
(1994) 02 MAD CK 0071

In the Madras High Court

Case No : Second Appeal No"s. 148 and 149/94

Hindustan Petroleum Corporation Ltd. and another

APPELLANT

Vs

Mr. A.K. Annadurai and another

RESPONDENT

Date of Decision : 18-02-1994

Acts Referred:

Caltex Acquisition of Shares of Caltex Oil Refining (India) Limited and of the Undertakings in India of Caltex (India) Limited Act, 1977 — Section 5, 5(2), 6, 7, 7(3)
Civil Procedure Code, 1908 (CPC) — Section 80
Constitution of India, 1950 — Article 12, 14, 19, 31(c)
Transfer of Property Act, 1882 — Section 106

Citation : (1994) 02 MAD CK 0071

Hon'ble Judges : Srinivasan, J

Bench : Single Bench

Advocate : B. Kumar, for the Appellant; T.R. Rajaraman and S.S. Sundar for caveator, for the Respondent

Judgement

Srinivasan, J.—These appeals arise out of the suits filed by the respondents for recovery of possession of the properties admittedly owned by them with damages. Both the courts have granted decrees for possession in favour of the plaintiffs. The trial court negatived the prayer for damages. On appeal the appellate court has granted a decree for damages at the rate of Rs. 300/- per mensem. The first contention urged by Learned Counsel for the appellants is that the suits are bad for want of notice under S. 80 of Civil Procedure Code. According to Learned Counsel the appellants are deemed to be Central Government by virtue of the provisions of the Caltex (Acquisition of Shares of Caltex Oil Refining (India) Limited and of the Undertakings in India of Caltex (India) Limited Act, 1977 hereinafter referred to as the Caltex Act. Learned Counsel placed reliance on the provisions of S. 9 of the said Act. Under that Section, if the Central Government is satisfied that Government company is willing to comply or has complied with such terms and conditions as Government may think fit, to impose, may, by Notification, direct that the right, title and interest and the liabilities of Caltex (India) in relation to any of the undertakings

in India, shall instead of continuing to vest in the Central Government, vest in the Government company either on the date of Notification or on such earlier or later date not being a date earlier than the appointed day as may be specified in the Notification. Once such vesting takes place, the right, title and interest and the liabilities of Caltex (India) in relation to its undertakings in India vest in the Government company and on and from the date of such vesting, the company shall be deemed to own the rights and liabilities of the Central Government. With reference to Ss. 5, 6 and 7 of the Act so far as may be, they shall apply in relation to such Government Company as they apply in relation to Central government and for that purpose reference in those Sections to the Central Government shall be construed as reference to Government Company.

2. There is no merit in this contention. The appellants are undoubtedly limited companies registered under the Companies Act. The appellants represent Hindustan Petroleum Corporation limited, which has been registered under the Companies Act. It may be a Government Company. But it is certainly not, "Government" within the meaning of S. 80 of Civil Procedure Code. The legal fiction which is introduced will apply only to Ss. 5, 6 and 7 of the said Act and it cannot be carried to S. 80 of Civil Procedure Code. There is no question of the right of the Central Government being involved in this. It is a question of procedure for filing a suit against the Government. If it is a Government, S. 80 of CPC requires notice of two months and in this case the appellants are not the Government and they are only Limited Companies. Hence no notice under S. 80 of CPC is necessary.

3. Learned Counsel refers to the judgment of the Supreme Court in *Som Prakash v. Union of India* (A.I.R. 1981 S.C. 212). Which considered the question whether for the purpose of Art. 12 of the Constitution of India, Bharat Petroleum Corporation Limited was a State or not. The Supreme Court held that it was a State within the meaning of Art. 12. But that will not in any way equate the Corporation to the Government within the meaning of S. 80 of Civil Procedure Code.

4. Learned Counsel draws my attention to the Judgment of the Bombay High Court in *Trade Centre Developers and Builders Pvt. Ltd. and Another Vs. Union of India and Another*, . The Court had to consider the validity of Ss. 5(2) and 7(3) of ESSO (Acquisition of Undertakings of India) Act 14 of 1974 with reference to Arts. 14, 19 and 31(c) of the Constitution of India. That judgment has nothing to do with the present proposition of law urged by Learned Counsel. Hence the first contention is rejected.

5. The second contention of Learned Counsel is that under the provisions of the Caltex Act, the appellants have exercised their option to renew the lease and also intimated the owners of their option. It is submitted by Learned Counsel that under S. 7, there is automatic renewal of the lease for a period often years. In this case the contractual lease expired on 31.5.1910. Even assuming that S. 7 would automatically extend the period of lease, it will only run upto 31.5.1990.

The present suit was filed only on 30.7.1990 after issue of notice of termination under S. 106 of the Transfer of Property Act. Hence, the alleged renewal under S. 7 of the Caltex Act will not help the appellants to claim another renewal. According to Learned Counsel the Section provides for any number of renewals so long as the appellants desire. There is no substance in this contention. The Section provides only for one renewal as it is the purpose of the Act not to disturb the existing position till alternative arrangements could be made. In fact, the renewal is only for the purpose of continuing the possession for a reasonable period. The lease that is referred to under S. 7 of the Act can only refer to the lease which was in existence on the date of the Act and not any subsequent renewed lease or holding over. In the present case Learned Counsel submits that the appellants have been holding over for a period often years from 1.6.1980 to 31.5.1990. It is argued by him that the respondents have not granted any renewal as prayed for by the appellants and therefore, the appellants are entitled to one renewal after 31.5.1990. There is no merit in this contention. S. 7 of the Caltex Act does not authorise any such renewal in favour of the appellants.

6. The third contention is that the appellants are statutory tenants and they have defector possession. According to Learned Counsel, the purpose of the Caltex Act will be defeated if the appellants are evicted. There is no substance in this argument. If the appellants are not entitled to continue in possession and the owners of the land are desirous of taking possession, there is no question of the appellants continuing in possession on the basis that the provisions of the Act will be defeated.

7. The fourth contention is that the courts below have wrongly taken the view that the request of the appellants for renewal of the lease in July 1990 is not a valid one. According to Learned Counsel, though the tenancy was terminated by a notice under S. 106 of the Transfer of Property Act by the respondents, it is open to the appellants to exercise its rights of renewal under S. 7 of the Caltex Act. I have already found that the appellants have no right whatever to claim a renewal in any event after 31.5.1990. Hence, there is no substance in the contention that there is a valid request for renewal in July 1990 and the appellants would be entitled to continue as leases.

8. The next contention urged on behalf of the appellants is that whether there is a lease or not, the possession of the appellants shall not be disturbed in view of the object of the Caltex Act. Learned Counsel reads the Preamble of the Act and submits that the Act is intended for the purpose of enabling the Central Government to take control of the Petroleum products produced, marketed and distributed in India and for that purpose the Act provides for continuation of the leases and continuation of possession by the lessees. It is submitted that if the possession of the lessees is disturbed, it will not be possible to fulfil the objects of the Act. Reliance is placed in this connection on the Judgment of a Division Bench of Andhra Pradesh High Court in *Mustafa Hussain Vs. Union of India (UOI) and Another*, . Learned Counsel draws my attention to the following passage in

the judgment.

Now it remains to be seen whether these provisions are so unrelated to the object of the Act or the dominant object of these provisions is to achieve an unauthorised purpose. The statement of Objects and Reasons of the Caltex Acquisition Act shows that in implementation of the policy for progressively securing that the ownership and control of the production of the nation's Petroleum resources are vested in the State and thereby so distributed as best to subserve the common good, the Government entered into negotiation with Caltex for acquiring hundred percent of the shares of Caltex Oil Refining (India) Limited free of encumbrances and the undertakings in India of Caltex (India) Limited. An Ordinance was promulgated by the President on 30th December, 1976 and the same was replaced by the present Act. The Ordinance also provided for the continuance of the contracts entered into by the Caltex for any sale or supply in India. From this it can be seen that the supply of these products is an integral part of the State policy. A perusal of the Preamble as well as the other provisions in the other two enactments would also show that the object behind the state policy was to have the ownership and control over these undertakings dealing in Petroleum products which are very essential and to see that the Public are supplied with the same. By merely acquiring these undertakings the object cannot be achieved. It is a matter of common knowledge that these undertakings had entered into leases with numerous individuals in respect of the Plots on which the supply pumps etc., were installed. Such pumps are very essential for distribution and supply of the products. All such leases and rights of tenancy were in existence on the appointed day. Unless such leases are continued for reasonable time, the very object of requisitions of these undertakings will get defeated. If on the appointed day or soon after many of the leases were about to expire, then the State which has acquired these undertakings will be in a difficult position unless the Corporation created by the State are empowered to continue the leases or rights of tenancy for some more time. It is with this object that S. 5(2) and S. 7(3) of the respective Acquisition Acts are incorporated. Therefore, we have no doubt whatsoever in holding that these provisions are basically and essentially necessary for giving effect to the object of the State policy. It can, by no stretch of imagination, be said that the dominant object of these impugned provisions is only to achieve an unauthorised purpose.

9. The Division Bench in that case had to consider only the constitutional validity of the relevant Sections of the Act. The Division Bench did not have to consider whether the rest while lessee can continue in possession even after the termination of lease. The reasoning of the Division Bench is to the effect that the lease, which was in force on the date of the Act was to continue for a reasonable time so that the objects of the Act could be carried out. The proposition advanced by Learned Counsel for the appellants is in no way supported by the Judgment of the Division Bench in the above case. The passage extracted above does not contain any proposition as adumbrated by Learned Counsel.

10. Learned Counsel relies on the Judgment of the Madhya Pradesh High Court in *Manchar Singh v. Caltex Oil Refining (India) Ltd., Bombay* (A.I.R. 1981 MP 123). That again is a case in which the validity of Sections in the Acquisition Act was considered. That has nothing to do with the point, which is now argued by Learned Counsel before me. There is absolutely no substance in the contention that the erstwhile lessee can continue in possession whether there is renewal or subsisting lease.

11. The next contention urged in that the respondents are receiving rent from the appellants and therefore, they cannot claim possession. I have already referred to the fact that the tenancy was terminated by valid notice under S. 106 of the Transfer of Property Act and immediately after the expiry of the period of notice, the present suit has been filed. There is no merit in the contention that the respondents were receiving rent.

12. The next contention is that the appellate court is in error in granting a decree for damages. According to Learned Counsel, there is no evidence whatsoever in support of the said decree. It is submitted that the amount granted as damages is wholly unreasonable. I find that the Appellate Court has considered the entire evidence on record. It has rejected the evidence of P.Ws. 2 and 3 as it is not supported by documents. But it has taken into account the evidence of P.Ws. 2 and 3 as it is not supported by documents. But it has taken into account the evidence of D.Ws. 1 and 2 and arrived at the figure of Rs. 300/- per mensem by way of damages. It is certainly open to the appellate court to consider the question of damages on the basis of the entire evidence available on record. In fact the reliance is placed by the appellate Court only on the deposition given by D.w.s. 1 and 2 in this connection. No exception can be taken by the appellants to the amount fixed by the appellate Court as it is on the lower side. The appellate Court has also taken into consideration the extent of the property and the market value of the properties in the neighborhood. The rent fixed on never be said to be higher than the normal rent which prevails in the area. There is no substance in the contention raised by Learned Counsel.

13. The last contention advanced is that the public will suffer if the appellants are dispossessed of the property as they lose the service of the Petrol bunk. That is wholly irrelevant. In this case the respondents have been refusing to grant renewal of the lease and they have been fighting with the appellants from 1980. The appellants ought to have made suitable arrangements long back in order to shift their petrol bunk to another premises if they were keen on serving the members of the public. The suit has been pending for about four years and the appellants have lost in both the courts. Hence, the appellants ought to have made alternative arrangement for shifting the Petrol Bunk. In the circumstances, all the contentions urged by Learned Counsel for the appellants fail, the Second Appeals are dismissed.