(2000) 10 MAD CK 0074

In the Madras High Court

Case No : W.A. No. 2302 of 1999

N.R. Vairamani APPELLANT

Vs

Union Of India and two others RESPONDENT

Date of Decision : 20-10-2000

Acts Referred:
Burmah Shell (Acquisition of Undertakings in India) Act, 1976 — Section 5, 7
Companies Act, 1956 — Section 23
Constitution of India, 1950 — Article 226

Citation : (2000) 10 MAD CK 0074

Hon'ble Judges : N.K. Jain, C.J;K. Raviraja Pandian, J

Bench : Division Bench

Advocate : Mr. K. Subramanian, for Mr. Mohamed Saffi, for the Appellant; Mr. Dillip Singh for M/s. King and Patridge, for the Respondent

Judgement

N.K. Jain, CJ.

1. This writ appeal has been filed against the order of the learned Single Judge, dated 27.10.1999, passed in W.P.No. 17370 of 1999, dismissing the writ petition with the observation that it is for the writ petitioner to take appropriate proceedings before the appropriate Court, to evict respondents 2 and 3.

2. It is alleged that on 1.4.1958, by way of a lease deed, the disputed property was leased out by the writ petitioner in favour of M/s.Burma Shell Oil Storage and Distributing Co., of India Ltd., for a period of 20 years. The currency of lease was expired on 31.8.1978. The writ petitioner has decided not to grant any further lease, and wanted to put up a building on the said property. It is further alleged that since the undertaking was transferred and vested with the Central Government, the petitioner on 22.9.1977 sent a registered letter to the Bharat Petroleum Corporation Ltd., requesting to vacate the premises by the expiry of lease on 31.8.1978, since she was not willing to extend the lease, and in view of her proposed construction in the said property. But the respondents 2 and 3 did not vacate the premises, rather replied on 7.10.1977 stating that they are not

willing to vacate the premises, and as per Sections 5 and 7 of the Burmah Shell (Acquisition of Undertaking in India) Act, 1976 (herein after referred to as the Act) the writ petitioner is bound to renew the lease for a further period of 20 years on the existing rent of Rs.110 per mensem. Thereafter, the writ petitioner sent a letter on 18.1.1978 requesting to surrender the vacant site, but the same was answered negativing the request in the similar terms of the earlier reply. Hence, the writ petitioner filed a writ petition in W.P.No.2691 of 1978 for declaring Section 5 of the Act, which was subsequently dismissed. Though the lease period expired on 1.6.1998, the respondents on 9.1.1998 issued notice for continuance of occupation for a further period of 20 years from 1.6.1998. Challenging the same, W.P.No. 17370 of 1999 has been filed. The learned Single Judge, on consideration, dismissed the writ petition. Against that, the present writ appeal has been filed.

3. The learned senior counsel for the appellant submits that once the lease period expired on 31.8.1978, and the appellant issued notice showing her intention, deciding not to renew the lease, the attitude of respondents 2 and 3 insisting to remain there, without vacating the premises is nothing but depriving her right to get the vacant premises. Only under the compelling situation and in view of the decision in Hindustan Petroleum Corporation Ltd. and Another Vs. Dolly Das, , petitioner invoked the writ jurisdiction, but the learned Single Judge without considering the facts and law rejected her prayer. Therefore, the order of the learned Single Judge is liable to be set aside.

4. In pursuance of notice, Mr.Dullip Singh for M/s.King and Patridge entered appearance for respondents 2 and 3. The learned counsel submits that the writ petition has been filed against a letter of the second respondent, and not against any order, and therefore, the learned Single Judge is right in dismissing the writ petition. That apart, the facts of the case on hand are very much distinguishable from the facts of the case, decided by the Apex Court, cited supra.

5. In rejoinder, the learned senior counsel for the appellant submits that as per the earlier contract with the Burma Shell Company, they can seek second time renewal, but once Section 5(2) of the Act has been invoked, the contract has become statutory contract, and therefore, after the expiry of the statutory lease period, the respondents 2 and 3 became trespassers, and they cannot say now, to the appellant to go to civil Court for eviction. The learned senior counsel further submits that the notice issued by the writ petitioner is a notice of termination, and not that of renewal, and therefore, the appellant''s case is squarely covered by the decision of the Apex Court, cited supra, and the appellant is entitled to get the vacant premises.

6. We have heard the learned counsel for the parties, and perused the materials on record, and the case law cited. Admittedly, the currency of lease was expired on 1.6.1998. It is also seen that in view of the Burmah Shell (Acquisition of Undertakings in India) Act, 1976, the Government of India acquired the entire equity shares in Burmah Shell Refineries Ltd., and it had become a Government

Company. On 12.2.1976 a certificate of incorporation was issued u/s 23 of the Companies Act, 1956 effecting the change in the company''s name as Bharath Refineries Limited. On 1.7.1997 another certificate of incorporation was issued further changing its name as Bharath Petroleum Corporation Limited. These facts are not disputed by either side. It is also true that generally this Court cannot exercise writ jurisdiction, in those cases, where disputed and complicated questions of fact need elaborate investigation, as neither this Court can go into those disputed questions of facts, nor can it investigate the same. So also, one cannot be permitted to circumvent the remedy available under the law. But the question, which has to be seen in this case is whether the appellant is entitled to get the relief, as prayed for, in view of the Hon''ble Supreme Court''s decision in Hindustan Petroleum Corporation Ltd. and Another Vs. Dolly Das, , wherein by a lease deed dated September 1, 1970 M/s.Kalinga Automobiles, Bhubaneshwar, Orissa leased out some property to M/s.Caltex (India) Ltd. Subsequently, the Parliament has enacted The Caltex (Acquisition of Shares of Caltex Oil Refining (India) Ltd., and of the Undertakings in India of Caltex (India) Ltd.Act, 1977 pursuant to which M/s.Caltex (India) Ltd. was taken over by the Government of India, and was amalgamated with the Hindustan Petroleum Corporation by an order dated May 9, 1978. Section 7(3) of the said Act specifically provided that on the expiry of the term of any lease, 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 was originally granted or entered into. On March 23, 1979 the Hindustan Petroleum Corporation exercised the option of renewal of lease for a further period of 10 years, which was not objected. Thereafter, on September 13, 1989 the Hindustan Petroleum Corporation wrote a letter saying that in view of Sections 5 and 7(3) of the Act they exercised their right to renew the lease for a further period of 20 years commencing from October 1, 1989 on the same terms and conditions, on which the original lease dated September 1, 1970 was entered into. Challenging the second time extension of the lease the respondent before the Supreme Court filed writ petition before the Orissa High Court. The High Court held that since no fresh lease deed was executed between the parties, Clause 3(g) of the lease deed was not acted upon, and therefore, the appellant cannot enforce a second renewal. It was further held that since the object of Sections 5(2) and 7(3) of the said Act is only to give some breathing time, the Hindustan Petroleum Corporation was not entitled to exercise any option for a further period after the first renewed term of 10 years, which was expired in 1989, and quashed the impugned letter seeking extension of lease. The Hon''ble Supreme Court after observing that the renewal of lease could only be for one term and no more, modified the order of the High Court to the extent that the appellant/Corporation has no power to claim exercise of option for any renewal of the lease beyond September 30, 1999, that the appellant/Corporation has to hand over vacant possession on or before March 21, 2000, and that the appellant/Corporation has to pay the rent till the date of handing over of the vacant possession. From the facts culled out, it is very clear that the currency of lease was expired on 1.6.1998, and the respondent/Corporation has become the statutory lessee, and notice of termination was also served. Under the circumstances, we are of the view that the contention of the learned Senior Counsel for the appellant that the proposition of law, laid down by the Hon''ble Supreme Court in the above cited case, will squarely cover the case on hand, has some force. Since, the alleged facts does not involve any complicated questions, and need no elaborate investigation, and in view of the observations made by the Hon''ble Supreme Court in Paragraph-9 in the decision cited supra, we deem it proper to entertain this writ appeal. As we have already stated, the appellant has sent only a notice of termination of lease and certainly it will not amount to a notice of renewal. After the issuance of notice of termination of lease, respondent/Corporation has no right to exercise their option for renewal, and they have to vacate the premises. They are only rank trespassers. Considering their reply to the termination notice, for the reasons stated above, and in view of the decision of the Hon''ble Apex Court cited supra, in our humble opinion, in the facts of the given case, it is not necessary to get the eviction from the appropriate court, and the appellant is entitled to get the vacant possession of the disputed property by invoking writ jurisdiction. In view of this, in the facts of the given case, the order of the learned Single Judge is not sustainable. The appellant is also entitled for the arrears of rent, if any, for the use and occupation of the premises. Three months time, from today, is granted to the respondent/ Corporation to vacate and hand over the vacant possession to the appellant. The respondent/Corporation will also to continue to pay for the use and occupation of the premises, till the vacant possession is handed over to the appellant, as per this order. The respondent/Corporation will also furnish an undertaking to this effect before this Court, within a period of three weeks from today. With these observations, this writ appeal is allowed with no order as to costs.