

(2011) 01 MP CK 0033

Madhya Pradesh High Court

Case No: Writ Petition No. 465 of 2002

Bharat Petroleum Corporation

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision: Jan. 25, 2011

Acts Referred:

- Constitution of India, 1950 - Article 226, 227

Citation: (2011) ILR (MP) 1211 : (2011) 2 JLJ 193 : (2011) 2 MPLJ 590

Hon'ble Judges: A.K.Shrivastava, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

A.K. Shrivastava, J.

By this petition under Article 226/227 of the Constitution of India the Petitioner has sought quashment of the order dated 16-2-2001, passed by Collector, Sagar (document No. 10); quashment of demand raised by Tahsildar, Sagar dated 22-12-2001 (document No. 11); commanding Renewal of lease for a period of 30 years commencing from 1976; computation of lease rent on the basis of cost of land as it existed in the year 1976 and computation of lease rent and premium based on memorandum dated 3-3-1994.

The facts, in nutshell are that a lease of 0.27 acre (140" x 50") out of Khasra No. 279 of Mouza Rajakhedi, Sagar was granted to M/s Burmah Shell Oil and Storage Company by the Governor of Central Provinces and Berar represented by Deputy Commissioner, Sagar for establishing a retail outlet of petrol pump for a period of five years with effect from 4-11-1995 to 3-11-1960 on a yearly rent of Rs. 21=4 annas (document No. 1). Later on, the said Company applied for renewal of lease and rent of permanent lease to Collector and Naib Tahsildar, Sagar on 15-9-1966. The Company was communicated by Collector, Sagar that permanent lease has been

granted on annual rent of Rs. 490/- and premium of Rs. 160/-. The Company was asked to pay the rent and arrange to execute document of permanent lease. A copy of the intimation has been filed as document No. 2.

It is the further case of the Petitioner that Bharat Petroleum Corporation is successor of Burmah Shell Oil and Storage Company. Since the period of renewed lease was going to be lapsed, the Petitioner applied for renewal of the lease period which was registered as Case No. 22A/20(1)76-77 by the Nazul Officer, Sagar. According to the Petitioner, the decision to renew the lease period was pending on the table of the Respondents. The senior officers of the Company were called by Collector, Sagar on 17-12-1999 and discussed in respect of renewal of lease period and in this regard letter dated 23-11-1991 (document No. 4) has been filed by the Petitioner, but the lease period was not renewed. Nevertheless, the retail outlet of the Petitioner was continued.

The record of the proceedings relating to renewal of the lease period was shuttling between the Tahsildar, Nazul Officer, Collector, Commissioner and the office of the Secretariate at Bhopal. Ultimately, it was lost, with the result it took lessor nearly 19 years to convey to the Petitioner that State Government has consented to renew lease for the period 1971 to 2001. Copy of the intimation in this regard has been filed by the Petitioner as document No. 5. However, during the intervening period, since the decision to renew lease was taking much time, lease rent was demanded by the Respondents and the same was deposited by the Petitioner till the year 2001. The receipts acknowledging payment collectively have been filed as document No. 6.

On renewing the lease period vide document No. 5 dated 11-1-1995 with effect from 1971 to 2001 the State of Madhya Pradesh directed to provide area 7000 square feet to the Petitioner for a premium of Rs. 5,60,000/- on yearly rent @ Rs. 42,000/- for the period 1971 to 2001 and granted permanent lease on the conditions which are referred in document No. 5 dated 11-1-1995. One of the condition which is embodied in this document is that within six months from 11-1-1995 the Petitioner shall be obliged to deposit the requisite premium or else the allotment order shall stand rejected automatically. It is the further case of the Petitioner that although an area 7000 square feet has been directed to be provided, but, in fact the Respondents were having possession of 3375 square feet only which was given to the Petitioner and rest of the portion was in the possession of the trespassers and in this regard Petitioner submitted Respondents to remove the encroachment but the land was not got vacated and vacant possession of the encroached land was never given to the Petitioner, hence, on the basis of land which was given in the possession of the Petitioner the premium and yearly rent should have been fixed.

The Petitioner submitted an application/representation to Secretary, Revenue Department of the State of Madhya Pradesh that the premium and the rate of rent which has been fixed is based on the guidelines of market rate prevailing in the year 1994-95 and not in terms of the circular F-6-34 Nazul-94, Bhopal dated 3-3-1994

which says that the premium and the yearly rent of the government land provided to public sector should be nominal and not according to the market rate. Since the Petitioner is a Government of India Undertaking and is serving under the different schemes of the State Government, therefore, the exorbitant premium @ Rs. 160/- and yearly rent @ Rs. 490/-which has been fixed at the market rate be reconsidered in terms, of the circular of the Government on the subsidised premium and yearly rent and it may accordingly be ordered and in this regard document No. 8 has been filed but this representation was never decided.

Since the Petitioner did not deposit the premium and the yearly rent as demanded by the Respondents vide document No. 5 dated 11-1-1995, the Additional Collector, Sagar vide its order dated 16-2-2001 cancelled the permanent lease of Petitioner and in this regard a letter was sent by Nazul Officer, Sagar to Petitioner on 13/15th March, 2001 (document No. 9). The Additional Collector, Sagar vide order dated 16-2-2001 also directed to take possession of the land on which the retail outlet of the Petitioner has been installed.

Hence, the Petitioner by filing this petition under Articles 226 and 227 of the Constitution of India has prayed the reliefs which I have mentioned hereinabove.

The Respondents have filed return and submitted that the State Government allotted the lease in question in favour of the Petitioner subject to deposit the premium and lease rent prescribed under the guidelines prevailing in the year 1993-94 vide order dated 11-1-1995 (document No. 5) by imposing a specific condition in para 2 that the allottee should deposit the premium and lease rent within a period of six months from the date of allotment, failing which the order of allotment will stand automatically cancelled. However, for about seven years the Petitioner did not deposit any amount, hence, a decision was taken to cancel the lease and eventually rightly it has been cancelled.

Further stand of the Respondents in the return is that the land in question was given to predecessor Company of the Petitioner M/s Burmah Shell Oil and Storage Company by the Governor of Central Provinces and Berar with effect from 4-11-1955 for a period of five years and subsequently the lease was renewed by the Collector vide order dated 9-4-1963. The nature of the aforesaid lease was temporary and which was liable to be renewed after each five years on the terms of premium and lease rent fixed by the Government. The Company was later on asked to execute a formal lease agreement by Naib Tahsildar vide order dated 27-6-1966, but, the Company did not turn up to execute the lease deed and remained in actual possession of the land. Subsequently, an application on behalf of the Petitioner was moved in the year 1976 for the grant of permanent lease in respect of the same land. The Petitioner for all practical purposes remained in possession of the said land since 1955 whereas no renewal was allowed after the year 1970. In para-4 of the return it has been admitted that certain encroachments were reported in the year 1979 on the aforesaid land and Tahsildar initiated action against the

encroachers and imposed fine against them. The said order was assailed by filing appeal before the Sub-Divisional Officer, Sagar who concluded the proceedings in the year 1984 and during this period the application of Petitioner to renew and provide permanent lease was pending.

In para 5 of the return it has been pleaded that Collector, Sagar recommended the matter to the Divisional Commissioner, Sagar for allotment of permanent lease on 4-4-1992 who later on forwarded the matter to the State Government for the grant of lease. The State Government being competent authority decided to allot the land on permanent lease subject to deposit the premium and lease rent prevailing in the year 1993-94 and directed Collector, Sagar on 23-9-1994 (Annexure R-I) to make the computation of premium and lease rent in respect of the land in question.

It has been admitted in the return that the decision was taken only in the year 1995 to allot the permanent lease in favour of the Petitioner and accordingly computation of premium and lease rent was determined on the basis of rate which was prevailing in the year 1993-94 and now the Petitioner is estopped to question the fixation of the premium and lease rent. According to the Respondents since the Petitioner did not pay the requisite premium amount as well as annual rent, therefore, rightly the lease has been terminated and Petitioner is not entitled for any relief as prayed in this petition.

The contention of Shri Rao, learned senior counsel for the Petitioner is that repeatedly the Petitioner was requesting the Respondents to renew the lease as well as to provide permanent lease but they took near about two decades to pass order and it appears that the concerned file which was made pendulum in between the different offices of the Respondents viz. Nazul Officer, Collector, Commissioner and ultimately office of the Secretariate at Bhopal and the same was not traceable and was lost and ultimately a decision was taken on 11-1-1995 (document No. 5) by the Revenue department of the State Government to grant a lease in favour of Petitioner retrospectively with effect from 1971 to prospective period of 2001 and therefore, fixing the premium at a higher rate retrospectively with effect from 1971 is not only arbitrary.

By inviting my attention to different receipts of the deposit of annual rent (collectively filed as document No. 6) it has been submitted that regularly the yearly rent has been deposited in the Government Treasury in compliance to the demand which was being made by the Respondents, therefore, the Petitioner is not at all at fault at any point of time and therefore, the action of Respondent directing to pay the amount of premium as well as annual rent with compound interest and that too with retrospective effect with effect from 1971 is not only illegal but is also arbitrary in nature and therefore, the impugned order dated 16-2-2001 passed by the Additional Collector, Sagar and in pursuance to that order the demand of Rs. 20,44,700/- dated 22-12-2001 (document No. 11) be quashed.

On the other hand, Shri Harish Agnihotri, learned Government Advocate justified the action of the Respondents making the said demand and submitted that this petition be dismissed.

Having heard learned Counsel for the parties I am of the view that this petition deserves to be allowed in part.

On bare perusal of the first order-sheet of this Court dated 31-1-2002 this Court finds that while issuing notice on the question of admission to the Respondents an interim order was passed that no coercive steps shall be taken against the Petitioner, in case, Petitioner deposits a sum of Rs. 4.00 Laes with the Collector, Sagar. It is not in dispute that, said amount has been deposited by the Petitioner.

On going through the pleadings of the parties the gist whereof I have already mentioned in the facts narrated hereinabove it is gathered that although the Petitioner was throughout possessing the land for retail outlet of the petrol pump and after the expiry of the lease period he was also requesting the authorities to get the lease period renewed and further to grant permanent lease to the Petitioner with effect from 1976 but no concrete action was taken for a very long period of 19 years (near about two decades) and ultimately the decision was taken by the Respondent No. 1 directing to renew the lease as well as for the grant of permanent lease with effect from 1970 to 2001 only on 11-1-1995 (document No. 5). Admittedly, during this period throughout the retail outlet of the petrol pump of the Petitioner was permitted to be continued and the lease was never cancelled. Only vide order dated 16-2-2001 an order was passed by the Additional Collector passing an order that the lease is determined on account of not depositing the premium and annual rent and ultimately directed to take possession of the land in which retail outlet of the Petitioner is established.

On going through the letter dated 15th September, 1966 issued by the Naib Tahsildar, Sagar to the then predecessor of Petitioner the Burmah Shell Oil and Storage Company in respect of grant of permanent lease this Court finds that an application to grant permanent lease was submitted to the concerning officer on 27-8-1961 since the reference of this application has been given in document No. 2. On bare perusal of the letter it is further gathered as an area 7000 square feet has been granted by Collector, Sagar vide its order dated 9-4-1963 in Revenue Case No. 12-1/(A) 1963-66 on the annual rent of Rs. 490/- and a premium of Rs. 180/-, the Petitioner's predecessor was directed to deposit rent with effect from 4-11-1960 to 3-11-1967 and to get the document of the permanent lease executed and was further directed to make the payment of the rent by 1-10-1966 with a further stipulation to get the document of permanent lease executed. In pursuance of this document the Petitioner on 27th September, 1966 submitted cheque of Rs. 3430/- and the letter of thanks in that regard was given by Naib Tahsildar, Sagar. However, the lease deed was not got executed. But, the predecessor of the Petitioner deposited the premium as well as was depositing the yearly rent. The Naib

Tahsildar, Sagar was requested to send the copy of receipt of challan for the record of Petitioner's predecessor.

The Respondents have not filed any document along with the return that the Petitioner's predecessor was at fault in not getting the document of lease executed. No correspondence in that regard has been filed along with the return.

On bare perusal of the document No. 6 containing the collective receipts of the yearly rent this Court finds that earlier the Petitioner's predecessor and after merger of the said company, yearly rent was being deposited by the Petitioner. Therefore, it appears that the Petitioner was not at fault and he was depositing the yearly rent at the rate of Rs. 490/- per year as directed by the Respondents to Petitioner's predecessor company and later on at the rate of Rs. 735/- per month. The bald statement in the return that Petitioner's predecessor company did not turn up to execute lease deed will not be sufficient in order to hold that at any point of time the said company was at fault in absence of any correspondence submitted along with the return indicating that the said company was at fault. Even otherwise, no action was taken by the Respondents terminating the lease of the Petitioner in default of executing the lease deed. On the contrary they were accepting the yearly rent which was being deposited by the Petitioner. In the return in para-4 it has been admitted by the Respondents that again in the year 1976 the Petitioner requested to grant a permanent lease in respect of the land to run the retail outlet. Further it is admitted in the return that no renewal of lease period was allowed after 1970. According to me, if by the efflux of the period of lease the Petitioner continued as a lessee and was depositing yearly rent which was being accepted by the Respondents, its status would still remain as a lessee unless and until the lease is determined in accordance with law in terms of the provisions of the Transfer of Property Act. Undisputedly regularly the yearly rent was being deposited by the Petitioner and which was being accepted by the Respondents.

It has been pleaded in the return in para-3 that in the year 1976 again the Petitioner applied to get the lease deed renewed but no order was passed by the Respondents in this regard, although the Petitioner was pursuing to get the lease period extended. On bare perusal of document No. 4 dated 23rd December, 1991 this Court finds that again a request was made by the Petitioner to Collector, Sagar to grant the permanent lease mentioning the fact in this document that permanent lease was granted with effect from 4-11-1960 to 3-11-1967 by reminding and inviting to the letter of Naib Tahsildar dated 15th September, 1976 in that regard acknowledged by the Petitioner's predecessor company vide its letter dated 27th September, 1966 (document No. 3). In this letter dated 23rd December, 1991 (document No. 4) specifically it has been mentioned that rent has been paid up to 1989-90 and copy of the rent receipt was also enclosed and under these circumstances it was requested to grant the permanent lease but nothing was done by the Respondents.

Hence, for the reasons which I have stated hereinabove I am not having any scintilla of doubt in holding so that the Petitioner was not at fault at any point of time and he was again and again requesting the Respondents to grant permanent lease. Ultimately, the Respondent No. 1 vide order dated 11-1-1995 (document No. 5) directed to allot patta of 7000 square feet land with effect from 1971 to 2001 fixing the premium of Rs. 5,60,000/- and yearly rent of Rs. 42,000/- by giving further direction that the entire amount be deposited within a period of six months from, the date of issuance of the order. On bare perusal of the averments made in the return this Court finds that by allotting the land in question an permanent lease basis the rent prevailing in the year 1993-94 was taken into consideration and in this regard the circular of the Government dated 2nd August, 1994 was taken into consideration. According to me, if the decision was taken on 11-1-1995 vide document No. 5 on the basis of the guideline of the year 1993-94, it should not have been applied retrospectively with effect from 1971 because the Petitioner was not at fault at any point of time. On the contrary, he was repeatedly requesting the Respondents to provide the permanent lease and continued to deposit the yearly rent. Hence, according to me the demand to pay the yearly rent as well as fixing the premium on the guidelines of the year 1993-94 is arbitrary so far as fixing the annual rent and the premium from 1971 to 11-1-1995 and indeed, the yearly rent and the premium should have been fixed in accordance to the norms of the Respondents prevailing from, time to time from the year 1971 to 1995. The said action of the Respondents is arbitrary and hence that part of the order of Respondent No. 1 dated 11-1-1995 (document No. 5) directing to pay the premium and yearly rent with effect from 1971 to 11-1-1995 is set aside and quashed with a direction to Respondent No. 1 that guideline of the Government which was prevailing during these years from time to time and on the basis of those guidelines the premium and the yearly rent be fixed with effect from 1971 to 11-1-1995.

As pointed out hereinabove that in the return it has been admitted by the Respondents that certain portion of land has been encroached by the encroachers and the proceedings are initiated against them but there is nothing on record whether vacant possession of the entire area 7000 square feet has been given to the Petitioner or not and therefore, by taking into account this aspect of the matter that although it was directed to provide 7000 square feet of land to the Petitioner, the possession of this area was not provided to him and therefore, accordingly apportionment of the premium and yearly rent is to be made by the State Government by keeping in mind that how much actual area the Petitioner is possessing.

However, I do not find any illegality in the order of the Respondent No. 1 dated 11-1-1995 (document No. 5) in determining the premium and the rate of yearly rent on the guidelines of 1993-94 because it is in the domain of the Government to fix the rate. Why such rate has been fixed, it has been mentioned in the circular dated 2nd August, 1994 (Annexure R-I) assigning reasons for fixing the premium and the

yearly rent. It is, however, made clear that in case the premium and the yearly rent has not been fixed in terms of the said circular dated 2nd August, 1994 (Annexure R-I), it may be fixed in pursuance to the said circular which shall be paid by the Petitioner with effect from 11-1-1995 in terms of document No. 5. The impugned order dated 16-2-2001 (document No. 10) which is the order of Collector, Sagar in pursuance of which the Tahsildar issued letter dated 22-12-2001 making demand of Rs. 20,44,700/- along with 15% interest is hereby set aside and quashed. According to me, because the Petitioner was not at fault any time, therefore, he cannot be saddled with the interest and therefore, interest part is also set aside.

Resultantly, this petition succeeds in part. The impugned orders Annexure P-10 dated 16-2-2001 of Additional Collector, Sagar and the order of Tahsildar dated 22-12-2001 are hereby set aside and quashed. The order of State Government (Respondent No. 1) dated 11-1-1995 (document No. 5) is set aside in part and that part of order by which the premium and the yearly rent has been fixed with effect from 1971 on the basis of the guideline of 1993-94 is hereby quashed and Respondent No. 1 is hereby directed to fix the premium as well as yearly rent from the year 1971 to 11-1-1995 on the basis of guidelines prevailing from time to time in different years for that period by taking into account that out of 7000 square feet the possession of how much area has been given to the Petitioner and accordingly apportioning the area which was in actual possession of the Petitioner, the premium and the yearly rent may be fixed. From 11-1-1995 the premium and the yearly rent be fixed on the basis of the guidelines prevailing in the year 1993-94 as mentioned in the circular dated 2-8-1994 (Annexure R-I) to the area which the Petitioner is actually possessing w.e.f. 11-1-1995. The Respondents are further directed to adjust Rs. 4.00 Lacs which were deposited by the Petitioner vide order dated 31-1-2002.

This petition is accordingly partly allowed to the extent indicated hereinabove with no order as to costs.