

(2001) 03 PAT CK 0047
In the Patna High Court
Case No : LPA Nos. 914 and 933 of 2000

Hindustan Petroleum Corporation Ltd. and Others	APPELLANT
Vs	
Jag Mohan Mehrotra and Another Jag Mohan Mehrotra and Another Vs Hindustan Petroleum Corporation Ltd. and Others	RESPONDENT

Date of Decision : 14-03-2001

Acts Referred:

Citation : (2001) 03 PAT CK 0047

Judgement

1. Both the Letters Patent appeals arise out of judgment and order dated April 20, 2000, by a learned single judge of this court in CWJC No. 1479 of 1999 (since reported in Jag Mohan Mehrotra v. Hindustan Petroleum Corporation Ltd. [2002] 109 CompCas 844). In view of the nature of the case, both the appeals have been heard together in detail at the stage of admission itself and are being disposed of by this common order.

2. LPA No. 914 of 2000 has been preferred by the writ petitioners against that part of the judgment under appeal by which prayer for a direction to the respondents which include Hindustan Petroleum Corporation Limited (hereinafter referred to as "the Corporation"), a Government company, to vacate the premises in question has been refused. This was sought as a consequential relief after the main relief of quashing of letter dated December 28, 1998, (annexure 5) issued by the Corporation in terms of Section 5(2) read with Section 7(3) of the ESSO (Acquisition of Undertakings in India) Act, 1974 (hereinafter referred to as "the Act"), was allowed by the learned single judge. LPA No. 933 of 2000 has been preferred by the Corporation and its official against the grant of aforesaid relief to the writ petitioners.

3. Since the issue in LPA No. 933 of 2000 relates to the main relief hence, the same has to be considered first and only if this appeal fails then the issue relating to consequential relief raised in LPA No. 914 of 2000 shall have to be considered.

4. The dispute relates to a plot of land measuring 8,000 sq. ft. on Dak Bungalow Road in the town of Patna. Writ petitioner No. 1 as karta of the family owning the said land, created a lease over the said land through a registered deed of lease dated October 11, 1966, in favour of ESSO Standard Eastern Inc., an American company, for a period of three years from March 1, 1966, at a monthly rental of Rs. 600. The lease agreement further provided that after the expiry of three years, the lessee shall have the option of renewal for a further period of ten years at the rate of Rs. 600 per month and thereafter, a further option of renewal for ten years at the rate of Rs. 650 per month and thereafter, a last option of further renewal for another term of ten years at the rate of Rs. 700 per month.

5. By virtue of Section 3 of the Act, the right, title and interest of ESSO in relation to its undertakings in India stood transferred to and vested in the Central Government with effect from March 13, 1974, the appointed day. Thereafter, through a notification by Government of India u/s 7 of the Act the undertakings of ESSO in India vested in a Government company, the Corporation.

6. For the purpose of deciding the controversies between the parties in these appeals, at this juncture, it is useful to take note of Sections 5 and 7 of the Act which are as follows :

"5. Central Government to be lessee or tenant under certain circumstances. --(1) 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.

(2) On the expiry of the term of any lease or tenancy referred to in Sub- Section (1), such lease or tenancy shall, if so desired by the Central Government, be renewed on the same terms and conditions on which the lease or tenancy was held by ESSO immediately before the appointed day.

7. Power of Central Government to direct vesting of the undertakings of ESSO in a Government company.--(1) Notwithstanding 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 notification or on such earlier or later date (not being a date earlier than the appointed day) as may be specified in the notification.

(2) 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 undertaking, and all the rights and liabilities of the Central Government in relation to such undertaking shall, on and from the date of such vesting be deemed to have become the rights and liabilities, respectively of the Government company.

(3) The provisions of Sub-section (2) of Section 5 shall apply to lease or tenancy, which vests in a Government company, as they apply to 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."

7. On a combined reading of Sections 5 and 7 it is clear that as a Government company the Corporation became the lessee in respect of the land in question, stepping into shoes of ESSO by virtue of statutory provisions. The facts disclose that the Corporation not only availed of the full term of the first ten-year term from March, 1969, to February, 1979, on a monthly rental of Rs. 600 per month but also availed of lease/tenancy at the rental of Rs. 650 per month for the next ten years, i.e., from March, 1979, to February, 1989, and for a further period of ten years from March, 1989, to February, 1999, at the monthly rental of Rs. 700. When the right of availing of further lease for two terms of ten years each available to the Corporation by virtue of Section 5(1) read with Section 7(2) was over and the final and last lease was nearing completion, the Corporation issued the impugned letter dated December 28, 1998 (annexure 5 to the writ application), seeking to exercise a right for renewal of lease for a further period of 33 years commencing from March 1, 1999, on the same terms and conditions on which the lessee held the lease immediately before March 13, 1974. This right was claimed in terms of Sections 5 and 7(3) of the Act. The writ petitioners challenged annexure 5 through writ petition bearing CWJC No. 1479 of 1999, filed on February 9, 1999, leading to the judgment under appeal.

8. The learned single judge agreed with submissions advanced on behalf of the writ petitioners that the impugned order is beyond the scope and purpose of Section 5(2) of the Act. On the basis of a Division Bench judgment of the Orissa High Court reported in Smt. Dolly Das Vs. Hindustan Petroleum Corporation Ltd. and Another, which was affirmed by the Supreme Court vide judgment reported in Hindustan Petroleum Corporation Ltd. and Another Vs. Dolly Das, and a judgment of the Madras High Court reported in M. Rose and Others Vs. Hindustan Petroleum Corpn. Ltd. and Others, , it was held that the provisions of Sections 5(2) and 7(3) of the Act were enacted to give breathing time to organise their affairs and such provisions would not be available to the Government company if the transition from private ownership to Government ownership has already been effected and a long period of time has passed thereafter. Learned counsel for the Corporation assailed the aforesaid finding and submitted that Section 5(2) read with Section 7(3) of the Act does not contain any limitation of time within which a right of renewal has to be exercised and, therefore, the right of renewal would arise on the expiry of the term of a lease

referred to in Sub-section (1) and if desired by the Government company, the expired lease has to be renewed on the same terms and conditions on which the lease or tenancy was held by ESSO immediately before the appointed day.

9. No doubt, there is no express limitation in Section 5(2) of the Act, but it is clear that the provisions in question are transitory in nature and hence, must be interpreted in a manner which can fulfil the object of the Act without causing unnecessary hardship or injustice to innocent third parties who had leased their properties to ESSO before the appointed date. The learned single judge, in this connection, has adopted the views of the Orissa High Court in the case of Smt. Dolly Das Vs. Hindustan Petroleum Corporation Ltd. and Another, . The Supreme Court in that very case, while disposing of the appeal vide judgment reported in Hindustan Petroleum Corporation Ltd. and Another Vs. Dolly Das, held in paragraph 12 that the Corporation in terms of Section 7 of the Act could seek renewal only for a period of one term as originally granted. Even in that view of the matter, since the period of lease on March 13, 1974, was for ten years hence, on expiry of the then lease period in February, 1979, the Corporation could have invoked its power of renewal u/s 5(2) read with Section 7(3) of the Act only for one term of ten years expiring in February, 1989. Since such a course open u/s 5(2) was not to the advantage of the Corporation hence, it appears to have adopted for exercising the right of renewal in exercise of rights available u/s 5(1) of the Act so as to enjoy a lease up to February, 1999. Having done so, it cannot be permitted to exercise the option of renewal of the lease that had already expired in February, 1989, and in which the monthly rental was Rs. 650. The subsequent and last lease for ten years at the rate of Rs. 700 per month was a latter lease not referred to in Sub-section (1) of Section 5 and hence, the Corporation must be deemed to have forgone its right u/s 5(2) of the Act for renewal of a lease referred to in Section 5(1). It is further clear from Section 5(2) of the Act that the renewed lease should be on the same terms and conditions on which the lease was held by ESSO immediately before the appointed day. In this case, on the appointed day the lease for ten years was at a rental of Rs. 650 per month but thereafter the Corporation availed of another lease by way of renewal on rental of Rs. 700 per month and, therefore, on expiry of this lease it does not appear proper and reasonable that the law would permit renewal at the rate of Rs. 650 per month. Hence, on such considerations also we find no force in the submissions of learned counsel for the Corporation. The conclusions of the learned single judge regarding the impugned order contained in annexure 5 to the writ application are, therefore, affirmed and LPA No. 933 of 2000 is found to be without any merit.

10. Coming to LPA No. 914 of 2000, it is worthwhile to notice that after setting aside the impugned order contained in annexure 5 to the writ application the learned single judge rejected the consequential relief by holding that continuance of respondent-Corporation under the lease agreement even after expiry of the lease and determination of the same is a contractual matter lying outside the field of public law and hence, not liable to review under writ jurisdiction.

Therefore, the parties were left free to agitate the issue in the civil court.

11. Learned counsel for the appellants--writ petitioners has submitted that the aforesaid view is erroneous and in the facts of the case when the main relief for quashing of annexure 5 has been granted against a Government company which admitted in annexure 5 that the lease in its favour shall expire of February 28,1999, then denial of consequential relief for a direction to vacate the land in question should not have been left for decision by the civil court. It was further submitted that there was no contractual relationship between the writ petitioners and the Corporation with regard to tenancy/lease in question because the lease agreement was with ESSO and the Corporation stepped into shoes of ESSO by virtue of operation of the Act. According to him, since the Act, particularly Section 5(1), transferred upon the Corporation only the rights which were available to ESSO and nothing more hence, being a Government company and having taken advantage of the provisions of the Act, it cannot be permitted to act arbitrarily and to continue in possession after expiry of the lease in February, 1999. Such a right of further continuance was not conferred upon the Corporation by the Act or any other law and hence, the learned single judge ought to have followed the Orissa High Court judgment as well as that of Supreme Court in the case of Hindustan Petroleum Corporation Ltd. and Another Vs. Dolly Das, and should have directed the Corporation to hand over vacant possession of the land in question to the writ petitioners within a fixed time. A perusal of the aforesaid judgments shows that the High Court of Orissa directed the Corporation to deliver vacant possession of the premises in question and the apex court did not interfere with such direction but only fixed the time period for vacating the premises, as per request made by the Corporation.

12. Learned counsel for the appellants-writ petitioners further contended that the learned single judge should not have been guided by the decisions of the English courts on the question regarding public law and private law in view of the observation of the Supreme Court of India in paragraph 101 of Escorts case reported in Life Insurance Corporation of India Vs. Escorts Ltd. and Others, , wherein it was observed thus (page 637);

"We also desire to warn ourselves against readily referring to English cases on questions of constitutional law, administrative law and public law as the law in India in these branches has forged ahead of the law in England, guided as we are by our Constitution and uninhibited as we are by the technical rules which have hampered the development of the English law."

13. Reliance was also placed on behalf of the appellants-writ petitioners on the judgment of the Supreme Court in the case of Dwarkadas Marfatia and Sons Vs. Board of Trustees of the Port of Bombay, , to submit that action of a public Corporation dealing with tenants was found to be one amenable to judicial review if such action is devoid of reason or is arbitrary.

14. On the other hand, learned counsel for the Corporation submitted that the

expiry of lease can only be a ground for bringing a civil action for eviction and hence, on such ground no direction should be issued for handing over possession, in exercise of power under Article 226 of the Constitution of India. It was suggested that the Corporation should be left free to take all the usual defences which a party is free to take in a suit for eviction on the ground of expiry of the lease. However, on a specific query, no defence was pointed out which could be examined to find out whether such a defence merits determination only in a civil suit.

15. After the hearing of these appeals, at the admission stage itself was concluded, the court wanted learned counsel for the Corporation to take instructions as to what would be the reasonable time the Corporation may require to vacate the premises, in case this court did not agree with the submissions raised on behalf of the Corporation noticed above. For this purpose when the matter was listed for orders then learned counsel for the Corporation expressed inability on the part of the Corporation to indicate any time frame. On behalf of the corporation reliance was placed on two more judgments of the Supreme Court in the case of Life Insurance Corporation of India's case [1986] 59 CompCas 548 and in the case of Express Newspapers Pvt. Ltd. and Others Vs. Union of India (UOI) and Others, to support the earlier submission that the writ petitioners should be left free to take steps for eviction of the Corporation through a suit for eviction before the civil court. For this purpose reliance was placed upon paragraph 102 of the judgment in the case of Life Insurance Corporation of India's case [1986] 59 CompCas 548 and paragraphs 196, 201, 202 and 205 of the judgment in the case of Express Newspapers Pvt. Ltd. and Others Vs. Union of India (UOI) and Others, . We have already considered paragraph 101 of judgment in the case of Life Insurance Corporation of India's case [1986] 59 CompCas 548 and paragraph 102 only emphasises the principle that it is impossible to draw the line to demarcate the frontier between the public law domain and the private law field and that such question must be decided in each case with reference to the particular action and a host of other relevant circumstances. In that case the State was found to be acting as a shareholder in seeking to change the management of a company in question. In the present case the Corporation has stepped into the shoes of a lessee by virtue of statutory provisions of the Act. In the case of Express Newspapers Pvt. Ltd. and Others Vs. Union of India (UOI) and Others, , the petitioner succeeded in getting the impugned notice quashed through petitions under Article 32 of the Constitution of India and there was no further relief sought by the petitioner falling for consideration before the court. It was with regard to the plea of the Union of India, a respondent in that case, for claims for recovery of conversion charges that the court granted a liberty to claim the same by a duly constituted suit. In that case such civil rights of the parties were found to flow from the lease deed and not from any statutory provision. Hence, the aforesaid judgments are of no help to the Corporation.

16. Having considered all the submissions as well as the relevant aspects of the

case, we find substance in the submissions advanced on behalf of the appellants-writ petitioners. No doubt, a Government company or Corporation may enter into a purely contractual relationship and on such consideration judicial review of such matter may be denied under Article 226 of the Constitution of India. However, in the present case, the relationship between the parties is governed largely by the provisions of the Act and once it is found that the Corporation has no right under the Act to continue as a tenant after the expiry of lease in February, 1999, the Corporation's continued possession and its reluctance to vacate the premises must be held as arbitrary and unreasonable. In such circumstances, the play of Article 226 is not only permitted but is desirable.

17. For all the aforesaid reasons, LPA No. 933 of 2000 is dismissed and LPA No. 914 of 2000 is allowed. Since even after enquiry the Corporation refused to indicate any reasonable time within which it could vacate the premises, it is directed to hand over vacant possession of the premises to the petitioners within a period of six months from today. In the facts of the case, the parties are directed to bear their own costs throughout.