
(2007) 03 BOM CK 0020

Bombay High Court (Aurangabad Bench)

Case No: First Appeal No. 1281 of 2005 with Civil Application No. 263 of 2006

Hindustan Petroleum
Corp. Ltd.

APPELLANT

Vs

Chandulal Dipchand
Kale

RESPONDENT

Date of Decision: March 21, 2007

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 15, 16, 17, 18, 19
- Constitution of India, 1950 - Article 12, 14
- ESSO (Acquisition of Undertakings in India) Act, 1974 - Section 5, 5(1), 5(2), 5(32), 7
- Maharashtra Rent Control Act, 1999 - Section 3, 3(1)
- Transfer of Property Act, 1882 - Section 106, 108

Citation: (2007) 5 ALLMR 310 : (2008) 3 BomCR 897

Hon'ble Judges: Kingaonkar V.R., J

Bench: Single Bench

Advocate: Anjali Bajpai Dube, for the Appellant; S.D. Kulkarni, for the Respondent

Final Decision: Dismissed

Judgement

Kingaonkar V.R., J.

This first appeal arises out of eviction decree granted in Special Civil Suit No. 35/2002. Some undisputed facts may be stated at the outset. The suit plot bearing CTS No. 1916, to the extent of 1226.32 Sq.m. was previously owned by one Gajanan Saptarshi. The open plot was leased out in 1963 to ESSO eastern inc. Company for running its petrol pump at Kopargaon. The lease was initially for 10 years period and was continued from time to time. The lease period was to expire by 30.9.1982. When the lease was extended in 1973 then the ESSO Company was operating its business of petroleum products in India. The ESSO Acquisition of Undertaking in India Act, 1974, (For short, "ESSO Act") came into force with effect from 13.3.1974. By operation of law, provisions of Section 5(2)

of the said Act in particular, the appellant became the lessee of the landlord. There was deemed attornment of the tenancy due to the provisions of the said enactment.

2. Thus, instead of ESSO Company the appellant stepped into its shoes and continued to enjoy the lease hold rights in respect of suit property. The plaintiff/respondent purchased the suit property by virtue of a sale deed dated 1.7.1994 from the previous owner, namely Gajanan Saptarshi and thereby stepped into the shoes of the landlord. The appellant had exercised the option for continuation of the lease period for more 10 years after its expiry by end of September, 1982 and continued therefore, the lease rights, as per the provisions of the ESSO Act for period between 1st October 1982 till 30.9.1992. Though, the appellant thereafter issued a letter to the landlord Gajanan Saptarshi of its intent to continue the lease period yet, there was no mutual agreement settled as such between them. The appellant issued letter dated 4.6.1992 (Exh. 144) which is expression of its interest to continue the lease period for period between 1.10.1992 to 30.9.2002 on the same terms. The proposal was yet to materialise when the suit property was purchased by the respondent in 1994 and he too continued his letter correspondence with the appellant regarding his intended enhancement of the rate of previous rent, as condition for extension of the lease period. The appellant did not communicate any consent for the demanded enhancement of the rent. There was no renovation of the lease agreement between the parties. The respondent purchased the suit property with due consent of the appellant's competent officer.

3. The respondent decided to terminate the tenancy of the appellant. The respondent/plaintiff issued two notices, one on 1.8.2001 and another on 1.7.2002 u/s 108 of the Transfer of Property Act. The respondent claimed that the lease rights of the appellants have come to an end due to efflux of agreed lease period by 30.9.1992 and thereafter its possession was unauthorised and wrongful. The respondent further alleged that the appellants would be bound to pay compensation at the rate of Rs. 1,500/- p.m. for wrongful use and occupation of the suit property after the termination of the tenancy rights. The appellant was called upon to deliver possession of the suit property at the most on or before 3.8.2002. The quit notices were not complied with by the appellant. The appellant gave reply to the notice and claimed protection u/s ESSO Act, seeking the statutory extension of the lease period. It was the contention of the appellant that the lease could be renewed when the option was exercised and the same was continued by act of the parties upto 30.9.2002. The appellant further asserted that the lease could not be terminated during the period it was subsisting.

4. The respondent, thereafter, filed suit for eviction and recovery of Rs. 4,30,450/- towards compensation for wrongful use and occupation of the suit property. The respondent contended that the provisions of the Maharashtra Rent Act were not applicable in view of exemption available u/s 3 thereof. The respondent further pleaded that the appellant cannot continue its possession after termination of the lease and in any case after the efflux of lease period.

5. The appellant resisted the suit on various grounds. Assertions of the appellant are that previous landlord had accepted the rent from time to time after 30.9.1992 and as such he had waived the right to terminate tenancy after efflux of the lease period which was continued upto 30th September 1992. The appellant further contended that when the previous owner did not terminate the tenancy rights at any point of time between 30.9.1992 till the date of sale deed in favour of the respondent/plaintiff i.e. 1.7.1994, there was no right available to the plaintiff for termination of the tenancy. The validity and legality of the quit notices was also challenged by the appellant. It was contended that the provisions of the Transfer of Property Act are not applicable and, therefore, the suit itself was not maintainable. The appellant also raised objection regarding jurisdiction of the trial Court to entertain the suit. On these premises, the appellant sought dismissal of the suit.

6. The trial Court framed various issues at Exh. 25. The parties adduced oral and documentary evidence in support of the rival contentions. On merits, the trial Court came to the conclusion that the lease hold rights of the appellant have been properly terminated under the quit notices issued by the respondent. The trial Court held that the appellant is not entitled to any protection under provisions of the ESSO Act because the option for renewal of the lease was available only on one occasion after the initial lease period was over. The trial Court repelled the objection regarding the territorial jurisdiction.

7. The trial Court held however, that the respondent is not entitled to claim any amount of compensation for use and occupation of the suit property inasmuch as the status of the appellant was that of a tenant. In keeping with these findings, the suit was decreed for eviction with direction to cause inquiry into the future mesne profits. The suit was dismissed as far as claim for compensation is concerned. The respondent did not file any cross-objection or appeal against such finding. The claim for compensation is not pressed into service on behalf of the respondent during hearing of the present appeal. (Continued on 21.3.2007).

8. Smt. Anjali Bajpai Dube, learned Counsel for the appellant, would submit that the trial Court has committed error while deciding the issue of jurisdiction. She contended that having regard to Section 20 C.P. Code particularly, explanation appended thereto the suit ought to have been filed where the head office or the sub-office of the appellant - Corporation is situated. She would point out that the Regional office is situated at Aurangabad and therefore, the plaintiff ought to have filed the suit in the Court at Aurangabad or at Mumbai. It is contended that the jurisdiction was not available to the Civil Court at Kopergaon. She seeks to rely on certain observations in [New Moga Transport Company, through its Proprietor Krishanlal Jhanwar Vs. United India Insurance Co. Ltd. and Others](#), .

9. The Apex Court in the given case held that where two courts or more have jurisdiction under C.P.C. to try the suit then the exclusion clause under the agreement between the parties has to be considered. In the fact situation of the said case, it was explicit that the consignment note itself had indicated that the Court at Udaipur alone will have the

jurisdiction and the intention of the parties could be gathered from such term in the agreement. That was a suit for recovery of money on account of the loss of goods due to fire. As against this, learned Counsel Mr. Kulkarni, would submit that normal place of suing would be the place where the cause of action arose. The suit property is situated within the territorial jurisdiction of Civil Court at Kopergaon, and hence there is no jurisdictional error committed by the trial Court.

10. Smt. Anjali Bajpai Dube, learned Counsel would further contend that the trial Court has committed patent error in construing the provisions of the ESSO Act. She argued that there is no express provision under the ESSO Act to warrant inference that extension of the lease period shall be only for one occasion. She contended that u/s 5(2) of the said Act, the option is available to the appellant for renewal of the lease on the same terms, without any restriction, and the same was already exercised by the appellant by issuing the letter of intent (Exh. 144).

11. She would submit that the plaintiff delayed the renewal of lease and gained time because he was not in need of the premises but wanted exorbitant enhancement of the rent. She would submit that ultimately when the Maharashtra Rent Control Act, came into force then the suit was filed because the new enactment provided for an exemption clause. She would submit that the provisions of the Transfer of Property Act would not be applicable to the lease transaction when the rights of the appellant are protected under the special enactment, namely, the ESSO Act. Consequently, she urged to allow the appeal and set aside the impugned decree.

12. Mr. Kulkarni, learned Counsel on the other hand supports the impugned judgment and decree. He would submit that the ESSO Acquisition of Undertaking in India Act, 1974 came on the statute book with a purpose to provide legal protection to the leases and transactions which were already brought into existence. He would submit that only one time facility of extension of the lease at the behest of the landlord was available and the same was already exhausted by the previous owner Gajanan Saptarshi. He contended that the status of the appellant is on par with that of a trespasser after the efflux of the lease period and as such the eviction decree is quite sustainable.

13. The significant and substantial questions of law to be determined in this appeal are thus :

(i) Whether in the facts and circumstances of the present case, the trial Court has committed Jurisdictional error while assuming availability of jurisdiction and deciding the suit?

(ii) Whether in the facts and circumstances of the present case, the appellant can claim continuity of the lease hold rights irrespective of the fact that there is absence of mutual agreement because the renewal of the lease could be claimed by the appellant as a matter of right in view of the provisions contained in Section 5 r/w Section 7 of the ESSO

(Acquisition of Undertaking in India) Act, 1974?

(iii) What is the legal status of the appellant after the efflux of the lease period which was extended upto 30.9.1992 i.e. after availment of the first option regarding renewal of the lease?

(iv) Whether the trial Court has committed patent error while reaching conclusion that provisions of the Maharashtra Rent Act are not applicable due to the exemption clause u/s 3(b) and passing of the impugned decree?

14. At the threshold, I would consider the objection regarding availability of jurisdiction to the Civil Court at Kopargaon. In the present case, there is no agreement between the parties regarding jurisdiction. In the case of New Moga Transport Co. (supra) there was exclusion clause and therefore, though, the two Courts had jurisdiction yet, the jurisdiction of one Court was treated as excluded by agreement of the parties. There cannot be duality of opinion that in case where the head office of the Corporation is located or its sub-office is situated, the suit can be filed. The relevant provision of Section 20 commences with the expression "other suits to be instituted". The opening words of the Section will make it clear that the provision is in the form of exception. For, it commences with expression "subject to the limitations aforesaid" which means except those categories contained in Section 15 to 19. The explanation provides that a Corporation shall be deemed to carry on business at its sole or principal office or in respect of any cause of action arising at any place where it has also a subordinate office.

15. The provisions of Section 16(a) of the C.P.C. would make it manifest that the suit for recovery of immovable property with or without rent or profits has to be instituted in the Court within the local limits of whose jurisdiction the property is situate. That is the ordinary place where the suit of that kind could be instituted. The provisions of Section 20 would come into play only when the suit is not governed by any of the clauses enumerated u/s 16 of the C.P.C. In the present case, however, the suit is clearly covered by Sub-clause (a) of Section 16 of the C.P.C. and hence, the place where suit property is situated is the place where the suit shall be filed. The suit property is situated at Kopargaon. It was therefore, rightly filed in the Civil Court at Kopargaon. There appears no jurisdictional error committed by the trial Court while entertaining the suit.

16. That apart, the question of jurisdiction is not always a vital question. The objection as to place of suing may be considered within the ambit of Section 21(1) of the C.P.C. 1908. In [R.S.D.V. Finance Co. Pvt. Ltd. Vs. Shree Vallabh Glass Works Ltd.](#), the Apex Court observed:

Objection as to the place of suing shall be allowed by the appellate or revisional Court subject to the following conditions:

(i) That such objection was taken in the Court of first instance at the earliest possible opportunity;

(ii) In all cases where issues are settled then at or before such settlement of issues;

(iii) There has been a consequent failure of justice.

17. In the present case though the first two conditions are satisfied yet, the third condition of failure of justice is not fulfilled. There is hardly anything on record to say that due to wrong place of suing the appellant was prejudiced in making out his defence. The objection cannot be entertained without satisfaction of the third condition alongwith the other two conditions, that the failure of justice is occasioned as a result of the wrong place of suing. In this view of the matter, the objection raised by the learned Counsel Smt. Anjali Bajpai Dube, cannot be countenanced.

18. The core issue involved in this appeal is as regards the interpretation of Section 5(2) of the ESSO (Acquisition of Undertaking in India) Act, 1974. There cannot be any doubt that the said enactment was brought into existence with a view to provide umbrella of protection to the rights of the Government of India undertaking/Corporation which took over the business of the ESSO Eastern Inc. a foreign Company. The preamble itself would make it amply clear that the purpose was to acquire rights available to the ESSO Eastern Inc. By legal fiction, the rights were transferred to the Government Companies. The appellant acquired such rights in accordance with the statutory provisions.

19. The initial lease deed (Exh. 110) provided under Clause 3(d) and Clause 3(e) that the renewal option would be available to the said Company. Secondly, there was another option to claim preferential right to purchase the property. Admittedly, the ESSO Eastern Inc. Company never exercised the option under Clause 3(e) of the lease deed (Exh. 110) nor the same was ever exercised by the appellant. All along, the appellant expressed intention to obtain further renewal of the lease. The lease period expired on 30.9.1992 after the exercise of the first option by the appellant for extension of the lease with effect from 1st October 1982 onwards. The appellant became the lessee after 1974 when the above referred enactment provided for the change of the status of existing lease agreement and also provided for further option for continuation of the leasehold rights. The initial lease commenced in 1963 and the first 10 years period elapsed in 1973. Thereafter, by mutual agreement the lease period was extended for further 10 years period which elapsed on 30.9.1982. The appellant exercised the option for continuation of the said lease period and, therefore, again by consent of the previous owner, namely Gajanan Saptarshi, the lease period was continued for further 10 years. The term of lease came to an end on 30.9.1992. The respondent did not renew the lease period though the appellant desired further extension. The respondent demanded enhancement of the rent. There was letter correspondence between the parties in this behalf without culmination thereof into mutual settlement of terms by way of agreement.

20. The relevant provisions of the Esso (Acquisition of Undertakings in India) Act, 1974 may be reproduced for ready reference.

5. Central Government to be lessee or tenant under certain circumstances.-

(1)....

(2) 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.

Then Section 7(3) reads as follows:

7. Power of Central Government to direct vesting of the undertakings of Esso in a Government company.-

(1)....

(2)....

(3) The provisions of Sub-section (2) of Section 5 shall apply to a lease or tenancy, which vests in a Government company, as they apply to a lease or tenancy vested in the Central Government and reference therein to the "Central Government" shall be construed as a reference to the Government company.

21. A plain reading of the aforesaid provisions would make it manifest that vesting of the leasehold rights as contemplated under the said Act was for the purpose of continuity of the leasehold rights by the Government Undertaking/Companies/Corporations. The very preamble of the enactment would make it clear that the special Act was brought into force with a view to ensure coordinated distribution and utilisation of petroleum products distributed and marketed in India by the erstwhile ESSO Eastern Inc. The intention of the legislature was to bring about proper arrangement in order to smoothly change the hands in respect of the business of petroleum products after taking over the east-while ESSO Eastern Inc. Company.

22. It is conspicuous that there was no acquisition of any property of the landlords who had leased out the properties for running of the petroleum vending outlets. In the absence of intention to acquire the property or to legally requisition the property, it must be presumed that one time extension of lease was made compulsory with a view to give proper time frame for the appellant to make alternative arrangements if the lease agreement would not get any further extension. It is difficult to say that such option was given for any perennial period. If the appellant's contention is accepted then it will amount to perennial extension of the lease at the option of the appellant and that too on the same terms as provided u/s 5(2) of the Esso (Acquisition of Undertakings in India) Act, 1974. That does not appear to be the real intention of the legislature while enacting the aforesaid special statute.

23. Strong reliance is placed on certain observations in [Bharat Petroleum Corporation Ltd. Vs. P. Kesavan and Another](#), . Smt. Anjali Bajpai Dube, would point out from para 28 of the above judgment that the provisions of the Transfer of Property Act would have no application in the case where a transfer of property takes place by operation of law. The Apex Court had an occasion to deal with similar provisions under the Burmah Shell (Acquisition of Undertakings in India) Act. The relevant observations are as follows:

19. Section 5(2) and Section 7(3) of the Act are required to be given its purposive meaning, having regard to the object and purport the statute seeks to achieve. The Central Government by reason of the provisions of the said Act acquired running business undertakings dealing in distribution and marketing of petroleum products. The leases or tenancy for outlets are, therefore, continued to be kept with the Central Government or the Government company, as the case may be, so that no let or hindrance is placed in the matter of distribution of the products from established retail outlets, unless alternate arrangements are made. Having regard to the object of the Act, as noticed hereinbefore, it is difficult to agree with the submission of the learned Counsel for the respondents to the effect that the expression of mere desire by the Central Government or the appellant was not enough and they were required to show something more, as for example existence of need for renewal of the lease. The Central Government or the Government Company is a State within the meaning of Article 12 of the Constitution of India. They are required to act fairly. It is not the case of the respondents herein that desire to get the lease renewed was actuated by any malice or ill-will or the same was otherwise unfair and unreasonable. In that view of the matter, it is difficult to construe Section 5(32) of the Act as not laying down a law not contemplating automatic renewal of the lease.

24. The above observations would show that the intention was to continue the leases, so that no hindrance is placed in the matter of distribution of the product from established retail outlets, unless alternate arrangements are made. The purposive interpretation would make it clear therefore, that the continuity of leases was provided under the special enactment in order to facilitate smooth take over of the said foreign company and to maintain continuity of the running business outlets. The provision does not specifically provide that such facility was available for all the times to come.

25. Smt. Anjali Bajpai Dube, learned Counsel Seeks to rely on [Bharat Petroleum Corporation Ltd. and Another Vs. N.R. Vairamani and Another](#), . This authority is sought to be relied upon in support of the argument that provisions of the Transfer of Property Act are not applicable and the respondent could not have maintained a suit under the provisions of the T.P. Act. The Apex Court observed that it was improper to determine the questions regarding tenancy in the exercise of writ jurisdiction. The Apex Court held that the proper course was to leave rights of the parties for determination by the Court established under the Tenants Act.

26. In that case, the lease agreement was between Bharat Petroleum Corporation and the landlord - N.R. Vairamani. The landlord proposed for extension of the lease period on certain terms. However, Bharat Petroleum Corporation Ltd. rejected the proposal and sent a letter of refusal. The landlord thereafter, filed a writ petition before Madras High Court taking the stand that since Bharat Petroleum Corporation was unwilling for renewal of the lease deed, it was liable for eviction. The Writ Petition was allowed by the Madras High Court. The Apex Court held that in such matters, writ jurisdiction could not be exercised. With due respect, the issue in the present case is altogether different.

27. At this juncture, it may be mentioned that in [Trade Centre Developers and Builders Pvt. Ltd. and Another Vs. Union of India and Another](#), validity of the ESSO Act was challenged before this Court. A Division Bench of this Court held that the Act is valid and free from vires of Article 14. This Court observed that the authorities can exercise the option available u/s 5(2) or 7(3) only once and that too on the same terms and conditions to which the lease was subjected on the appointed day. Of-course, it is "Obiter Dicta" of the Division Bench. Even so it will have a persuasive value. Mr. Kulkarni, learned Counsel for the respondent also seeks to rely on certain observations in [M/s. Raptakos Brett and Co. Ltd. Vs. Ganesh Property](#). The Apex Court observed:

For such claim there is no question of the source of right to possession being its erstwhile contract which is dead and gone. It cannot necessarily be the foundation of the cause of action unless the plaint itself refers to such a cause of action arising out of the terms and conditions of the erstwhile contract which according to the plaint are still subsisting on the date of the suit. Thus, it cannot be generalised that in every case when on the expiry of period of lease the landlord seeks to recover possession from the erstwhile tenant such a suit must necessarily be said to be one for enforcement of right arising from the contract of tenancy with third party ex-tenant.

28. In somewhat identical fact situation, a Single Bench of Karnataka High Court in (Hindustan Petroleum Corporation Limited Bombay v. Virupakshappa Channabasappa Kotambri) AIR 1982 Kar 275, held that the ESSO Company whose lease had expired could not invoke Section 5(1) as a statutory tenant. It was held that the option was available to the lessor to renew the lease and that it was not compulsory for him to grant extension after one time statutory extension availed by the Hindustan Petroleum Corporation. The learned Counsel for the appellant would submit that there is implied renewal of the lease because the ex-landlord had accepted the rent in the past. It appears that the respondent also accepted the rent amount but always he expressed protest and thereby communicated that he had never waived his rights to claim discontinuity of the lease agreement. It is held in [C. Albert Morris Vs. K. Chandrasekaran and Others](#), that mere receipt of rent after discontinuation of the lease will not amount to waiver of the rights which accrued to the landlord. The Apex Court held that the act of holding over after the expiration of the term of lease does not create any tenancy rights thereafter.

29. Once it is found that the appellant could not have claimed extension of the lease period after 30.9.1992, as a matter of right, inasmuch as the statutory compulsion period was over, then it follows that the appellant continued to remain in possession without legal rights in this behalf. It is pointed out by Smt. Anjali Bajpai Dube, learned Counsel that the notices were given even before the further period was to expire in September 2002, though the letter of expression of interest and for continuity of the lease was already issued vide Exh. 144.

30. It is contended that the plaintiff/respondent avoided to take any action because he would have been required to file eviction suit under the provisions of the Bombay Rent Act but he sprang in action only when the Maharashtra Rent Control Act, 1999 came into force. That does not make any difference. Due to inaction of the plaintiff during the relevant period, no legal right as such was created in favour of the defendant/appellant. If the plaintiff did not file any suit under provisions of the Bombay Rent Act, immediately when the cause of action arose, then also the subsequent suit cannot be thrown out for such a reason.

31. It appears that under the provisions of Section 3(1)(b), of the Maharashtra Rent Control Act, the lease transactions regarding any premises let or sublet to any public sector undertaking or any Corporation established by Central or State Act, having a paid up share capital of Rupees one crore or more have been exempted from operation of the said Act. In other words, it was intention of the Legislature to protect the lease rights and those tenants, who were holding over, and are of the ordinary status. The statutory Corporations having capital of more than Rupees one crore or more perhaps may not need such protection under the local law. Such big Corporations would be able to negotiate better deals with the landlords or may be that they can organise for alternative tenements. In any case, when such exemption clause is made available then there is nothing wrong if the plaintiff filed regular suit in the Civil Court instead of filing the suit in the Court which has jurisdiction to deal with the eviction matters covered under the Maharashtra Rent Control Act, 1999 i.e. in the Court of Civil Judge (J.D.) having such jurisdiction. The status of the appellant after lapse of the tenancy period is practically that of an unauthorised occupant. In [Smt. Shanti Devi Vs. Amal Kumar Banerjee](#), it is held that where the lease period expired and there was no allegation of the tenant holding over, notice u/s 106 of the T.P. Act would not be necessary. The possession of such a tenant is without any legal right.

32. The appellant had no right to continue the possession after the expiry of the lease period. The appellant does not get any protection under the provisions of the Maharashtra Rent Control Act, 1999. Obviously, the suit for eviction is maintainable in such circumstances. I do not find any jurisdictional or factual or legal error committed by the trial Court.

33. For the reasons stated above, the point Nos. 1 and 2 are answered in the negative. I further hold that the status of the appellant, after expiry of the lease period would be that

of unauthorised occupant. The point No. 3 is thus answered accordingly. The point No. 4 is also answered in the negative. The appeal is without merits and as such is dismissed with costs. However, at the request of the learned Counsel Smt. Anjali Bajpai Dube, the interim relief already granted is continued for 12 weeks.