease and the petitioners as well as the representative of the first respondent discussed the matter and arrived at an arrangement for the renewal of lease. Hence, now, it is not open to the petitioners to give a go by to such an agreed arrangement and file this writ petition. So far as other contentions are concerned, they are similar to that of the first respondent herein.

6. Mr. R. Krishnamoorthy, learned senior counsel for the petitioners contended that the original lease was entered into between the petitioners' father and the Burma Shell Oil Storage and Distributing Company of India Limited in the Year 1958. The said lease period expired in 1978 and the petitioners' father filed the writ petition in W.P.No. 4730 of 1979. In the said

writ petition, this Court directed the Central Government to direct the Central Public Works Department to determine the fair rent. So far as the recovery of possession was concerned, the same has been rejected. The first respondent preferred an appeal in W.A.No. 76 of 1993, which was also dismissed. As per the Act, the statute provides for one renewal. The Act came into force in 1976 and as such, as per the provisions of the Act, the first respondent is entitled for a renewal of further period of two years since the statute provides for one renewal of further period of twenty years. The first respondent is liable to surrender possession after the expiry of renewed period of lease. As the renewed period of lease expired in September, 1998, the first respondent is liable to surrender possession and they are not entitled to continue their occupation. He also relied upon a Division Bench judgment of this Court in *Tiger Muthiah Vs. The State of Tamil Nadu and others*, and contended that the first respondent cannot continue to be in possession as tenant after the expiry of the lease period.

7. Mr. Santhanakrishnan, learned Counsel for the first respondent herein vehemently contended that since the petitioners failed in their earlier attempt i.e., in W.P.No. 4730 of 1979, this writ petition is barred by the principles of *res judicata*. Further, the question as to whether the first respondent is entitled for the benefits of the City Tenants Protection Act had been left open in the earlier writ petition in W.P.No. 4730 of 1979.

Hence, the petitioners are bound to go before the Civil Court for recovery of possession where the respondents can put forth their claim under the City Tenants Protection Act. By filing this writ petition the respondents cannot be deprived of their statutory right.

8. Mr. N.R. Chandran, learned senior counsel appearing for the second respondent contended that the petitioners, having agreed for the renewal of lease for further period, are estopped from filing this writ petition. In other respects, the learned senior counsel fairly represents that he adopts the arguments of the learned Counsel for the first respondent in order to avoid waste of time.

9. I have carefully considered the above contentions of the respective counsel. It is unnecessary to elaborate the facts, since they are clear from the above narrated facts as well as the respective contentions of the learned Counsel

for both parties.

10. The first respondent herein is the lessee of the property. After the Act came into force, by virtue of Section 5 of the Act, the lease period was

renewed for a further period of twenty years from 1.10.1978, since the first respondent is entitled for one renewal under the statute. Now, the

statutory lease period or the lease period renewed as per the provisions of the statute expired by efflux of time on 30.9.1998. As the statutory

extended or renewed period expired, the present writ petition has been filed.

11. So far as the maintainability of this writ petition is concerned, the Supreme Court in the case of Hindustan Petroleum Corporation Ltd. and

Another Vs. Dolly Das, held that the writ petition of this nature is maintainable and the principles laid down therein had been followed by the

Division Bench of this Court consisting of the Honourable The Chief Justice and K. Raviraja Pandian, J., in Tiger Muthiah Vs. The State of Tamil

Nadu and others, in their judgment dated 20.10.2000. Hence, I do not propose to elaborately discuss this issue except extracting a portion of the

said judgment, which is as follows:

As we have already stated, the appellant has sent only a notice of termination of lease and certainly it will not amount to a notice of renewal. After

the issuance of notice of termination of lease, respondent/Corporation has no right to exercise their option for renewal, and they have to vacate the

premises. They are only rank trespassers. Considering their reply to the termination of notice, for the reasons stated above, and in view of the

decision of the Hon''ble Apex Court cited supra, in our humble opinion, in the facts of the given case, it is not necessary to get the eviction from the

appropriate Court, and the appellant is entitled to get the vacant possession of the disputed property by invoking writ jurisdiction.

In view of the above laid principles, there cannot be any dispute that the writ petition is maintainable.

12. The first respondent's lease came to an end by efflux of time on 30.9.1998. This lease period is the renewed period of lease under the statute.

As the statute provides for only one renewal, it has been held by the Apex Court in the judgment in Hindustan Petroleum Corporation Ltd. and

Another Vs. Dolly Das, as well as the Division Bench in their judgment in the said writ appeal that the first respondent is not entitled for further

renewal in the following terms:

It was further held that since the object of Sections 5(2) and 7(3) of the said Act is only to give, some breathing time, the Hindustan Petroleum

Corporation was not entitled to exercise any option for a further period after the first renewed term of ten years, which was expired in 1989, and

quashed the impugned order seeking extension of lease. The Hon"ble Supreme Court after observing that the renewal of lease could only be for

one term and no more, modified the order of the High Court to the extent that the appellant/Corporation has no power to claim exercise of option

for any renewal of the lease beyond September 30, 1999, that the appellant Corporation has to hand over vacant possession on or before March

21, 2000 and that the appellant/Corporation has to pay the rent till the date of handing over of the vacant possession. From the facts culled out, it

is very clear the currency of lease was expired on 1.6.1998, and the respondent/Corporation has become the statutory lessess, and notice of

termination was also served. Under the circumstances we are of the view that the contention of the learned senior counsel for the appellant that the

proposition of law, laid down by the Hon"ble Supreme Court in the above cited case, will squarely cover the case on hand, has some force.

13. So, the first respondent is not entitled for the further renewal of lease by way of right and as such, they cannot insist for the renewal of lease in

their favour. When the first respondent has no right of renewal of lease for further period and the existing lease period already came to an end, the

first respondent is liable to surrender possession in view of the judgment of the Apex Court as well as this Court referred supra.

14. Learned Counsel for the first respondent, however contended that in the earlier writ petition W.P.No. 4730 of 1979, the petitioners' claim for

recovery of possession had been rejected and as such, this writ petition is barred by the principles of res judicata.

15. This Court is unable to agree with the same. At the time of filing the writ petition in W.P.No. 4730 of 1979, the first respondent has got a

statutory right of one renewal as per the provisions of the Act. Hence, the petitioners are not entitled for the recovery of possession. That is not the

situation at present. The petitioners are seeking recovery of possession after the expiry of statutory renewed period. Hence, the earlier judgment

will not stand in the way of the petitioners in granting the relief under this proceedings.

16. It is also contended by the learned Counsel for the first respondent that the rights of the first respondent under the City Tenants Protection Act

had been left open to be agitated as and when the petitioners seek for recovery of possession.

17. This Court is of the view that such a right of the first respondent cannot be taken away under this proceedings. It may be noticed that in the

earlier writ petition, the Central Government has been asked to fix the fair rent and the first respondent has been directed to pay the rent for the

statutory period of renewal. As and when the fair rent is fixed, liberty has been given to the petitioners therein, who are the petitioners herein, to

vindicate their rights in the manner known to law before the appropriate forum or the court, if they are aggrieved against the determination of fair

rent. Liberty was given to the first respondent herein at the stage to claim any right under any law including the provisions of the Tamil Nadu City

Tenants Protection Act, if it is held to be applicable. So it cannot be said that in the earlier proceedings, this Court has held that the first respondent

is entitled for such rights or benefits provided under the provisions of the Tamil Nadu City Tenants Protection Act. This is clear from the words ""if

it is held to be applicable"". So, it has to be considered as to whether the first respondent is entitled for such benefit under the City Tenants

Protection Act.

18. The City Tenants Protection Act has been enacted to give protection to certain classes of tenants. Sub-section (4) of Section 2 defines the

tenant as follows:

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

(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 the predecessors in interest had erected any building on such land and who continues in actual physical possession of

such land and building, notwithstanding that.

(1) such person was not entitled to the rights 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 I 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 publication of the Madras City Tenants' Protection Act (Amendment) Act, 1972

(Tamil Nadu Act 4 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 legal heirs.

19. As per the above provision, the tenant is a person, who is liable to pay the rent under tenancy agreement express or implied and continues to

be in possession of the land after determination of the tenancy agreement. So, the entire provision makes it clear that the tenant must be in

possession of the land pursuant to the agreement expressed or implied. In this case, there is no agreement expressed or implied, since the renewal

is at the intervention of the statute. That is why the Division Bench of this Court in the writ appeal held that, "after issuance of notice of termination

of lease, the respondent corporation has no right to exercise their option for renewal and they have to vacate the premises. They are rank

trespassers".

20. The benefit of the City Tenants' Protection Act can be claimed only by the tenants, but not by the trespassers. Once it is held by the courts

that after the expiry of the statutory lease period, the first respondent cannot be considered to be a tenant holding over and they are rank

trespassers, this Court is of the opinion that the first respondent is not entitled for any benefit under the City Tenants' Protection Act. Hence the

petitioners are entitled for the relief sought for in this writ petition.

21. The first respondent is granted three months' time from today to deliver and hand over the vacant possession to the petitioner. The first

respondent will also to continue to pay the rent for the use and occupation of the premises till the vacant possession is handed over to the petitioner

as per this order. The first respondent corporation shall also furnish an undertaking to that effect before this Court within a period of three weeks from today.

22. With these directions, the writ petition is allowed. No costs. Consequently, the above W.M.P. is dismissed.