

(2002) 08 OHC CK 0033

In the Orissa High Court

Case No : OJC No's. 3970 and 3987 of 2002

Satyanarayan Agrawal and Another and Bharat Petroleum Corporation Limited and Another

APPELLANT

Vs

Smt. Anguri Devi and Others

RESPONDENT

Date of Decision : 07-08-2002

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Petroleum Rules, 1976 — Rule 144, 145, 157

Citation : (2002) 94 CLT 630 : (2002) OLR 790 Supp

Hon'ble Judges : P.K. Balasubramanyan, C.J;A.S. Naidu, J

Bench : Division Bench

Advocate : J. Patnaik, A.A. Das, B. Mohanty, T.K. Patnaik, B.K. Nayak, S. Das and P.K. Naik for OJC No. 3970/2002 and S. Udgata, for OJC No. 3987/2002, for the Appellant; B.P. Ray, S. Pujari, P.K. Patnaik, B. Sahoo and J.A. Reddy, for the Respondent

Final Decision : Allowed

Judgement

A.S. Naidu, J.—The petitioners in OJC No. 3970 of 2002, the partners of M/s. Auto Feed, a firm engaged in the business of sale of petrol, diesel and lubricants under a Dispensing Pump and Selling Licence of M/s. Bharat Petroleum Corporation Ltd. from its retail outlet at Uditnagar, Rourkela, seek to challenge the order dated January 14, 1999 (Annexure-5), passed by the Additional District Magistrate, Sundargarh (Opposite party No. 2), cancelling the "No Objection Certificate" on the strength of which the Chief Controller of Explosives, East Circle, Calcutta issued licence bearing No. OR-922 of February 27, 1970 in favour of one Kishanlal Agrawal, the predecessor-in-interest of the petitioners, as well as the order Annexure-6 passed by the Revenue Divisional Commissioner (Northern Division), Orissa, Sambalpur in Misc. Appeal No. 2 of 1999 confirming the order of cancellation, vide Annexure-5.

2. Bereft of all unnecessary details, the short facts which are necessary for effectual adjudication of the cases are stated hereinbelow :

Late Satyanarayan Agrawal was the original owner of the land appertaining to Plot No. 426, Khata No. 168(A), Holding No. 656 situated within Rourkela N.A.C. He leased out the said land in favour of Kishanlal Agrawal and accorded his written consent on January 5, 1970 for establishment of a petrol pump and further agreed not to cancel the lease or withdraw his consent till the petrol pump would run on the said plot by the lessee or his transferees. On the basis of such consent, the District Authority on January 31, 1970 granted "No Objection Certificate" under the Petroleum Rules for installation of a petrol pump-over the leasehold. On February 26, 1970, Kishanlal Agrawal entered into a partnership with petitioner No. 1 Satyanarayan Agrawal for running of the petrol pump in the name and style of M/s. Auto Feed and the said partnership firm continued to pay the rent for the leasehold to Satyanarayan Agrawal, the original owner. On the basis of the "No Objection Certificate" issued by the District authority on February 27, 1970, Explosive Licence was granted by the Deputy Chief Controller of Explosives, Calcutta under the Petroleum Rules in favour of Kishanlal Agrawal for storage of Petroleum Products, vide Annexure-3.

While matters stood thus, in the year 1981, Smt. Anguri Devi, Opposite Party No. 1, and one Smt. Bhagabati Devi purchased the leasehold land in two different parts from Satyanarayan Agrawal and continued to receive rent from the firm M/s. Auto Feed. In January, 1986, with the consent of Kishanlal Agrawal, the Explosive Licence was transferred in favour of the firm M/s. Auto Feed in consonance with Rule 157 of the Petroleum Rules. In July, 1985, Kishanlal Agrawal retired from the partnership of M/s. Auto Feed and Smt. Anguri Devi, Smt. Bhagabati Devi and one Subas Kumar were inducted as partners apart from petitioner No. 1. In February, 1988, a Dispensing Pump and Selling Licence Agreement was executed between M/s. Bharat Petroleum Corporation Ltd. and Satyanarayan Agrawal (Petitioner No. 1) and Ajay Kumar Agrawal (Petitioner No. 2), representing the firm M/s. Auto Feed, vide Annexure-1. In April, 1998 a fresh partnership deed was executed among Satyanarayan (Petitioner No. 1), Ajay Kumar Agrawal (Petitioner No. 2), Smt. Anguri Devi (Opposite party No. 1) and Subas Kumar for running the business in the name and style of M/s. Auto Feed. In April, 1995 the Explosive Licence was transferred to M/s. Bharat Petroleum Corporation Ltd. in consonance with Rule 157 of the Petroleum Rules with consent of M/s. Auto Feed. On March 31, 1996, the partnership of M/s. Auto Feed dissolved and on April 1, 1996, a fresh partnership deed was executed between petitioner Nos. 1 and 2 for running the said business of M/s. Auto Feed, who were appointed as dealers of Bharat Petroleum Corporation Ltd. "

In the meanwhile, dissensions cropped up and sometime in May, 1996, opposite party No. 1 Smt. Anguri Devi and aforesaid Subas Kumar filed Title Suit No. 49 of 1996 in the Court of the Civil Judge (S.D.), Rourkela inter alia challenging the dissolution of the partnership and praying for a declaration that the plaintiffs (i.e. opposite party No. 1 and Subas Kumar) had 50% interest in M/s. Auto Feed and to issue a permanent injunction by directing the defendants not to prohibit the plaintiffs from entering upon the business premises of M/s. Auto Feed and

manage the day to day business affairs by virtue of the plaintiff's continuing as partners of the business, as well as for other ancillary reliefs. It is pertinent to mention here that both petitioner Nos. 1 and 2 and Bharat Petroleum Corporation were impleaded as defendant Nos. 1, 2 and 3 respectively in the said suit.

Opposite party No. 1 Smt. Anguri Devi also filed an application before the Additional District Magistrate, Sundargarh praying for cancelling the "No Objection Certificate" on the strength of which the Explosive Licence was issued on February 27, 1970 in favour of Kishanlal Agrawal. The said application was registered as Misc. Case No. 4 of 1996. The Additional District Magistrate by the impugned order Annexure-5, came to the conclusion that Smt. Anguri Devi (Opposite Party No. 1) was the owner of a portion of the land over which the petrol pump is situated and she had not given her consent in writing either to the opposite parties or to M/s. Auto Feed to use her portion of the land for running the petrol pump after she was ousted from the partnership firm. On the basis of the said finding, the Additional District Magistrate arrived at the conclusion that the licence to run the business over the land had ceased and the petitioners did not have any right to use the site for storing petroleum as the licensed premises belonged to Smt. Anguri Devi, and ordered cancellation of the "No Objection Certificate" issued earlier vide Annexure-5.

3. Being aggrieved by the order of the Additional District" Magistrate, the petitioners preferred Misc. Appeal No. 2 of 1999 under Rule 155 of the Petroleum Rules, 1975 before the Revenue Divisional Commissioner (Northern Division), Orissa, Sambalpur. By order of January 18, 2002 (Annexure-6), the Revenue Divisional Commissioner held that as the respondent Smt. Anguri Devi, the owner of the land, did not admit the tenancy of the appellants (present petitioners) and as they cannot claim adverse possession over the land, their claim always being as tenants, her consent was necessary for grant of "No Objection Certificate" and dismissed the appeal. As stated earlier, the aforesaid two orders, i.e. Annexure-5 and 6, are impugned in this Writ Petition.

4. OJC No. 3987 of 2002 has been filed by M/s. Bharat Petroleum Corporation Ltd. also challenging the order of January 14, 1999 passed by the Additional District Magistrate, Sundargarh and the order of January 18, 2002 passed by the Revenue Divisional Commissioner, Northern Division, Sambalpur in Misc. Appeal No. 2 of 1999 which are the orders impugned in O.J.C. No. 3970 of 2002.

Smt. Anguri Devi, opposite party No. 1, had entered Caveat and also filed a preliminary counter-affidavit opposing the admission of the Writ Petitions inter alia reiterating the stand taken by her before the Additional District Magistrate, Sundargarh. It is averred that the petitioners had managed to obtain renewal of the licence in favour of M/s. Bharat Petroleum Corporation on the basis of a "No Objection Certificate" and the said certificate should be recalled as opposite party No. 1 who is the owner of the property has not given her consent. Subsequently an additional affidavit has also been filed on behalf of Smt. Anguri Devi enclosing several documents like the consent given by the original owner late

Satyanarayan Agrawal dated 5.1.1970, the consent given by Smt. Bhagabati Devi and an affidavit sworn to by Kishanlal Agrawal as Annexures-A/1, B/1 and C/1 respectively.

5. As the facts and points of law in both the Writ Petitions are the same, both the matters are being disposed of by this common judgment.

6. Mr. Jagannath Patnaik, learned Senior Advocate appearing for the petitioners in OJC No. 3870 of 2002, submitted that Kishanlal Agrawal was the lessee under late Satyanarayan Agrawal who was the admitted owner of the land in dispute. Said Satyanarayan Agrawal had intimated the authorities that he had no objection if "No Objection Certificate" was granted by the Additional District Magistrate, Sundargarh to Kishanlal Agrawal for running the petrol pump. He had also undertaken that he would not cancel the lease or withdraw his consent till the petrol pump would run on the leasehold plot by the lessee or his transferees. A copy of the "No Objection" writing by the original land owner is filed by opposite party No. 1 along with his further affidavit of July 10, 2002 as Annexure-A/1. Mr. Patnaik further submitted that Smt. Bhagabati Devi, the owner of the balance portion of the land, had also certified that she had leased out her land to M/s. Auto Feed for putting up the petrol pump and conveyed that she had no objection for renewal of the Selling Licence. The said certificate was issued on March 26, 1996 and a copy thereof is filed as Annexure-B/1 to the further affidavit filed by opposite party No. 1. According to the learned counsel, Smt. Anguri Devi, opposite party No. 1, and Smt. Bhagabati Devi purchased the lands in two different sale deeds from the original owner late Satyanarayan Agrawal and after purchase accepted M/s. Auto Feed as a tenant and also accepted rent from it thus leading to attornment by the tenant to the assignee landlords and recognition of such tenancy. That tenancy, according to the learned counsel, has never been terminated. On the other hand, as would be evident from the prayer made in Title Suit No. 49 of 1996, opposite party No. 1 still claims to be a partner of M/s. Auto Feed and prays for the issue of a permanent injunction directing the defendants not to prohibit her from entering upon the business premises of M/s. Auto Feed and manage its day to day business affairs. The said prayer otherwise reveals that she has indicated explicit consent to the running of the petrol pump on the disputed site. It is further forcefully submitted by Mr. Patnaik that Smt. Anguri Devi, opposite party No. 1, being the assignee of late Satyanarayan Agrawal is bound by the commitments made and the rights conferred by the original owner. On the basis of the aforesaid contention it was contended that both the Additional District Magistrate as well as the Revenue Divisional Commissioner erroneously came to the conclusion that as Smt. Anguri Devi, opposite party No. 1, had not given her consent for running of the petrol pump on the land of which she is the owner, the "No Objection Certificate" granted earlier should be recalled and the impugned orders being illegal and unjust are liable to be quashed.

7. At the other hand, Mr. B.P. Ray, learned counsel for opposite party No. 1,

forcefully submitted that the consent of the land owner is very much necessary for granting the Explosive Licence under the Petroleum Rules and in the absence of such consent, the authorities had rightly cancelled the "No Objection Certificate" granted earlier. It is further submitted that the possession of the petitioners being litigious possession and Smt. Anguri Devi, opposite party No. 1, having not given her consent, the authorities had rightly directed cancellation of the earlier "No Objection Certificate" which is the sine qua non for granting Explosive Licence.

8. In support of his submission, Mr. Ray relied upon the decision in the case of *Jogesh and Ors. v. Bharat Petroleum* AIR 1990 SC 2116. In the said case, the Hon'ble Supreme Court has held that "No Objection Certificate" granted under Rule 144 of the Petroleum Rules can be cancelled wherever the licensee ceases to have any right to use the site for storing petrol and that right could be lost by a licensee either by his tenancy or right to the use of the site coming to an end or for any other reason, whereby in law the right to use the site for storing petrol ceases. The said decision, according to us, does not support the case of the opposite parties, inasmuch as in the case at hand, neither the lease/tenancy of M/s. Auto Feed has been cancelled nor ceased, even no notice has been issued determining the tenancy nor any suit has been filed for eviction. On the other hand, Annexure C/1 filed by Smt. Anguri Devi (opposite party No. 1) along with her additional affidavit in this Court clearly reveals that the original owner Satyanarayan Agrawal had not only given consent, but also undertook that he would not cancel the lease or withdraw his consent till the petrol pump would run on the aforesaid plot by the lessee, or his transferee. Thus the ratio of the decision of the Supreme Court (*supra*) has absolutely no application. In fact, if the ratio was to be applied it has to be held that the right of the licences or lease has not ceased and it is continuous. The possession of the petitioners over the leasehold cannot also be treated to be litigious possession, as no litigation disputing the tenancy and/or for eviction has been initiated in any Court. Added to it, opposite party No. 1 as a plaintiff in Title Suit No. 49 of 1996, had unambiguously prayed for a direction not to prohibit her from entering upon the business premises and managing the day to day affairs of the petrol pump, which reveals that she had in any event given tacit consent for running the petrol pump on the leasehold.

9. Mr. Ray also relied upon a decision of the Supreme Court reported in *M.C. Chockalingam and Others Vs. V. Manickavasagam and Others*, in support of his submission that a tenant/licencee is not entitled to claim to be in lawful possession of the premises on determination of the tenancy or expiry of the lease. Law is well settled that lawful possession of a tenant is not litigious possession and must have some foundation in a legal right to possess the property. But then, in the present case, as has been stated earlier, a valid tenancy was created by the original owner. Opposite Party No. 1, who is a subsequent purchaser, has accepted the tenancy, and absolutely no attempt has been made by opposite party No. 1 to determine the tenancy. Even otherwise,

opposite party No. 1 being an assignee of Satyanarayan Agrawal, has stepped into the shoes of the original owner and cannot object to the rights and obligations created by late Satyanarayan Agrawal.

10. Mr. Ray strenuously took us through Rules 144, 145 and 157 of the Petroleum Rules and contended that the consent of the land owner is necessary for renewal of the Explosive Licence. But on going through the aforesaid provisions, we find ourselves unable to accept the said contention, inasmuch as none of the provisions referred to above stipulate the requirement of any consent by the landlord for renewal of the Explosive Licence especially when the right to continue in possession or occupation has not been terminated.

11. The Additional District Magistrate lost sight of the provisions of the Petroleum Rules and proceeded on the ground that opposite party No. 1 had not consented to the continuance of the petrol pump on the leasehold and the tenancy has ceased. The said reasoning, according to us, was not only fallacious, but also contrary to the pleadings of the parties. As has been stated above, the tenancy of the petitioners has not been determined as yet by opposite party No. 1. What opposite party No. 1 appears to be aggrieved against, is the dissolution of the partnership, thereby prohibiting her from taking part in the business of M/s. Auto Feed. Thus, the Additional District Magistrate as well as the Revenue Divisional Commissioner failed to appreciate the facts in the true perspective. They have made a wholly erroneous approach and have palpably erred in withdrawing the certificate. We, therefore, have no hesitation to quash the orders Annexures-5 and 6.

12. The Writ Petitions were heard in extenso on 10.7.02 and hearing was concluded and judgment was reserved. On 11.7.02, an additional affidavit has been filed by opposite party No. 1 Smt. Anguri Devi, inter alia stating that inadvertently letter of January 5, 1970 issued by late "Satyanarayan Agrawal, the original owner, Annexure-A/1, had been filed along with the affidavit of July 10, 2001. It is stated that subsequently she came to know that the letter was a manipulated one as would be evident from the written arguments filed by Smt. Anguri Devi before the Revenue Divisional Commissioner. Whether Annexure-A/1 was a created or manipulated document or not is purely a question of fact which cannot be raised for the first time here and that too after she herself produced the document. That question cannot also be satisfactorily decided in the Writ Jurisdiction. Therefore, we refrain from expressing any opinion regarding the validity or otherwise of Annexure-A/1, But the fact remains that the said document was filed by Smt. Anguri Devi, opposite party No. 1, along with the affidavit of July 10, 2001 and it clearly reveals that the original owner late Satyanarayan Agrawal of whom opposite party No. 1 was an assignee had apparently accorded consent. Be that as it may, in view of the fact that the tenancy of the petitioners was accepted by opposite party No. 1 and it has not been determined, and added to it a suit is pending where the question as to whether opposite party No. 1 has fifty per cent share in the firm M/s. Auto Feed

is to be decided, the Explosive Licence cannot be cancelled merely on the objection of opposite party No. 1. In the circumstances, we hold that the Additional District Magistrate and the Revenue Divisional Commissioner committed an error in directing cancellation of the Explosive Licence, vide Annexure-5 and 6.

13. Accordingly, we allow the writ petitions and quash the impugned orders of the Additional District Magistrate, Sundargarh and the Revenue Divisional Commissioner, Northern Division, Sambalpur as per Annexure-5 and 6 dated 14.1.1999 and 18.1.2002 respectively.

14. The parties to bear their own costs.

P.K. Balasubramanyan, C.J.

15. I agree.