(2003) 06 OHC CK 0020

In the Orissa High Court

Case No : Original Jurisdiction Case No. 6960 of 1993

Hindusthan Petroleum Corporation Limited — APPELLANT

Vs

The Revenue Divisional Commissioner, Central Division and Others — RESPONDENT

Date of Decision : 20-06-2003

Acts Referred:

ESSO (Acquisition of Undertakings in India) Act, 1974 — Section 3, 5, 5(2), 7(1)
Petroleum Rules, 1976 — Rule 144, 151

Citation : (2003) 06 OHC CK 0020

Hon'ble Judges : R.K. Patra, J;P.K. Misra, J

Bench : Division Bench

Advocate : G. Rath, S.P. Mishra, A.K. Mishra and R.K. Patnaik, for the Appellant; D.R. Mohapatra, A.G.A. for O.Ps. 1 and 2, Ashok Mukherjee, G. Mukherjee, P. Mukherjee and B. Mishra for O.P. No. 4. B. Mishra, B.K. Barik, R.C. Patnaik and B.P. Satpathy for O.Ps. 5, 6 and 7, for the Respondent

Final Decision : Allowed

Judgement

R.K. Patra, J.—Cancellation of "no objection certificate" granted in favour of the Petitioner for operating the Petrol Pump at Baripada through their agent M/s. Mulchand Onkarmal is the subject-matter of challenge in this writ petition.

2. Briefly stated, the case of the Petitioner is that it is a registered company having its registered office at Bombay. It carries on business of manufacturing and selling of various petroleum products throughout the country. A petrol and diesel outlet is being run on the land appertaining to Sabik Plot No. 3211 under Sabik Khata No. 1092/3/309 corresponding to Hal Plot No. 395 under Hal khata No. 206 under Unit No. 9 of Baripada town. The said land belonged and stood recorded in the name of Surendranath Banerjee (since dead). Initially, the land in question was leased out in favour of ESSO EASTERN INC, a corporate body, by the said Surendranath Banerjee for operating a petrol and diesel outlet. A lease deed was executed in acknowledgment thereof on 15.12.1973 with the condition that the lease would operate with effect from 1.12.1971 for a period of 10 years

at a monthly rent of Rs. 125/-. Clause 3(d) of the lease deed laid down that the demised promises would be granted lease for a further term of 10 years from the expiration of the first term at the rate of Rs. 150/- per month. Clause 3(f) of a lease deed dealt with repurchase by exercising necessary option by the lease. In order to operate the said outlet, the lease was required to obtain ''no objection certificate'' from the competent authority of the local administration, i.e., the Additional District Magistrate under Rule 144 of the Petroleum Rules, 1976. Rule 151 provides that if the District Authority or the State Government is satisfied that the licensee has ceased to have any right to use the site for storing petroleum, the no objection certificate can be cancelled after giving a reasonable opportunity of being heard. Accordingly, ESSO EASTERN INC was granted no-objection certificate on the basis of the lease-hold right. While ESSO EASTERN INC was running the petrol and diesel outlet on the land in question, in the year 1974 the Parliament enacted the ESSO (Acquisition of Undertakings in India) Act, 1974. Section 3 of the said Act provided that on the appointed day, i.e., the date of commencement of the Act, the right, title and interest of ESSO in relation to its undertakings in India, shall stand transferred to and shall vest in the Central Government. By virtue of Section 3 and Section 7(1) of the Act, the right, title and interest of ESSO vested with the Petitioner company. In view of the aforesaid provision, the Petitioner because the lessee in respect of the land in question to run the petrol and diesel outlet. While the matter stood thus, the Additional District Magistrate issued notice (Annexure-1) to the Petitioner to produce the necessary document conveying title in respect of the land in question failing which stops would be taken to cancel the ''no-objection certificate'' issued earlier. The Petitioner filed its cause contending that the original lease period of 10 years expired on 1.12.1981 and since it had exercised option of renewal before the expiry of the term, the lease-hold right of the Petitioner continued for a further period of 10 years on payment of the revised rent dues which was accepted by the lessor. Subsequently prior to the expiry of the term of the lease on 1.12.1991, the Petitioner exercised his option by intimating the heirs of the original lessor on 6.11.1991 at Annexure-3. The Additional District Magistrate, however, without appreciating the stand taken by the Petitioner illegally cancelled the ''no-objection certificate'' by order dated 10.5.1993 at Annexure-4. Being felt aggrieved by the said order, the Petitioner filed appeal before the Revenue Divisional Commissioner, Central Division, Cuttack, who dismissed the same by order dated 21.8.1993 at Annexure-5.

3. Learned Counsel for the Petitioner contended that Petitioner has a right of renewal of the lease which it duly exercised as per letter dated 6.11.1991 (Annexure-3) and, therefore, the authorities erred in holding that it has no right to use the land for running the outlet. According to the learned Counsel, the Additional District Magistrate clearly fell into error in holding that the right of the lessee extinguished since 1.12.1981 and, therefore, ''no-objection certificate'' is liable to be cancelled.

4. Section 3 of the ESSO (Acquisition of Undertakings in India) Act, 1974 lays

down that the right, title and interest of ESSO in relation to its undertakings in India shall stand transferred to and shall vest in the Central Government on the appointed day, i.e., the date of commencement of the Act. Section 5 of the Act provides that where any property is held in India by ESSO under any lease or under any right of tenancy, the Central Government shall be deemed to have become the lessee or tenant 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. Sub-section (2) thereof further provides that on expiry of the term of any lease or tenancy, 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. Section 7 of the Act deals with power of Central Government to direct vesting of the undertakings of ESSO in a Government company.

5. On a bare reading of the aforesaid provision, it would be clear that the Petitioner has stepped into the shoes of ESSO, i.e., the original lessee and has the statutory right of renewal in view of Sub-section (2) of Section 5 of the said Act. In the letter dated 6.11.1991 (Annexure-3), the Regional Manager of the Petitioner wrote to the successor-in-interest of the original lessor Surendranath Banerjee as follows:

Kindly refer to the Lease Agreement of December, 1973 between Shri Surendranath Banerjee and M/s. ESSO Eastern Inc. for the above land for a period of 10 years effective Ist December, 1971 till 30th November, 1981.

As per the stature by which M/s. ESSO Standard Eastern Inc. has been taken over by the Govt. and vested in Hindustan Petroleum Corporation Ltd. and as per the terms of the said Agreement, we had exercised our contractual option for a further period of 10 years effective 1st December, 1981 till 30th November, 1991.

As per the ESSO Acquisition Act, we have a right to continue in the above mentioned premises for a further period of 20 years effective 1st December, 1991 till 30th November 2011 on the same terms and conditions. We are, however, willing to consider and negotiate a fair rental for the above mentioned premises by mutual agreement. We therefore request you to advise us rental acceptable to you to enable us negotiate further and arrive at a mutual acceptable amount.

6. From the above stand taken, we are inclined to hold that the Petitioner cannot be said to be an unauthorised person. Exercise of option of renewal as indicated in Annexure-3 would prima facie go to show that it is a lessee, i.e., a tenant holding over.

7. For the reasons aforesaid, the Additional District Magistrate clearly erred in law in cancelling the ''no-objection certificate''. As a consequence his order at Annexure-4 and the order passed by the Revenue Divisional Commissioner,

Central Division, Cuttack in appeal at Annexure-5 are hereby quashed.

8. In the result, the writ petition is allowed. There would be no order as to costs.

P.K. Misra, J.

9. I agree.