

(2003) 10 MAD CK 0164

In the Madras High Court

Case No : Civil Revision Petition No. 4005 of 2001 and C.M.P. No. 21607 of 2001

Hindustan Petroleum Corporation Ltd.

APPELLANT

Vs

Spencer and Company Ltd.

RESPONDENT

Date of Decision : 15-10-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : AIR 2004 Mad 110 : (2003) 4 LW 432

Hon'ble Judges : S. Ashok Kumar, J

Bench : Single Bench

Advocate : O.R. Santhanakrishnan, for the Appellant; M.S. Sampath, for the Respondent

Final Decision : Dismissed

Judgement

S. Ashok Kumar, J.—This Civil Revision Petition has been filed against the judgment of the learned VI Additional Judge, City Civil Court, Chennai, dismissing C.M.A. No. 188 of 2000 preferred against the order passed in I.A. No. 16309 of 1997 in O.S.No.14544 of 1996 on the file of the VI Assistant Judge, City Civil Court, Chennai.

2. The respondent, Spencer & Co Limited, the plaintiff, filed the suit against the petitioner/defendant for a decree directing the defendant to deliver the vacant possession of the land, to pay a sum of Rs. 1,06,000/- by way of damages for use and occupation from 01.06.1980 to 30.09.1980 and to direct the defendant to pay the plaintiff a sum of Rs. 26,250/- per month by way of damage and use and occupation from the date of plaint till the date of delivery of possession and for costs.

3. The petitioner/defendant filed I.A. No. 16309 of 1997 under the provisions of Section 9 of the City Tenants Protection Act offering to purchase the property for a reasonable price to be fixed by the Court. The respondent/plaintiff filed a counter mainly alleging that the petitioner/defendant was not a tenant on the

relevant period and the petitioner/defendant was not in actual possession of the property as a tenant, whereas one Ban Service Et Lubritection was in actual possession of the property running a petrol bunk, and therefore, the petitioner/defendant is not entitled to the benefits of Section 9 of the City Tenants Protection Act.

4. The learned VI Assistant Judge, City Civil Court, Chennai, who tried the I.A., dismissed the same on the ground that the petitioner/defendant is not in actual possession of the property and one Ban Service Et Lubritection is in actual possession of the property and therefore, the petitioner/defendant cannot be hold as a tenant entitled to the protection u/s 9 of the City Tenants Protection Act. Aggrieved over the said order, the petitioner/defendant preferred C.M.A. No. 188 of 2000 and the learned VI Additional Judge, City Civil Court, Chennai, dismissed the C.M.A. on the ground as found by the learned VI Assistant Judge. Aggrieved over the said judgment, this Civil Revision Petition has been filed.

5. Heard both the sides. The case of the petitioner is that their predecessors-in-interest have been tenants under the respondent/plaintiff from 01.01.1995 onwards; the petitioner's predecessors-in-interest Caltex (India) Ltd. have, after taking possession of the vacant site on 01.01.1995, put up superstructure thereon for the purpose of carrying on their business in the sale of petroleum products; in pursuance of nationalization of foreign oil companies, the Central Government took over the assets of Caltex (India) Ltd. and the petitioner Corporation, a Central Government Enterprise, stepped into the shoes and took over the business and premises of the erstwhile Caltex (India) Ltd.; the petitioner has been tendering the rent for the subject site to the respondent as a tenant thereafter and a lease was executed and registered by the respondent on 17.04.1979 for the period from 01.01.1975 to 31.12.1979 and thus the petitioner is a tenant of the suit site. According to the petitioner, they received suit summons on 10.07.1981 for Ejectment filed by the respondent in respect of the suit property, and therefore, it has become necessary for the petitioner to invoke the provisions of Section 9 of the City Tenants Protection Act as amended and prayed to direct the respondent-landlord to sell the site to the petitioner.

6. The case of the respondent/defendant is that the petitioner is not entitled to the protection of the City Tenants Protection Act and therefore, is not entitled to invoke the provisions u/s 9 of the said Act as amended for the purpose of directing the respondent to sell the suit land to the petitioner; the lease was never extended beyond 31.12.1979 and the petitioner is not in actual physical possession of the property, since the possession is with one Ban Service Et Lubritection, a dealer under the petitioner, and therefore the petitioner is not entitled for the protection under the City Tenants Protection Act.

7. For invoking the provisions of the City Tenants Protection Act, various decisions of this Court and the Supreme Court can be looked into:-

(i) In T.R.P. Raja Sekara Bhoopathy Vs. Navaneethammal and Others, , this Court

has held that the tenant who is not in actual physical possession of the land and building is not entitled to claim benefits of the Tamil Nadu City Tenants' Protection Act. This Court has also held as follows:-

?. "On a fair reading of Section 2(4)(ii) (b) of the Act, it is clear that such a physical and actual possession of the land and building is a sine quo non to project the benefits or statutory entitlement under the Act. If that were not the intendment of this piece of legislation, then the very foundation of its objective would be lost, and at the same time it would be a travesty to hold that it is only the original tenant of the vacant site, who put up the superstructure, who would be entitled to the benefits of the Act and that his heirs, though they may be persons who can be described as tenants would be entitled to such benefits even though they have parted with possession. I am, therefore, of the view that the primordial requirement for a tenant to claim the benefits under the Act is that he should be in actual physical possession of such land and building."

(ii) In *Estate of T.P. Ramaswami Pillai v. Mohd. Yousuf* 1983 (2) M.L.J. 319, this Court has held as under:-

"?. It is true that u/s 2(4)(i) of the Act, while defining a "tenant", there is no specific reference whatever to the tenant being in possession of the land; but what has been stated u/s 2(4)(i) is one of the incidents of a tenancy express or implied, viz., the tenant had made or rendered himself liable to pay rent in respect of the land. The payment of such rent to the landlord is only on account of the possession and enjoyment of the demised land by the tenant and not for any other purposes. The normal incident of a tenancy is that the tenant should be put in possession of the land let out and the landlord should be paid the rent for the land so let out. In the definition, u/s 2(4)(i) of the Act, the liability to pay the rent alone is explicitly referred to, but that would also take in the other incidents of a tenancy express or implied, viz., possession of the demised land by the tenant. That it was so contemplated is made clearer by section 2(4)(ii) of the Act which enacts an inclusive definition so as to take in persons who continue to remain in possession after the determination of the tenancy agreement. The inclusive definition confers the status of a tenant on an erstwhile tenant who continues in possession, even after the determination of the tenancy agreement; but what is important is, this contemplates that the person referred to in Section 2(4)(i) of the Act should also be a person, who should be in possession. While Section 2(4)(i) of the Act contemplates a person who is in possession as a tenant during the subsistence of the tenancy and thereby becoming entitled to the benefits of the Act, Section 2(4)(ii) extends such benefits to a person who continues to remain in possession of the demised land after the determination of the tenancy agreement. In other words, on a conjoint reading of Section 2(4)(i) and 2(4)(ii) of the Act, it is clear that while section 2(4)(i) takes in a tenant in possession during the currency of the lease, section 2(4)(ii) contemplates the case of continuity of possession by an erstwhile tenant after the determination of the tenancy and the conferment of the status of a tenant even on such a person.

To accept the contention of the learned Counsel for the petitioner would be to hold that the tenant need not be in possession during the currency or subsistence of the lease to claim the benefits of Section 9 or other provisions of the Act, but nevertheless can claim such statutory benefits, while, after the expiry or determination of the lease, unless he is in possession, he cannot claim the benefits of Section 9 or other provisions of the Act as a tenant u/s 2(4)(ii) of the Act. This is a very anomalous position. That is why, the word "tenant" has been so defined in the Act as to take in both categories of persons, viz., tenants in possession during the subsistence of the lease as well as tenants in possession after the determination of the lease."?

(iii) In judgment dated 19.07.1996 delivered in S.A. No. 982 of 1995 and C.M.A. No. 575 of 1995, where the Hindustan Petroleum Corporation Limited was the appellant claiming protection u/s 9 of the Tenants Protection Act and in almost similar set of facts of the case, this Court has held that when the first defendant has no physical possession, it cannot be a tenant, much less a tenant entitled to protection of the City Tenants Protection Act.

(iv) In *Hamasa Patel and two others v. S. Balakrishnan and another* 1997 3 L.W.769 (DB), this Court has held as under:-

"On analysis of the definition of the word "tenant" in S.2(4) of the Tamil Nadu City Tenants Protection Act with reference to the other provisions of law, the Courts have held that physical possession of the property by the tenant is a sine qua non for the tenant seeking to purchase the property u/s 9 of the Act. In the instant case, neither defendants 1 and 2 nor the fifth defendant have been able to show that they were in physical possession of the property. On the other hand, the pleadings and the evidence clearly show that they are not in possession of the property. We are clearly of the opinion that defendants 1 and 2, as well as the fifth defendant have miserably failed to prove that either of them were in possession of the property entitling them to file an application u/s 9 of the Act. Once it is held that defendants/appellants are not entitled to purchase the property u/s 9 of the Act, the decree for possession has to be upheld."

(v) In *M/s. M.V.S. Muthuvale & Sons v. Easwara Vadivammal* (2000) 2 M.L.J. 794, this Court has held that Sec.9 of City Tenants Protection Act is not enforcing of right but only privilege given to tenant, that to claim privilege, he has to satisfy all the statutory conditions, that if he is not in physical possession of the property or superstructure, the question of immunity for eviction will not arise and that privilege given to tenant under Sec.9 is equitable in nature.

(vi) In *S.R. Radhakrishnan and Others Vs. Neelamegam*, , the Supreme Court has held in paragraphs 5, 6, 12, 13 and 14 as follows:-

"5. From the above provision it will be seen that the following conditions are to be satisfied before a tenant is entitled to relief:

- i) He should be a tenant in possession of the land;
- ii) He should have erected a superstructure on the land in respect of which he would be entitled to claim compensation u/s 3;
- iii) A suit or proceeding for eviction should have been taken by the landlord against him;
- iv) He should have applied to the court for direction in that regard within one month from the date of service of summons in such suit.

6. Although the above quoted provisions of the Act do not specifically mention that a tenant should be in possession of the tenanted premises before he can move such an application, yet it refers to Section 3 of the Act, i.e., a tenant who is entitled to compensation u/s 3. A reference to Section 3 makes it clear that compensation is with respect to building erected by the tenant on the tenanted premises and the compensation that he gets is only for what he hands over to the landlord on ejection.

12. The learned Counsel for the appellants finally argued that the Tamil Nadu City Tenants' Protection Act 1921 is a socially beneficial piece of legislation meant for protection of the interests of tenants and its provisions should be liberally construed so as to advance the object of the Act. This argument in the context of facts on record is totally misconceived. Liberal interpretation does not mean that benefit can be given contrary to the basic provisions of the Act or in violation of the statutory provision. It has been pointed out above that the appellants did not satisfy the basic ingredients of Section 9 and therefore, they are not entitled to invoke the said provision for their benefit.

13. Learned Counsel for the appellant contended that actual physical possession of the premises is not essential for exercising the privilege conferred on a tenant by Section 9 of the Act. In support of his contention, he relied on *Gummalapura Taggina Matada Kotturuswami v. Setra Veeravva and others* 1958 (1) SCR 968. This was a case under the Hindu Succession Act, 1956. Section 14(1) of the Act provides "any property by a joint Hindu family, whether acquired before or after the commencement of this Act shall be held by her as full owner thereof and not as a limited owner". In the context of his provision it was held that the word "possession" occurring in Section 14(1) is used with widest connotation and it may be either actual or constructive or in any form recognized by law. We are afraid that the wide meaning given to the word possession in Section 14 in the Act cannot have any relevance for purpose of provision of Section 9 of the Tamil Nadu Act under consideration. As already noted Section 9 read with Section 3 of the Act makes it imperative that the tenants should be in possession of the premises with respect to which the right to purchase is sought to be exercised. If a tenant is not to hand over possession of the suit premises to the landlord at the time of ejection, there is no question of payment of any compensation to him u/s 3 of the Act. If he is not entitled to compensation u/s 3 of the Act he cannot invoke Section 9 of the Act. Actual physical possession is essential in the

context of relevant provisions of the Act. In fact in *P. Ananthakrishnan Nair and another v. Dr. G. Ramakrishnan and another*, : [1987]2SCR734 (though cited by the learned counsel for the appellant), it was held by this Court that the premises must be in personal occupation of the tenant before he could exercise the right u/s 9 of the Act. It was also observed by this Court that "Section 9 confers an additional statutory right on a tenant against whom suit for ejectment is filed to exercise an option to purchase the demised land through the medium of Court on fulfillment of conditions specified therein. It is not an absolute right, as the court has discretion to grant or refuse the relief for the purchase of the land. The tenant has no vested right in the property, instead it is a privilege granted to him by the statute which is equitable in nature. The policy underlying Section 9 is directed to safeguard the eviction of those tenants who may have constructed superstructure on the demised land, so that they may continue to occupy the same for the purposes of their residence or business". From these observations it follows that actual physical possession of the demised premises of the tenant is sine qua non of an application u/s 9. In *P. Ananthakrishnan's* case (supra) as per concurrent findings of fact on record the tenant had discontinued its business in the suit premises and only a small portion thereof had been retained by them for keeping the accounts books, etc. of the erstwhile business. Rest of the land and the superstructure standing thereon had been in occupation of sub-tenants since long. Thus the tenant was not in actual occupation of most part of the demised premises. Therefore, it was held that it would be unreasonable to direct the landlord to sell the land to the tenants.

14. Our attention was invited to various decisions of the Madras High Court taking the same view, i.e., actual physical possession of the demised premises is essential to maintain an application u/s 9 of the Act. As a matter of fact the learned Counsel for the appellant cited the case in *Estate of T.P. Ramaswami Pillai v. Mohd. Yousuf and others* 1983 (2) MLJ 319 which takes the same view. We fail to understand how his authority helps the appellant. In our view it fully supports the case of the respondents."

8. As far as the case on hand is concerned, according to the petitioner/defendant himself, one Bon Service Et Lubrification is in actual possession and enjoyment of the property and doing business thereon, but he is a licensee under the petitioner/defendant and therefore, the petitioner/defendant has to be construed as tenant in possession through the licensee Bon Service Et Lubrification. Even though the lease in favour of the petitioner/defendant was not renewed after 1979, a suit was filed in the year 1981 by the plaintiff against the defendant for delivery of possession. The petitioner/defendant, thereafter, filed the application u/s 9 of the City Tenants Protection Act. If really the petitioner/defendant continued as a tenant, the petitioner himself should have paid the rent to the landlord, the respondent/plaintiff. On the other hand, the petitioner permitted the Bon Service Et Lubrification to pay the rent, which would show that it was Bon Service Et Lubrification, who was in possession of the property and paid the rent. This conclusive proof would show that the petitioner/defendant is not in

actual possession of the property and on the other hand, Bon Service Et Lubrtection is in actual physical possession of the property and also paid the rent. The employees of Bon Service Et Lubrtection are paid by Bon Service Et Lubrtection and not by the petitioner/defendant. All these factual circumstances would show that the petitioner/defendant is not in actual physical possession of the property.

9. Both in the pleading and in the evidence, it is proved that Bon Service Et Lubrtection is in actual physical possession even though he may be a licensee under the petitioner/defendant. The petitioner/defendant may be in legal or constructive possession of the suit property, but no doubt, he is not in actual physical possession of the property. What the law requires under the City Tenants Protection Act is to invoke the benefit and privilege, the petitioner must be in actual physical possession of the property. Legal or constructive possession of the property does not entitle the petitioner to claim the benefits or privilege under the City Tenants Protection Act.

10. In view of the decisions already referred to above, particularly, the latest decision of the Supreme Court in S.R. Radhakrishnan and Others Vs. Neelamegam, , the first condition that the he should be a tenant in possession, is not proved by the petitioner/defendant and therefore, the petitioner is not entitled for the protection or privilege enunciated in Section 9 of the City Tenants Protection Act.

11. In the result, this Civil Revision Petition is dismissed. Consequently, C.M.P. No. 21607 of 2001 is also dismissed. No costs.