
(2013) 04 MAD CK 0326

In the Madras High Court

Case No : S.A. No. 555 of 2010 and C.R.P. (NPD) No. 2006 of 2010 and M.P. No. 1 of 2010

Hindustan Petroleum Corporation Ltd.

APPELLANT

Vs

Saroj Rajanikant

RESPONDENT

Date of Decision : 29-04-2013

Acts Referred:

Citation : (2013) 4 CTC 365

Hon'ble Judges : R.S. Ramanathan, J

Bench : Single Bench

Advocate : O.R. Santhanakrishnan, for the Appellant; P.K. Siva Subramaniam, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Ramanathan, J.—The Defendant in O.S. No. 3416 of 1997 on the file of the XVI Assistant Judge, City Civil Court, Chennai, is the Appellant in the Second Appeal and the Revision Petitioner in the Revision. The Respondent/Plaintiff filed the above Suit for declaration that the Lease Deed, dated 16.10.1974 entered into between the Plaintiff and the Defendant is void at least from the period 1.4.1974 to 30.6.1994, for delivery of vacant possession and for damages. The Suit was dismissed and the Appeal filed by the Respondent/Plaintiff was allowed and aggrieved by the same, this Second Appeal was filed by the Appellant.

2. In that the Suit, the Appellant/Revision Petitioner filed LA. No. 18682 of 2002 u/s 9 of the Tamil Nadu City Tenants' Protection Act and that Application was allowed. Therefore, the Respondent filed C.M.A. No. 75 of 2004 against the Order passed in I.A. No. 18682 of 2002 in O.S. No. 3416 of 1997 and both the A.S. No. 511 of 2008 & CMA No. 75 of 2004 were heard together and common judgment was passed allowing both the Appeals and hence, this Second Appeal and the Revision were filed.

3. Mr. O.R. Santhanakrishnan, the learned Senior Counsel appearing for the

Appellant/Revision Petitioner submitted that the Lower Appellate Court without properly appreciating the well considered Judgment of the Trial Court, erred in granting eviction without considering the provisions of Section 7(3) of Caltex [Acquisition of shares of Caltex Oil Refining (India) Limited and of the Undertaking in India of Caltex (India) Limited] Act, 1977.

4. The learned Senior Counsel further submitted that admittedly, the lease was entered into on 16.10.1974 for a period of twenty years and as per Section 7(3) of the Act 17 of 1977, the Appellant/Revision Petitioner is entitled to exercise the option for another period of twenty years and the option was exercised as evidenced by Ex. B1 and therefore, the lease period was automatically extended upto to 2014 and therefore, the Suit for eviction prior to that date is not maintainable.

5. The learned Senior Counsel further submitted that admittedly, the Appellant/Revision Petitioner is a tenant of the premises and the Appellant/Revision Petitioner also filed Application u/s 9 of the Tamil Nadu City Tenants' Protection Act and admittedly, land was taken on lease and building was constructed by the Appellant/Revision Petitioner and as such, they are entitled to the benefits of Section 9 of the Tamil Nadu City Tenants' Protection Act and they are in legal possession of the property and they have only permitted the dealer to sell the products of the Appellant's Company and they have not parted with possession and therefore, they are entitled to purchase the property by invoking Section 9 of the Tamil Nadu City Tenants' Protection Act and that was not properly appreciated by the Lower Appellate Court and the Lower Appellate Court erred in holding that the Appellant/Revision Petitioner is not in actual possession, without properly appreciating the Dealership Agreement entered into between the Appellant/Revision Petitioner and its dealer.

6. On the other hand Mr. P.K. Siva Subramaniam, the learned Counsel for the Respondent submitted that even as per the admission of the Appellant/Revision Petitioner, the lease commenced in the year 1938 and it was for a period of five years and therefore, even assuming that Section 7(3) of the Act 17 of 1977 applied to the facts of the case, the lease can be renewed on the same terms and conditions, on which the lease or tenancy or arrangement was originally granted or entered into. Therefore, as the original lease of the year 1938 was for a period of 5 years, the option of renewal though available to the Appellant/Revision Petitioner, by exercising that option they can only seek extension of lease for five years, which was the term mentioned in the original lease of the year 1938 and therefore, the Appellant/Revision Petitioner was entitled to remain in possession of the property till 1999 and thereafter, their possession became illegal and therefore, they are liable to be vacated.

7. The learned Counsel further submitted that though, the Appellant/Revision Petitioner was the tenant, for invoking Section 9 of the Tamil Nadu City Tenants' Protection Act, the tenant must have been in actual physical possession of the property and admittedly, the Appellant/Revision Petitioner was not in actual

physical possession and they entered into a Dealership Agreement with its dealer and the dealer was in actual possession of the property and therefore, the Appellant/Revision Petitioner is not entitled to invoke the benefits of the Act i.e., as per Section 9 of the Tamil Nadu City Tenants' Protection Act.

8. The learned Counsel for the Respondent relied upon the following judgments in support of his contention:

1. Hindustan Petroleum Corporation Limited Vs. K.M. Yakub (died) and Others,
 2. Hindustan Petroleum Corporation Ltd. and Another Vs. Dolly Das,
 3. Hindustan Petroleum Corporation Limited, Chennai Vs. Keyaram Hotels (P) Ltd.,Chetpet, Chennai,
 4. S.R. Radhakrishnan and Others Vs. Neelamegam,
 - 5 Bharat Petroleum Corporation Ltd. Vs. P. Kesavan and Another,
 6. Malini Parthasarathy v. Hindustan Petroleum Corporation Ltd., 2007 (1) CTC 67; and
 7. Bharat Petroleum Corporation Ltd. Vs. R. Ravikrishnan and Thevar Automobiles
9. The learned Senior Counsel for the Appellant/Revision Petitioner also relied upon the following judgments in support of his contention:

1. Manohar Singh and Another Vs. Caltex Oil Refining (India) Ltd., Bombay and Others,
 2. Hindustan Petroleum Corporation Ltd. and another v. Dolly Das, 1994 (4) SCC 450;
 3. S.A. Ramachandran Vs. S. Neelavathy,
 4. Palace-de-Wales Vs. The State of Tamilnadu and Another,
 5. Bharat Petroleum Corporation Ltd. and Another Vs. N.R. Vairamani and Another,
 6. Bharat Petroleum Corporation Ltd. Vs. P. Kesavan and Another, and
 7. Unreported judgment in Hindustan Petroleum Corporation Ltd. v. C.S. Narendran, C.A. No. 1001 of 2010 arising out of SLP (C) No. 28693 of 2008.
10. On the basis of the above submissions made by the learned Counsel appearing for the parties, the following substantial questions of law arise for consideration in this Second Appeal:

1. Whether the Lower Appellate Court was right in decreeing the Suit for possession, when the lease for the suit property got statutorily renewed by exercising the option as per Section 7(3) of the Act 17 of 1977 and the lease expired only on 30.6.2014?

2. Whether the Lower Appellate Court was right in holding that the Appellant was not entitled to protection under Tamil Nadu City Tenants' Protection Act.

11. The Suit was originally filed for the relief of declaration that the Lease Deed, dated 16.10.1974 between the Plaintiff and the Defendant was void at least for a period from 1.4.1974 & 30.6.1994, for delivery of vacant possession of the property and for recovery of Rs. 91,800/- as damages, for use and occupation of the property from 15.9.1986 to 1.1.1987. During the arguments in the First Appeal in A.S. No. 511 of 2008, a Memo was filed for deleting the prayer (a) with regard to the void nature of Lease Deed and that was received and the Appellant/Revision Petitioner herein also agreed for deletion of that prayer and the prayer (a) was deleted.

12. Further, during trial before the Trial Court, I.A. No. 11707 of 1998 in O.S. No. 3416 of 1997 for amendment of the Plaint was filed and that was dismissed and the Revision filed in C.R.P. No. 3028 of 2001 was allowed by this Court, permitting amendment and by reason of the amendment, the Respondent/Plaintiff was permitted to include the cause of action for the Suit, which has arisen on account of the expiry of the lease period on 30.6.1984. Therefore, the Suit was filed for recovery of possession, on the basis of the expiry of the lease period and for damages.

13. As stated supra, in the Plaint, the Respondent averred that the suit property was leased out to the Appellant's predecessor in title by the Respondent's predecessor in title under a registered Lease Deed, dated 16.10.1974 for a period 20 years. The lease period expired on 15.10.1994.

14. It is the contention of the learned Senior Counsel for the Appellant /Revision Petitioner that even before the expiry of the lease period, the option given to the Appellant/Revision Petitioner as per Section 7(3) of the Act 17 of 1977 was exercised on 16.2.1994 by sending a Letter to the Respondent and therefore, the lease was renewed for a further period of twenty years and it expires only on 15.10.2014 and therefore, the Suit for recovery of possession before the expiry of the period is not maintainable.

15. On the other hand, the learned Counsel for the Respondent contended that admittedly, the lease came into existence in the year 1938 for a period five years and therefore, u/s 7(3) of the Act 17 of 1977, the renewal can be only for a period five years, as per the original lease and the Appellant/Revision Petitioner cannot take advantage of the Lease Deed, dated 16.10.1974.

16. In the judgment reported in Bharat Petroleum Corporation Ltd. Vs. P. Kesavan and Another, the Hon'ble Supreme Court dealt with the scope of Section 5(2) of the Burmah Shell (Acquisition of Undertakings in India) Act, 1976, which is in pari materia with Section 7(3) of the Act 17 of 1977. While interpreting Section 5(2) of the Burmah Shell (Acquisition of Undertakings in India) Act, 1976, the Hon'ble Supreme Court has held 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. 75. The maxim "generalia specialibus non derogant" means 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. [See Indian Handicrafts Emporium and Others Vs. Union of India (UOI) and Others, ; D.R. Yadav and Another Vs. R.K. Singh and Another, Union of India (UOI) and Others Vs. B.N. Jha, ; Ashok Leyland Ltd. Vs. State of Tamil Nadu and Another, ; M.P. Vidyut Karamchari Sangh Vs. M.P. Electricity Board, .

17. In the judgment reported in Hindustan Petroleum Corporation Ltd. and Another Vs. Dolly Das, Section 7(3) of the Act 17 of 1977 was considered and held that the Appellant has got the option to renew the lease for a further period as stated in the earlier Lease Deed. Therefore, from the above two decisions of the Hon"ble Supreme Court, it is made clear that the Appellant/Revision Petitioner is entitled to renew the lease for a further period. Once, it is held that the Appellant/Revision Petitioner is entitled to exercise the option for renewal, the next question that arises for consideration is the duration of lease for which renewal can be claimed.

18. To appreciate and answer this question, we will have to see Section 7(3) of the Act 17 & 1977 and it is as follows:

7(3) On the expiry of the term of any lease, tenancy or arrangement referred to in sub-section (1) or sub-section (2), such lease or tenancy or arrangement shall, if so desired by the Central Government, be renewed or continued, so far as may be, on the same terms and conditions on which the lease or tenancy or arrangement was originally granted or entered into.

19. A reading of the above sub-clause makes it clear that the lease can be renewed or continued on the same terms and condition on which the lease or tenant or arrangement was originally granted or entered into.

20. Therefore, we will have to see what were the terms and conditions on which the parties originally entered into the lease.

21. In the Plaint, the Respondent mentioned only the Lease Deed, dated

16.10.1974 entered into between the parties. But in the Written Statement, the Appellant/Revision Petitioner admitted that they entered into a Lease Deed in the year 1938 and the lease was renewed by execution of successive Lease Deeds and the last Lease Deed was dated 16.10.1974. The Respondent did not mark the earlier Lease Deeds from the year 1938. If the Lease Deed, dated 16.10.1974 is taken as the original Lease Deed, then the Appellant/ Revision Petitioner is entitled to get the renewal for a further period of twenty years from 1994. On the other hand, if the original Lease Deed of the year 1938 was taken into consideration, then the Appellant/Revision Petitioner may not be entitled to further extension of 20 years and the Appellant/Revision Petitioner was entitled to a period for which the original Lease Deed was executed.

22. Though, the Respondent/Plaintiff did not state anything about the original Lease Deed in the year 1938, it was admitted by the Appellant /Revision Petitioner that the lease commenced from the year 1938 and the lease was renewed periodically and the last Lease Deed was, dated 16.10.1974. Therefore, having regard to the admission of the Appellant/ Revision Petitioner, the words "originally granted" stated in Section 7(3) of the Act 17 of 1977 would only mean the term fixed under the original Lease Deed, which in this case was referable to the lease of the year 1938. Therefore, the Appellant/Revision Petitioner cannot contend that under the Lease Deed, dated 16.10.1974, twenty years period was fixed and therefore, while exercising the option u/s 7(3) of Act 17 of 1977, the Appellant/Revision Petitioner is entitled to renew the lease period for a further period twenty years.

23. Further, the Appellant/Revision Petitioner is relying upon the renewal clause u/s 7(3) of Act 17 of 1977 and therefore, the burden was on him to prove that as per the option exercised by him for renewal of the Lease Deed, the Appellant/ Revision Petitioner was entitled to renew the lease for twenty years. The Appellant/Revision Petitioner having admitted that the Lease Deed commenced in the year 1938, the words "originally granted" mentioned in Section 7(3) of the Act 17 of 1977 would only mean the period mentioned in the Lease Deed of the year 1938 and it cannot refer to the Lease Deed, dated 16.10.1974. Therefore, the Appellant/Revision Petitioner is not entitled to claim renewal for a period of 20 years from 1994.

24. As the Appellant/Revision Petitioner was not able to produce the earlier Lease Deed of the year 1938, the Appellant/Revision Petitioner is also not entitled to claim any renewal for any fixed period. According to the Respondent, earlier lease of the year 1938 was for a period of five years and therefore, in the absence of any other evidence, the contention of the Respondent has to be accepted and therefore, the Appellant/Revision Petitioner is entitled to claim renewal only for a period five years and that period expired on 15.10.1999. Therefore, after the Respondent was permitted to amend the prayer for recovery of possession, on the expiry of the lease period, during the pendency of the Suit, the Suit filed for recovery of possession was maintainable and the Respondent

was entitled to recovery of possession of the property, as the lease granted in favour of the Appellant/ Revision Petitioner expired on 15.10.1999 after granting five years extension. Therefore, the substantial question of law No. 1 is answered in favour of the Respondent and against the Appellant/Revision Petitioner and I hold that the Lower Appellate Court was right in decreeing the Suit for recovery possession as the lease expired on 15.10.1999.

25. It is admitted that the Appellant/Revision Petitioner entered into a Memo of Agreement with its dealer and the dealer is doing business in the suit property and according to the learned Senior Counsel appearing for the Appellant/Revision Petitioner, the Appellant/Revision Petitioner continued to be in legal possession of the property and the dealer was not given any possession and only license was granted to the dealer to use the property for the purposes mentioned in the Dealership Agreement and therefore, the Appellant/Revision Petitioner was entitled to Section 9 of the Tamil Nadu City Tenants' Protection Act.

26. In the judgment reported in *Malini Parthasarathy v. Hindustan Petroleum Corporation Ltd.*, 2007 (1) CTC 67, the learned Single Judge of this Court had an occasion to deal with the similar Dealership Agreement and held that once Petroleum Corporation entered into a Dealership Agreement with a dealer, they are not in actual possession of the property and the dealer is in actual possession and therefore, they are not entitled to invoke the provision of Section 9 of Tamil Nadu City Tenants' Protection Act.

27. In the judgment reported in *Bharat Petroleum Corporation Ltd. Vs. R. Ravikrishnan and Thevar Automobiles* the Hon''ble Division Bench of this Court, on a remand from the Hon''ble Supreme Court elaborately discussed the concept of legal possession and actual possession and held that when the Petroleum Corporation entered into a Dealership Agreement with a dealer, though they are in legal possession of the demised property, they are not in actual possession of the property and to invoke the Section 9 of the Tamil Nadu City Tenants' Protection Act, the tenant must be in actual possession of the property and as the Appellant was not in actual possession of the property, the Appellant was not entitled to invoke the provision of the Tamil Nadu City Tenants' Protection Act. The Hon''ble Division Bench followed the judgment reported in *S.R. Radhakrishnan and Others Vs. Neelamegam*, wherein the Hon''ble Supreme Court held that in order to claim the benefits under the Tamil Nadu City Tenants' Protection Act, the tenant must be in actual possession and it is not sufficient that if the Tenant is in legal possession.

28. Further, in the judgments reported in *Hindustan Petroleum Corporation Limited Vs. K.M. Yakub (died) and Others*, ; *Hindustan Petroleum Corporation Limited, Chennai Vs. Keyaram Hotels (P) Ltd.,Chetpet, Chennai*, ; *K.K. Janardhanam Vs. Thiruvalluvar Transport Corporation Limited*, ; *Hindustan Petroleum Corporation Limited v. B.S. Ojeeha*, 2011 (1) MWN (Civil) 387, the same principle has been reiterated.

29. As the Appellant is not found to be in actual possession of the property, which is sine qua non for claiming benefits u/s 9 of the Tamil Nadu City Tenants, Protection Act, the appellant is not entitled to the benefits of Act and hence, the substantial question of law No. 2 is also answered in favour of the Respondent against the Appellant/Revision Petitioner. In the result the Second Appeal and the Revision are dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.