

(1990) 06 KAR CK 0051
In the Karnataka High Court
Case No : C.R.P. No. 3628 of 1982

G. Sridharamurthi

APPELLANT

Vs

Hindustan Petroleum Corporation Ltd. and another

RESPONDENT

Date of Decision : 26-06-1990

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Karnataka Rent Control Act, 1961 — Section 21 (1) (f), 23

Citation : AIR 1991 Kar 249 : (1991) ILR (Kar) 65

Hon'ble Judges : M.M. Mirdhe, J;K.A. Swami, J

Bench : Division Bench

Advocate : M.R. Achar, for the Appellant; C.M. Desai, for the Respondent

Judgement

K. A. Swami, J.—This Civil Revision Petition is preferred against the order dated 20-4-1982 passed by the learned District Judge, Bellary, in H.R.C.R. No. 27/1981 confirming the order dated 27-8-1981 passed by the Principal Munsiff, Bellary in H.R.C. No. 48/1977. The petitioner is the landlord and the respondent is the tenant of the premises in question. The schedule premises is an open space measuring 66'6" x 40" situated at Bangalore-Bellary Trunk Road in the City of Bellary comprised in S. No. 432/25 in Ward No. XVII in the Registration District of Bellary bounded on the east by the Property of the petitioner occupied by M. G. Auto-mobiles Paints Shop; west by Bangalore Road; North by Compound Wall of Janathakal People and South by Road.

2. This C.R.P. is referred to a Division bench on the ground that there is R.F.A. 384/1982 pending on the file of this Court concerning the very same premises relating to eviction of the tenant. Consequently, the revision petition is posted along with R.F.A. No. 384/82. We shall separately deal with R.F.A. No. 384/1982. In this order, we shall dispose of C.R.P. No. 3628/1982.

3. The learned Principal Munsiff, Bellary has held that the Central Government has not sublet the premises to M/s. Hindustan Petroleum Corporation Ltd., the respondent herein, without the written permission of the landlord and has

accordingly dismissed the petition filed by the landlord for eviction of the tenant under S. 21(1)(f) of the Karnataka Rent Control Act, 1961 (hereinafter referred to as the "Act").

4. In the Revision Petition filed by the landlord, the learned District Judge has held that there is subletting of the premises but having regard to the provisions contained in clause 4(a) of the lease deed executed by the landlord in favour of ESSO Eastern Inc. the landlord must be deemed to have waived the consent for subletting and as such the subletting has not contravened the provisions of S. 21(1)(f) of the Act. Accordingly, the learned District Judge has dismissed the revision petition. Hence this revision petition under S. 115, C.P.C.

5. Having regard to the contentions urged on both sides, the following points arise for consideration:

(1) Whether the respondent-tenant is an assignee of the lease in contravention of the provisions contained in S.21(1)(f) of the Karnataka Rent Control Act without obtaining the consent in writing of the landlord and as such it is liable to be evicted?

(2) In the facts and circumstances of the case, even if it is held that there is assignment of the lease by the original tenant to the respondent, whether such assignment can be held to have been made with the consent in writing of the landlord?

Point No. 1

6. The facts necessary for the purpose of deciding point No. 1 are not in dispute. The premises in question belongs to the petitioner. It was leased to ESSO Eastern Inc. under a registered lease deed dated 17-7-1965. The duration of the lease was for a period of five years.

On the expiry of five years, the lessee was entitled to have the lease renewed for a further period of 5 years. Even before the expiry of the first period of five years, the Parliament passed a Law known as "The ESSO (Acquisition of Undertakings in India) Act, 1974 (hereinafter referred to as "Act No. 4/1974") which came into force on 13-3-1974. On the coming into force of Act No. 4/1974, the right, title and interest of Esso Eastern Inc. (hereinafter referred to as "ESSO") in relation to its undertakings in India stood transferred and vested in the Central Government. What is the effect of the several provisions of Act No. 4/1974 will be referred to at the appropriate stage. Consequent to the acquisition of ESSO all its properties including the leasehold rights came to be vested in the Central Government. The Central Government by the issue of a Notification dated 14-3-1974 transferred all the properties of the ESSO including the leasehold rights to Esso Standard Refining Co. of India Ltd. Before the transfer was made, Lube India Ltd. was also amalgamated with Esso Standard Refining Co. of India Ltd. On the transfer of ESSO to Esso Standard Refining Co. of India Ltd., it came to be known as Hindustan Petroleum Corporation Ltd.

7. The contention of Sri M. R. Achar, learned counsel for the petitioner is that even though by the Act No. 4 of 1974, ESSO came to be vested in the Central Government and by the Act No. 4 of 1974 itself Central Government came to be substituted in place of ESSO, even as lessee also, the further act of the Central Government in transferring the leasehold right to Esso Standard Refining Co. of India Ltd., amounted to assigning the leasehold right by the tenant to M/s. Hindustan Petroleum Corporation Ltd., and this act was without the consent of the landlord; therefore, it fell within the mischief of Sec, 21(1)(1) of the Act. It is also further contended that even if it is held that the transfer of ESSO to Esso Standard Refining Co. of India Ltd., is an involuntary act. by reason of the command of the statute, such an act also attracted the provisions of S. 21(1)(f) of the Act as the landlord had not consented to it.

8. The question as to whether the landlord had consented to it or not will be considered while dealing with point No. 2. As far as point No. 1 is concerned, it is necessary for us to advert to some of the provisions of the Act No. 4/1974.

9. Section 3 of the Act No. 4, 1974 transfers and vests all right, title and interest of ESSO in relation to its undertakings in India in the Central Government with effect from 13-3-1974. Section 4 states the effect of vesting. It states that the Undertakings referred to in S. 3 shall be deemed, save as otherwise provided in sub-section (2) to include all assets, rights, powers, authorities and privileges and all property moveable and immovable, cash balances, reserve funds, investments and all other rights and interests in, or arising out of, such property as were, immediately before the appointed day, in the ownership, possession, power or control of Esso, in relation to its undertakings in India and all books of account, registers, records and all other documents of whatever nature relating thereto and shall also be deemed to include all borrowings, liabilities and obligations of whatever kind then subsisting of Esso in relation to its undertakings in India. Sub-section (2) of S. 4 excludes certain assets of Esso from the purview of the Act. For our purpose, it is not relevant. Therefore, it is not necessary to refer to it. Sub-section (3) of S. 4 expressly states that unless otherwise expressly provided by the Act, all deeds, bonds, agreements, powers of attorney, grants of legal representation and other instruments of whatever nature in relation to the undertakings of Esso in India, subsisting or having effect immediately before the appointed day and to which Esso is a party or which are in favour of Esso shall be of as full force and effect against or in favour of the Central Government and may be enforced or acted upon as fully and effectually as if in the place of Esso the Central Government had been a party thereto or as if they had been issued in favour of the Central Government.

10. From the aforesaid provisions, it is clear that by the statute itself, the original lessee has been substituted by the "Central Government". Sub-section (4) of S. 4 provides that all matters pending by or against Esso, shall be continued, prosecuted and enforced by or against the Central Government. Subsection (4) is not relevant for our purpose but this also goes to indicate that the vesting was to

such an extent that no sooner the Act came into force, wherever Esso was concerned. Central Government was to be substituted and the Central Government was to continue in place of Esso.

11. Sub-section (1) of S. 5 specifically deals with lease and tenancy right held by ESSO at the time of vesting. It states that "Where any property is held in India by Esso 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 S. 5 gives a right to the Central Government to have the lease renewed on the same terms and conditions on which the lease or tenancy was held by Esso immediately before the appointed day i.e., the date of vesting.

12. A reading of the provisions contained in Ss. 3 to 5 of the Act together leaves no doubt that by the Act of Parliament the lessee has been substituted. It is the settled legal position that a Legislature can modify, annul and substitute the contracts intra-vivos. That being so, when the Parliament in exercise of its power passes the Law by which it substitutes the parties to the lease, it cannot be held that there is assignment or transfer of the lease or subletting of the premises, by the lessee to the person or the authority in whom the leasehold rights are vested by the law.

13. Section 7 of Act No. 4/1974 empowers the Central Government to direct the undertakings of ESSO vested in the Central Government to vest it in a Govt. company. It provides that notwithstanding anything contained in Ss. 3, 4 and 5, the Central Government may, if it is satisfied that a Government Company is willing to comply, or has complied with such terms and conditions as that Government may think fit to impose, direct, by notification, that the right, title and interest and the liabilities of Esso in relation to any undertaking in India shall instead of continuing to vest in the Central Government, vest in the Government Company either on the date of the Notification or on such earlier or later date (not being a date earlier than the appointed day) as may be specified in the Notification. Sub-section (2) further provides that where the right, title and interest and the liabilities of Esso in relation to its undertakings in India vest in a Government Company under sub-section (1) the Government Company shall, on and from the date of such vesting, be deemed to have become the owner, tenant, or lessee, as the case may be, in relation to such undertakings, and all the rights and liabilities of the Central Government in relation to such undertakings shall, on and from the date of such vesting, be deemed to have become the rights and liabilities, respectively of the Government Company. Sub-section (3) provides that the provisions of sub-section (2) of S. 5 shall apply to a lease or tenancy, which vests in a Government as they apply to a lease or tenancy vested in the Central Government and reference therein to the "Central

Government" shall be construed as a reference to the Government Company.

14. We have in *Smt. Dakshayini v. Messrs. Hindustan Petroleum Corporation Ltd.* (R.F.A. No. 83/1980 decided on 31-5-1990), considered S. 3, sub-sections (1), (3) and (4) of S. 4 and Ss. 5 and 9 of Act No. 4 of 1974 held as follows :

"The combined effect of Sec. 3, sub- sections (1), (3) and (4) of S. 4 and S. 5 of the Esso Acquisition Act is that from the date of vesting, for all intents and purposes, in relation to undertakings of Esso in India, the Central Government takes the place of Esso in India. In the deeds, agreements, bonds, lease deeds or instruments of any nature in favour of Esso or to which Esso is a party, subsisting or in force, and legal proceedings pending, instituted by or against Esso, on the date of vesting, in place of the Esso, the Central Government is substituted by a legislative decree. The instrument and the legal proceedings will have to be enforced and continued, as the case may be, as if the instruments were in favour of the Central Government or to which the Central Government is a party, as if the legal proceedings were instituted by or against the Central Government, as the case may be. The transfer to and vesting in, the Central Government the right, title and interest of Esso in relation to its undertakings in India is so complete that even the services of existing employees of Esso are statutorily transferred to the Central Government or Government Company, as the case may be. (See Sec. 9)."

From the provisions contained in S. 7, it is clear that even vesting or transferring of the right, title and interest and liabilities of the Esso transferred to and vested, in the Central Government to Esso Standard Refining Co. of India Ltd. is a legislative act. Section 7 specifically provides that right, title and interest and the liabilities of Esso in relation to its undertakings in India shall instead of continuing to vest in the Central Government, vest in the Government Company either on the date of the Notification or on such earlier date and not being a date earlier than the appointed day as may be specified in the Notification issued by the Central Government. Sub-section (2) of S. 7 further provides that such Govt. Company shall be deemed to have become the owner, tenant or lessee, as the case may be, in relation to such undertaking and all the rights and liabilities of the Central Government in relation to such undertakings, shall, on and from the date of vesting, be deemed to have become the rights and liabilities, respectively, of the Government Company. The Parliament has not stopped at that. It has gone a step further and stated in sub-section (3) of S. 7 that the provisions of sub-section (2) of S. 5 shall apply to a lessee or tenancy, which vests in a Government Company, as they apply to a lease or tenancy vested in the Central Government and reference therein to the "Central Government" shall be construed as a reference to the Government Company. Thus S. 7 places the matter beyond doubt that the effect of transfer of right, title and interest thereto vested in the Central Government to the Government Company is that the Govt. Company, must be deemed for all purposes as original lessee because sub-section (2) of S. 5 has been made applicable. So the lease must be deemed to

have been granted by the Lessor to M/s. Hindustan Petroleum Corporation Ltd.

15. This interpretation is in conformity with the object and intendment of the Act No. 4/1974 as stated in the preamble portion of it. The Act is passed to give effect to the directive principle of the State under Article 31-C of the Constitution. The Act is enacted in pursuance of the policy of the State incorporated in Art. 39(b) and (c) of the Constitution. The object of the Act is that the Esso Undertakings in India should be acquired in order to ensure that the ownership, and control of the petroleum products are distributed and marketed in India by the said Company are vested in the State and thereby so distributed as best to subserve the common good. If that be so, the process of acquisition is such that no sooner the taking over of the Esso takes place, the business of the Esso as conducted by it should continue in the same manner in which it was continued before vesting, without any legal obstacle whatsoever. It is because of this only, the Parliament has taken care to provide in detail the provisions relating to all matters as contained in Ss. 3, 4, 5, 7 and 9 of Act No. 4/1974. Thus this is a case in which neither there is any assignment nor there is any sub-letting. This is a case in which the very contract of lease is modified by the law and in place of Esso, "Hindustan Petroleum Co. Ltd." is substituted by the law itself. Therefore, we are of the view that on a reading of the aforesaid provisions of the Act together, there is no scope for accepting the contention of Sri M. R. Achar, learned Counsel for the petitioner that the act of the Central Government in transferring the properties of Esso to Esso Standard Refining Co. of India Ltd., amounts to sub-letting or assignment of the lease-hold rights. There is no act of party i.e., the tenant is involved in substituting the name of the 1st respondent either by assigning or sub-letting. It is all done by law. What attracts S. 21(1)(f) of the Act is the act of the tenant by which he unlawfully sub-lets or assigns or transfers in any manner his interest in the premises, without the consent in writing of the landlord. Therefore, there is no scope for applying S. 21(1)(f) of the Act as the requirements of that provision are not satisfied.

15-A. However, learned Counsel for the petitioner has placed reliance on the two decisions of the Supreme Court in Parasram Harnand Rao Vs. Shanti Parsad Narinder Kumar Jain and Another, and General Radio and Appliances Co. Ltd. and Others Vs. M.A. Khader (Dead) by Lrs., . In Parasram Harnand Rao's case an official liquidator brought leasehold rights for sale at the instance of the lessee. Therefore, it was held that there was assignment at the instance of the lessee. So transferee was liable to be evicted. The relevant portion of the Judgment reads thus Parasram Harnand Rao Vs. Shanti Parsad Narinder Kumar Jain and Another, :

"As regards point No. 3, the High Court relying on a decision of Calcutta High Court in Krishna Das Nandy Vs. Bidhan Chandra Roy, , has found that as the transfer in favour of respondent No. 1 by the Official Liquidator was confirmed by the Court, the status of the tenant by respondent No. 1 was acquired by operation of law and therefore the transfer was an involuntary transfer and the

provisions of Rent Control Act would not be attracted. After careful perusal of Calcutta case, in the first place it appears that the section concerned has not been extracted and we are not in a position to know what was the actual language of the section of the Bengal Act. Secondly, in our opinion, the Official Liquidator had merely stepped into the shoes of Laxmi Bank which was the original tenant and even if the Official Liquidator had transferred the tenancy lease to respondent No. 1 under the orders of the Court, it was on behalf of the original tenant. It was undoubtedly a voluntary sale which clearly fell within the mischief of S. 14(1)(b) of the Delhi Rent Control Act. Assuming that the sale by the Official Liquidator was an involuntary sale, then it undoubtedly became an assignment as provided for by S. 14(b) of Delhi Rent Control Act. Section 14(b) runs thus :--

"14(b). That the tenant has, on or after the 9th day of June, 1952, sub-let, assigned or otherwise parted with the possession of the whole or any part of the premises without obtaining the consent in writing of the landlord."

The language of S. 14(b) is wide enough not only to include any sub-lease but even an assignment or any other mode by which possession of the tenanted premises is parted. In view of the wide amplitude of S. 14(b) we are clearly of the opinion that it does not exclude even an involuntary sale. For these reasons therefore we are unable to agree with the view taken by the High Court. The appeal is accordingly allowed, the judgment and decree of the High Court are set aside and the plaintiff's application under S. 25 of the Delhi Rent Control Act is dismissed."

Learned Counsel for the petitioner stressed on the observation that even assuming that the sale by the Official Liquidator was involuntary sale, then it undoubtedly became an assignment as provided in S. 14(b) of the Delhi Rent Control Act, and contended on the basis of the aforesaid observation that even if it is construed that the transfer by the Central Government by reason of the order passed under Act No. 4 of 1974 is involuntary transfer, nevertheless, it becomes an assignment. We have already held that the provisions contained in Ss. 3, 4, 5, 7 and 9 of the Act No. 4/1974 read in the light of the aims, objects of the said enactment, there is no scope whatsoever for holding that there is an assignment or transfer of the lease by the tenant i.e., the Esso. It is a case of modification of the contract by substituting one of the contracting parties by the Parliament through the law enacted by it. Therefore, such a case cannot be held to come under the rule laid down in Parasram Harnand Rao Vs. Shanti Parsad Narinder Kumar Jain and Another, because in that case the Supreme Court considered a different situation which arose out of the act of the lessee through the liquidator in bringing the leasehold right for sale. Hence, we are of the view that the decision in Parasram Harnand Rao's case cannot be applied to the case on hand. Similarly in General Radio and Appliances Co. Ltd. and Others Vs. M.A. Khader (Dead) by Lrs., , it was the tenant-Company which submitted a scheme which was duly approved and sanctioned by the High Court of Bombay and as

such it was not involuntary one and it was the one initiated at the instance of the lessee only. The Supreme Court in para-9 of its judgment has recorded a categorical finding which reads thus :

"The order of amalgamation has been made on the basis of the petition made by the transferor Company in Company Petition No. 4 of 1968 by the High Court of Bombay. As such it cannot be said that this is an involuntary transfer effected by order of the Court. Moreover the 1st appellant-Company is no longer in existence in the eye of law and it has effected itself for all practical purposes The 2nd appellant-Company i.e. transferee Company is now the tenant in respect of the suit premises and the 1st appellant-Company has transferred possession of the suit premises in favour of the 2nd appellant-Company. There is undoubtedly no written permission or consent of the respondent-landlord to this transfer of tenancy right of the 1st appellant-Company as required under S. 10(ii)(a) of the said Act. Moreover even if it is assumed to be a sub-letting to the 2nd appellant by the 1st appellant, such sub-letting has been made contrary to the provisions of the said Act and in violation of the terms of Clause 4 of the tenancy agreement (Exhibit P-6) which clearly prohibits such sub-letting of the tenanted premises without the written permission of the landlord. The Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 is a Special Act which provides for eviction of tenants on certain specific grounds mentioned in S. 10 of the said Act. There is no express provision in the said Act that in case of any involuntary transfer or transfer of the tenancy right by virtue of a scheme of amalgamation sanctioned by the Court by its order under Ss. 391 and 394 of the Companies Act as in the present case, such transfer will not come within the purview of S. 10(ii)(a) of the said Act. In other words such a transfer of tenancy right on the basis of the order of the Court will be immune from the operation of the said Act and the transferee tenant will not be evicted on the ground that the original tenant transferred its right under the lease or sub-let the tenanted premises or a portion thereof. It is important to note in this connection the definition of tenant as given in S. 2(ix) of the said Act which provides specifically that a tenant does not include a person placed in occupation of a building by its tenant. On a plain reading of this provision it is crystal clear that any person placed in occupation of a building by the tenant cannot be deemed or considered to be a tenant in respect of the premises in which the said person is to be in possession within the meaning of the said Act. Therefore, the 2nd appellant i.e. National Ekco Radio and Engineering Co. Ltd. the transferee company who has been put in possession of the tenanted premises by the transferor tenant General Radio and Appliances Co. (P.) Ltd. cannot be deemed to be tenant under this Act on the mere plea that the tenancy right including the leasehold interest in the tenanted premises have come to be transferred and vested in the transferee company on the basis of the order made under Ss. 391 and 394 of the Companies Act."

Thus, it is clear that the decision in General Radio and Appliances Co. Ltd. and Others Vs. M.A. Khader (Dead) by Lrs., , also has not considered the point that is

involved in the case on hand. Therefore, it is not possible to apply the rule laid down in that case to the case on hand.

16. It is further contended on behalf of the petitioner that in the event it is held that the Act in question has the effect of altering the lease-hold rights, it will come in conflict with the State Act viz., the Karnataka Rent Control Act and as the Parliament cannot enact the matters covered by the Karnataka Rent Act, it is the Karnataka Rent Control Act that prevails and not the Act No. 4 of 1974 enacted by the Parliament. The Act No. 4 of 1974 falls under Entries, 52, 51 and 97 of List of Schedule-VII whereas the Karnataka Rent Control Act falls under Entry-6 of List III. It is also relevant to notice that the Act No. 4 of 1974 squarely falls within the legislative competence of the Parliament. If that be so, in order to give effect to the objects and intendments of Act No. 4 of 1974 as stated in the preamble if some provisions incidentally fall beyond its legislative competency, such provision will be incidental to and are intended to effectuate the intendments and objects of the Act. In such a case, what has to be seen is the pith and substance of the Act. Examined from this point of view, the Act No. 4 of 1974 falls within the Legislative Competency of the Parliament. Therefore, it is not possible to hold that it conflicts with the State Law. In addition to this, it is also relevant to notice that the Karnataka Rent Control Act provides for the control of rents and evictions, leasing of buildings, rates of hotels and lodging houses and for certain other matters. The Act No. 4 of 1974 has not affected any of the provisions contained in the Karnataka Rent Control Act relating to control of rents and evictions, leasing of buildings and control of rates of hotels and lodging houses and certain other matters provided in the Act. The Act No. 4 of 1974 acquires and vests all the properties, rights and liabilities of Esso, in Central Government. It also further provides for transferring of the same to Government Company. It also further declares that such transferee shall be deemed to be a original lessee. Thus it only alters the parties to the contracts, and it does not affect any one of the provisions of the Karnataka Rent Control Act. If by reason of alteration of the parties to the contracts, the provisions of the Karnataka Rent Control Act are not attracted, it does not mean or it cannot be held to mean that such a consequence affects or results in nullifying the provisions of the Karnataka Rent Control Act. As long as the pith and substance of Act No. 4 of 1974 is within the legislative competence of the Parliament, incidental trenching here and there or such consequences, if any, will not affect the validity of the enactment in any manner. In addition to this, it is also relevant to notice that S. 11 of the Act specifically provides that "the provisions of the Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act or in any decree or order of any court, tribunal or other authority". Thus Sec. 11 of the Act No. 4 of 1974 overrides any other law and gives overriding effect to the provisions contained in Act No. 4 of 1974.

17. Of course, it is contended that similar non obstante clause is contained in sub-section(1) of S. 23 of the Karnataka Rent Control Act, therefore, the

Karnataka Rent Control Act will prevail over Act No. 4 of 1974. Section 23(1) of the Act opens with the words "Notwithstanding anything contained in any law, but subject to any contract to the contrary, it shall not be lawful after the coming into operation of this part, for any tenant to sub-let whole or any part of the premises let to him or to assign or transfer in any other manner his interest therein". In this regard, it is relevant to notice that as per S. 23(1) of the Act it is not lawful to sub-let, transfer or assign tenancy right, "subject to any contract to the contrary", in other words, without the consent in writing of the landlord. The object of S. 23 is only to prohibit the tenant from sub-letting, transferring or assigning the leasehold rights without the consent in writing of the landlord. This cannot be read as affecting the legislative power of the Parliament to make a law altering or substituting the contract between the parties, even if such contracts relate to leasing of building. Therefore, the field covered by both the enactments is not one and the same. Hence, the question of conflict between the Act No. 4 of 1974 and the Karnataka Rent Control Act does not arise. Accordingly, Point No. 1 is answered in the negative, and against the petitioner.

POINT NO. 2

18. In the light of the finding recorded on point No. 1, point No. 2 does not really survive. However, as the contentions have been advanced, we consider the same.

19. The contention of the petitioner is that clause 4(a) of the lease deed only enables the tenant to licence or sub-let the demised premises or any part thereof to any local dealer or Agent for use for all or any of the purposes mentioned in the lease deed without any consent of the landlord; but not in favour of a Company which is neither a local dealer nor an agent of the original tenant. We are not inclined to construe clause 4(a) of the lease deed in such narrow terms. Clause 4(a) of the lease deed provides.

"The tenant shall be at liberty to licence or sub-let the demised premises or any part thereof to any local dealer or agent for use for all or any of the purposes aforesaid without any consent of the landlord."

Thus clause 4(a) of the lease deed in principle permits the lessee to sub-let the premises to another or to give on licence to another person, without the consent of the landlord. Of course the clause also further states that such licence or sub-letting "to any local dealer or agent". The clause does not specify the licensee or sub-lessee. It only specifies, broad category of licensee or sub-lessee. Such broad categorisation of a licensee or sub-lessee does not in any way restrict or water down the authority given to the lessee to sub-let or give on licence the demised premises to a person who does not answer the description contained in clause 4(a) of the lease-deed, and sub-letting or giving on licence to such person does not automatically and ipso facto make the possession of the lessee or licensee illegal or opposed to the provisions of S. 23 of the Karnataka Rent Control Act. Section 23 and S. 21(1)(f) of the Karnataka Rent Control Act only cover the case where there is a subletting or assigning or transferring of his

interest by the tenant without the consent of the landlord in writing. Here is a case wherein the lease deed executed by the landlord and the tenant in specific terms provides that the tenant is at liberty to licence or sub-let the demised premises without the consent of the landlord. That being the position, the authority granted to the tenant under clause 4(a) of the lease deed to sub-let or licence the demised premises is sufficient to take out the case out of the purview of S. 23 of the Act. The question as to whether the person to whom the premises is sub-let or given on licence, answers the categories mentioned in clause 4(a) of the lease deed, is a quite different issue and that does not in any way affect the case. In the event the sub-lessee or the licensee does not fall within the categories mentioned in clause 4(a) of the lease deed, it does not bring the case under S. 23 of the Act. Section 23 of the Act is not concerned as to whom the premises is sub-let or to whom the interest of the premises is assigned or transferred. The object of it, is only to ensure that the tenant without the consent in writing of the landlord does not sub-let whole or any part of the premises or assign or transfer his interest in the premises. When the lease deed itself gives liberty to the tenant to licence or sub-let the premises without any consent of the landlord, the case cannot be held to fall within the mischief of S. 23 of the Act. Therefore, we are of the view that even if it is held that the act of the Central Government in transferring Esso to the Esso Standard Refinery Co., is held to amount to sub-letting, transferring or assigning the leasehold right, such an assignment or sub-letting is permitted by the lease deed itself. Therefore, we hold that the case does not fall within the mischief of S. 23 of the Act. Accordingly, point No. 2 is answered in the negative and against the petitioner.

20. For the reasons stated above, the Civil Revision Petition fails and the same is dismissed.

21. Petition dismissed.