

(1999) 04 MAD CK 0067

In the Madras High Court

Case No : Second Appeal No. 580 of 1998

T.B. Nath and others

APPELLANT

Vs

Hindustan Petroleum Corporation Ltd. and another

RESPONDENT

Date of Decision : 15-04-1999

Acts Referred:

Burma Shell (Acquisition of Undertakings) Act, 1976 — Section 5(1), 55
Civil Procedure Code, 1908 (CPC) — Order 20 Rule 12
Constitution of India, 1950 — Article 14, 254, 31(2)
ESSO (Acquisition of Undertakings in India) Act, 1974 — Section 23, 5, 7
Mines Act, 1952 — Section 2, 3
Transfer of Property Act, 1882 — Section 106, 107

Citation : (1999) 2 CTC 145 : (1999) 2 LW 552

Hon'ble Judges : E. Padmanabhan, J

Bench : Single Bench

Advocate : Mr. S. Gopalaratnam, for Mr. P. Veeraraghavan, for the Appellant; Mr. A.L. Somayaji Senior Counsel for Mr. K. Ramani, for the Respondent

Judgement

1. The plaintiffs in 6.S.No. 569 of 1979 on the filed of the VI Assistant Judge, City Civil Court, Chennai, who have succeeded before the trial

court and lost before the first appellate court are the appellants in this second appeal.

2. This second appeal is directed against the judgment and decree of the learned VII Additional Judge, City Civil Court, Chennai dated 10.7.1997

made in A.S.No. 44 of 1997 in reversing the judgment and decree dated 20th September, 1996 made in O.S.No. 569 of 1979 on the file of the

trial court. At the time of admission, the following two substantial questions of law were framed by this Courts:-

(i) Whether the lease granted in favour of the 1st respondent stood terminated on the expiry of the period of the lease as stated in the lawyer's

notice Ex.A.7 dated 12.10.1978 whether on such termination, the appellants became entitled to the reliefs claimed in the suit?

(ii) Assuming without conceding that there was a valid renewal of the lease as claimed by the 1st respondent the expiry of the said renewal period

of lease during the pendency of the suit being a subsequent event, the lower Appellate Court should have under law granted the reliefs claimed by

the appellants in the suit without requiring them to seek the reliefs in fresh legal proceedings?

3. Heard Mr.S. Gopalaratnam, Senior Counsel appearing for Mr. P. Veeraraghavan, counsel on record for the appellants and Mr.A.L. Somayaji,

Senior Counsel appearing for Mr.K. Ramani counsel on record for respondents.

4. At the request of the learned counsel appearing for either side a date was fixed for final disposal of the second appeal and accordingly the

second appeal was listed for final disposal.

5. The factual matrix requires to be summed up for the disposal of this second appeal:

(a) The plaintiffs 1 to 3 instituted the suit O.S.No. 569 of 1979 against the defendants 1 and 2 praying for judgment and decree directing the

defendants to put the plaintiff in vacant possession of the schedule II mentioned land after removing all the structures thereon at the cost of the

defendants; directing the first defendant to pay to the plaintiffs damages for use and occupation of the II mentioned land at the rate of Rs. 1500 per

ensem from 1.1.1979 till date of delivery of vacant possession of the suit land, besides the Corporation tax payable by the said defendants for

the said land and for costs and other incidental reliefs.

(b) According to the plaintiffs, the suit II schedule property was originally owned by Hindu Joint Family consisting of the plaintiffs and their mother

Sivakamu Sundari, that the II schedule, property forms part of Schedule-I, that the second schedule property was taken on lease by M/s. Esso

Standard Eastern Inc., from the first plaintiff's mother for a period of ten years from 1.1.1969 to 31.12.1978 on a monthly rent of Rs. 300 for the

first five years and Rs. 350 for the next five years as per the lease deed dated 8th October, 1969, that subsequently the said Esso Standard

Eastern Inc., referred as Esso for brevity, agreed to pay the property tax payable in respect of Schedule II to the Corporation from the date of the

lease and it is being paid by Esso, that consequent to Esso (Acquisitions of Undertakings in India) Act, 1974, all the assets and liabilities of the said

Esso including interest in the lease deed dated 8.10.1969 mentioned in Schedule-II vested in the said defendant, that the said defendant had

attorned the tenancy of the schedule II in favour of the first plaintiff's mother and was paying the rents to her as well as tax payable thereon to the

Corporation; that the first schedule property was partitioned in terms of the partition deed dated 29.6.1976 that as per the partition, the second

schedule was divided by metes and bounds and had been allotted to plaintiffs share each being entitled to a specific portion therein and the

plaintiffs are the present owners of the said land, and that after the said partition, the first defendant had attorned its tenancy in favour of the

plaintiffs.

(c) The Second defendant is the licensee under the first defendant of the schedule II mentioned land and the structures put up by the first

defendant, that by letters dated, 20th June 1978 and 8th September, 1978, the first defendant intimated the plaintiffs that in terms of Section 5 and

7(3) of the Esso (Acquisition of Undertakings in India) Act, 1974, it would renew the lease in respect of the II schedule property for a further

period of 10 years from 1.1.1979 to 31.12.1988 on the same terms and conditions at a total rental of Rs. 350 per month, that the first plaintiff's

mother and the plaintiffs by their reply dated 12.10.1978 refused to renew the lease and called upon the defendants to surrender vacant possession

of the schedule II after removing superstructure and levelling the land to its original state, that the first defendant by letter dated 16.10.1978

declined to comply with the plaintiffs demand, that the plaintiff's mother Sivakami Sundari died on 13.12.1978 and that the plaintiffs are the

owners of the suit property.

(d) According to the plaintiffs Section 5 of the said act is unconstitutional and ultra vires of the Constitution of India and the defendants cannot

therefore seek to enforce any right purporting to flow from the said provision, that the said Act is not one intended or designed to acquire the

properties of third parties like the plaintiffs, that section 5 of the Act is ultra vires, that section 5 of the Act had no reasonable nexus to the object

sought to be achieved by the Act, that there is absolutely no nexus for providing

acquisition or requisition of properties of third parties, that the power conferred on the Central Government or the first defendant with the higher rights than what Esso enjoyed previously is obviously discriminatory any offends Art. 14 of the Constitution, that to insist on the renewal of the lease on the same terms and conditions again is arbitrary and unreasonable despite the admitted manyfold increase of the value of the said land, that it offends Article 14 and 31(2) of the Constitution, that Section 5 of the Act could be deemed to provide for Acquisition or requisition and it offends Article 14 of the Constitution, that after the expiry of the lease by efflux of time the plaintiffs are entitled to recover possession of land from the defendants, that as the lease had expired by efflux of time with 31.12.1978, no notice of termination of tenancy as contemplated by Section 106 of the T.P. Act is necessary, that the II schedule property will easily fetch a rent of Rs. 1,500 per month if it is let out to third parties considering the location and its importance and the facilities it commands, that the plaintiffs are entitled to recover the suit property from the first defendant and a sum of Rs. 1,500 per month by way of damage and for use and occupation from 1.1.1979 and that a decree has to be passed as prayed for.

(e) The II schedule property forms part of the I schedule property and it measures 4 grounds and 1004 sq.ft situate at G.N. Chetty Street, T.

Nagar, heart of the Metropolitan City of Chennai.

(f) The first defendant filed a written statement which was adopted by the second defendant. According to the first defendant the averments set out

in paragraph 2 to 6 of the plaint regarding the original lease are not in dispute and the defendants further pleaded that the leasehold property and

the subsequent vesting of interest on the defendants is by virtue of Central Act 4 of 1974, that the interpretation placed on the said enactment is not

correct, that the agreement set forth in para 13 of the plaint is misleading and incorrect, that the Central Act 4 of 1974 is a valid piece of

Legislation, that it is neither unconstitutional nor illegal, nor ultra vires, that the rights sought to be acquired and protected under the said Act 4 of

1974 includes and comprehends the leasehold, rights in property in the occupation of the erstwhile Esso, that the said Company as well as the first

defendant operate in the distribution and sale of Petrol and Petroleum products

mostly on such leasehold rights which are therefore protected under the Act, that there is no requisition of the plaintiffs right in the property as contended by the plaintiffs, that the right of the defendants to continue in the property as a tenant is protected and that the same would not amount to an acquisition of ownership of rights in the property, that the owners of the properties are also not deprived of the property which still continues to be in their name, that in exercise of the right to continue in possession u/s 5 of the Central Act 4 of 1974 is not violative of any fundamental right, that there is no discrimination or arbitrariness in the said provision, that the plaintiffs have nothing to lose since the property is to be returned after the lease period while the defendants have to pull out the tanks, demolish the building and structures and start afresh, that the defendants possession of the subject matter of the property is protected by the enactment as well as the recent amendment, that the constitutional issue raised cannot be decided by the City Civil Court and it must be referred for the decision of the appropriate constitutional forum and that the plaintiffs are not entitled to any relief prayed for by them in the suit.

6. The trial court framed three main issues for consideration and 4th issue being consequential. The plaintiffs examined two witnesses while the first defendant examined one witness. The plaintiffs marked Exs. A.1 to A. 19 while the defendants have not marked any document. The Commissioner's report and plan have been marked as Exs. C.1 and C.2. The trial court after consideration of the oral and documentary evidence as well as the provisions of the Central Act 4 of 1974 decreed the suit as prayed for. On appeal by the defendants, the lower appellate court by judgment and decree dated 10th July 1997, allowed the appeal, set aside the judgment and decree of the trial court and dismissed the suit in its entirety, but without costs. Being aggrieved, the present second appeal has been preferred by the plaintiffs.

7. Detailed arguments were addressed by Mr.S. Gopalaratnam, Senior Counsel appearing for the appellants and Mr.A.L. Somayaji, Senior Counsel appearing for the contesting respondents. Very many points were raised by the Counsel appearing for either side. They have referred to earlier decisions of this Court as well as Apex Court with respect to cases arising out of either under the same Esso (Acquisition of Undertaking in

India) Act 1974 or other identical legislation relating to other Oil Companies which were acquired.

8. Before proceeding to take up the discussion on the main contention, it is suffice to state that the validity of Esso (Acquisition of Undertakings in

India) Act 1974 and identical of provisions have been upheld by the Apex Court in G. Sridharamurti Vs. Hindustan Petroleum Corporation Ltd.

and another, and in W.P.No. 10340 of 1991 dated 22.11.1995 on the file of this Court. In view of the settled legal position upholding the validity

of the Central Act 4 of 1974, no contention was rightly raised. Therefore, both the sides have confined themselves to other contentions while

accepting the validity of the Central Act 4 of 1974.

9. Before proceeding further, the material facts which forms the basis of the suit claim requires a mention. Under Ex.A1 dated 8.10.1969, the

plaintiffs granted a lease of the suit property for a term of ten years commencing from 1.1.1969 to 31.12.1978. the Esso (Acquisition of

Undertakings in India) Act, 1974 (Central Act 4 of 1974) came into force on 13.3.1974. The Central enactment provides that on the expiry of the

term of any lease or tenancy referred to in sub section (1) the lease or tenancy shall if so decided by the Central Government be renewed on the

same terms and condition's on which lease or tenancy was held by Esso immediately before the appointed day.

10. Under Ex.A.5 dated 20th June, 1978, the first defendant wrote to the plaintiffs that terms of Section 5 of the Central Act 4 of 1974 they are

renewing the lease for a further period of ten years on the same terms and conditions on which the lessee held the lease immediately before 13th of

March, 1974 and required the plaintiffs to treat the letter as one of having renewed the lease for a further period of 10 years, commencing from 1st

January, 1969 to 31st December, 1988 on a total rental of Rs. 350 per month.

11. Under Ex.A.6 dated 8.9.1978, the first defendant addressed the plaintiffs stating that they propose to prepare a draft lease deed incorporating

the terms and conditions of rental and required the plaintiffs to signify their acceptance. By reply dated 12.10.1978, marked as Ex.A.7, the

plaintiffs intimated the first defendant that they are not willing to grant any further lease or renew the lease and called upon the defendants to

surrender vacant possession of the property 1.1.1979. To the said reply, the first

defendant under Ex.A8 dated 16.10.1978 replied stating that they decline to surrender vacant possession as they have exercised their right to renew the lease for a further period of ten years with effect from the 1st January of 1979. on a monthly rental of Rs. 350 per month and advised the plaintiffs that they may desist from initiating any legal proceedings against the defendants.

12. On 24.1.1979, the suit O.S.No. 569 of 1979 was instituted. It is also to be mentioned incidentally that the defendants agreed to pay the property tax which is one of the terms of the lease as was originally agreed to between the plaintiffs and Esso which the defendants have not agreed. On the above facts, legal contentions were put forward by the learned counsel for the appellants and the same were resisted by the learned senior counsel appearing for the respondents.

13. The relevant provision of the Esso, (Acquisition of Undertakings in India) Act 1974 (Central Act 4 of 1974) has to be incorporated. Section 4 of the Act provides for vesting. Section 5 of the Act provides that the Central Government to be the lessee or tenant under the certain circumstances. Sub-section (2) of Section 5 provides that on the expiry of terms of any lease or tenancy referred to in Sub section (1), such lease or tenancies shall if so decided by the Central Government, be renewed on the same terms conditions on which the lease or tenancy was held by.

ESSO immediately before the appointed day.

14. Placing reliance on the said provision it is contended on behalf of the defendants that the lease in favour of the defendants in respect of the suit second schedule property owned by the plaintiffs stands renewed by the statutory provision and the option exercised in terms of the provision by the first defendant and that no separate document or lease deed is required for the said purpose. While on behalf of the plaintiffs it is being contended that without a document, there can be no valid lease of an immovable property much less a valid renewal in law without execution of lease or any, instrument of renewal thereof the defendants will not acquire the right to. continue in occupation or claim the right of tenancy in respect of the suit property as if there had been a valid renewal for a further period of ten years in continuation of the original lease granted by the plaintiffs in favour of Esso, the erstwhile undertaking which had since vested with

the Union of India.

15. Mr.A.L. Somayaji, senior counsel appearing for defendants contended that renewal having been effected by virtue of statutory provisions of

the Act, no question of execution of a lease deed or instrument of lease neither called for nor arise in terms of the provision of the Act, nor the

renewal depends upon the acceptance by the plaintiffs, the owners of the land. The learned counsel for the defendants contended that the view

taken by this Court in Bharat Petroleum Corporation Ltd. Vs. V. Ashvinraj, and other identical cases is not correct and it requires re-consideration

while the learned counsel for the plaintiffs contended that the law laid down therein is the correct legal position and in the absence of a deed or

instrument of renewal and registration thereof there could be no right or renewal of tenancy even according to the statutory provision or as has

been conferred therein in favour of the defendants.

16. According to Mr.A.L. Somayaji, the very provision of the Central Act 4 of 1974 is an exception to the provisions of the Transfer of Property

Act as well as the Registration Act and the Indian Stamp Act, as it provides for automatic renewal or the lease gets renewed without requirement

of an instrument of renewal of lease and that the formality of execution of lease deed or instrument of lease is neither contemplated nor called for in

terms of the provisions of Act 4 of 1974 and even if there is no instrument of renewal thereof for the period for which the lease gets renewed by

the Central Act 4 of 1974, it is of no consequence and the defendants have the right to continue in possession till the renewal comes to an end and

till then there could be no dispossession of the defendants.

17. In this respect the attention of the Court was drawn to the earlier decision in Bharat Petroleum Corporation Ltd. Vs. V. Ashvinraj, where

Abdul Hadi, J., took the view that in the absence or failure to get a lease deed duly executed and registered after the exercise of option u/s 5(2) of

the Burmah Shell (Acquisition of Undertakings in India) Act, 1976, the lessee would neither be able to secure any leasehold interest in property

after expiry of original lease nor can be belatedly contend, after receipt of suit notice terminating lease and demanding possession, that possession

suit instituted should fail. Abdul Hadi, J., has taken the said view with respect to the identical provision contained in Central Act 2 of 1976. The

learned Judge held thus:

In this connection, the relevant observation of this court in the said decision is as follows:

There is another contention, which, though not vehemently argued, yet has been expressed by the learned senior counsel appearing for the

defendant and that is, the renewal of the lease had come into existence and force by the exercise of option for renewal by the defendant.

But, a bare exercise of option for renewal could not be of any avail to the defendant, because the law is well settled that a covenant for renewal

contained in a lease does not ipso facto extend the tenure or term of the lease, but only entitles the lease to obtain a fresh lease. If there is a clause

for renewal in the original lease, and that clause has been taken advantage of and any option pursuant thereto has been properly exercised, it only

gives a lever for the lessee to obtain new lease in accordance with an in due satisfaction of the law governing the making of leases. If to the renewal

lease, the requirements of the first part of S.107 of the Transfer of Property Act are attracted, as obviously are in the present case, no a valid lease

would come into existence unless the said requirements are satisfied. So far as present case is concerned, even if the defendant is stated to have

exercised its option for renewal, which position we have accepted, it has not improved the lot of the defendant to say that there had been a

renewed lease, which had enured in its favour, because admittedly the Property Act were not satisfied. The proposition of law has been clearly

recapitulated by Ismail, J., as he then was, after tracing the authorities on the subject in *Rasiklal M. Mehta and Another Vs. The Hindustan Photo*

Films Manufacturing Company Ltd.,

In my view, the above said, reasoning would reply to the present case also, even though in the present case, the exercise, of the option for the

renewal is not based on the contract between the parties, but on the above said statutory provision, viz., Section 5(2) of the Act. It has been noted

already that Section 5(2) only says that the lease "shall if so desired by the Central Government, be renewed on the same terms and conditions...

In other words, it does not say that the lease shall stand renewed or shall automatically get renewed, but it only says, "shall be renewed". So, unless

the other formalities required u/s 107 of the Transfer of Property Act are

complied with and a lease deed as such is executed and registered duly, the defendant lessees would not secure leasehold interest in the property in question after the expiry of the prior lease on 31.3.1983. Admittedly, the defendant has not taken any further steps after the above said exercise of option under Ex.B.1. Even though the plaintiff, under Ex.A.6 expressed his unwillingness to give a renewal of the lease, the defendant could have worked out remedies open to it under law for compelling the plaintiff to execute and register a proper lease deed pursuant to the option exercised and pursuant to Section 5(2) of the above said Act. The defendant, having not taken any such steps so far, cannot at this distance of time, contend that the possession suit initiated by the plaintiff should fail. At least when the suit notice Ex.A.1 dated 8.4.1983 terminating the lease and demanding possession was received by the defendant on 12.4.1983 (as borne out by Ex.A.2), the defendant should have taken necessary steps for working out remedies open to it in the light of Section 5(2) of the Act and the fact that it has exercised its option for renewal. But, nothing has been done by the defendant so far. In such a situation, the plaintiff is bound to succeed.

18. Following Abdul Hadi, J., my learned brother S. Jagadeesan J., had taken an identical view in Bharat Petroleum Corporation Ltd v. N. Ravi and another, 1997 (I) L.S. 309 S. Jagadeesan, J., held thus:-

However, the learned counsel did not point out any inconsistency between Section 5(2) of the said Act 2 of 1976 and Section 107 of Transfer of Property Act. Since this point has been raised, it has become necessary to consider as to whether Section 107 of the Transfer of Property Act is inconsistent with 5(2) of the said Act 2 of 1976, Section 5 of the Act 2 of 1976 reads as follows:-

5(1) where any property is held in India by Burmah Shell under any lease or under any right of tenancy, the Central Government shall, on and from the appointed day, be deemed to have become the lease or tenant as the case may be, in respect of such property as if the lease or tenancy in relation to such property had been granted to the Central Government, and there upon all the rights under such lease or tenancy shall be deemed to have been transferred, to, and vested in the Central Government.

On the expiry of the term of any lease or tenancy referred to in sub-section (1),

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 Burmah Shell immediately before the appointed day.

Section 5(1) of the said Act makes it clear that wherever any property is held by Burmah Shell under any lease or tenancy in respect of such

property the Central Government shall be deemed to have become, the lessee or tenant, as the case may be, in respect of such property and such

rights shall also be deemed to have been transferred in favour of the Central Government. Section 5(2) of the said Act enables the Central

Government to get the lease renewed, if so desire: Section 107 of the Transfer of Property Act runs as follows:-

107. Lease how made----- A lease of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be

made only by a registered instrument. All other leases of immovable property may be made either by a registered instrument or by oral agreement

accompanied by a delivery of possession. Where a lease of immovable instrument, such instrument or, where there are more instruments than one,

each such instruments shall be executed by both the lessor and the lessee; provided that the State Government may, from time to time, by

notification in the Official Gazette, direct that leases of immovable property, other than leases from year to year, or for any term exceeding one

year of reserving a yearly rent, or any class of such leases, may be made by unregistered instrument or by oral agreement without delivery of

possession.

As per this provision, where the lease of the immovable property is made under an instrument, such instrument shall be executed by both the lessor

and the lessee. The Registration Act contemplates the compulsory registration of the lease deed where the lease exceeds more than one year.

Hence it is incumbent on the part of the Central Government to get the lease deed registered after the same was executed by both the lessor and

the lessee. Only if the contention of the counsel that Section 5(2) of the said Act contemplates an automatic renewal of the lease in favour of the

Central Government then the other formalities are not required as held in the case reported in Bharat Petroleum Corpn Ltd., v. Ashvinraj, AIR

1976 Mad. 285. Section 5(2) of Act 2 of 1976 does not contemplate any automatic renewal. When section 5(2) of the said Act does not

contemplate any automatic renewal, then Section 107 of the Transfer of Property Act cannot be said to be inconsistent with the said provision.

Hence Section 11 of Act 2 of 1976 is not attracted on the facts of the present case.

19. Yet another learned Brother Judge of mine S. Subramani, J., had taken an identical view in S. Sivakumar and 4 others v. Bharat Petroleum

Corporation Limited, 1997 (3) L.W. 520 by referring to the decision of Abdul Hadi, J., in Bharat Petroleum Corpn Ltd., v. Ashvinraj, AIR Mad.

285 held that in the absence of instrument of renewal of lease the mere exercise of option by the Bharat Petroleum Corporation is of no

consequence and according to the Learned Judge an instrument of renewal is essential. The Learned Judge interpreted Section 5 (1) of the Burma

Shell (Acquisition of Undertakings) Act, 1976, which is impart materia and took the view that the option exercised by the Oil Company is a desire

to renew the lease and that mere desire or intention on the part of the Government or the undertaking will not be sufficient for the purpose of Sub-

section (2) of Section 55 of the Act and that it may be followed with an instrument of renewal of lease and in the absence of such lease according

to the Learned Judge, the absence of a registered instrument to renew will be a statutory violation and that the court cannot think that an enactment

has been passed with an intention to avoid payment of tax, or stamp duty, nor it could be assumed that the registration of a lease deed necessary.

According to the Learned Judge, the earlier Division Bench of this Court in Hindustan Petroleum Corporation Limited Vs. Vummiddi Kannan, has

to be followed S.S. Subramani, J., held thus:-

Argument of learned counsel for the first respondent is that in view of Section 5(2) of the Burmah-Shell (Acquisition of Undertakings in India) Act,

1976 (2 of 1976), if a lessee expressed his desire to have the same renewed, there is a statutory renewal, and nothing more has to be done. The

argument of learned counsel is that even without a document, by expressions of desire, it is statutorily extended...

On a reading of Sub-section (2) of Section 5 of the Act, referred to above, it is clear that if a desire to renew a lease has to be expressed on the

expiry of the term, that means, the expiry of the lease and the desire to have renewal will be intimately connected. The desire to have a renewal

cannot be long after the expiry. I do not think till the suit was filed, first defendant- Corporation showed its inclination to have a statutory renewal...

In Delhi Development Authority Vs. Durga Chand Kaushish, , the rule laid down was, even if there is an option to renew the lease, and even if the

parties have exercised their option, unless proper lease deed is executed, there is no lease. The said decision of the Supreme Court was followed

in the decision reported in R.M. Metha v. Hindustan Photo Films Mfg. Co. 1976 (I) MLJ 115 : 89 L.W. 19. In that case, M.M. Ismail, J., as he

then was, held thus:

Once an option to renew is exercised by the lessor or lessee, a valid lease a such does not come into existence unless a registered document as

such is executed if the renewed lease in question satisfies the requirements of Section 107 of the Transfer of Property Act. The option conferred

either on the lessee or on the lessor in more or less in the nature of pre-emption and neither the conferment of such option itself nor the exercise

thereof automatically or of its own force brings into existence a new lease irrespective of other statutory provisions regarding the form, procedure

or the modalities by which alone such a lease can be brought into existence. Therefore, once a renewed lease comes within the scope of section

107 of the Transfer of Property Act, such a lease can be made only be a registered instrument. It is a new lease that Comes into existence as a

result of the exercise of the option for renewal and that too by the bilateral acts of the parties and consequently the new lease is made within the

scope of the expression occurring in Section 1077 and therefore, it has to be made only by a registered instrument. When no valid lease for a

period of three years is created, no suit could be instituted for recovery of damages for any alleged breach of contract.

The said decision of the learned Judge was approved by Division Bench of this Court in the decision reported in Hindustan Petroleum Corporation

Limited Vs. Vummiddi Kannan, wherein their Lordship held thus:

A covenant for renewal contained in a lease does not ipso facto extend the tenure of the lease, but only entitles the lessee to obtain a fresh lease. If

there is a clause for renewal in the original lease, and that clause has been taken

advantage of and any option pursuant thereto has been properly exercised it only gives a lever for the lessee to obtain a new lease in accordance with and in due satisfaction of the law governing the making leases.

If to the renewed lease, the requirements of the first part of S. 107 are attracted as in present case, no valid lease would come into existence unless the said requirements are satisfied. Therefore, though the tenant had exercised his option for renewal, he could not say that there had been a renewed lease, which had enured in his favour, because no document of fresh lease as per requirements of S. 107 had come into existence to bring about a renewed lease valid in the eye of law.

Learned counsel for the first respondent submitted that the document is not necessary for getting the benefit of a lessee, and the decision of the Supreme Court reported in Delhi Development Authority Vs. Durga Chand Kaushish, and also in the decisions of this Court referred. to above namely, Hindustan Petroleum Corporation Limited Vs. Vummiddi Kannan, , the provisions of Section 5(2) of the Act was not taken into consideration, nor the effect of the desire expressed by the lessee were taken note of. The argument is that those cases were in respect of contractual renewal and not statutory renewal. Learned counsel further submitted that when the Statute declares that there will be a renewal on the same terms and conditions, that itself is a lease for all purposes, and it is to avoid unnecessary expenses of the Public Undertakings by taking a lease deed and getting it registered, this clause is introduced. I do not think that such a contention could be accepted. In Manohar Singh and Another Vs. Caltex Oil Refining (India) Ltd., Bombay and Others, which was followed by the Kerala High Court in P. Sankaranarayanan Nambiar and Others Vs. Union of India (UOI) and Others, and also in Mustafa Hussain Vs. Union of India (UOI) and Another, their Lordships interpreted what is meant by the word if so desired in their opinion in the context mean if so desired. If this is the meaning of the words if so desired, naturally, the argument of learned counsel for first respondent has to fail. In every case, it is because of the need of the lessee, the lease is renewed, and subsequently the document is registered. If a registered document is avoided there will be a statutory violation, especially under the Income Tax Act. Court cannot think that an enactment has been passed with an

intention to avoid payment of tax. The said contention is, therefore, rejected. Not only for the above reason, but also for the reason that two of the decisions of our High Court have taken a different view in that regard. A similar contention was raised by the very same counsel in the decision reported in Bharat Petroleum Corporation Ltd. Vs. V. Ashvinraj, has considered the entire argument of the very same learned counsel in paragraphs 10, 10A, 10B of the Judgment which read thus:

Their Lordships further distinguished the decision of the Kerala High Court and also the Bombay High Court and held that the Division Bench decision reported in Hindustan Petroleum Corporation Limited Vs. Vummiddi Kannan, still holds the field. The said decision was again followed by another Judge, in the decision reported in Bharat Petroleum Corpn., Ltd., v. N. Ravi & another, 1997 (I) L.W. 309. In view of the decisions of the Supreme Court and also the Division Bench judgment of this Court, and later followed by other learned Judges, I felt that the contention of learned counsel for first respondent has to be rejected and I do so accordingly. In view of the above finding question No.3 is answered in favour of the appellants and I hold that the first defendant has not expressed its desire to have the lease renewed on the expiry of the term, and having failed to take a renewal of the lease, it is not entitled to the benefits of Act 2 of 1976.

20. As already noted above, Justice Abdul Hadi in Bharat Petroleum Corporation Ltd. Vs. V. Ashvinraj, and Justice S.S. Subramani in S. Sivakumar and 4 others v. Bharat Petroleum Corporation Limited, 1997 (3) LW 520 have taken identical view and held that an instrument of renewal is essential.

21. It was also brought to the notice of this court that identical view was taken by two other Learned Judges namely, S.S. Subramani, J., in Bharat Petroleum Corpn., v. Ravi, 1997 (1) LW 309 : 1997 (I) MLJ 287 and K. Govindarajan, J., in Bharat Petroleum Corpn., v. Sankaran and another, 1999 (I) MLJ 655. With respect to my learned Brother Judges, in my considered view the effect of statutory right to continue in occupation gets vested by a mere exercise of option by the Government of India or the undertaking. In terms of section 5(2) of the Central Act 2 of 1976 exercise of option of renewal of the lease in terms of the statutory provision, does not depend upon the consent of the lessor nor it

requires compliance with the provisions of the Transfer of Property Act or the Stamp Act or the Registration Act or the Income Tax Act or any

other statutory provision. If the view taken by the learned Judges are to be accepted, they by refusing to execute the lease deed the statutory right

to continue in possession would be defeated and the occupation is rendered illegal. It is not the intendment or purpose or the object of the

Legislature. The statutory provision 5 as well as 5(2) of the Act not only by a fiction renews a tenancy but also stipulates the terms and conditions

of such renewal, a fresh grant and it is as renewal of such right to be in possession in continuation of the earlier status that existed before the expiry

of the lease.

22. In other words in my considered view a statutory right to continue in possession is conferred on the undertaking for a further period and the

statutory provision declares the statute of such continuance as a tenant subject to the further stipulation of same "terms and conditions.

23. I am not able to persuade myself to take the view taken by the four other Learned Judges of this Court as the Registration and other

documentation or instrumentation or compliance with other statutory provisions is a requirement or formality without which there could be no

renewal by inter-parties, which is not required in respect of statutory right. In my considered view, as already pointed out if such a view is taken

then statutory provision itself will gets nullified and the very object of the provision is rendered ineffective or futile. Such an interpretation renders

the very provision otiose and defeats the very purpose of legislation .

24. The legislature intended that existing lease in favour of the Undertaking shall be continued for a further period and to this extent restricted the

right of the lessor or the owners of the demised premises with the object of keeping the outlet to continue its business. The legislature had not only

stipulated that such a renewal is for the same period and subject to the same terms and conditions. Therefore it follows that the Legislature had not

only stipulated that the renewal is automatic, but also subject to the same terms and conditions. In other words the undertaking is conferred with a

right to continue in lawful possession for such duration and for such duration the status of the occupant being that of a tenant and the lessor's rights

is preserved or kept at the same rate of consideration.

25. The intendment of the Legislature and the language of the provision has to be given full effect. In my considered view, therefore, it follows that

the moment the Government or the Undertaking exercises its option, it is axiomatic that renewal is effected on the same terms and conditions,

which is a statutory renewal, which does not depend upon volition of the lessor and the continuance of possession of the Undertaking is protected

statutorily. Any other interpretation would render the statutory provision futile. The reading down of the said provision or rendering it futile for

absence of formalities is not warranted though a reading down is permissible for upholding the validity of an enactment.

26. While considering the identical provision after giving anxious consideration, with respect to the Learned Judges, I am not inclined to accept the

view taken by them and I feel justified in taking a different view on the interpretation which I place on Section 5(2) of the Central Act 4 of 1974.

Section 5(2) reads thus:

On the expiry of term of any lease or tenancy referred to in sub-section (1) 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.

27. The expression that on the option being exercised by the Central Government on the expiry of lease referred to in Sub-section (1) of Section 5

such lessee is conferred with the right to continue in possession and status of occupant being lessee and the lease or tenancy stands renewed on the

same terms and conditions which lease was held by the undertaking before the appointed day, and the expression ""renewed"" in my considered

view would mean that in terms of Sub-section (1) of Section 5 of Central Act 4 of 1974, the renewal of lease is automatic and it does not require

any further action or instrumentation or consent of the lessor. In other words, the statutory provision unequivocally declares that on the exercise of

option by the Government, lessee's possession for such period is lawful, but subject to his status being the same. Hence the lease will stand

renewed on the expiry of the term of any lease or tenancy.

28. The Apex Court while considering the scope of Section 5 of The Esso (Acquisition of Undertakings in India) Act, 1974 in G. Sridharamurti

Vs. Hindustan Petroleum Corporation Ltd. and another, held thus:

It would be clear from above provisions that by statutory operation, the pre-existing tenancy rights held by Esso Company with the appellant initially stood transferred and vested in the Central Government, and thereafter, by operation of Section 7 of the Esso Act, the said rights in turn stood transposed and vested in the government company as if the government company statutorily became the tenant of the appellant-landlord. It is true that Sub-section (1) of Section 23 of the Act employing non obstante clause excluded operation of any other enactment. But it must be remembered that there is no specific provision in List II of the Seventh Schedule to the Constitution covering the Act. On the other hand, by virtue of what has been stated in Entry 6 in List III of the Seventh Schedule, the legislature of the State and also Parliament can enact law in relation to immovable property. Since the Esso Act is a Central enactment, and later too, the non obstante clause in Section 7 of Esso Act excludes the operation of Section 23 of the Act. Both the Act and the Esso Act occupy same field both cannot exist harmoniously. So to the extent of inconsistency, the Act becomes void by operation of Article 254 of the Constitution. On the Esso Act coming into force, by operation of Section 5 and 7 of that Act, the respondent-Corporation became statutory tenant and thereby it cannot be construed to be an assignment of tenancy rights, which the appellant landlord had entered into with the Esso Company, by the Central Government in favour of the government company.

29. In the present case, the validity of the enactment has already been upheld and it is not being challenged and therefore it follows that the

Legislative intentment has to be given full effect and it follows that the statutory conferment to continue in possession in continuation of earlier lease

is conferred by the statute and no further formality is required such as registration or payment of stamp duty etc., etc., It is not a bilateral contract

as being concluded by Volition of lessor and lessee, but it is a statutory right to continue in possession. But the status of such occupant is that of a

tenant alone. Section 23(1) of the Esso (Acquisition of Undertakings in India) Act 1974 which employs non obstante clause do exclude the

operation of other enactment, which includes the Transfer of Property Act or other statutory enactments which apply to leases.

30. It is an automatic conferment of right to continue in occupation by renewal which provision has already been upheld by the Apex Court and as

a consequence it follows that by the statutory provision the lessee's lease gets renewed for all purposes inclusive of documentation or

instrumentation or registration or payment of stamp duty or clearance under the Income Tax or other restrictions which formalities are required to

be complied with as a contract interparty even in case of renewal. Such a statutory provision to continue in legal possession is an automatic

renewal and it does not depend upon the volition of the lessor, nor an instrument or a document of renewal is required, which is the effect of non

obstante clause in Section 23(1) of the Act.

31. Normally renewal is deemed to be a fresh grant of a fresh lease and it is called as renewal simply because it postulates existence of a prior

lease which generally provides for renewal as of right. In other respects, it is really a fresh lease as has been held in Delhi Development Authority

Vs. Durga Chand Kaushish, which was already relied upon and referred to in the earlier decision, the Apex Court held that the renewal of lease is

a grant of fresh lease and it is called as renewal simply because it postulates existence of a prior lease. But in the present case in terms of the

statutory provision, the renewal in terms of the earlier lease deed which lease deed is by the consent of the parties. Here the renewal is as per the

statutory provision which does not depend upon a renewal clause if any provided in the earlier agreement or violation of the parties. That apart, the

provision also provides that it is subject to the same terms and conditions the lease be renewed, which means renewal is operative for all purposes.

Therefore it follows that in terms of Sub-section (2) of Section 5 excepting the expression an option which is the only requirement, no further

requirement is called for or necessitated, nor any formality of document is required including the registration as in terms of the statutory provision,

the lease gets renewed.

32. The renewal of a tenancy means an agreement for a fresh tenancy following on the termination of the earlier one and in my considered view any

other meaning would defeat the provisions of the Act which is not the intendment of the Legislature and also affect the intendment of the Legislative

provision as the lessor may decline to execute the document of renewal and decline to accept the option. Therefore, such a contingency is sought

to be avoided by the legislature by providing that the lease be renewed or gets

renewed and the language used is declaratory nature and the renewal does not depend upon either on the volition of the lessor, nor the requirement of instrumentation or any other requirement like registration etc., are required in this behalf. The expression "be renewed" has to be given full meaning. This legal fiction is created for a particular and definite purpose and it is created for the particular purpose. Such legal fiction is created for a particular and definite purpose and it is created for the particular purpose. Such legal fiction has to be given full effect. In this respect in the decision of the Supreme Court in Industrial Supplies Pvt. Ltd. and Another Vs. Union of India (UOI) and Others, it has been held that "It is now axiomatic that when a legal fiction is incorporated in a statute, the court has to ascertain for what purpose the fiction is created." It has been held thus:

Parliament, with due deliberation, in S.3 (n) adopted by incorporation the enlarged definition of owner in S.2 (1) of the Mines Act, 1952 to make the Nationalisation Act all embracing and fully effective. The definition is wide enough to include three categories of persons; (i) in relation to a mine the person who is the immediate proprietor or a lessee or occupier of mine or any part thereof, (ii) in the case of a mine the business whereof is carried on by a liquidator or a receiver, such liquidator or receiver, and (iii) in the case of a mine owned by a company, the business whereof is carried on by a managing agent, such managing agent. Each is a separate and distinct category of persons and the concept of ownership does not come in. Then come to the crucial last words: "but any contractor for the working of a mine or any part thereof shall be subject to this Act in like manner as if he were an owner, but not so as to exempt the owner from liability." The insertion of this clause is to make both the owner as well as the contractor equally liable for the due observance of the Act. It is needless to stress that the Mines Act, 1952 contains various provisions for the safety of the mines and the persons employed therein. In the case of a mine, the working whereof is being carried on by a contractor, he is primarily responsible to comply with the provisions of the Act. Though a contractor for the working of a mine or any part of thereof is not an owner, he shall be subject to the provisions of the Act, in the like manner as if he were an owner but not so as to exempt the

owner from any liability.

It is now axiomatic that when a legal fiction is incorporated in a statute, the Court has ascertain for what purpose the fiction is created. After

ascertaining the purpose, full effect must be given to the statutory fiction and it should be carried to its logical conclusion. The Court has to assume

all the facts and consequences which are incidental or inevitable corollaries to giving effect to the fiction. The legal effect of the words ""as if he

were"" in the definition of owner in S.3 (n) of the Nationalisation Act read with S. 2(1) of the Mines Act is that although the petitioners were not the

owners, they being the contractors for the working of the mine in question were to be treated as such though, in fact, they were not so. The oft-

quoted passage in the judgment of Lord Asquith in *East and Dwelling Co. Ltd., v. Finsbury Borough Council*, 1952 AC 109 brings out the legal

effect of a legal fiction in these words:

If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the

consequence and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it..... The

statute says that you must imagine a certain state of affairs; it does not say that having done so, you must pause or permit your imagination to

boggle when it comes to the inevitable corollaries of that state of affairs.

In the light of this pronouncement, the Court has to give full effect to the expression.

33. S.S. Subramani, J had taken the view that in such contingency, if the lessor fails or fails to execute the deed of registration, it is for the

Undertaking to use for specific performance. In my considered view, I beg to differ from such approach as well. The learned Judge while taking

note of the renewal provision had proceeded on the basis that it is only an option that is exercised by the Government or undertaking and thereafter

the formality of instrumentation has to be complied with. But it should not be lost sight that on the exercise of option the lease gets renewed

automatically which automatic renewal does not depend upon any other reason or cause or that matter the consent of the lessor, which is the

normal pre- requisite for the renewal nor it requires compliance of any other formalities as prescribed in the Transfer of Property Act, which

applies to contractual tenancies or enforcement of such renewal as per stipulations agreed to between the parties, not to statutory renewal as in the present case.

34. The expression ""renewed"" as it appears in Sub section (2) of Section 5 has to be given its full meaning, which would mean that the lease gets renewed automatically and no further act is required as it is the intendment of the Legislature and legislative provision dictates that the lease gets renewed for the full term on the same terms and conditions.

35. In the circumstances for the above reasoning I am taking a different view. However, it is not necessary for me to refer the matter to a larger

Bench for consideration since the present appeal could be decided on other issues; But for the other issues, on which a final decision could be

rendered normally this Court is bound to refer the matter to a large Bench for consideration in view of the different view I have expressed. This

dissenting view I have taken after due consideration and with respect to the Learned Judges and for the above reasons I beg to differ.

36. As against the judgment of Abdul Hadi, J., reported in Bharat Petroleum Corporation Ltd. Vs. V. Ashvinraj, , it is brought to the notice of the

Court that the matter is pending in appeal before the Apex Court. Therefore it is not essential also to refer the matter to a large Bench. It was also

brought to the notice of this Court that the judgment rendered by S.S. Subramani, J., reported in S. Sivakumar and 4 others v. Bharat Petroleum

Corporation Limited, 1997 (3) L.W. 520, the Apex Court had rejected the SLP in Bharat Petroleum Corporation v. Smt. Maltibai Sathe and

Another, 1998 (3) L.W. 821, wherein the Apex court held that it is not necessary for them to go into the merits of the controversy as the extended

lease under the Burmah Shell (Acquisition of Undertaking in India) Act, 1976 expires on December 31, 2000 and therefore the ends of justice

would be met if it is directed that the appellant and respondent No.2 (licensee) to hand over the vacant possession of the premises to respondent

No.1 by June, 30, 1999, besides observing that the question of law be kept open to be decided in some appropriate proceedings. So also in

Bharat Petroleum Corporation v. Smt. Maltibai Sathe and Another, 1998 (3) L.W. 821; Bharat Petroleum Corporation Ltd., v. Sivakumar and

another, 1998 (3) L.W. 821 the Apex Court held thus:

"In view of the decision of this Court dated 7th February, 1996 in C.A.No. 7424 of 1993 arising from SLP (Civil) 18012 of 1993 (since reported

in Bharat Petroleum Corporation v. Smt. Maltibai Sathe and Another, 1998(3) L.W. 821 and also in view of the fact that even the extended

period of the lease has by now expired, we do not see any reason to interfere. Hence the Civil Appeal is dismissed.

37. Nextly it was contended by Mr.S. Gopalaratnam, learned senior counsel appearing for the appellants that in the present case the renewed

lease in terms of Sub-section (2) of Section 5 had expired factually on 31.12.1988 and a further term of ten years had lapsed pending the

proceedings. Therefore even the statutorily renewed lease has lapsed and therefore according to the learned senior counsel the decree for

ejectment as prayed for has to be passed in this appeal itself.

38. Per contra, Mr.A.L. Somayaji, learned senior counsel for the respondents contends that the plaintiffs should initiate fresh action after

terminating the tenancy. This court is unable to sustain such a contention raised by the Senior Counsel appearing for the respondents. But for the

statutory renewal, it is fairly stated that the respondents should have surrendered possession by an order or decree for eviction should have been

passed by the trial court. Because of the renewal effected by statute, the defendants have continued for the full period of renewal of 10 years which

term also had expired admittedly. Therefore, it follows that the defendants have no right to continue and a decree has to be passed as contended

by Mr.S. Gopalaratnam, learned senior counsel for the appellants. The learned counsel relied upon the Division Bench judgment of this Court in

Hindustan Petroleum Corpn. Ltd. Vs. Uma Rani, where an identical question arose and the Division Bench held that it would be open to the Court

to mould the relief and grant a decree for possession in the same suit where the lease has been renewed statutorily and the lessee's right to occupy

gets lapsed on the expiry of the statutorily renewed lease. R.A. Swami C.J., speaking for the Bench held thus:

Facts necessary to decide point (1) are no more in dispute. The defendants obtained lease of the suit property from the mother of the plaintiff on

1.7.1969. It was an open site. Lease was for a period of 5 years with a clause conferring on the defendant to seek renewal for a further period of

5 years. In exercise of that right, the defendant got the lease renewed for another period of 5 years from 1.7.1974. to 30.6.1979, In the

meanwhile, Central Act 17 of 1977 came into force, which gave the statutory right to the lessee to seek further renewal of 5 years. Accordingly,

the defendants exercised that statutory option and got the lease renewed for a further period of 5 years, which expired on 30.6.1984, Meanwhile,

the suit came to be filed on 5.10.1979 for recovery of possession and for other reliefs as already pointed out. These facts are not disputed.

In addition to that, the other facts which are also not disputed by the parties are that after the expiry of the lease period on 30th June, 1984, the

defendant also tried to invoke the provisions for the City Tenants Protection Act before the Competent Authority. That plea was also negated.

Specific applications filed seeking benefit under the City Tenant's Protection Act were dismissed. Those orders are not carried in appeal or

revision and it is not disputed that the right, if any, of the defendant to invoke the City Tenants' Protection Act, has been closed. It is also not

disputed by the parties that the defendant was not entitled to any benefit under the Tamil Nadu Buildings (Lease and Rent Control) Act. Thus, it is clear

that the right, of the defendant to remaining possession not being protected by any statute, came to an end on the expiry of the lease period, on

30th June, 1984. As such, it cannot remain in possession lawfully, nor it can resist the suit for recovery of possession filed by the owner of the suit

property. No doubt, the suit had been filed before the expiry of the lease period, but, nevertheless, when during the pendency of the suit to eject

the lessee and to recover possession from the lessee of the demised property the right of the lessee to remain in possession comes to an end by

efflux of time, it is not necessary for the plaintiff to file another suit for recovery possession and it would be open to the court to mould the relief and

grant a decree for possession in the same suit. The court can take into account developments taking place subsequent to the filing of the suit and

mould the relief.

39. The Division Bench in turn had followed the earlier decision of the Apex Court in Pasupuleti Venkateswarlu Vs. The Motor and General

Traders, and ultimately held that the defendant namely the Hindustan Petroleum Corporation with respect to which Undertaking identical renewal is

admitted, held that the said Undertaking has no right to remain in possession and decreed in favour of the lessor. I am not only bound by the decision, but also in respectful agreement with the view taken by the Division Bench.

40. In fact, the Apex Court also in *Bharat Petroleum Corpn., v. Smt. Maltibai Sathe & another*, 1998 (3) L.W. 821 , as well as. *Bharat Petroleum Corpn., Ltd., v. S. Sivakumar & others*, 1998 (3) L.W. 821 , held that in the light of the said provision to render substantial justice, this court is of the view that on the expiry of the statutory renewal lease, the defendants have no right to continue in occupation and the plaintiff is entitled to a decree as prayed for.

41. Though the learned counsel for the respondent submitted that the defendant Corporation is willing to revise the quantum of rent, as admittedly the quantum of rent paid is a pittance when compared to the location and extent of the property, the learned counsel for the appellants made it clear that the plaintiffs/lessors are not. willing for a renewal as they like to have the property for their own use and occupation and there is no justification for the defendant to continue for an indefinite period to the detriment of the plaintiffs.

42. But for the statutory renewal and interjection the position of the plaintiffs and the defendants will be the same as under the original agreement to lease which provides for surrender on the expiry of the period agreed. Once, the statutory renewal ceased to operate, the parties are restored back to the original position and it follows that the plaintiffs will be entitled to recovery of possession. The statutory renewal results in suspension of the right to evict and also enables the defendant Undertaking to continue for a further period namely which period is also fixed by the statutory provision. It is not as if the defendant is a protected tenant to continue in possession until he is evicted by virtue of such provision. Once the statutory renewal lapsed or ceased to operate, it follows automatically that the parties are placed back to the original position.

43. But for the introduction of the statutory provision, the defendants possession would be illegal and the plaintiffs would be automatically entitled for recovery of possession. It is not as if the defendant has putforth any other claim in this respect, which would enable to continue in occupation.

Therefore it follows that in the present suit itself the plaintiffs will be entitled to a decree as the period for which the statutory renewal had operated

had already lapsed and the defendants have no further right to continue or insist, nor they could contend at this stage that the defendant has to file a

fresh suit or issue a fresh notice of termination.

44. The statutory renewal is quite different and distinct from the renewal by agreement of the parties or by the stipulations contained in the Transfer

of Property Act. It cannot be said that the defendant is a tenant by sufferance. Therefore it is obvious that once statutory renewal gets exhausted or

ceases or lapses, it follows that the relationship between the parties will revive to the original position. This legal position in my considered view

would result in the restoration of the original terms of grant of lease which stands terminated validly, and after the lapse, the defendant had to

surrender possession for which purpose the suit has already been instituted and it is still being continued.

45. Mr.A.L. Somayaji, the learned counsel for the defendants contended that the plaintiffs have to file a fresh suit cannot be appreciated. As the

parties are placed back to the original position, prior to the expiry of the contractual terms of lease and the statutory provision or the statutory

renewal had just enabled the defendants to continue during the period covered by the statutory renewal and it is not as if it is a grant or a lease

which is covered by the provisions of the Transfer of Property Act and therefore, no fresh notice is required and the reliefs prayed for in the suit

under appeal could very well be granted.

46. As already pointed out, the trial court decreed the suit in favour of the plaintiffs and the defendant was directed to remove the superstructure, if

any, put up with costs. The first appellate court had reversed it on the assumption that even after the deemed renewal a fresh suit is required to be

filed and after fresh suit is required to be filed and after fresh termination of the lease. The first appellate court had referred to the earlier decision of

this court and in the light of the earlier decision of this court and in the light of the above discussion, it is not necessary to discuss in detail. It would

be just and suffice to hold that the judgment of the first appellate court cannot be sustained in the light of the latter developments namely, the expiry

of the very period for which the statutory renewal enabled the defendants to

continue.

47. In the light of the Division bench Judgment of this Court in Hindustan Petroleum Corpn. Ltd. Vs. Uma Rani, and the decision of the Apex

Court in Bharat Petroleum Corporation Ltd., v. Smt. Maltibai Sathe and another, 1998 (3) L.W. 821, and Bharat Petroleum Corporation Ltd., v.

S.Sivakumar and others, 1998(3) L.W. 821, this Court holds that the plaintiffs are entitled to a decree as prayed for. The judgment and decree of

the first appellate court are set aside and that of the trial court are restored with respect to the relief of ejectment.

48. With respect to the claim of damages for use and occupation on and from the date of expiry of the statutory renewal, it shall be decided under

Order 20, Rule 12, C.P.C. The claim for damages for the earlier period is rejected as in terms of Section 5(2) of the Statutory renewal it was on

the same terms and condition and the plaintiffs have paid arrears at the old rate.

49. The defendants are granted two months time to surrender possession subject to the condition that they file an affidavit of undertaking within

four weeks from today agreeing to surrender possession without the plaintiffs being required to file an execution petition. Failure to file affidavit will

result in automatic lapse of the time granted by this court and the plaintiffs will be entitled to execute the decree as prayed for.

50. The first question of law is answered in favour of the appellants. So also the second question of law and this court hastens to add that the

plaintiffs need not be driven to a fresh suit or initiate fresh legal proceedings has been held by the Division Bench of this Court.

The parties shall bear their respective costs in this appeal.