(2010) 04 BOM CK 0110

In the Bombay High Court

Case No : Civil Revision Application No. 756 of 2009

Hindustan Petroleum Corporation Ltd.	APPELLANT
Vs	
Navjeevan Co-operative Housing Society Limited, ICICI Bank Ltd. and State Bank of India	RESPONDENT

Date of Decision : 29-04-2010

Acts Referred:

Burma Shell (Acquisition of Undertakings) Act, 1976 — Section 5(1), 5(2)
Caltex Acquisition of Shares of Caltex Oil Refining (India) Limited and of the Undertakings in India of Caltex (India) Limited Act, 1977 — Section 7(1), 7(3), 9
Civil Procedure Code, 1908 (CPC) — Order 20 Rule 12

Citation : (2011) 5 BomCR 186

Hon'ble Judges : J.H. Bhatia, J

Bench : Single Bench

Advocate : G.S. Godbole, for the Appellant; Satish Shetty and Rehana Kasuri, instructed by Banatwala and Co., for the Respondent

Final Decision : Dismissed

Judgement

J.H. Bhatia, J.—With consent of the learned Counsel, matter is taken up immediately for final hearing and disposal.

2. Respondent No. 1 is admittedly the landlord in respect of the premises admeasuring about 10,000 sq.ft. in Madhav Mills Estate, Lamington Road, Bombay. The said premises were let out under a registered indenture of lease in favour of Caltex India Ltd. for running petrol pump. As per the terms of the contract, period of the lease was 20 years and the agreed annual rent was Rs. 33,000/-. It was further covenanted that on expiry of 20 years, the tenant would have an option to get the lease renewed for a further period of 10 years for which rent would be Rs. 36,000/- per annum. Before expiry of the said period of ten years, the tenant would also be entitled to exercise option for further renewal for a period of 10 years at the rent of Rs. 39,660/- per annum. For both the renewals, option was to be exercised before the expiry of the term. It also specifically provided that option of renewal would be in aggregate for two terms

each of 10 years. During the original term of lease, the said shares and assets and liabilities of the Caltex India Ltd. were acquired by the Central Government under [The] Caltex [Acquisition of Shares of Caltex Oil Refining (India) Ltd. and of the undertakings in India of Caltex (India) Ltd.] Act, 1977) (Hereinafter referred to as the Caltex Act). As per the provisions of Section 7(1) of the said Act, rights under any lease or tenancy or any other right to secure any premises for any purpose, which were held by the Caltex India Ltd. immediately before the appointed date, would vest in and be held by the Central Government on and after the appointed day on same terms and conditions on which the Caltex India Ltd. would have held. As per the provisions of Section 9, Central Government could direct vesting of such undertaking in a Government company. Revision applicant before this Court is the Government company in whom the rights under the lease in the present dispute were vested by the Government and thus, the applicant/defendant became tenant or lessee of the landlord/plaintiff. Original lease period of 20 years expired on 30.1.1984 and further period of 20 years beyond that also expired on 30th January, 2004. Plaintiff/landlord issued a notice dated 18th September, 2003 to the defendant No. 1/applicant terminating the tenancy with effect from 31/1/2004. The notice was received but the defendant No. 1 refused to vacate the premises. After expiry of the lease period even after computing the period for which the renewal could allowed, plaintiff filed suit No. 57/67 of 2004 for eviction and possession.

3. Defendant Nos. 2 and 3 are the banks, who had opened their ATM centres in the said premises under licence from the defendant No. 1.

4. Defendant No. 1 contested the suit contending that the suit was pre-mature because as per the terms of the original contract, the Caltex India Limited was entitled to two terms of 10 years each by renewal beyond the period of 20 years and as per the provisions of the Caltex Act, defendant No. 1 is also entitled to exercise option for further renewal for the lease period which was 40 years. Therefore, the defendant No. 1 is statutory tenant under the said Act and suit is liable to be dismissed.

5. The trial Court after hearing the parties dismissed the suit. The plaintiff preferred appeal No. 480/06 against the dismissal of the suit. The appellate Court allowed the appeal rejecting the contentions raised by the defendant No. 1 and passed decree for eviction and possession and also directed to hold an enquiry for mesne profits under Order XX Rule 12 of the C.P.C. The said judgment and decree are challenged by the original defendant No. 1 in the present revision application.

6. The learned Counsel for the defendant No. 1 vehemently contended that under the terms of the contract, Caltex India Ltd. was entitled to continue in possession as tenant for 40 years, inclusive of two terms of 10 years each by way of renewal of the original tenancy. According to the learned Counsel by virtue of the provisions of Section 7(3) of the Caltex Act, on expiry of the terms of the lease, Central Government, if it so desires, may renew or continue said lease on the

same terms and conditions on which the lease or tenancy was originally created. Therefore, on expiry of period of 40 years being the total period as per the lease agreement, Central Government would be entitled to further renewal beyond that period. Defendant No. 1, being the Government company in whom all the powers of the Central Government have been vested u/s 9, is entitled to exercise the same option and is statutorily entitled to further renewal to lease on the same terms and conditions beyond the period of 40 years. On the other hand, the learned Counsel for the respondent No. 1/plaintiff vehemently contended that original period of lease was 20 years and thereafter there could be renewal at the option of the tenant provided that the option was exercised before the expiry of the lease period. As the Caltex India Ltd. was nationalised and its property was acquired under the Caltex Act even before the expiry of the original lease period of 20 years, original tenant could not exercise that option. However, by virtue of the provisions of Section 7(3), the Central Government and by virtue of Section 9, the Government Company could exercise the same option of renewal statutorily and even though no lease deed or renewal deed was executed beyond the period of 20 years, renewal was implied statutorily. According to the learned Counsel, there could not be any perpetual lease in favour of the Government or the defendant No. 1. The learned Counsel supported the view taken by the Appellate Court.

7. There is no dispute about the terms of the original lease deed dated 30th January, 1964 executed between the plaintiff and the Caltex India Ltd. The original term of the lease was 20 years. Right of renewal was conferred on the tenant as per the provisions of the Clause 3(d) of the said indenture of the lease. It reads as follows:

[d] That the Lessor will on the written request of the Lessee made three calendar months before the expiry of the term hereby created and if there shall not at the time of such request be any existing breach or non-observance of any of the covenants on the part of the Lessee hereinbefore contained grant to it a lease of the demised premises for a further term of ten years from the expiration of the said terms at a rental of Rs. 36,000/- per year and containing the like covenants and provisos as are herein contained including a clause for a further one term of Ten years at a rental of Rs. 39,660/- per year as the same terms and conditions as herein contained so as to give the Lessee in its option aggregate of two terms each of Ten years.

8. Thus, as per the said contract, option of renewal could be exercised by the tenant by making written request three months before the expiry of the term and there could be renewals only for two terms of 10 years each. Initial term of the lease, being 20 years, was to expire on 30.1.1984. However, before the expiry of the original term of 20 years, on 23rd April, 1977, Caltex Act was passed and all the shares, assets and liabilities of the Caltex India Ltd. were taken over by the Central Government. The said Act came into force on 30th December, 1976, being the appointed day. Thus, even though the Act was passed on 23rd April,

1977, from the appointed date, i.e., 30th December, 1976, Caltex India Ltd. was taken over by the Central Government. At that time, original term of the lease was still subsisting and the occasion for its renewal had not arisen and, therefore, Caltex India Ltd. had not exercised that option of renewal. u/s 7(1) of the Act, rights and interests in respect of any property, including a right under any lease or tenancy or arrangement, which Caltex India Ltd. held immediately before the appointed day stood vested in and was held by the Central Government on and after the appointed day. Sub-section 3 of Section 7 clearly provides that on the expiry of the term of any lease, tenancy or arrangement, such lease or tenancy or arrangement, if so desired by the Central Government, shall be renewed or continued on the same terms and conditions on which the lease or tenancy or arrangement was originally granted or entered into. Same powers were vested in the defendant No. 1 by virtue of Section 9. Taking into consideration, the terms of the lease deed and these provisions, it would appear that when the Caltex Act was passed and the Caltex India Ltd. was nationalised, lease for a period of 20 years was in force and existence. That lease was to expire on 30th January, 1984. By virtue of the provisions of Section 7(3) at the option of the Central Government or at the option of the defendant/company, lease could be renewed on the same terms and conditions. It means on expiry of the lease on 30th January, 1984, the Government could have, if it so desired, renewed the lease on the same terms and conditions. This power could be exercised by the Government by virtue of provisions of Section 7(3) even if there would be no covenant for the renewal in the original lease deed. Incidentally, there was a specific covenant for renewal in the original lease deed also. Therefore, the terms of the contract and the provisions of Section 7(3) have to be read together. It only means that the Government could exercise option of renewal beyond the original period of lease, which would otherwise expire on 30th January, 1984. In State of U.P. and Others Vs. Lalji Tandon (Dead), , the Supreme Court had occasion to consider as to whether the perpetual right of renewal would be held to exist in law. After having considered the legal provision, Their Lordships approved following propositions of law laid down by the Andhra Pradesh High Court in Syed Jaleel Zane Vs. P. Venkata Murlidhar and Others, .

(i) In India, the law does not prohibit a perpetual lease; clear and unambiguous language would be required to infer such a lease. If the language is ambiguous the court would opt for an interpretation negating the plea of the perpetual lease;

(ii) To find an answer to the question whether a covenant for renewal contained in the lease deed construed properly and in its real context, entitles the tenant to continue as long as he chooses by exercising the option of renewal at the end of each successive period of 5 years subject to the same terms and conditions depends on the deed of lease being read as a whole and an effort made to ascertain the intention of the parties while entering into the contract. No single clause or term should be read in isolation so as to defeat other clauses. The interpretation must be reasonable, harmonious and be deducted from the language of the document;

(iii) The Court always leans against a perpetual renewal and hence where there is a clause for renewal subject to the same terms and conditions, it would be construed as giving a right to renewal for the same period as the period of the original lease, but not a right to second or third renewal and so on unless, of course, the language is clear and unambiguous.

From this legal position, it is clear that the law does not prohibit perpetual lease but it is necessary that there should be clear and unambiguous language to infer such a perpetual lease. If there is no specific contract for perpetual lease and in unambiguous language, Court would lean against the perpetual renewal and where there is a clause for renewal, subject to the same terms and conditions, it would be considered as right of renewal for the same period as the period of original lease but not a right to second or third renewal and so on, unless language of the contract so provides in clear and unambiguous terms.

9. In the present case, the contract between the plaintiff and the original tenant in very clear and unambiguous language provides that after the expiry of the original terms of 20 years, lease could be renewed for a period of 10 years only and the second renewal could be for further period of 10 years. The Clause 3(d) specifically and in clear terms provides that the renewal could be in agreegate of two terms each of 10 years only. In view of this, there could not be any perpetual renewal nor there could be any renewal beyond the period of 20 years after expiry of the original period of lease.

10. In Bharat Petroleum Corporation Ltd. Vs. P. Kesavan and Another, , the Supreme Court was called upon to consider identical provisions in the Burma Shell (Acquisition of Undertakings in India) Act, 1976. In that case, question before the Supreme Court was whether without registration of the renewal deed, the Government or its company Bharat Petroleum Corporation Ltd. could claim the rights of tenancy on the basis of provisions for renewal in the said Burma Shell Act. In that case, Courts below had held that such renewal deed would require to be registered as per the provisions of Transfer of Property Act and merely because there was provision in the Burma Shell Act for renewal by mere exercise of option without execution of registered deed, would not create renewed tenancy. After having considered the provisions of the Transfer of Property Act and Registration Act as well as Section 5(2) of the Burma Shell Act, which is identical to the provisions of Section 7(3) of the Caltex Act, the Supreme Court observed as follows:

13. The said Act is a special statute. Sub-section (2) of Section 5 thereof mandates that in the event the appellant desires to renew the lease or tenancy, the same would be renewed on the same terms and conditions on which the lease or tenancy was held by Burmah Shell immediately prior to the appointed day.

14. Sub-section (1) of Section 5 of the Act provides for a legal fiction in terms

whereof the appellant herein became a lessee in respect of the leasehold. A legal fiction, as is well-known, must be given its full effect See Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others, . Sub-section (2) of Section 5 of the Act is imperative in character and must be construed as such. Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others, .

15. The maxim ''generalia specialibus non derogant'' meaning thereby that general things do not derogate special things shall, thus, apply in the instant case and in that view of the matter as admittedly the appellant herein has expressed its desire to renew the lease, Sub-section (2) of Section 5 read with Sub-section (3) of Section 7 thereof shall be attracted.

Supreme Court finally came to conclusion that even though the renewal deed was not duly executed and registered, still provisions of Section 5(2) read with Section 7(3) being special law, would prevail and there would be renewal of leave. After having considered that provision, Their Lordships also considered the purpose behind making such a provision and Their Lordships observed as follows in paragraph 19:

19. Section 5(2) and Section 7(3) of the Act are required to be given its purposive meaning, having regard to the object and purport the statute seeks to achieve. The Central Government by reason of the provisions of the said Act acquired running business undertakings dealing in distribution and marketing of petroleum products. The leases or tenancy for outlets are, therefore, continued to be kept with the Central Government or the Government company, as the case may be, so that no let or hindrance is placed in the matter of distribution of the products from established retail outlets, unless alternate arrangements are made.

Having regard to the object of the Act, as noticed hereinbefore, it is difficult to agree with the submission of the learned Counsel for the respondents to the effect that the expression mere desire by the Central Government or the appellant was not enough and they were required to show something more, as for example existence of need for renewal of the lease.

11. From these observations, it is clear that the Central Government had acquired running business undertakings dealing in distribution and marketing of petroleum products. Leases or tenancy of outlets are therefore, continued to be kept with the Central Government or the Government Companies so that no hindrance is placed in the matter of distribution of such products from the established retail outlets. For this purpose, provision was made empowering Central Government or its company to exercise option of renewal. In the present case, original lease deed was for a period of 20 years. When the Government had taken over assets and liabilities of the Caltex India Ltd., still period of 8 to 9 years of the original lease was still remaining. Not only that, lease deed also provided for renewal of two terms of 10 years each. In view of the observations made by the Supreme Court in Bharat Petroleum Corporation Limited (Supra), it can be held that even in absence of execution of renewal deeds, there was

statutory renewal for a further period of 20 years in two terms. It means the defendant No. 1/company could carry on business smoothly for a period of about 28 years after the Caltex India Ltd. was nationalised. That was a very long period and it could smoothly carry on its business without any hindrances or difficulty. To hold that even on expiry of that period, the Government or its company could have the option of renewal for a further period of twenty years or 40 years would be ridiculous, unwarranted and totally unacceptable. The learned senior Counsel for the defendant No. 1 could not point out any authority to support the contention that beyond the period of 40 years including two terms of renewal, defendant No. 1 could have option of further renewal or further statutory renewal, as the learned Counsel would call it.

12. The learned senior Counsel placed reliance on Bharat Petroleum Corporation Limited v. Rustom Behramji Colah (Dr.) 2007(2) Bom C.R. 870. However, on perusal of that judgment, it appears that the said authority does not support the claim of the defendant No. 1 at all. In that case, original lease was for a period of 20 years commencing from 1st January, 1956, with the option of renewal for a further term not exceeding 20 years on the same terms and conditions, Save and except the covenant for renewal. Original period of 20 years expired on 1st January, 1976. Burma Shell Act was enacted on 24th January, 1976 before that there was communication from Burma Shell for renewal for a further period of 20 years. The original landlord instituted suit in 1982 for eviction after having served notice of termination of the lease. It was contended on behalf of the Bharat Petroleum Corporation Ltd., the Government Company, that the suit was premature. The contention of the Bharat Petroleum Corporation Limited was rejected by the Courts below and the decree was passed. Said judgment and decree was challenged before the High Court in Writ Petition. Writ petition was decided on 16.7.2006. In the said judgment, the learned Single Judge (Coram: Chandrachud, J.) held that the petitioner (B.P.C.L.) had the benefit of one renewal of the term of the lease and that on expiry of that term in the year 1996 as there was no provision for further renewal and the lease had expired by efflux of time. The learned Judge rejected the contention that beyond the period of twenty years, being the term of the renewal, there could be any further statutory renewal under the Act. This authority infact corroborates the view being taken by me. Thus, there is no scope for further statutory renewal beyond the period of aggregate two terms of 10 years each, as covenanted in the original lease deed. The learned Counsel vehemently contended that earlier two renewals were at enhanced rents and not on the same terms and conditions and, therefore, further statutory renewal on the same terms and conditions is permissible. Merely because on the first two renewals as per the terms of the contract, there was provision for increase in rent, it would not make the legal position different.

13. Taking into consideration all the facts, circumstances and the legal position, I find no illegality or irregularity in the judgment and decree passed by the appellate Bench of the Small Cause Court and, therefore, it needs no interference.

14. For the aforesaid reasons, revision application stands dismissed.

15. In view of the request of the learned Counsel for the revision applicant, execution of the eviction decree shall remain stayed till 9th July, 2010 subject to the revision applicant/defendant No. 1 filing undertaking before this Court within four weeks that they shall not create any third party interest or shall not induct any third party in the premises.