(1995) 09 AP CK 0056

In the Andhra Pradesh High Court

Case No : C.C.C. Appeal No. 19 of 1988

Hindusthan Petroleum Corporation Ltd. APPELLANT

Vs

Totaram Muralilal and Sons RESPONDENT

Date of Decision : 18-09-1995

Acts Referred:
ESSO (Acquisition of Undertakings in India) Act, 1974 — Section 5, 5(2), 7, 7(3)

Citation : (1996) 1 ALT 190

Hon'ble Judges : V. Bhaskar Rao, J;N.Y. Hanumanthappa, J

Bench : Division Bench

Advocate : P. Ramachandra Reddy, for the Appellant; S. Venkat Reddy, for the Respondent

Judgement

N.Y. Hanumanthappa, J.—This is defendant''s appeal, filed aggrieved by the judgment and decree dated 23-10-1987 passed by the Additional Chief Judge, City Civil Court, Hyderabad in O.S. No. 875, of 1985, decreeing the plaintiff''s suit for eviction, arrears of rent and damages as prayed for in the plaint.

2. Facts not in dispute are that the schedule property belongs to the plaintiff, who leased out the same to the defendant under lease deed dated 19-7-1969 for a period of 12 years and 9 months, on a monthly rent at Rs. 760/ - per month, with a clause that if either of the parties wants to renew the lease, the same shall be as per the fresh terms and conditions, mutually agreed upon. During the currency of the lease period, the business of the defendant appellant was taken over and came to be vested in the Central Government by virtue of the promulgation of Esso (Acquisition of Undertakings in India) Act i.e., Act 4 of 1974 (for short ''the Act'') The entire business including the right to carry on the business and other purposes were acquired by the Central Government. As per Section 5 of the Act, the Central Government is empowered, if so desired, to continue the said lease or tenancy by way of renewal on the same terms and conditions on which the lease was subsisting before the appointed date. The Act came into force on 13-3-1974 and as on that date the agreement dated

19-7-1969 was in force. As per the said agreement the rent to be paid was Rs. 760/- per month.

3. The claim of the plaintiff was denied by the defendant. At the same time it is asserted by the defendant that it had no other alternative but to exercise the Statutory Option by letter dated 21-12-1981 for the renewal of the lease on the same terms and conditions on which the defendant held the lease immediately before 13-3-1974, as the defendants letter dated 13-6-1981 exercising the Contractual Option provided by the lease agreement dated 19-7-1969 under Clause 3 (d) was not accepted by the plaintiff as is evident from the letter dated 31-7-1981. The plaintiff while admitting the receipt of the letter dated 21-12-1981 appears to have contended that a rent of Rs. 5,000/- is equitable and in the absence of the defendant agreeing to such renewal, the site should be handed over to the plaintiff, but the same is resisted in the face of the right of option provided in Section 5 of the said Act.

4. On the basis of the above pleadings, the trial court framed the following issues:--

1. Whether the plaintiff is a registered partnership firm entitled to institute the suit in the name of the firm?

2. Whether Sri Shamlal Gupta is competent to represent the plaintiff firm and sign the plaint on behalf of the plaintiff firm?

3. Whether this Court has no jurisdiction to entertain the suit?

4. Whether the suit property is covered by the A.P. Buildings (lease, Rent and Eviction) Control Act?

5. Whether the defendant was bound to comply with Clause 2 (f) of the registered lease dated 19-7-1969 executed between the plaintiff and M/s. Esso Standard Eastern Incorporated?

6. Whether the business of the defendant on the suit site is being carried on by a dealer of the defendant to the knowledge of the plaintiff?

7. Whether the defendant was entitled by way of statutory option to extend the period of the lease unilaterally and without concurrence of the plaintiff?

8. If issue 7 is in the affirmative, what is the period of extended lease 10 years or 12 years 9 months from 1-2-1982?

9. Whether the defendant has committed breach of an essential terms of the lease dated 19-7-1969 and incurred a forfeiture as provided in Clause 4 (d) of the lease agreement?

10. Whether the defendant paid the rent due from 1-1-1982 onwards till date of suit in the manner alleged in para 9 of the written statement?

11. If issues9and 10 are in the affirmative whether the defendant was not

entitled to exercise the statutory option of extending the lease for a further term?

12. To what damages for use and occupation if any and for what period past and future is the plaintiff entitled against the defendant?

13. Whether the suit is not maintainable as claimed by the defendant?

14. Whether the dealer of the defendant is a necessary party to the suit and if so whether the suit is bad for non-joinder of a necessary party to the suit?

15. Whether the suit notice dated 5-11-1982 is a proper and valid notice terminating the tenancy of the defendant?

16. To what relief?

5. In support of their respective contentions, both the parties led evidence, both oral and documentary. On behalf of the plaintiff one witness was examined as P.W 1 and Exs. A-1 to A-11 marked, whereas on behalf of the defendant two witnesses were examined as D. Ws. 1 and 2 and Exs. B-1 to B-8 were marked.

6. The trial Court, after appreciating the entire evidence, both oral and documentary, held that the defendant is liable to be evicted. Regarding the rents, it said that the defendant is liable to pay rent at the rate of Rs. 1,500/- per month, from the period after expiry of 12 years 9 months from 19-7-1969. Accordingly, it passed a judgment and decree on 23-10-1987.

7. Aggrieved by the said judgment and decree, this appeal.

8. Heard Sri Ramachandra Reddi, learned senior counsel for the appellant and Sri S. Venkata Reddy, learned senior counsel for the respondent.

9. According to Sri Ramachandra Reddi, the rate of rent to be paid for the period subsequent to the coming into force of the Act is only Rs. 760/- and not Rs. 1500/- per month, whereas Sri S. Venkata Reddy urged that the rate of rent payable by the defendant from 1-2-1982 is Rs. 1500/- per month as determined by the Court below and not Rs. 760/- per month, for the reason that by the time the Act came into force, the defendant had already completed a period of five years as tenant and so a party to the clause which stipulates that for any renewal, the rent shall be as mutually agreed upon. Sri Venkata Reddy placed reliance on a decision of the learned single Judge of this Court, reported in Agrimmcor Pvt. Ltd. Vs. Union of India (UOI) and Another, , wherein it was held as follows:

"..............I hold that the condition with regard to increase in rents in the event of the option for extension of lease being exercised is an essential condition of lease and it cannot be overlooked or ignored. If the 2nd respondent is not prepared to increase the rents, the same would be arbitrary and on that count the action of the 2nd respondent in exercising for extension of lease is fit to be set aside................."

10. We gave our careful thought to the contentions raised by both the learned

senior counsel. We again read Section 5(2) and 7(3) of the Act and also the decision rendered by the learned single Judge of this Court. In the instant case, as far as the date of coming into force of the Act and its applicability to the terms of lease, are concerned, there is no dispute between the parties. It is also not in dispute that both the parties were not in agreement on rent.

11. Sri Venkata Reddy, learned senior counsel for the respondent submitted that even after coming into force of the Act, the defendant/appellant wrote a letter requesting the plaintiff to extend the lease period on same terms and conditions entered into earlier., whereas the landlord-plaintiff refused to agree to renew the lease on original terms and conditions, but agreed if the defendant was willing to pay rents at Rs. 5,000/- per month. Since the defendant sought for renewal of licence, Sri Venkata Reddy, learned senior counsel for the respondent, submitted that it shall be presumed that the defendant wanted to give effect to one of the terms of the original lease agreement, relating to the extention of lease on mutually agreed terms and on payment of Rs. 1500/- per month. This is how the trial Court rightly understood and passed a decree for payment of rents at Rs. 1500/- per month, subsequent to 1-2-1982, according to Sri Venkata Reddy, and the same shall not be disturbed.

12. In our view, the said contention has no force, nor the decision of the learned single Judge referred above of this Court is acceptable. We have to take into consideration how the parties were governed, in view of coming into force of the Act. As on the date of writing the letter, the Act had already come into force. The effect of Section 5(2) of the Act is that in view of acquisition of the undertaking, the right to continue the business had accrued to the Government of India and entitled them to seek renewal of lease on the same terms and conditions existing as on the date of the Act coming into force. Mr. Ramachandra Reddy, learned counsel for the appellant sought to draw a distinction between the Statutory Option conferred by Section 5 of the Act and Contractual Option contemplated by Clause 3 (d) of lease agreement dated 19-7-1969 and contended that in the former case the terms and conditions shall be same as applicable as on 13-3-1974 when the Act came into force and only in the later case, the terms can be negotiated afresh. We find force in this contention. Thus, from this what is to be understood is that the Act conferred a benefit on the part of the lessee to seek renewal of lease on same terms and conditions existing at the time of entering into agreement and a further renewal as per the terms of the lease deed, if the party so desired is altogether different. The dispute between the parties started not after expiry of the renewed period flowing from the operation of law, but it was during its subsistence.

13. Therefore, the view taken by the trial Court that the defendant is liable to pay rent at Rs. 1500/- per month subsequent to 1-2-1982 does not stand to reason. Moreover such a construction of provisions viz., Sections 5 and 7 of the Act is illegal. The contentions of Sri Venkata Reddy, learned senior counsel for the respondent on this point are not acceptable. On the other hand, Sri

Ramachandra Reddi, learned senior counsel for the appellant is right in his submission.

14. Therefore, the appeal is allowed in part and the judgment and decree of the trial Court, sofar as it relates to awarding of rents at Rs. 1500/- per month from 1-2-1982 is set aside and it stands undisturbed in other respects. The defendant is liable to pay rents at Rs. 760/- per month for a period of 12 years and 9 months from 1-2-1982. The plaintiff can recover damages for the use of the premises by the defendant, subsequent to the above mentioned period, if he is so entitled. The submission of Sri Ramachandra Reddi that if three months'' time is given, his client would vacate the premises and put the plaintiff in vacant possession of the same without driving him to execution Court, is recorded. No costs.