

Hindustan Petroleum Corporation Ltd.

Vs

Dolly Das

Civil Appeal No. 6009 of 1993

(S. Rajendra Babu, S.N. Phukan JJ)

13.04.1999

JUDGMENT

S. Rajendra Babu, J

1. By a lease deed dated September 1, 1970 M/s Kalinga Automobiles, Bhubaneswar, Orissa, a partnership firm leased land comprised in Government of Orissa, a partnership firm leased land comprised in Government of Orissa Drawing No. C-311, Flat No. B of Civil Centre, Unit I situate at Bapuji Nagar Kajpath, Bhubaneswar, Orissa admeasuring 116 feet x 100 feet together with a service station standing thereon from October 1, 1969 for a period of 10 years renewable and determinable as provided in the lease deed. The Caltex (Acquisition of Shares of Caltex Oil Refining (India) Ltd. and of the Undertakings in India of Caltex (India) Ltd.) Act, 1977 [hereinafter referred to as 'the Act'] was enacted by Parliament and pursuant to which M/s Caltex (India) Ltd. was taken over by the Government of India and was amalgamated with the petitioner-Corporation by an order made on May 9, 1978. Section 7(1) of the Act provided that the rights arising under leases obtained by Caltex (India) Ltd. would vest in the Central Government. Section 7(3) of the Act specifically provided that on the expiry of the term of any lease, if so desired by the Central Government, be renewed or continued, so far as may be, on the same terms and conditions on which the lease was originally granted or entered into. The Amalgamation Order provided in clause 5 thereof savings of contract etc. entered into by M/s Caltex (India) Ltd. as they would be subsisting or having effect immediately before the appointed day be as full force and effect in favour of the appellant and may be enforceable fully and effectually as if the appellant had been a party thereto or as if it had been executed in favour of the appellant.

2. By a letter dated May 23, 1979 the appellant exercised the option of renewal of the lease for a further term of 10 years from the expiration of the present tenure of the lease in question. Thereafter, on September 13, 1989, the appellant wrote to the respondent that in terms of Section 5 and Section 7(3) of the Act they exercised their right to renew the lease for a further period of 20 years commencing from October 1, 1989 on the same terms and conditions on which the lease dated September 1, 1970 held the lease immediately before 1977. On March 23, 1993 the respondent filed a petition under Article 226 of the Constitution for quashing of the said notice of renewal dated September 13, 1989. Before the High Court the respondent contended as under :-

(i) that no deed has been executed renewing the lease on its expiry on September 30, 1979 and, therefore, the appellant could not exercise any further option of renewal and the notice of renewal, to which we have adverted to earlier, dated September 13, 1989 sent by the respondent is without jurisdiction and the appellant is a trespasser;

- (ii) that even if the appellant had a statutory right of renewal the same could be availed of only once and there could be no further renewal subsequent to 1989;
- (iii) that in terms of the enactment the right of renewal has to be exercised when desired by the Central Government and the Central Government having not desired in the present case it is not open to the appellant to exercise that right;
- (iv) that in view of enormous escalation of prices of land in the city of Bhubaneswar it is an arbitrary and inequitable act on the part of the appellant to occupy the premises at a meagre rent of Rs. 1900/- per month; and
- (v) that the respondent's offer to be appointed as an agent under the Corporation should have been acceded to and not to appoint illegally another agent.

On behalf of the appellants it was contended before the High Court that even in the absence of a deed the right of renewal could be exercised in accordance with the original terms contained in the lease deed and thus the appellant as a right to ask for a further renewal of 20 years and the notice of renewal cannot be stated to be illegal or arbitrary. The validity of the Act or any provision thereof not being in question and as the object of the Act is distribution of petroleum products which is in public interest and, therefore, such power could be exercised under the Act. However, it was made clear that the appellant is willing to enhance the rent subject to the condition of the lessor agreeing to renew the lease for a further period of 20 years.

3. The High Court held the appellant having replaced M/s Caltex (India) Ltd. in the terms of the Act and the Amalgamation Order while the original lease was subsisting and after expiry of the lease no fresh deed having been executed between the parties, clause 3(g) of the lease deed was not acted upon and, therefore, the appellant cannot enforce a second renewal after the renewed term of 10 years which expired in 1989. The object of Sections 5(2) and 7(3) of the Act being to give some breathing time, these provisions contemplate renewal of a lease for one term and, therefore, the appellant was not entitled to exercise any option for a further period after the renewed term of 10 years expired in 1989 and consequently the communication dated September 13, 1989 was without jurisdiction and such a power was not available to the appellants. The contention that the Central Government not having expressed its desire was not accepted by the High Court on the view that the appellants could not hold the lease subsequent to 1989 and, therefore, the position of the appellant was that of a trespasser and is, therefore, bound to pay damages at the rate of Rs. 5 thousand per month and thus accepted that contention also. The High Court further took the view that if the respondent is desirous of continuing the sale of petroleum, there was no justification on the part of the Corporation to engage another person and forcibly occupy the premises.

Ultimately, the High Court issued the following directions :-

- (i) The impugned letter of Hindustan Petroleum Corporation Limited is quashed as the Corporation does not have the power to exercise option for any further renewal after expiry of the renewed period in 1989;
- (ii) The said HPCL should deliver the vacant possession of the premises in question to the petitioner;
- (iii) Subsequent to 30.9.1989, the date on which the renewed period of ten years expired, the HPCL would be liable to pay the petitioner at the rate of Rs. 5,000/-

(five thousand) per month till vacating the premises in question in favour of the petitioner;

(iv) It would be open for the HPCL to negotiate with the petitioner and if the petitioner agrees, to appoint the petitioner as an agent of HPCL for continuing the petrol pump in question.

This order is in appeal before us. This Court on September 9, 1993, while directing issue notice, granted interim stay which was continued by another order made on November 1, 1993 and *status quo* was ordered to be maintained by another order dated July 14, 1997 and that condition continues till today.

4. Shri Rajeev Dhawan, Learned senior advocate for the appellants, contended :-

(i) firstly, that the letter exercising the option to renew the lease in terms of Section 5 and 7(3) of the Act was sent on September 13, 1989 and the writ petition was filed before the High Court on March 23, 1993 and in the absence of any explanation for the delay in approaching the Court, the High Court ought to have dismissed the petition on the ground of laches alone;

(ii) secondly, that the writ petition was not an appropriate remedy inasmuch as disputed questions of fact as to (a) whether the original lease was renewed or not and in what manner the same had to be renewed, (b) whether by a deed or otherwise and the effect thereof, and (c) whether the payment of damages or mesne profits would really arise;

(iii) thirdly, that the invocation of the jurisdiction of the High Court in a contractual matter between two private parties though having a statutory flavour or adjudication of the rights thereto is clearly an abuse of the process of the court; and

(iv) lastly, that the lease entered into originally with M/s Caltex (India) Ltd. on September 1, 1970 enabled the appellant to obtain an aggregate of two renewals each of ten years and that provision read with statutory provisions of Section 5 and 7 of the Act would enable the appellants to exercise such option. Therefore, it was submitted that this Court should interfere with the impugned decision of the High Court.

5. Shri S.K. Dholakia, learned senior advocates appearing for the respondent, refuted each one of the contentions advanced on behalf of the appellants and submitted that the ground of laches or maintainability of the petition much less the nature of the remedy that would be available to the respondent was not at all raised in specific terms before the High Court and when the High Court had entertained the petition and exercised its jurisdiction, it is no longer open to the appellants to raise such contentions for the first time before this Court.

6. In the absence of constitutional or statutory rights being involved a writ proceeding would not lie to enforce contractual obligations even if it is sought to be enforced against the State or to avoid contractual liability arising thereto. In the absence of any statutory right Article 226 cannot be availed to claim any money in respect of breach of contract or tort or otherwise. In the present case, the appellants have sought to exercise their powers under Section 7 of the Act and, therefore, though the other consequences may be contractual in nature, the exercise of the right being under a statute,

it cannot be said that the respondent could not approach the writ court.

7. So far as the contention regarding laches of the respondent in filing the writ petition is concerned, delay, by itself, may not defeat the claim for relief unless the position of the appellant had been so altered which cannot be retracted on account of lapse of time or inaction of the other party. This aspect being dependent upon the examination of the facts of the case and such contention not having been raised before the High Court, it would not be appropriate to allow the appellants to raise such contention for the first time before us. Besides, we may notice that the period for which the option of renewal has been exercised has not come to an end. During the subsistence of such period certainly the respondent could make a complaint that such exercise of option was not available to the appellants and, therefore, the jurisdiction of the High Court could be invoked even at a later stage. Further, the appellants are not put to undue hardship in any manner by reason of this delay in approaching the High Court for a relief.

8. We may now advert to the contention that the writ remedy is not appropriate in this case. Where interpretation of a contract arises in relation to immovable property and in working such contract or relief thereof or any other fall out thereto may have the effect of giving rise to an action in tort or for damages, the appropriate remedy would be a civil suit. But if the facts pleaded before the court are of such nature which do not involve any complicated questions of fact needing elaborate investigation of the same, the High Court could also exercise writ jurisdiction under Article 226 of the Constitution in such matters. There can be no hard and fast rule in such matters. When the High Court has chosen to exercise its powers under Article 226 of the Constitution we cannot say that the discretion exercised in entertaining the petition is wrong.

9. Now, we shall turn to the merits of the case. The merits of the case as to the extent of the period of renewal will entirely depend on the interpretation of clause 3(g) of the lease deed. Clause 3(g) of the lease deed provided as under :-

"That the Lessor shall upon the written request by the Lessee before the expiry of the term hereby created grant to it a lease of the demised premises for a further term of 10(Ten) years from the expiration of the term hereby granted at a monthly rent of Rs. 1720/- and containing the like covenants and provisos as are herein contained including a clause for one renewal for a further term of 10(Ten) years at a monthly rent of Rs. 1920/- and on the same terms and conditions as therein contained so as to give the lessee at its option an aggregate of two renewals each of ten years. Upon such exercise of the right of renewals each of ten years. Upon such exercise of the right of renewal a fresh lease incorporating all the terms and conditions with clause No. 3(g) suitably modified on each renewal or deleted in the case of last renewal, shall be executed and registered by both the parties to these presents."

The High Court took the view that in the absence of a deed of lease clause 3(g) in the original deed had not been acted upon though the appellant had exercised his option by letter dated May 23, 1979. The learned counsel for the appellant submitted that this view of the High Court cannot be supported at all if we read clause 3(g) in a fair way. According to him, there are two components in clause 3(g) of the lease deed. The first of which binds the lessor in imperative terms to renew the lease for a period of 10 years from the expiration of the term at a monthly rent of Rs. 1720 per month on same terms as contained in the original lease with a further power of renewal for another terms of 10 years at a monthly rent of Rs. 1920/- on the same terms and other conditions as contained in the original lease deed. Thus it is submitted that the option given to the lessee is an

aggregate of two renewals each of 10 years. The second component of the said clause, it is submitted, is as to the execution of a fresh lease incorporating the terms and conditions with clause 3(g) suitably modified on each renewal or deleted in the case of last renewal and shall be executed and registered by both the parties to these presents. He further contended that the second component though requires to be fulfilled does not take away the right of the lessee to renew the lease and, therefore, he submitted that the view taken by the original lease deed itself contemplated renewal even if a lease deed has not been executed does not, by itself, defeat the option for renewal.

10. On the other hand, Shri Dholakia submitted that a covenant for renewal contained in the lease not *ipso facto* extend the tenure or term of the lease but only entitles the lessee to obtain a fresh lease in accordance with and in due satisfaction of the law governing the making of leases. He submitted that the terms in agreement provide for renewal of the lease on certain conditions and renewal could not be obtained in piece-meal and in violation of any part and portion and when an option is exercised under the said clause the entire provisions of the same must be followed and complied with. In the present case, the claim for renewal of the lease was not followed up by a deed and, therefore, lease had not been actually renewed, he submitted that mere sending of a letter for renewal of lease would not create a lease to allow renewal of the same. The clause requiring execution of the lease deed incorporating the terms and conditions is a condition which needs to be fulfilled when option for renewal is acted upon. He further submitted that the view taken by the High Court is perfectly in order.

11. The lease had been granted with effect from October 1, 1969 in favour of M/s Caltex (India) Ltd. and on coming into force of the Act on April 23, 1977 the appellant has stepped into its shoes and from that day onwards the appellant has been in possession of the same till now. The crucial question whether option for renewal either in terms of the lease deed or in terms of the Act had been availed of or not is the controversy between the parties now. Litigation between the parties has been going on from 1993 onwards. On expiry of the term the deed provides for renewal for two terms of 10 years each on the same terms and conditions except for enhancement of rent and execution of fresh deed modifying the clause relating to renewal. The appellant gave notice of renewal in terms of the provisions of (i) the deed in letter dated May 23, 1979, and (ii) the Act in the letter dated September 13, 1979. Now it is not necessary to examine the effect of renewal for the earlier period as even on appellant's own showing it is invoking the statute in the latter notice and not the terms of the deed. If that is so, the appellant could seek for renewal only in terms of Section 7 of the Act which enabled it to renew the deed for a period of one term as originally granted. Covenant for renewal is not treated as part of terms prescribing the period of lease but only entitles a lessee to obtain a fresh lease. Renewal of lease could only for one term and no more, but nevertheless it could be contended that the covenant for renewal was also part of the lease and, therefore, stood incorporated in the renewed lease arising under the Act. However, in the peculiar facts of this case, we think that it is not necessary to enter upon the merits of the controversy regarding the effect of clause 3(g) of the lease deed or the rights available under the Act for renewal of the lease period. We are of the opinion that ends of justice in this case will be met if we modify the order of the High Court in the following terms :-

1. The appellant does not have power to claim exercise of option for any renewal of the lease beyond September 30, 1999;
2. The appellant seeks for and is granted time to hand over vacant possession of the premises in question to the respondent on or before March 31, 2000, however, subject to filing of the usual undertaking in this Court within a period of four weeks

from today;

3. Rent payable is as per the terms of the lease deed, that is, Rs. 1920/- per month which shall be paid till the date of handing over the vacant possession;

4. If any arrears of rent, as stated above, has not been paid, the same shall be paid within a period of three months from today; and

5. The order made by the High Court to the extent it is inconsistent with our order shall stand set aside.

12. The appeal is disposed of accordingly.