

Hindustan Petroleum Corporation Ltd. and Another

Vs

Shyam Co-Operative Housing Society and Others

Transferred Case No. 7 of 1987 in Transfer Petition No. 390 of 1986

(A. P. Sen, B. C. Ray JJ)

19.09.1988

JUDGMENT

SEN, J. –

1. The principal question in controversy in this petition under Article 226 of the Constitution filed by the Hindustan Petroleum Corporation Ltd., a Government of India undertaking, which has been transferred from the High Court of Bombay to this Court under Article 139-A of the Constitution, is whether the petitioner is entitled to the protection of Section 15-A of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, introduced by Maharashtra Act 17 of 1973 read with Section 5 of the Esso (Acquisition of Undertakings in India) Act, 1974.

2. Put very briefly, the essential facts are these. The Esso Eastern Inc., a company organised and existing under the laws of the State of Delaware, USA, was carrying on, in India the business of distributing and marketing petroleum products manufactured by Esso Standard Refining Company of India Ltd., and Lube India Ltd., and had, for that purpose, established places of business in India. The company had taken several flats in the Metropolitan City of Greater Bombay and elsewhere for accommodating their employees including Flat No. 35 in Block No 8 in the housing colony known as Shyam Niwas situate at Warden Road, now called Bhulabhai Desai Road, Bombay on leave and licence basis for a period of one year in terms of an agreement in writing dated November 26, 1968 from Smt. Nanki M. Malkani, respondent 2 herein. On December 4, 1968 respondent 1 Shyam Co-operative Housing Society Ltd. passed a resolution admitting petitioner 2 T. J. Mansukhani, an employee of the company, as a nominal member of the society though he was not the licensee. The company on January 16, 1970 exercised the option of renewal of the licence for another year i. e. till November 30, 1970. On November 29, 1971, respondent 2 Smt. Nanki M. Malkani addressed a letter to the company intimating that the agreement for leave and licence was due to expire on that date and accordingly the period of the said licence was renewed, yearly, from time to time for three years on the expiry of each term of licence i.e. on November 30, 1971, November 30, 1972 and November 30, 1973. In the meanwhile, the State legislature of Maharashtra enacted Act 17 of 1973. The Amendment Act also made consequential changes to which we shall presently refer. Undoubtedly, the Esso Standard Inc was in occupation of the flat in question as on February 1, 1973 and thus acquired the status of a tenant under Section 15-A of the Act.

3. On March 13, 1974, the Esso (Acquisition of Undertakings in India) Act, 1974 was brought into force. As from that date, the Central Government by virtue of sub-section (1) of Section 5 of the Act was deemed to be the tenant of the flat in question. On April 9, 1975, respondent 2, Smt. Nanki M. Malkani sent a communication to the petitioner affirming the terms and conditions of the licence. Again, on March 24, 1976, she addressed a letter confirming that she had given the aforesaid flat to

Esso Eastern Inc. in December 1968 on leave and licence basis and the petitioner being the successor-in-title of that company had been occupying the flat as licensee on the same terms and conditions. On September 11, 1980, the society passed a resolution calling upon the petitioner - Corporation to vacate the said premises and directing that respondent 2 Smt. Nanki M. Malkani should herself occupy the flat. upon failure of the Corporation to vacate the premises the society on September 15, 1980 filed an application under Section 91 (1) of the Maharashtra Co-operative Societies Act, 1960 before the 3rd Co-operative Court, Bombay for eviction of the petitioner and its employee. On January 7, 1981, petitioner 1 permitted another employee to occupy the flat. The 3rd Co-operative Court, Bombay after consideration of the evidence adduced by the parties by its well reasoned judgment dated June 6, 1983 dismissed the claims of the society holding inter alia that Esso Eastern Inc. was in occupation of the flat in dispute under a subsisting licence as on February 1, 1973 and thus got the protection available to a licensee under Section 15-A of the Bombay Rent Act and the said protection could not be taken away merely by the society making a claim for eviction under Section 91 (1) of the At. Aggrieved, the Society wen up in appeal to the Maharashtra State Co-operative Appellate Court which by its judgment dated March 17, 1984 allowed the appeal and decreed the claim of the society requiring petitioner 1 Hindustan Petroleum Corporation Ltd. to vacate Flat No. 35 in Block No. 8 of the society building with a further direction that respondent 2 Smt. Nanki M. Malkani should occupy the flat in question herself. Thereupon, the petitioner moved the High Court under Article 226 of the Constitution for an appropriate writ, direction or order for quashing the impugned judgment and order passed by the Maharashtra State Co-operative Appellate Court.

4. This petition mainly raises three questions. They are : (1) Whether the Hindustan Petroleum Corporation Limited being a successor-in-interest of the Esso Eastern Inc., the licensee, was entitled to the protection of Section 15-A of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, introduced by the Maharashtra Act 17 of 1973, having regard to the fact that the Esso Eastern inc. was in occupation of the flat in dispute under a subsisting licence as existing on February 1, 1973. (2) Whether the Maharashtra State Co-operative Appellate Court was justified in holding that a licence being purely personal, upon acquisition of the Esso Eastern Inc. by the Central Government under the Esso (Acquisition of Undertakings in India) Act, 1974, the agreement for leave and licence as existing on the appointed day i. e. March 13, 1974 under Section 2(a) of that Act, stood extinguished and therefore the right acquired by Esso Eastern Inc. under Section 15-A of the Bombay Rent Act of being a protected tenant in relation to the flat in question, could not stand transferred to, or be vested in, the Central Government under Section 3 of the Acquisition Act. Was it also justified in holding that although the Esso Eastern Inc. Was it also justified in holding that although the Esso Eastern Inc. was deemed to be a tenant of the disputed flat under Section 15-A of the Bombay Rent Act, the Central Government could not be deemed to have become the tenant thereof under sub-section (1) of Section 5 of the Acquisition Act merely because prior to the enactment of Section 15-A of the Bombay Rent Act the premises were held by Esso Eastern Inc. on an agreement of leave and licence? (3) Whether a claim for ejection of an occupant of a flat in a co-operative housing society having been lit into possession of the premises under an agreement for leave and licence executed between it and a member of the society, by virtue of its employee having become a nominal member thereof, is a 'dispute touching the business of the society' within the meaning of Section 91 (1) of the Act. In the view that we take on the first two questions, there is no need to answer the third which is already covered by the decision of this Court in *O. N. Bhatnagar v. Smt. Rukibai Narsindas*.

5. The statutory provisions bearing on these questions are set out below. The relevant provision in sub-section (1) of Section 91 of the Act, prior to its amendment, provided :

91(1) Notwithstanding anything contained in any other law for the being in force, any dispute touching the... business of a society shall be referred by any of the parties to the dispute... to the Registrar, if both the parties thereto are one or other of the following :

a member...

(b) a member, past member or a person claiming through a member....

The definition of the term 'landlord' as contained in Section 5(3) of the Bombay Rent Act was amended to include 'in respect of a licensee deemed to be tenant by Section 15-A the licensor who has given such license'. The expression 'licensee' as defined in sub-section (4-A) thereof introduced by the Amending Act, insofar as material, reads as follows :

(4-A) "licensee", in respect of any premises or any part thereof, means the person who is in occupation of the premises or such part, as the case may be, under a subsisting agreement for licence given for a licence fee or charge and includes any person in such occupation of any premises or part thereof in a building vesting in or leased to a co-operative housing society registered or deemed to be registered under the Maharashtra Co-operative Societies Act, 1960; but does not include a paying guest, a member of a family residing together, a person in the service or employment of the licensor etc..... and the expressions "licence", "licensor" and "premises given on licence" shall be construed accordingly.

Sub-section (1) of Section 15-A of the Bombay Rent Act, as introduced by the Maharashtra Act 17 of 1973 provides :

15-A (1) Notwithstanding anything contained elsewhere in this Act or anything contrary in any other law for the time being in force, or in any contract, where any person is on February 1, 1973 in occupation of any premises, or any part thereof which is not less than a room, as a licensee, he shall on that date be deemed to have become, for the purposes of this Act, the tenant of the landlord, in respect of the premises or part thereof in his occupation.

Section 28(1) of that Act insofar as material reads :

28(1) Notwithstanding anything contained in any law and notwithstanding that by reason of the amount of the claim or for any other reason, the suit or proceeding would not, but for this provision, be within its jurisdiction,

(a) in Greater Bombay, the Court of Small Causes, Bombay,

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shall have jurisdiction to entertain and try any suit or proceeding between a landlord and a tenant relating to the recovery of rent or possession of any premises to which any of the provisions of this Part apply... and to decide any application made under this Act and to deal with any claim or question arising out of this Act or any of its provision and... no other court shall have jurisdiction to entertain any such suit, proceeding or application or to deal with such claim or question.

6. We must then refer to the relevant provisions of the Esso Eastern Inc. (sic). The avowed object and purpose of the Esso (Acquisition of Undertakings in India) Act, 1974, as reflected in the long title is to provide for the acquisition and transfer of the right, title and interest of Esso Eastern Inc., the foreign company, in relation to its undertakings in India with a view to ensuring co-ordinated distribution and utilisation of petroleum products distributed and marketed in India by Esso Eastern Inc. and for matters connected therewith or incidental thereto. The preamble to the Act is in these terms :

Whereas Esso Eastern Inc., a foreign company, is carrying on, in India, the business of distributing and marketing petroleum products manufactured by Esso Standard Refining Company of India Limited and Lube India Limited and Lube India Limited, and has, for that purpose, established places of business at Bombay and other places in India;

And whereas it is expedient in the public interest that the undertakings, in India, of Esso Eastern Inc. should be acquired in order to ensure that the ownership and control of the petroleum products distributed and marketed in India by the said company are vested in the State and thereby so distributed as best to subserve the common good :

Section 3 of the Act provides :

3. Transfer and vesting in the Central Government of the undertakings of Esso in India. - On the appointed day, the right, title and interest of Esso, in relation to its undertakings in India, shall stand transferred to, and shall vest in the Central Government.

The Act received the assent of the President on March 13, 1974 and published on that day became the appointed day, as defined in Section 2(a) of the Act. Sub-section (1) of Section 5 provides :

5. Central Government to be lessee or tenant under certain circumstances. - (1) Where any property is held in India by Esso 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 lessee 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 thereupon all the rights under such lease or tenancy shall be deemed to have been transferred to and vested in the Central Government.

Section 7(1) provides that, notwithstanding anything contained in Section 3, 4, and 5, the Central Government may, if it is satisfied that a government company is willing to comply, or has complied, with such terms and conditions as that government may think fit to impose direct, by notification, that the right, title and interest and the liabilities of Esso in relation to any undertaking in India shall, instead of continuing to vest in the Central Government, vest in the government company either on the date of the notification or on such earlier or later date (nor being a date earlier than the appointed day) as may be specified in the notification.

7. The Act makes provision that if there was any dispute with regard to what is vested in the Central Government, the proper forum was the Central Government for taking a destine. Section 19 of the Act reads as under :

19. Power to remove difficulties.- If any difficulty arises in giving effect to the

provisions of this Act, the Central Government may, by order, not inconsistent with the provisions of this Act, remove the difficulty :

Provided that no such order shall be made after the expiry of a period of two years from the appointed day.

8. In exercise of the powers conferred by sub-section (1) of Section 7 of the Act, the Central Government, in the Ministry of Petroleum and Chemicals issued a Notification No. GSR 131(E) Dated March 14, 1974, that on being satisfied that Esso Standard Refining Company of India Limited, a government company, is willing to comply with the terms and conditions imposed by the Central Government, hereby directs that the right title and interest and the liabilities of Esso Eastern Inc., in relation to its undertakings in India, shall, instead of continuing to vest in the Central Government, vest, w.e.f. March 15, 1974, in Esso Standard Refining Company of India Limited. Indubitably, as on the appointed day, i.e. March 13, 1974 under Section 2(a) of the Acquisition Act, the Esso Eastern Inc. had acquired the status of a protected tenant under Section 15-A of the Bombay Rent Act and the tenancy rights so acquired in relation to the flat in question stood transferred to and became vested in, the Central Government. By virtue of the aforesaid notification issued under Section 7(1) of the Act, the rights of tenancy in the flat in question instead of continuing to vest in the Central Government became vested in Esso Standard Refining Company of India Limited, a Government of India undertaking, w.e.f. March 15, 1974. It is also necessary to mention that the Central Government held, in the name of the President, 74 per cent of the equity share capital of the Esso Standard Refining Company of India Limited, which therefore became a government company as defined by Section 617 of the Companies Act, 1956.

9. On July 12, 1974 the Company Law Board, in exercise of the powers conferred by sub-sections (1) and (2) of Section 396 of the Companies Act, 1956, read with the notification of the Government of India in the Department of Company Affairs No. GSR 443 (E) dated October 18, 1972, made Lube India Limited & Esso Standard Refining Company of India Limited (Amalgamation) Order, 1974. Clause (3) of the said Order provided that as from the appointed day, the undertaking of Lube India Limited shall stand transferred to, and vest in, Esso Standard Refining Company of India Limited. As a result of the amalgamation of the two companies, the name of Esso Standard Refining Company of India Limited was changed to Hindustan Petroleum Corporation Limited. It is therefore evident that petitioner 1 Hindustan Petroleum Corporation Limited, a Government of India undertaking, is a successor-in-interest of Esso Eastern Inc. which acquired the status of a deemed tenant under Section 15-A of the Bombay Rent Act, which right devolved on the Central Government under Section 5(1) of the Acquisition Act.

10. Upon these facts and the statutory provisions, the 3rd Co-operative Court rightly concluded as under :

Thus, it is clear that there was a subsisting licence in favour of opponent 3 as on February 1, 1979. The definition 'Licensee' as given in Section 5(4-A) of the Rent Act includes inter alia a person in occupation of premises of a co-operative housing society.

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My findings on this issue are that opponent 3 has a right to the premises against opponent 1 as protected tenant under Section 15-A of the Rent Act.

In dealing with the question, it observed :

The Supreme Court has clearly observed that the protection given to a licensee under a valid licence as on February 1, 1973 under Act 17 of the amended Rent Act is available to a licensee of any premises or any part thereof in a building vesting in or leased to a co-operative housing society.

This protection given to a licensee in the position mentioned above cannot be taken away merely by the society filing the case against the member and occupant for reliefs to the opponent member. The provisions of the two legislations are to be harmoniously interpreted and such harmonious interpretation is possible. In case the occupant of a premises gets protection under Section 15-A of the Rent Act against the member, the society can implement the provisions of Section 2(16) of the Maharashtra Co-operative Societies Act, 1960 by determining the rights of the member and admitting a new member for the premises. Hence, my finding on the second part of the issue is that the rights of opponent 3 cannot be determined without determining the rights of opponent 1 i.e. Nanki M. Malkani, a co-partner member in the suit premises.

In view of these findings, the 3rd Co-operative Court held in favour of the petitioner-corporation and dismissed the claim for eviction filed by the society under Section 91 (1) of the Act.

11. Curiously enough, while allowing the appeal, the State Appellate Court has observed as follows :

One thing is clear that Hindustan Petroleum took over the rights and liabilities of Esso Standard Eastern Co. We would like to point out that leave and licence agreement confers only a personal right to occupy... that right cannot be transferred nor it can be inherited by Hindustan Petroleum Corporation by virtue of the merger of Esso Company with Hindustan Petroleum Corporation. Under these circumstances it has to be noted that as soon as the Esso Standard Eastern Co. was taken over by Hindustan Petroleum Corporation, the rights under the leave and licence agreement came to an end... it cannot be said that it (Hindustan Petroleum Corporation) also took over the rights of Esso Standard Eastern Co. to occupy the flat under the leave and licence agreement.

Again it observed :

At p. 299 of the record there is a letter dated March 24, 1980 written by respondent 1 to the personal adviser of Hindustan Petroleum Corporation Ltd. In the first para of the said letter it is stated by respondent 1 that he has given the suit flat to Esso Standard Eastern Inc. in December 1968 on leave and licence basis and that Hindustan Petroleum Corporation is the successor-in-title of the Esso Company and that Hindustan Petroleum Corporation is occupying the said flat.

Probably in ignorance of this legal position, respondent 1 wrote the abovementioned letter dated March 24, 1980 to Hindustan Petroleum Corporation.... Even supposing that respondent 1 intended that respondent 3 should continue as a licensee after Esso Standard Eastern Co. was taken over by respondent 3 it has to be noted that there was no separate leave and licence agreement with Hindustan Petroleum Corporation namely, respondent 3. Even assuming for the sake of argument that respondent 1 intended that the flat should be occupied on leave and licence basis by respondent

3 that leave and licence agreement was terminated by respondent 1 by the abovementioned letter.

Further, it observed :

However there is absolutely no evidence to show that the licence was renewed at any time. The evidence of the witness examined on behalf of respondent 2 clearly shows that there was no renewal of the leave and licence agreement... as mentioned above after the Esso was taken over by respondent 3 the leave and licence agreement automatically came to an end... under these circumstances we feel that the rights that were given under the leave and licence agreement were not available to respondent 3.

12. Dr. Y. S. Chitale, learned counsel appearing for the petitioners rightly contends that the findings reached by the appellate court are manifestly erroneous and have caused a grave miscarriage of justice. The finding that there was no subsisting licence existing as on February 1, 1973 to attract the provisions of Section 15-A of the Bombay Rent Act in the case of the petitioner-corporation is vitiated by its failure to give effect to the admission contained in the letter dated March 24, 1980 written by respondent 2, Smt. Nanki M. Malkani which is to the effect :

I had given the above flat to the then Esso Standard Inc. in December 1968 on leave licence basis. You as a successor-in-title of that company have been occupying the flat as licensee on the same terms and conditions.

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As you and your predecessor-in-title are reputed organisation I had given the flat for your officers use in the expectation that you will return the flat, when I require it for my own use.

Besides this letter, the learned counsel for the petitioners drew our attention to a sheaf of letter exchanged between respondent 2 Smt. Nanki M. Malkani and the Hindustan Petroleum Corporation Ltd. showing that she accepted that there was subsisting agreement of leave and licence as late as March 24, 1980 which must by necessary implication, give rise to the inference as to the existence of such a licence between its predecessor Esso Eastern Inc. as on February 1, 1973 which conferred on it the status of a protected tenant under Section 15-A of the Act. Indeed, the correspondence shows that it was at the behest of respondent 2 that every time on the expiry of a term of licence it came to be renewed from year to year till Section 15-A of the Bombay Rent Act was brought into force. Thereafter, the predecessor-in-interest of the petitioner-corporation was deemed to be her tenant under Section 15-A of the Bombay Rent Act. For instance, by letter dated April 9, 1975 she wrote to the Hindustan Petroleum Corporation Ltd. that the above flat had been in its possession since December 1, 1968. Again, by letter dated November 15, 1976, she wrote to the corporation forwarding the original bill of the society in support of her demand for payment of enhanced taxes and charges. In view of these admission made in there letters and more particularly in the letter dated November 29, 1971 to Esso Eastern Inc. which reads as under:

As the present agreement of leave and licence in regard to above flat is due to expire on November 30, 1973 that is two years from hence, you would like me to give you an undertaking of renewal of this agreement to justify the expenditure being incurred by you now.

the findings of the appellate court are clearly erroneous. On the other hand, it stands proved that

Esso Eastern Inc. had acquired the status of deemed tenant or protected licensee under Section 15-A of the Bombay Rent Act as on February 1, 1973. The findings of the appellate court to the contrary are therefore clearly erroneous. We are unable to sustain the view taken by the appellate court in not giving effect to sub-section (1) of Section 5 which vested the tenancy rights in relation to the flat in question on the Central Government as from appointed day. While it is true that a licence being personal is not capable of being transferred; there was no warrant for the assumption by the appellate court that the licence stood extinguished with the acquisition of the right, title and interest of Esso Eastern Inc. under Section 3 of the Acquisition Act. That Act came into force on March 15, 1974 and in the meanwhile, the licensee Esso Eastern Inc. had already acquired the status of deemed tenant under Section 15-A of the Bombay Rent Act as admittedly, there was a subsisting licence as on February 1, 1973. The appellate court has also failed to appreciate that the name of Esso Eastern Inc. was changed to Esso Eastern Inc. (sic) by a Certificate of Amendment dated December 22, 1970 vide a resolution passed by the Board of Directors of the corporation on December 15, 1970. In view of all this, the finding of the appellate court that the Hindustan Petroleum Corporation Ltd. was (sic not) entitled to the protection of Section 15-A of the Bombay Rent Act clearly borders on travesty and can hardly be sustained.

13. The appellate court was clearly in error in not appreciating that by Section 3 of the Acquisition Act, the right, title and interest of Esso Eastern Inc. in relation to its undertakings in India, shall stand transferred to, and shall vest in, the Central Government as from the appointed day i.e. as from March 13, 1974. Under sub-section (1) of Section 5 thereof, the Central Government became the lessee or tenant, as the case may be. By sub-section (2) thereof, 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 Esso immediately before the appointed day. By a notification issued on the next date, the right, title and interest of the Central Government became vested in Esso Standard Refining Company of India Ltd., a government company, w.e.f. March 15, 1974. Furthermore, by reason of Lube India and Esso Standard Refining Company of India Ltd. Amalgamation Order, 1974 made by the Company Law Board under Section 396(1) and (2) of the Companies Act, 1956 the undertaking of Lube India Ltd. vested in Esso Standard Refining Company of India Ltd. and immediately upon such transfer the name of Esso Standard Refining Company of India Ltd. stood change to Hindustan Petroleum Corporation Ltd.

14. In the premises, petitioner 1 Hindustan Petroleum Corporation Ltd. is clearly protected under Section 15-A of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. In that view of the matter, we do not think it necessary to deal with the contention as regards the applicability of Section 91 of the Maharashtra Co-operative Societies Act, 1960. All aspects arising out of the submissions as to the jurisdiction of the Registrar under Section 91(1) of the Act have already been considered by this Court on O. N. Bhatnagar case and we reiterate the principles laid down therein.

15. In the result, the petition under Article 226 of the Commission succeeds and is allowed. The judgment and order passed by the Maharashtra State Co-operative Appellate Court dated June 5, 1983 allowing the claim of respondent 1 Shyam Co-operative Housing Society for eviction of the petitioners as also the proceedings initiated by it under Section 91 of the Maharashtra Co-operative Societies Act, 1960 are quashed.

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