

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**First Appeal No.2228 of 2014
With
Civil Application No.12453 of 2014**

- 1) Hindustan Petroleum Corporation Limited (A Government of India Enterprises) having its Registered Office at 17, Jamshedji Tata Road, Mumbai - 400 020.
- 2) Hindustan Petroleum Corporation Limited, G-39, Town Centre, CIDCO, P.B. No.667, Aurangabad. .. **Appellants.**

Versus

- 1) Shantabai w/o Haribhau Shelke
Age 86 years,
Occupation : Agriculture
and Household,
R/o C/o Sudhir N. Kadam,
Sahayog Housing Society
Newasa Road, Shrirampur,
Taluka Shrirampur,
District Ahmednagar.
- 2) M/s B.P. Jadhav,
Nagar-Manmad Road, Shirdi,
Taluka Rahata,
District Ahmednagar. .. **Respondents.**

Smt. Anjali Bajpai-Dube, Advocate, for appellants.

Shri. S.D. Kulkarni, Advocate, holding for Shri. S.S.
Kulkarni, Advocate, for respondent No.1.

CORAM: T.V. NALAWADE, J.

DATE : 24th JUNE 2015

JUDGMENT:

1) Both the sides agreed to argue for final disposal and so the appeal was admitted and hearing was given. Civil Application No.12453 of 2014 is filed for grant of stay to the execution of the judgment and decree under challenge. This Court has not granted stay as there is not only the decree of possession of immovable property but there is also decree in respect of past *mesne profits* awarded by the trial Court and the appellant has not deposited the decretal amount.

2) Special Civil Suit No.108/2007 was filed for possession by the present respondent No.1 in the Court of Civil Judge, Senior Division, Kopargaon, District Ahmednagar. The suit property is part of CTS No.1011 situated at Shirdi, Tahsil Rahata and it admeasures 1398 square metres. This property was given on lease basis initially for a period of 10 years from 1-2-1971 on monthly rent of Rs.300/- to Caltex Oil Refining (India) Ltd. In the

lease document option was given for renewal of the lease period for further period of 10 years to lessee.

3) In the year 1977 by virtue of Caltex Acquisition Act, 1977 and further orders made by the Central Government the property of the Oil Company came to be amalgamated in Hindustan Petroleum Corporation Limited, defendant No.1. Defendant Nos.2 and 3 are the dealer and distributor at this outlet.

4) It is the case of the plaintiff that initial lease period with option of renewal expired on 31-3-1991. It is contended that the defendant was interested in renewal of lease but the plaintiff had no interest in renewal of the lease. According to the plaintiff, notices were given on 6-6-2007 and 11-6-2007 to call upon the defendant to deliver vacant possession of the property but the defendant avoided to give the possession, It is contended that the plaintiff did not extend the period of lease and even the cheque of so called rent amount sent for the period from June 1994 to February 2001 was not encashed by the plaintiff and there was no continuation of the lease

period. The plaintiff prayed for relief of possession of the property and for past *mesne profits* and also future *mesne profits*.

5) The defendant contested the suit by filing written statement. The defendant challenged everything including legality of the notice. It is contended that after 31-1-1991 the plaintiff continued to accept the rent of the suit property and so the defendant continued to use the property as tenant.

6) Issues were framed by the trial Court. The trial Court has held that possession of the defendant on the date of the suit was illegal and the plaintiff was entitled to reliefs of possession and past and future *mesne profits*.

7) Both sides gave evidence before trial Court. The trial Court has held that there was a term giving right to the defendant to renew the lease for 10 years more after the period mentioned in the lease deed. The trial Court has held that it was open plot given to the defendant and so provisions of the Rent Control Act are

not applicable. The trial Court has further held that there was no necessity to give notice under the Transfer of Property Act as the lease period was fixed in the lease document.

8) It was mainly submitted by the learned counsel for the appellant that in view of the provision of section 7(3) of the Caltex Acquisition Act, 1977 right was given to the lessee to renew period of lease after the expiry of the previous lease period. On this point learned counsel placed reliance on the case reported as **AIR 2004 SC 2206 (Bharat Petroleum Corporation Ltd. v. P. Kesavan)**. The Apex Court has discussed and interpreted relevant provisions from *Burmah Shell (Acquisition of Undertakings in India) Act, 1976* and these provisions are *para materia* similar to the provision of Caltex Acquisition Act, 1977. The Apex Court has held that in view of the provisions of *Burmah Shell Act* right was given to the Central Government to renew the lease on the same terms and conditions on which the lease and tenure was held by *Burmah Shell* immediately before the appointed date in the Act. Provisions of Transfer of Property Act were

discussed and it is held by the Apex Court that in view of provision of section 5(1) of the Burmah Shell Act a legal fiction is created due to which the Bharat Petroleum Corporation Limited in which the previous company was amalgamated, became lessee in respect of the lease hold.

9) On the other hand, learned counsel for the plaintiff, respondent placed reliance on two cases reported as (i) **AIR 1985 Bombay 4 (Trade Centre Developers and Builders Pvt. Ltd. v. Union of India)**; and, (ii) **2008(3) Bom CR 897 (Hindustan Petroleum Corporation Ltd. v. Chandulal Dipchand Kale)** (Aurangabad Bench). In the first case the constitutional validity of Esso (Acquisition Undertakings in India) Act, 1974 was challenged. The Division Bench of this Court held that provisions of the Act are protected by Article 31-C of the Constitution of India and hence cannot be challenged on ground of violation Articles 14 or 19 of the Constitution. During hearing of this proceeding, before the Division Bench it was conceded by the Government that the power conferred by section 5(2) and 7 (3) could be exercised once and not in perpetuity. This power is

similar to the power given by Caltex Act 1977 in section 7(3). The trial Court has considered these cases and has placed reliance on the observations made.

10) In the case of Bharat Petroleum Corp Ltd v. P Kesavan (supra) only right / power of renewal given under the aforesaid provisions was considered by the Apex Court but the point as to whether this power can be used or exercised in perpetuity was not involved. When the Union of India conceded in the case of Trade Centre Developers (supra) that such power can be exercised only once and not in perpetuity and when this decision was not challenged by the Central Government, it is not open now to the present defendant to say that these provisions can be used for renewal of lease in perpetuity.

11) In the present matter, in the lease document it was provided that the lessor was to make written request to the lessee within 60 days before expiry of the term fixed in the lease document for granting to it a lease of the demised premises for a further term of 10 years from the expiration of the previous term of 10 years. The document

was executed in the year 1971 and so it can be said that in the year 1991 the period of 20 years expired. Even if it is presumed that under section 7(3) of the Caltex Acquisition Act 1977 there was power/right to renew lease period for one more term, the further term expired in the year 2001. The suit was filed in the year 2007. Thus on the date of the suit the possession of the defendant was illegal.

12) On the point of fixation of past mesne profit there was not much dispute and considering the area of the property and the location where it is situated this Court holds that it is not possible to interfere in the decision given by the trial Court on that point also. Amount only of Rs.50,380/- is granted as past mense profit for the period fro 6-10-2004 to 6-10-2007. Separate inquiry is ordered for determining future *mense profits*.

13) In view of the aforesaid discussion, this Court has no hesitation to hold that there is no possibility to interfere in the decision given by the trial Court.

14) In the result, the appeal stands dismissed with no order as to cost. The application filed for the stay also is disposed of.

Sd/-
(T.V. NALAWADE, J.)

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