

SUPREME COURT OF INDIA

Bharat Petroleum Corporation Limited

Vs.

Rama Chandrashekhar Vaidya

C.A.No.2770 of 2013

(Aftab Alam and Ranjana Prakash Desai JJ.)

02.04.2013

JUDGMENT

AFTAB ALAM J.

SLP(C) No.355 of 2010

1. Leave granted.

2. The appellant-Bharat Petroleum Corporation Limited, is a Public Sector Oil Company. In appeal against a decree of eviction, it claims the right to another innings under section 5(2) of the Burmah Shell (Acquisition of Undertakings in India) Act, 1976 (hereinafter referred to as “the Act”).

3. The facts which provide the context for judging the appellant’s claim are brief and simple.

4. The predecessor of the appellant, namely, Burmah Shell Oil Storage and Distributing Company of India Limited came in occupation of a piece of land situated at Kurla, Taluka-South Salsette, District Bombay suburban, now included in Greater Bombay, admeasuring an area of 19,188 square feet, bearing Hissa No.1 (part) of Survey No.305 of Kurla (the suit premises) on the basis of a registered deed of lease dated September 22, 1955. The lease was for a period of 25 years beginning from March 1, 1955 and further gave to the lessee [vide. Clause 3 (d)] the unilateral right of renewal for an additional period of twenty five years by giving a notice in writing two months prior to the expiration of its term.

5. On January 24, 1976, the Burmah Shell (Acquisition of Undertakings in India) Act, 1976 came into force and by virtue of section 3 of the Act, the right, title and interest of Burmah Shell in relation to its undertakings in India stood transferred to and vested in the Central Government. Later on, following a notification issued by the Central Government under section 7(1) of the Act, the right, title and interest and the liabilities of Burmah Shell in relation to any of its undertaking in India that had vested in the Central Government were transferred to and vested in the appellant Company.

6. A few months before the term of the lease was to come to end, the appellant, on October 17, 1979 gave a notice to the lessor invoking the renewal clause in the lease deed[1] and asking for the renewal of the lease, at the same rent and upon the same terms and conditions as were contained in the lease, for a further period of 25 years with effect from March 1, 1980. In the notice it was also stated that a fresh engrossment of lease was being drawn up for execution and registration.

7. At this stage, it needs to be noted that though the appellant gave to the lessor the renewal notice and also continued to occupy the suit premises for the next twenty five years, no fresh lease deed was actually executed between the parties and registered in renewal of the previous lease. It also needs to be noted here that the lessor sent a letter to the appellant on April 24, 1980 stating that the monthly rent of the suit premises stood increased to Rs.500/- from March 1, 1980[2], but the appellant was remitting rent to the lessor at the old rate of Rs.400/- only. The appellant was requested by the letter to pay the differential amount for the past two months and to pay the future rent at the increased rate of Rs.500/- per month.

8. As the second twenty five year term was nearing expiry, another notice for renewal of the lease was given on behalf of the appellant to the lessor on October 7, 2004. This notice was, once again, with reference to the lease deed dated September 22, 1955. It was stated in the notice that the lease after its renewal would be expiring on February 28, 2005 and the appellant was desirous of continuing in occupation of the premises for another period of thirty years. This notice concluded by observing and claiming as under:

“Since we are in occupation of the site and carrying on the business of retailing of petroleum products from the above premises for the last 50 years, and in public interest are desirous of continuing the business of storing and selling of petroleum products from the above premises for a further period of 30 years w.e.f. 1st March, 2005 on the same terms and conditions.”

9. This time the lessor responded by a notice of termination of tenancy dated March 3, 2005. In this notice, it was stated on behalf of the lessor that the 1955 lease expired on September 21, 1980 but the appellant neither sent any notice for renewal of the lease period nor the lease in respect of the suit premises, an open plot of land, was renewed. Hence, the appellant continued as a month to month tenant in respect of the open plot of land on payment of rent at the rate of Rs.500/- per month. The notice further stated that the lessor was not interested in continuing the monthly tenancy of the appellant and the tenancy was being terminated by that notice.

10. A reply to the termination notice was given, on behalf of the appellant, by letter dated March 10, 2005 in which the provisions of sections 5 and 7 of the Act were invoked for the first time and a claim was raised for the renewal of the lease for a further period of 30 years on the same terms and conditions as contained in the earlier lease.

11. At that stage the respondent – lessor filed a suit for eviction of the appellant which was registered as T.E. R Suit No.72/86 of 2005 in the court of Small Causes at Mumbai. The appellant contested the suit by filing a written statement and the court of Small Causes by judgment and order dated January 18, 2007 dismissed the suit. The respondent filed an appeal (appeal No.163 of 2007) before the Appellate Bench of the Small Causes Court at Mumbai challenging the order dismissing the suit. The appeal was allowed by the Appellate Bench by its judgment and order dated March 5, 2009. Against the order of the Appellate Bench of the Small Causes Court, the appellant filed a revision (revision application no.535 of 2009) before the Bombay High Court. The revision application was dismissed by the High Court by order dated October 14, 2009 and the appellant then brought this matter to this Court in appeal by special leave.

12. Mr. C.A. Sundaram, learned senior counsel appearing for the appellant, strongly argued that the right of renewal under the lease and the right of renewal in terms of section 5(2) of the Act are two distinct and separate rights, the former being contractual and the latter statutory. He further contended that the two rights being different in nature and arising from different sources could, therefore, be exercised separately and successively, independently of each other. Mr. Sundaram contended that though in the year 1980, the Act had come into force nevertheless, the appellant chose first to exercise its right of renewal in terms of the provision in the lease. However, the exercise of the contractual right of renewal would not abrogate the appellant's statutory right as provided under section 5(2) of the Act and at the expiry of the lease renewed in terms of the contract, it would be still

open to the appellant to get a further renewal of the lease in exercise of the statutory right under section 5(2) of the Act.

13. In support of the submission, Mr. Sundaram relied upon the decisions of this Court in *Bharat Petroleum Corporation Ltd. v. P. Kesavan and another*[3] and *Hindustan Petroleum Corporation Ltd. And another v. Dolly Das*[4].

14. The decision in *P. Kesavan* does not touch upon the issues raised by Mr. Sundaram and does not seem to have any application in the facts of this case. In *P. Kesavan*, this Court held that renewal of the lease in terms of section 5(2) of the Act takes place by operation of law and the renewal is, therefore, not dependent upon the execution or registration of a fresh deed of lease. By virtue of section 5(2), the term of the earlier lease would be deemed to be renewed on the same terms and conditions on which the earlier lease or tenancy was held regardless of the execution or registration of a fresh lease deed. This is not the question arising in the present case.

15. The case of *Dolly Das* is indeed quite similar to the case in hand on facts and seems to have given rise to similar issues as arising in this case. But in *Dolly Das*, the Court did not adjudicate on the issues and gave certain directions having regard to the special facts and circumstances of the case. *Dolly Das*, too, therefore, is of no help in deciding this case.

16. Therefore, the points urged by Mr. Sundaram need to be examined on their own merits.

17. On a careful consideration of the matter, we find that though Mr. Sundaram has crafted his submissions very skilfully, the points raised by him do not really arise in the facts and circumstances of the case as noted above.

18. The original 1955 lease (which, as a matter of fact, is the only lease deed that came into existence between the parties) was for a period of 25 years and was due to expire on February 28, 1980. On October 17, 1979, the appellant gave the notice of renewal invoking the renewal clause in the lease deed. In the renewal notice, there is no reference at all to any provision, much less section 5(2) of the Act. After February 28, 1980, the appellant admittedly continued in occupation of the suit premises but it is undeniable that no fresh deed of lease was executed and registered renewing the terms of the previous lease.

19. Now, let us examine what would be the position in the absence of a fresh deed being executed and registered between the parties. There are only two possibilities; one, that the renewal notice was in exercise of the renewal clause in the lease deed. If that be so, the execution and registration of a fresh deed of lease was essential for the renewal of lease to take place. (See: State of U.P. and others v. Lalji Tandon (dead) through Lrs.[5] paragraphs 13 and 14; Anthony v. K.C. Ittoop Sons and others[6], paragraphs 8 to 11 and Hardesh Ores (P) Ltd. v. Hede and Company,[7]).

20. In case the renewal was claimed in terms of the stipulation in the lease deed (described as the “contractual right” by Mr. Sundaram), in the absence of a fresh deed of renewal, the appellant’s status became that of a month to month tenant and after twenty five years, in that relationship it would be ludicrous for the appellant to turn around and claim renewal of lease under section 5(2) of the Act..

21. Mr. Sundaram made an attempt to argue that it was not a case of renewal of lease but a case of extension of the term of the lease and in that case no fresh deed was required to be executed and registered between the parties. In support of the submission, he relied upon two decisions of Calcutta High Court, one by a division bench in Syed Ali Kaiser v. Mstt. Ayesha Begum[8] and the other by a learned single Judge of the same court in Ranjit Kumar Dutta v. Tapan Kumar Shaw[9]. We need not go into the question whether an extension of lease is permissible in the absence of any fresh deed for the simple reason that this is unquestionably a case of renewal of lease and not of extension of lease.

22. Thus, in case, renewal was claimed under a clause of the previous lease, the appellant has no case and the lessor cannot be faulted for terminating the tenancy by a notice under the Transfer of Property Act, 1882.

23. The other possibility is that though in the renewal notice dated October 17, 1979 there is no reference to section 5(2) of the Act, the renewal must be deemed to have taken place under that provision because the Act had come into force on January 24, 1976 and by virtue of section 5(2) of the Act, the renewal clause of the existing lease stood superseded. If the “renewal”, beginning from March 1, 1980 is to be deemed under section 5(2) of the Act that would be a legally valid and correct renewal even in the absence of a fresh deed being executed between the parties, as was held in P. Kesavan. If that be the position, then the appellant has already exercised and exhausted its right under section 5(2) of the Act and there can be no question of a second renewal in terms of the statutory provision.

24. Thus, viewed from any angle, the appellant cannot claim any further renewal of lease beyond February 28, 2005.

25. In light of the discussions made above, we find no merit in the appeal. It is, accordingly, dismissed with costs quantified at Rs.50,000/-.

26. However, having regard to the business of the appellant, it is given two months' time from the date of the judgment to vacate the suit premises.

SLP(C) No.15/2010.

27. SLP(C) No.15 of 2010 is dismissed for the reasons stated in the judgment in the connected matter, being Civil Appeal (arising from SLP (C) No. 355 of 2010).

ORDER

These interlocutory applications have been filed by the respondent (the landlord) stating that in gross violation of the undertakings given before the High Court, the petitioner, in connivance with its dealer, has inducted a rank outsider to the suit premises.

The appeal of the appellant/petitioner (the tenant) is dismissed by the judgment and order pronounced today.

It will, therefore, be open to the respondent/landlord to get the decree of eviction passed in his favour duly executed and/or to initiate a proceeding for contempt before the Bombay High Court and/or to seek appropriate reliefs in any other way that may be available to him in law.

The IAs are disposed of.

[1] Though the notice mentions clause 4(b) of the lease deed, it actually refers to clause 3(d) which is the renewal clause. Clause 4(b) relates to the determination of the lease on account of the failure of the lessor to obtain a licence or a renewal in respect of the pump outfit or outfits standing upon the suit premises at the time of execution of the deed or to be erected and maintained thereupon in future.

[2] As per the stipulation in the 1955 lease.

[3] (2004) 9 SCC 772

[4] (1999) 4 SCC 450

- [5] (2004) 1 SCC 1
 - [6] (2000) 6 SCC 394
 - [7] (2007) 5 SCC 614
 - [8] AIR 1977 Calcutta 226
 - [9] AIR 1997 Calcutta 278
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