

(2011) 09 MAD CK 0187

Madras High Court

Case No: O.S.A. No. 196 of 2010 and M.P. No. 1 of 2010

Indian Oil Corporation
Ltd.

APPELLANT

Vs

Lakshmi
Subrahmanyam and
Others

RESPONDENT

Date of Decision: Sept. 27, 2011

Acts Referred:

- Madras City Tenants Protection Act, 1922 - Section 11, 2(4), 3, 4, 9
- Transfer of Property Act, 1882 - Section 113

Hon'ble Judges: R. Banumathi, J; B. Rajendran, J

Bench: Division Bench

Advocate: T.R. Rajagopalan for Anand, Abdul and Vinod Associates, for the Appellant; K. Ramu, for RR1 to 4, for the Respondent

Final Decision: Dismissed

Judgement

B. Rajendran, J.

Indian Oil Corporation has come forward with this appeal aggrieved by the decree and judgment dated 16.02.2010 made in C.S. No. 582 of 2006 by which the learned single Judge directed the Corporation to deliver possession of the property to the Plaintiffs/ Respondents 1 to 4 herein and also permitted the Plaintiff/respondents 1 to 4 to take action against Indian Oil Corporation for future mesne profits.

2. According to the Defendants 1 and 2/appellants, the suit property belonged to the predecessor of the Plaintiffs/respondents 1 to 4 herein namely Mr. C.P. Pattabiraman. The original lease agreement entered into between the Appellants and the said Mr. Pattabiraman was much earlier to the lease deed which was renewed on 14.08.1985. As per the renewed lease, the lease was for a period of 20 years. The original lessor namely Mr. C.P. Pattabiraman died intestate on 19.06.2001

leaving behind the Plaintiffs/respondents 1 to 4 as his legal heirs to succeeded to his estate. According to the Defendants 1 and 2/appellants, they have been operating retail petrol outlet in the suit property. Even before the expiry of the lease, by a letter dated 24.03.2001, the plaintiffs/respondents 1 to 4 herein have requested them to vacate the suit property belonged to them and they were not willing to extend the lease for a further period, as per the earlier lease agreement. According to the Defendants 1 and 2/appellants, various correspondences have been exchanged between the parties as per which, the Defendants 1 and 2/appellants, have expressed their desire to purchase the suit property, but that did not fructify in sale as the quantum of sale price was not finalised. Ultimately, the Plaintiffs/respondents 1 to 4 made it clear that they only want the possession of the property and they are not inclined to renew the lease. Even the rent, which was paid by the Defendants 1 and 2/appellants beyond the lease period was not accepted.

3. The Defendants 1 and 2/appellants would mainly contend that the lease in their favour was not from the year 1983 and the original lease commenced from 27.03.1965, which was subsequently renewed as per the registered lease deed dated 14.08.1985 with an option for automatic renewal clause for another period of 20 years. According to the Defendants 1 and 2/appellants, they are entitled to the benefit of Madras City Tenants Protection Act, hereinafter referred to as the Act and therefore the suit, as filed by the plaintiffs/respondents 1 to 4 is not maintainable. As per Section 9 of the Act, the defendants 1 and 2/appellants are entitled to purchase the property at a price to be fixed by the Court. The act of the Plaintiffs/respondents 1 to 4 herein in initially accepting the proposal of the Defendants 1 and 2/appellants to purchase the property subsequent to the termination notice issued by them would constitute waiver of termination notice as per Section 113 of the Transfer of Property Act. Further, issues has been framed in the suit and additional written statement was also filed by the Defendants 1 and 2/appellants claiming that they are tenants within the meaning of the Act and necessary notice u/s 11, which is mandatory, was not issued by the Plaintiffs/ Respondents 1 to 4. As this mandatory notice was not issued by the Plaintiffs/ Respondents 1 to 4 prior to filing the suit, the suit is invalid and not maintainable in law.

4. The Plaintiffs/respondents 1 to 4 contended that the Defendants 1 and 2/appellants are not entitled to any benefit under the Act as they are not in actual physical possession of the suit property ever since 1985. The Plaintiffs/ respondents 1 to 4 would contend that one Kamadhenu Co-operative Society is in physical possession of the suit property, apart from that, a third party, who was arrayed as third Defendant in the suit namely ICICI Bank, is also in physical possession of a small portion of 150 square feet of the suit property wherein the third Defendant had installed an ATM under sub-lease. In view of the said sublease and in view of the fact that the Defendants 1 and 2/appellants are not in actual physical possession of the property and only the Defendants 1 and 2/appellants claims possession through

their dealer, the benefits under the Act is not available to them. Furthermore, the Defendants 1 and 2/appellants herein have already filed C.S. No. 45 of 2008 before this Court for specific performance of the contract and for renewal of lease after the termination of lease. As such, the lease got validly terminated and therefore, the Defendants 1 and 2/appellants have no right to avail the benefits provided under the Act.

5. Based on the pleadings of both sides and after perusing the oral and documentary evidence, the learned single Judge, after taking into consideration that the lease itself was executed in the year 1985, one Kamadhenu Cooperative Society and ICICI Bank alone are in actual physical possession of the property and the Defendants 1 and 2/appellants are not in possession of the property, held that the Defendants 1 and 2/appellants are not entitled to the benefits of the Act nor the suit can be construed as bad for nonissuance of the notice u/s 11 of the Act.

6. We have heard the learned Senior counsel for the Defendants 1 and 2/appellants and the Learned Counsel for the Plaintiffs/respondents 1 to 4.

7. The learned Senior counsel appearing for the Defendants 1 and 2/appellants mainly contended that the lease deed dated 14.08.1985 is a renewal of the earlier lease deed. In this lease deed, though the period of lease was mentioned, it has an automatic in-built renewal for further 20 years. The suit filed by the Plaintiffs/respondents 1 to 4, without issuing the mandatory notice u/s 11 of the Act is invalid as they have not paid any compensation, to be paid as contemplated u/s 3 of the Act. Further, what was contemplated under the Act in respect of actual physical possession would include possession of the company by that of their dealers. Further, the dealers appointed by the Defendants 1 and 2/appellants are carrying on their business for and on behalf of the Defendants 1 and 2/appellants and they still retain the right to re-entry even after termination of the contract. Therefore, according to the learned Senior counsel for the Defendants 1 and 2/appellants, the defendants 1 and 2/appellants squarely come within the definition of Section 4 of the Act. It was further contended that Ex. P2, notice dated 24.03.2004 was issued by the Plaintiffs/respondents 1 to 4 even before expiry of the 20 year period and therefore, Ex. P2 notice cannot be termed as a notice as contemplated u/s 11 of the Act.

8. The Learned Counsel for the Plaintiffs/respondents 1 to 4 would contend that the learned single Judge, after considering the rival contentions and after elaborate discussion, decreed the suit and the present appeal is filed by the defendants 1 and 2/appellants only to stall the execution of the decree and judgment passed by the learned single Judge. There is no merits in the appeal warranting interference of this Court and he prayed for dismissal of the suit.

9. We will first deal with the argument of the learned Senior counsel for the Appellant and examine as to whether the Defendants 1 and 2/appellants are tenants

within the meaning of the Act so as to avail the benefits conferred thereon. The main ground of attack by the learned Senior counsel for the defendants 1 and 2/appellants is that the mandatory notice u/s 11 of the Act was not issued by the Plaintiffs/respondents 1 to 4, prior to filing the suit. The Defendants 1 and 2/appellants also raised such a plea in the written statement and also stated that they are taking steps to file an application u/s 9 of the Act to purchase the suit property.

10. Though prior to the filing of the suit negotiation took place between the parties for purchasing the property, it was negated by the plaintiffs/respondents 1 to 4, who are the owners of the suit property. As per the Act, if the Appellant is a tenant within the meaning of Section 4 of the Act, notice is mandatory to be issued and there is no legal qualm over this. For the benefit to accrue under the Act, first and foremost, which a tenant has to prove is that he is in possession of the property. In this case, admittedly, the period of lease commenced from 1985 and the lease was for a period of 20 years. Though there was a renewal clause, even one year prior to the expiry of the lease, the plaintiffs/respondents 1 to 4 have issued a notice calling upon the Defendants 1 and 2/appellants to vacate and handover vacant possession of the suit property by stating that they are not willing to renew the lease. It is also an admitted fact that the Defendants 1 and 2/appellants are not running the petrol outlet and it is being run through their dealer Kamadhenu Cooperative Society. This is an admitted fact. In the event of such an admission, whether at all, the Defendants 1 and 2/appellants can be termed as a tenant under the Act has to be seen. In the latest decision of the Division Bench of this Court in (M/s. Bharat Petroleum Corporation Limited Chennai - 600 040 v. R. Ravikrishnan and Anr. 2011 4 LW 385 the Division Bench traced the entire history of Madras City Tenants Protection Act and gave a finding. The judgment of the Division Bench emanated from the order of remand passed by the Honourable Supreme Court in Civil Appeal No. 5903 of 2006 made in Bharat Petroleum Corporation v. Nirmala and Ors. wherein the Honourable Supreme Court rejected the claim made by the oil companies u/s 2 (4) (ii) (b) of the Act on the ground that the oil Companies are not in physical possession of the property. Further, the Honourable Supreme Court held that the claim of the oil companies u/s 2 (4) (ii) (a) of the Act has to be considered by the Division Bench and accordingly it remanded the matter to the Division Bench of this Court to render a finding. In that case, which was remanded by the Honourable Supreme Court, the Division Bench rendered the judgment reported in (M/s. Bharat Petroleum Corporation Limited, Chennai - 600 040 v. R. Ravikrishnan and another) 2011 4 LW 385. The core question decided by the Division Bench of this Court was to record a finding as to whether the Appellants therein are covered by the provisions of Section 2 (4) (i) and Sub-section (a) of Section 2 (4) (ii) of the Act and they are entitled to the benefits u/s 9 (1) of the Act. After tracing the history of the case, the Division Bench, in paragraph Nos. 60 to 62 has categorically held that the possession, which is held by the Oil Companies through their licensees/dealer,

though may be a lawful possession but not a possession as contemplated u/s 2 (4) (i) (a) or u/s 2 (4) (i) or (ii) (a) of the Act. In fact, the Division Bench, following the decision of the Honourable Supreme Court in [S.R. Radhakrishnan and Others Vs. Neelamegam](#), wherein it was held that actual physical possession is a sine quo non for claiming the benefits u/s 9 of the Act. In para Nos. 60, 61 and 62, the Division Bench held as follows:

60. The Supreme Court in paragraph 6 of the judgment in [S.R. Radhakrishnan and Others Vs. Neelamegam](#), indicated that the provisions of the City Tenants' Protection Act do not specifically mention that a tenant should be in occupation of the tenanted premises before he can file an application u/s 3 of the Act. Therefore, the Supreme Court was conscious of the fact that there was no requirement to show the possession of the tenanted premises as a condition precedent for filing an application u/s 9 of the Act. Even then, the Supreme Court on a consideration of the earlier decisions, arrived at a conclusion that actual physical possession is essential and rather it is sine quo non for filing an application u/s 9. In view of the said categorical finding given by the Supreme Court, we are not in a position to take a different view in the matter.

61. In view of our discussion in the preceding paragraphs, we are convinced that the oil Companies are in legal possession of the subject lands, notwithstanding the actual physical possession by the dealers. However, we reject the claim made by the oil Companies u/s 2 (4) (ii) (a) in view of the decision of the Supreme Court in [S.R. Radhakrishnan and Others Vs. Neelamegam](#), holding that actual physical possession is sine quo non for claiming the benefits of Section 9 of the City Tenants' Protection Act.

62. On the basis of our above discussion, we hold that:

(i) M/s. Bharat Petroleum Corporation Ltd and Hindustan Petroleum Corporation Ltd., are in legal possession of the land and building, originally given on lease to their predecessor-in-interest and devolved on them by virtue of the Acquisition Acts and now in the possession of the dealers on the basis of DPSL agreement;

(ii) In order to come within the definition of S.2 (4) (ii) (a) of the Act, the applicant must have actual physical possession of the land;

(iii) Though the oil companies are in legal possession of the lands and superstructure in question, they are not entitled to maintain the application u/s 9 of the Act, in view of the judgment of Supreme Court in [S.R. Radhakrishnan and Others Vs. Neelamegam](#), holding that actual physical possession is sine quo non for claiming the benefits of Section 9 of the City Tenants' Protection Act.

11. In fact, in [S.R. Radhakrishnan and Others Vs. Neelamegam](#), the Honourable Supreme Court categorically held that actual physical possession is essential in the context of the relevant provisions of City Tenants Protection Act. Further, the actual

physical possession of the demised premises by the tenant is a sine quo non for filing an application u/s 9 of the Act.

12. If we consider Section 3 of the Act in the light of the decision of the Honourable Supreme Court, it is specifically mentioned that a tenant should be in occupation of the tenanted premises before he could file an application u/s 3 or 9 of the Act and the Honourable Supreme Court has further held that actual physical possession is essential. This dictum laid down by the Honourable Supreme Court was also followed by the Division Bench of this Court in the decision mentioned supra. We respectfully concur with the decision rendered by the Division Bench of this Court reported in (M/s. Bharat Petroleum Corporation Limited, Chennai - 600 040 v. R. Ravikrishnan and Anr. 2011 4 Law Weekly 385.

13. Here is a case where the Defendants 1 and 2/appellants, who are admittedly not in possession of the property directly, but they are in possession through their licensee/dealer, seeks protection under the Act and asserts that they are entitled to the benefits u/s 3 by contending that non-issuance of notice u/s 11 of the Act by the Plaintiffs/respondents 1 to 4 prior to filing of the suit is fatal. This contention of the Defendants 1 and 2/appellants cannot be accepted. The Defendants 1 and 2/appellants are not entitled to the benefit under the Act for the simple reason that they are not in actual physical possession of the property.

14. The next point, which was urged by the Learned Counsel for the plaintiffs/ Respondents 1 to 4 is that the lease agreement itself was entered into in the year 1985. As per the amendment introduced in the Act, which came into force on 03.03.1980, it would cover only those tenants who were in possession of the property as on the date when the amendments came into force. Therefore, on the date when the amendments to the Act came into effect, the defendants 1 and 2/appellants are not in possession of the property and are not entitled to the benefit conferred under the Act. According to the learned Senior counsel for the Defendants 1 and 2/appellants, this is not a case where the agreement was entered into between the Defendants 1 and 2/appellants and the predecessor of the Plaintiffs/respondents 1 to 4 only in the year 1985, whereas, the Defendants 1 and 2/appellants were in occupation from the year 1965. Even otherwise, the building itself was put up by the Defendants 1 and 2/appellants long back in the year 1965 and the petrol bunk is in operation from 1965. Therefore, the lease agreement entered into in the year 1985 is only a renewal of the earlier lease, which is evident that identical words have been used in the lease agreement of the year 1985. Therefore, according to the learned Senior counsel for the Defendants 1 and 2/appellants, it is not a new agreement of lease, which would disentitle the Defendants 1 and 2/appellants to get the benefits under the Act.

15. As rightly pointed out by the learned single Judge, the Petroleum Corporation, which is a gigantic public sector oil company has not even chosen to produce the earlier lease itself, even though they claimed so in the written statement. Unless the

Defendants 1 and 2/appellants prove that they continued to operate the petrol bunk as per the terms of the earlier lease deed prior to 1985, they cannot now argue that the original lease of the year 1965 continued till this date. Even in the lease deed of the year 1985, nowhere any mention is made about the previous deed of the year 1965 or the continuance of the lease is on the basis of the previous lease deed. Further, as per the documents available, the lease itself was given in the year 1985 and there is no proof to show the subsistence of the lease prior to 1985. If this is taken into consideration, the amending Act 2 of 1980, which came into force on 03.03.1980, categorically stipulate that those properties which are leased out prior to this date alone are entitled to the benefit of the Act and consequently, the defendants 1 and 2/appellants are not entitled to the benefit of the Act. The Division Bench of this Court also in the decision mentioned supra, traced the entire history of the Act itself and held that those tenancy, which were created beyond 03.03.1980 are not entitled to the benefits of the Act.

16. As rightly pointed out by the learned single Judge, even as per the evidence of the first Defendant/first Appellant herein, it was categorically admitted that at the end of the lease period, the corporation would vacate the property and they will not claim any right for the superstructure. Therefore, even at that time, the Defendants 1 and 2/appellants are fully aware that they are not entitled to the benefits under the Act, inasmuch as, with open eyes, the Defendants 1 and 2/appellants have entered into the lease for a period of 20 years during the year 1985. Therefore, the observation of the learned single Judge that the defendants 1 and 2/appellants have entered into the lease deed knowing fully well that they are not entitled to the benefit of the Act is well founded.

17. As we have already held, even if it is assumed that the Defendants 1 and 2/appellants are entitled to the benefits of the Act, as per the decision of the Honourable Supreme Court as well as the latest Division Bench of this Court mentioned supra, necessarily the factum of possession has to be proved by the defendants 1 and 2/appellants and admittedly, they have not proved that they are in actual physical possession and enjoyment of the property. Admittedly, only the dealers of the Defendants 1 and 2/appellants and a sub-tenant namely ICICI Bank are in possession of the suit property. Under those circumstances, we hold that the Defendants 1 and 2/appellants are not in actual physical possession of the property as required under the Act and they are not entitled to the benefits of the Act.

18. If that be so, it has to be seen as to whether the argument of the learned Senior counsel for the Appellant that non-issuance of notice u/s 11 of the Act by the Plaintiffs/respondents 1 to 4 is fatal to the suit or not. Section 11 notice is a notice to be issued by the land owners calling upon the tenant to express their willingness for payment of compensation prior to their eviction. In this case, admittedly, a notice was issued by the Plaintiffs/ respondents 1 to 4 to the Defendants 1 and

2/appellants one year prior to the expiry of the lease, calling upon the Defendants 1 and 2/appellants to vacate and deliver vacant possession of the suit property. In and by that notice, the plaintiffs/respondents 1 to 4 also categorically indicated that they are not willing to sell the property to the Defendants 1 and 2/appellants. Even though there were correspondences between the parties after the notice, since there was no consensus-ad-idem between the parties, the offer of the Defendants 1 and 2/appellants was not accepted by the Plaintiffs/respondents 1 to 4 and they stood by their notice of eviction and did not seek for waiver of notice. As stated supra, first and foremost, the question is whether the Defendants 1 and 2/appellants comes within the definition and meaning of the tenant given in the Act and to prove that they are the tenant, they have to remain in possession of the property, but the possession was not proved, as required. Though the dealers possession can be a lawful possession, as per the decision of the Division Bench of this Court, such possession of the Defendants 1 and 2/appellants cannot be termed as a tenant, as enumerated u/s 2 (4) of the Act to seek the benefits conferred under the Act. As rightly pointed out by the learned single Judge, even prior notice issued by the landowner can be termed or deemed to be a notice u/s 11 of the Act. In any view of the matter, in view of the finding that the Defendants 1 and 2/appellants are not a tenant as per the Act and that the agreement itself was of the year 1985, the question of invoking Section 11 of the Act does not apply. Therefore, the argument of the learned Senior counsel for the Defendants 1 and 2/appellants that non-issuance of notice u/s 11 of the Act by the Plaintiffs/respondents 1 to 4 prior to filing of the suit is fatal to the suit is rejected.

19. The learned single Judge found that the Appellant cannot be termed as a tenant continuing in actual physical possession of the suit property and not entitled to the benefits of the Act is well founded and we do not find any reason to interfere with such a findings rendered by the learned single Judge. The learned single Judge also found that under Exs. P8 and P13, the defendants 1 and 2 were directed by the Plaintiffs/respondents 1 to 4 herein not to pay the rent after the termination notice and they have also not accepted the rent paid and therefore, it cannot be construed that the Plaintiffs/respondents 1 to 4 have waived their right to terminate the Defendants 1 and 2/appellants.

20. We find it very heartening to note that the Defendants 1 and 2/appellants, a mighty and gigantic oil corporation are not following their own contract/agreement. Under law, a party is expected to abide by the terms and conditions of the contract entered into by themselves. Here, the Defendants 1 and 2/appellants, knowing fully well that they are not entitled to the benefits under the Act, have contested the suit vociferously thereby subjected the plaintiffs/ landlords to harassment. Such an attitude on the part of the defendants 1 and 2/appellants is not desirable. If public Sector companies like the Defendants 1 and 2/appellants do not follow the terms and conditions entered into by them with open eyes, others cannot be expected to follow the Rule of Law. The Defendants 1 and 2/appellants, under the pretext of

seeking certain benefits under the Act, which they are fully aware that it will not enure to their benefit have taken the landowners/plaintiffs/respondents 1 to 4 herein for a ride. We find that this is a fit case warranting us to make such an observation.

21. In the result, we confirm the decree and judgment dated 16.02.2010 passed by the learned single Judge in C.S. No. 582 of 2006 and dismiss this Original Side Appeal. No costs. Consequently, connected miscellaneous petition is closed.