(1999) 04 MAD CK 0164

In the Madras High Court

Case No : Writ Petition No. 17945 of 1991

M. Rose and Others — APPELLANT

Vs

Hindustan Petroleum Corpn. Ltd. and Others — RESPONDENT

Date of Decision : 23-04-1999

Acts Referred:

Caltex Acquisition of Shares of Caltex Oil Refining (India) Limited and of the Undertakings in India of Caltex (India) Limited Act, 1977 — Section 3, 7(3)

Citation : AIR 2000 Mad 83

Hon'ble Judges : Y. Venkatachalan, J

Bench : Single Bench

Advocate : P.S. Raman, for the Appellant; O. Thangavelu, for King and Faridge, for the Respondent

Final Decision : Allowed

Judgement

Y. Venkatachalan, J.—Invoking Article 226 of the Constitution of India, the petitioner herein has filed the present writ petition, seeking for a writ of certiorari to rail for the records of the first respondent in their order in PAS/SSK/ LKG dated 21-8-91 and to quash the same.

2. In support of the writ petition, their mother and power agent has filed an affidavit wherein she has narrated all the facts and circumstances that forced them to file the present writ petition and requested this Court to allow their writ petition as prayed for. Her contra, on behalf of the respondents separate counter affidavits have been filed rebutting all the material allegations levelled against them one after the other and ultimately they requested this Court to dismiss the writ petition for want of merits.

3. Heard the arguments advanced by the learned counsel appearing for the parties. I have also perused the contents of the affidavit and the counter affidavits together with all other relevant material documents available on record in the form of typed set of papers. I have also taken into consideration the various aspects and points discussed and raised by the learned counsel

appearing for the rival parties.

4. In the above facts and circumstances of the case, the only point that arises for consideration herein, as to whether there are any valid grounds to allow this writ petition or not.

5. The short facts of the case of the petitioners, as seen from the affidavit are as follows :

The petitioners herein are the daughters of one Mr. Naxim A. Lobo, a retired District Judge and he purchased a property of approximately 3 grounds situated at the junction of Ponnamallce High road and New Avadi Road from their family friend, and Mrs. Padmini Cynthra Mukherji by a Deed of Sale dated 9-7-1993. His vendor had leased out the said property to M/s. Caltex (India) Ltd., by an indenture of lease dated 15-2-1972 for a period of 20 years. The Caltex (India) Ltd., was carrying on through its undertaking in India the business of marketing and distributing petroleum products. Act No. 17/1977 was enacted on 23-1-1977 but the same was given retrospective effect from 30-12-1976. By Section 3 of the Act all the shares in the capital of Caltex Oil Refining stood transferred to and vested in the Central Government from 30-12-1976. The Caltex Oil Refining thus became a Government company. Section 5 of the Act had also the effect of transferring and vesting in the Central Government with effect from 30-12-76 the right, title and interest of Caltex (India) in relation to its undertakings. In India, the effect of vesting of the undertaking of Caltex (India) in the Central Government is dealt with in Sections 6 and 7. Set lion 7 made it clear that the rights vested in the Central Government including the right under any lease. Power was also been conferred on the Central Government to renew or continue a lease on the same terms and conditions by Sub-section (3) of Section 7. Section 9 of the Act conferred power on the Central Government, to direct vesting of the undertakings of the Caltex (India) in Government company. Thereafter by virtue of an order of the Company Law Board, the undertaking of Caltex Oil Refining stood transferred to and vested in Hindustan Petroleum Corporation Ltd., the first respondent herein. After the purchase of the above referred property, by the petitioners herein and the notification of the 1978 order, the first respondent herein started atoning the monthly rentals of Rs. 700/- per month to the petitioners herein.

6. As per the original lease deed dated 15-12-1972, the lease in favour of the first respondent herein was to terminate on 31-12-1991 and there were no covenants giving right of renewal to the lessee. However under Clause 4(f) of the lease deed, the lessee was given a pre-emptive right to purchase the demised premises at the same price as any bona fide offer which may be received by the lessor. That being so, by a registered letter dated 21-8-1991, issued by the first respondent herein, the 1st respondent has invoked the provisions of Section 7(3) of the Act 17 of 1977 which reads thus :

"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."

In and by the above referred communication dated 21-8-91, the petitioners are now being compelled to continue the lease in favour of the first respondent herein for a further period of 20 years ending with 31-12-2011 on the same rent of Rs. 700/- per month.

7. It is the case of the petitioners herein that the very intent and purpose of Section 7(3) was that, inasmuch as the Government was in effect nationalising the business of the erstwhile multinational oil company it should be armed with sufficient statutory powers to continue the business of the oil company. Many leasehold properties in the possession of the oil company would become useless to the Government, if the leases were expiring soon after the passing of the Act. Consequently, by Section 7(3) the Government, was being given the power to extend the lease even if the original lease deed did not provide for a renewal. In this case, the original lease was executed with the erstwhile Caltex (India) in 1972, a few years before the takeover and the first respondent herein is the successor in interest of the erstwhile Caltex (India), who themselves enjoyed the lease for well over ten years paying the same rent of Rs. 700/- per month. It is contended by the petitioners that the first respondent herein claiming to be a delegate of the Central Government, u/s 7(3) has passed orders u/s 7(3) without examining the need of the Central Government. According to the petitioners herein, the first respondent herein having put up a super-structure at the property and having sub-leased the property to one Venus Enterprises, the second respondent herein for the purpose of putting up a Petrol Pump may claim the protection under Madras City Tenants'' Protection Act. It is stated by the petitioners herein that assuming without admitting that the protection under the above enactment is available to the first respondent herein, in any event, in view of the covenants in the lease deed itself, the first respondent has been conferred a pre-emptive right to purchase the property. Therefore, it is the grievance of the petitioners herein that without resorting us to the power to purchase the property, the first respondent has arbitrarily and illegally sought to exercise the power u/s 7(3) for renewing the lease deed till 2011 on the meagre rental of Rs. 700/- per month when the demised property comprising of three grounds of prime land in the heart of the city of Madras would at a conservative estimate fetch a market value of over Rs. 60/- lakhs at the time of filing the writ petition. According to the petitioners even though the petitioners herein could institute proceedings for evicting the respondents from the demised premises and even now are willing to offer the property for sale to the first respondent heroin at the market value, the same would be ineffective and premature so long as the first respondent''s order passed u/s 7(3) of the Act remains in foree. Hence they have come forward with this writ petition.

8. The impugned order passed by the 1st respondent is challenged by the petitioners herein on the grounds that the impugned order is arbitrary, non-speaking, inequitable and illegal and also violative of Articles, of the Constitution, that in passing the impugned order, the first respondent herein has failed to consider the need of the Central Govt., for continuing the lease-hold rights of the demised property, that the first respondent has no need for continuing the demised premises as a petrol pump and public interest would not suffer if the continuation of operating a petrol pump in the area is discontinued and that immediately next to the demised property another petrol pump owned by M/s. Bharat Petroleum and two houses away is other petrol pump owned by the first respondent herein followed by another pump operated by Bharat Petroleum on the other side of the Poonamallee High Road. It is the specific contention of the petitioners herein that within fifty metres there are three more petrol pumps two operated by the first respondent herein and one operated by Indian Oil Corporation, and that on New Avadi Road and Poonamallee High Road, within 500 metres radius, there are numerous other petrol pumps. According to the petitioners even assuming without admitting that the extent of the road being large, the number would have to be read down considering that there are seven petrol pumps within 100 metres of demised premises neither public interest equity or justice can sustain any need on the part of the Central Government or the first respondent for continuing the lease on the same premises till the year 2011 by invoking the power u/s 7(3) of the Act. It is the contention of the petitioners herein that in this case, the first respondent herein has already enjoyed the leasehold rights over the demised properly for more than a decade already and it cannot be urged that the business of the first respondent herein would suffer by surrendering this lease. Therefore, it is the categoric contention of the petitioners herein that the impugned order cannot be sustained u/s 7(3) of the Act and amounts to an Illegal and arbitrary and improper exercise of a statutory power vested with the authorities.

9. It is also the case of the petitioners herein that the first respondent has already been conferred a contractual right by an indenture of lease for exercising the preemptive right of purchase of the demised property, and if any public interest or need of the first respondent requires continuation of the operation of the petrol pump in the demised properly, the first respondent herein would have exercised their pre-emptive right of purchase and the petitioners herein would have been willing to sell the property at market value so that their investment in the valuable property is rendered a waste by continuation of the lease till the year 2011 at a demonstrably Inequitable unjust and unfair rent of Rs.700/- per month when the property value is well over Rs. 60 lakhs at the time of filing the writ petition. It is also contended by the petitioners herein that the first respondent herein having sub-leased the demised property to the second respondent herein, cannot plead the need of the second respondent herein for running the petrol pump. It is the strong contention of the petitioners herein that under the Act it is the need of the Central Government and its successor, the first

respondent herein which is material and that there is no privity of contract between the petitioners and the second respondent herein. It Is also the grievance of the petitioners herein that the first respondent herein has sub-leased the demised property at a much "higher rate" to the second respondent but seeking to pay the petitioners a monthly rent of Rs. 700/-and also that the annual property tax Itself for the demised premises works out to Rs. 6,000/- whereas the total rental collection is Rs. 8.400/- p.m. thereby rendering the entire property totally fruitless insofar as the petitioners are concerned. It is also the case of the petitioners that even for the purpose of institution of civil proceedings for evicting the first respondent, the orders impugned in the present writ petition giving statutory right of extension of the lease for a further period of 20 years would defeat the obtaining of any decree for eviction.

10. Per contra, in the counter affidavit Inter alia it is contended by the first respondent that in pursuance of the Government of India''s policy for progressively securing that the ownership and control of the products of the nation''s petroleum sources are vested in the State and thereby so distributed as best to subserve the common good, the President of India promulgated an Ordinance on 30-12-76 and later the Parliament enacted the Act 17 of 1977. u/s 5 of the Act, the right, title and interest of Caltex (India) Limited, in relation to its undertaking in India were transferred and vested in the Central Government with effect from 30th December, 1976. The effect of such vesting is dealt with in Sections 6 and 7 of the Act, Section 7 makes it clear that the rights so vested include the right under any lease and power has been conferred on the Central Government to renew or continue a lease on the same terms and conditions u/s 7(3) of the Act. Therefore it is contended by the respondents that as a result of these provisions, leases like those "of the petitioners which were in force on 30-12-76 stood transferred to and vested in the Central Government which also acquired a right u/s 7(3) to claim a renewal of such leases on the expiry of the terms thereof. It is the case of the respondent-1 that it is clear from the express wording of Section 7(3) that the 1st respondent has a right to renew the lease on the same terms and conditions. According to the first respondent the provisions of Sections 5 and 7(3) of the Act are perfectly valid and undertaking of Caltex (India) were taken over by the Government it was highly probable that suitable alternative premises for continuing the business activities of the undertaking of Caltex (India) could not be found and that therefore, the Central Government had to be armed with the power to get the lease and tenancies renewed or continued after their expiry. Therefore it is the case of the respondent-1 that the power u/s 7(3) is exercised when the subject matter of the lease or tenancy is really needed for continuing the business, and hence the power conferred by Section 7(3) cannot be said to be arbitrary as it is used only for subserving the purpose for which it is conferred viz., to ensure co-ordinated distribution and utilisation of petroleum products, which was being done by the former Caltex India) Ltd., to advance the common good. Therefore it is their specific stand that the power u/s 7(3) would be invoked only in public interest and where it is

necessary to secure the maintainability of a particular, outlet, without disturbance of dislocation to the community. According to the respondents, the Central Government can be expected to express a desire for continuance the lease only if a necessity for continuing the particular land as a retail outlet exists. Even according to the first respondent, in cases where there is no necessity to continue the lease, it is optional for the Central Government to surrender such leases. But it is stated by the respondents that in this case, inasmuch as there was a necessity for continuity of the lease, this first respondent rightly exercised its right invoking the provision of Section 7(3) of Act 17 of 1977 and put the petitioners on notice of its right to renew the lease for a further period of 20 years with effect from 1-1-1992. It is also the case of the respondent-1 that as a matter of fact by not continuing the petrol pump at the subject location, the public at large would suffer very much. Therefore, it is contended by the respondent-1 that the letter dated 21-8-91 exercising option to renew the lease is not illegal, arbitrary or improper exercise of the statutory power vested with the authorities. Hence it is prayed that the writ petition is liable to be dismissed.

11. In the counter affidavit filed by the second respondent it is stated by him that he is paying the rent according to the sales.

12. Having seen the entire material available on record and from the claims and counter claims made by the parties herein and in the facts and circumstances of this case, the only point that has to be decided is, as to whether the first respondent herein is entitled to invoke Section 7(3) of the Act and seek for the renewal of the lease for a further period of 20 years I.e., from 1-1-1992 in continuation of the already existing 20 years'' lease entered on 15-2-1972. In this case, the parents of the petitioners herein purchased the property in question in the year 1973 by virtue of a sale deed dated 9-7-73 from one Padmini Cynthra Mukherji. But even before such purchase the said vendor of the property had leased out the same for 20 years to the erstwhile Caltex (India) Ltd. for a monthly rent of Rs. 700/- by virtue of a lease deed dated 15-2-1972. Thereafter, the said Caltex (India) Ltd., was taken over by the Government by virtue of the Act 17 of 1977. Subsequently by an order of the Company Law Board, the undertaking of Caltex (India) Ltd., stood transferred to and vested in Hindustan Petroleum Corporation Ltd., the first respondent herein. Therefore the first respondent herein, the successor in interest of the erstwhile Caltex (India), have enjoyed the lease for well over ten years paying the same rent of Rs. 700/- per month. That being so, now the grievance of the petitioners herein is that in and by the above referred to communication dated 21-8-1991 which is impugned in this writ petition, the petitioners herein are now being compelled to continue the lease in favour of the first respondent herein for a further period of 20 years ending with 31-12-2011 on the same rent of Rs. 700/- per month. Justifying their such stand, it is contended by the respondents that power was also conferred on the Central Government to renew or continue a lease on the same terms and conditions by Sub-section(3) of Section 7. In this context at this stage it would be useful to extract the said Section 7(3) of the Act which reads thus :

"On the expiry of the terms 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."

In this regard it is significant to note that in the case of Manohar Singh and Another Vs. Caltex Oil Refining (India) Ltd., Bombay and Others, , the Madhya Pradesh High Court had interpreted Section 7(3) as under :

"the expression ''if so desired by the Central Government'' while being wide should be construed in the context that the provision is ancillary to enable the Central Government to continue the business of Caltex (India) and the word ''if so desired'' should therefore be read and construed as ''if so needed'' ".

Therefore it is the contention of the respondents that the Central Government can be expected to express a desire for continuance of the lease only if a necessity for continuing the particular land as a retail outlet exists and in the instant case as there was a necessity for continuing the lease the 1st respondent rightly exercised its right invoking, the provision of Section 7(3) of Act 17 of 1977 and that therefore, it is not open to the petitioners to challenge the letter written by the 1st respondent by their letter dated 21-8-91.

13. It is the contention of the petitioners that the impugned order of the first respondent is arbitrary, non-speaking, illegal and violative of Article 14 of the Constitution and that the first respondent has failed to consider the need of the Central Government, for continuing the leasehold rights of the demised property. It is contended by them that the first respondent has no need for continuing the demised premises as a petrol pump and public interest would not suffer if the continuation of operating a petrol pump in the area is discontinued. I see every force in the said contention of the petitioners herein because it is admitted even by the respondents themselves that in the vicinity of that area there are a number of petrol pumps and in particular there are two petrol pumps separated by the 1st respondent himself. It transpires during the course of arguments that in the surrounding area at least about 10 to 15 petrol pumps are there. Therefore that being so, there is no meaning in the contention of the respondents that by not continuing the petrol pump at the subject location the public at large would suffer very much. It is very clear that to meet the need of the general public in the said locality there are sufficient petrol pumps and that therefore there is no necessity for continuing the petrol pump in the said place by renewing the lease for another 20 years. That being so, even according to the averments of the counter, (Para 11 and Page 7) in cases where there is no necessity to continue the lease, it is optional for the Central Government to surrender such lease.

14. It is next contended by the petitioners that the provisions of Section 7(3) were enacted for the purpose of enabling the Central Government and the first

respondent herein as it is delegated to continue the business of the erstwhile oil company and for the purpose of enabling statutorily to extend such leasehold rights as were expiring soon after the nationalisation. Further it is significant to note t hat in the instant case, the first respondent herein has already enjoyed the leasehold rights over the demised property for more than a decade already and it cannot be urged that the business of the first respondent herein would suffer by surrendering this lease. Therefore it is contended by the petitioners herein that the Impugned order cannot be sustained u/s 7(3) of the Act and amounts to an illegal arbitrary and improper exercise of a statutory power vested with the authorities. In the facts and circumstances of this Case, I see every force in the said contentions of the petitioners.

15. It is also contended by the petitioners that the first respondent has already been conferred a contractual right by an indenture of lease for exercising the pre-emptive right of purchase of the demised property. If any public interest or need as alleged by the respondents required continuation of the operation of the petrol pump in the demised property, the first respondent herein would have exercised their pre-emptive right of purchase and the petitioners'' herein are always willing to sell the property at the market value, which according to the petitioners is Rs. 50 lakhs per ground so that their investment in the valuable property is rendered useful. But it is significant to note that by way of renewing the lease on the same terms and conditions of the original lease deed the respondents want that they can enjoy the said land for an unjust and unfair rent of Rs. 700/- per month when the property valuer as on date is about 130 lakhs. Further according to the petitioners even the annual property tax for the said property itself cannot be paid by the annual rent collection of Rs. 8,400/-. It is stated by the petitioners that even the 6% of fair rent value of the property would come to about Rs. 70,000/-. Therefore, for these reasons it is contended vehemently by the petitioners herein that without doing any of these the respondents want to have the lease for another two decades at the same rent of a meagre Rs. 700/- per month when admittedly the property is comprising of three grounds of prime land in the heart of the city of Madras. It is also the case of the petitioners herein that the first respondent herein having sub-leased the demised property to the second respondent herein cannot plead the need of the second respondent herein for running the petrol pump. I see every force in the said contention of the petitioners. Because under this Act, it is the need of the Central Government and its successor the first respondent herein which is material and in fact there is as privity of contract between the petitioners and the second respondent herein. That apart the first respondent herein has sub-leased the property at a much higher rate to the second respondent but seeking to pay the petitioner a monthly rental of Rs. 700/- that is really injustice done to the petitioners herein and that would render the entire property totally fruitless in so far as the petitioners are concerned. It is significant to note that in this case in the counter it is admitted by the second respondent who is now in possession of the petrol pump that he is paying the rent according to the sales. That being so, it is highly improper and

illegal to deprive and the interests of the petitioners herein for the benefit of the 1st and 2nd respondents herein at this Court has already found that in the continuation of the lease on the original terms and conditions, no public interest is involved and not sanctioning the continuity of the lease no pubic at large except the 2nd respondent will be at a loss. So, for the benefit of the 2nd respondent herein, by utilising the technicalities in the Act; the valuable rights and the liberty of the petitioners cannot be deprived of. Above all it is significant to note that, the property In question was purchased by the age old parents of the petitioners herein for the welfare of their daughters, the petitioners herein in the year 1973. It transpires that the father of the petitioners who is a retired Government Servant invested all his hard earned money and also the terminal benefits in this property for the well being of their daughters, the petitioners herein. But all these days there is slip between the cup and the lips and the petitioners were unable to enjoy the fruits of the investments of their father in this property. In such circumstances having enjoyed the leasehold right of the property in question for more than a decade they want to enjoy the same for another two decades at the same rate of rent of meagre Rs. 700/- per month. Such action of the respondents is certainly against the principles of natural justice. For such exercise they cannot take the help of the technicalities in the Act under the guise of Section 7(3) of the Act. That can be invoked only when there is utter necessity. But in this case it is proved beyond any doubt the respondents are not HAVING any necessity at all for continuing the said lease for another 20 years at the rate of a rent of Rs. 700/- per month. It is significant to note that the very intent and purpose of Section 7(3) was that in as much as the Government was in effect nationalising the business of the erstwhile multinational oil ''company it should be armed with sufficient statutory powers to continue the business of the oil company and many leasehold properties in the possession of the oil company would become useless to the Government if the lease were expiring soon after the passing of the Act. But that is not the position at present and that therefore in such circumstances, In this case the respondents cannot invoke the provisions of Section 7(3) of the Act and seek for the renewal of the lease which had already expired on 31-12-1991.

16. Thus for all the aforesaid reasons and in the facts and circumstances of this case and also in view of my above discussions with regard to the various aspects of this case and also on the strength of the various decisions cited by the parties herein I am of the clear view that the petitioners herein have made out a case in their favour that the impugned order of the 1st respondent is arbitrary, inequitable, illegal violative of Articles of the Constitution and also against the principles of natural justice. They have also proved that in passing the impugned order the first respondent has miserably failed to consider the need of the Central Government for continuing the lease-hold rights of the property and that therefore in this case they cannot invoke the provisions of Section 7(3) of the Act. Thus the respondents herein are not entitled to seek for the renewal of the lease which has already expired on 31-12-1991. Thus the writ petition succeeds

and the same has to be allowed as prayed for.

17. In the result, the writ petition is allowed. No costs. Consequently the communication of the respondent in this writ petition dated21-8-1991 is hereby quashed.

