

In the High Court of Judicature at Madras

Reserved on : 06.10.2015

Delivered on : 30.10.2015

Coram:

The Honourable Mr. Justice SATISH K. AGNIHOTRI
AND

The Honourable Mr. Justice K.K. SASIDHARAN

W.A.Nos.590 and 698 of 2015

and
MP Nos.1 & 1 of 2015

W.A.No.590 of 2015

1. Bharat Petroleum Corporation Ltd.
Bharat Bhavan
4 & 6 Currimbhoy Road
Ballard Estate
P.B.No.688, Mumbai-400001.
2. Bharat Petroleum Corporation Ltd.
No.1 Ranganathan Gardens
11th Main Road, Chennai-40. ...Appellants/Respondents

vs

1. K.T.Raja Kumaravel
 2. The Chief Controller
Department of Explosives
No.140, Rukmani Lakshmipathy
Marshalls Road, Egmore
Chennai-8.
 3. The Controller of Explosives
No.3, 5th East Cross Road
Gandhi Nagar, Vellore-632 006.
 4. The District Collector
Krishnagiri. ...Respondents/Petitioner
- Respondents 3 to 5

W.A.No.698 of 2015

K.T.Raja Kumaravel

...Appellant/Petitioner

vs

1. Bharat Petroleum Corporation Ltd.
Bharat Bhavan
4 & 6 Currimbhoy Road
Ballard Estate
P.B.No.688 , Mumbai-400001.
2. Bharat Petroleum Corporation Ltd.
No.1 Ranganathan Gardens
11th Main Road, Chennai-40.
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No.140, Rukmani Lakshmipathy
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Krishnagiri. ...Respondents/Respondents

Letters Patent against the order dated 19 February 2015 in W.P.No.21778 of 2012 on the file of this Court.

PRAYER in both Writ Appeals: Writ Appeals filed under Clause 15 of the presented under Article 226 of the Constitution of India to issue a writ of Mandamus directing the respondents 1 and 2 to hand over the vacant possession of the property in Old S.No.695/1 and 695/2 of Boganapalli Village Krishnagiri Taluk now the Town Survey Nos. 11/5 and 11/6B of Krishnagiri Town consequently directing the respondents 3 and 4 to cancel the explosive licence to run the Petrol Bunk by the respondents 1 and 2 and not to renew the same in future further directing the 5th respondent to cancel the NOC granted to the respondents 1 and 2 to run the Petrol Bunk in the Premises situated at No.128/253 Madras Road Krishnagiri in Old S.No.695/1 and 695/2 of Boganapalli Village Krishnagiri Taluk now the Town Survey Nos. 11/5 and 11/6B of Krishnagiri Town consequently directing the respondents 1 and 2 to pay the rent as per the

Government guidelines calculating from the period of 01.01.2004 to till the date of delivery of vacant possession and pass such other further or other orders.

Mr.O.R.Santhanakrishnan :For Appellants in W.A.No.590/2015
& RR 1 and 2 in W.A.No.698 of 2015

Mr.AR.L. Sundaresan
Senior Counsel
for Mr.A.K.Balaji :For appellant in W.A.No.698/2015
for R-1 in W.A.No.590/2015

Mr.SU.Srinivasan
Assistant Solicitor General
of India :For RR 2 and 3 in W.A.No.590/2015
and RR 3 and 4 in W.A.No.698/2015

Mr.P.S.Sivashanmughasundaram
Spl.Govt.Pleaader : For R4 in W.A.No.590/2015
For R.5 in W.A.No.698/2015

COMMON JUDGMENT

SATISH K. AGNIHOTRI & K.K.SASIDHARAN, JJ

This is the case of a State Owned Petroleum Corporation occupying the premises let out by the land owner even after the expiry of lease period and dismissal of Civil Suit filed for a decree directing extension of lease and confirmation of the same by the High Court in Second Appeal. The contention in this intra court appeal is to direct the landlord to file a suit for recovery of possession, obviously with an idea to retain possession of the retail outlet site indefinitely till the suit is disposed of.

Summary of Facts:

2. The predecessor in interest of the appellants by name M/s. Burma Shell Oil Storage and Distribution Corporation of India Limited entered into a lease agreement with Thiru Thangavel Gounder, the predecessor in interest of the first respondent in respect of 25496 sq.ft. of land as per lease deed dated 31 March 1964. The lease was for a period of forty years commencing from 1 January 1964. The assets and liabilities of M/s. Burma Shell Oil Storage and Distribution Corporation of India Limited was taken over by the Central Government by virtue

of Burmah Shell (Acquisition of Undertakings in India) Act, 1976. M/s. Bharat Petroleum Corporation Limited (hereinafter referred to as "the Corporation"), is the successor-in-interest of Burma Shell. The Corporation on the strength of the lease agreement dated 31 March 1964 continued to operate the outlet as a lessee under Thiru Thangavel Gounder. The lease period expired on 31 December 2003. There was no renewal thereafter.

3. The Corporation without making a request before the expiry of the lease period for renewal, filed a suit in O.S.No.49 of 2005 before the District Munsif, Krishnagiri for a judgment and decree directing the first respondent to renew the lease for a further period of forty years on the very same terms and conditions. The suit was filed by invoking the option given to the lessee for renewal of lease.

4. The suit in O.S.No.49 of 2005 was contested by the first respondent. The first respondent contended that before the expiry of the original period of lease, request was not made for renewal and as such the Corporation is not entitled for renewal of lease.

5. The learned District Munsif, Krishnagiri by way of a detailed judgment negated the contentions taken by the Corporation and dismissed the Civil Suit with cost. The decree was upheld by the Principal Subordinate Judge, Krishnagiri in A.S.No.31 of 2012. The Corporation thereafter filed Second Appeal in S.A.No.616 of 2013. The first respondent filed Cross Objection No.6 of 2014.

6. The first respondent after the dismissal of the first appeal filed a writ petition in W.P.No.21778 of 2012 for issuance of a writ of Mandamus directing the Corporation to handover vacant possession of the property. There was a further prayer to direct the respondents 3 and 4 in W.A.No.698 of 2015 to cancel the explosive licence issued to the appellants.

7. The learned Single Judge considered the Second Appeal and Cross Objection along with the writ petition and by a common judgment dated 19 February 2015 dismissed the Second Appeal and allowed the Writ Petition. The decree in Second Appeal No.616 of 2013 has become final as there was no challenge at the instance of the appellants. Feeling aggrieved by the order allowing the writ petition in W.P.No.21778 of 2012, the Corporation has come up with the intra court appeal in W.A.No.590 of 2015. The first respondent in W.A.No.590 of 2015 filed intra court appeal on

W.A.No.698 of 2015 challenging the order dated 19 February 2015 rejecting the prayer for payment of rent as per market rate.

Submissions in brief:

8. The learned counsel for the Corporation in W.A.No.590 of 2015 contended that the learned Single Judge erred in issuing a Mandamus directing the Corporation to surrender vacant possession of the land. According to the learned counsel, Writ Petition would not lie in the matter of eviction. The only course open to the landlord is to file a suit for recovery of possession. The learned counsel contended that the appellants are entitled to possess the outlet till the Corporation is evicted by the Civil Court.

9. The learned Senior Counsel for the first respondent contended that the order passed by the learned Single Judge in W.P.No.21778 of 2012 requires to be considered in the light of the decree in S.A.No.616 of 2013. According to the learned Senior Counsel, the appellants being a State within the meaning of Article 12 of the Constitution of India should be fair while dealing with the public. The Corporation has no right to keep possession of the property after the expiry of the lease period viz., 31 December 2003 and it is in illegal possession of the land with effect from 1 April 2004. The learned Senior Counsel contended that the certificate issued by the Revenue Department shows that the market rent of the land in question is a sum of Rs.1,30,748.80. However the Corporation is paying only a sum of Rs.450/- per quarter. It was contended that there is no requirement to file a Civil Suit in view of the decree passed by the Civil Court and the related judgment in S.A.No.616 of 2013.

W.A.No.590 of 2015

10. The predecessor-in-interest of the Corporation took a lease of 25496 sq.ft. of land in Survey Nos.11/5, 11/6B at Krishnagiri from the father of the first respondent. The lease deed was executed on 31 March 1964. The lease was for a period of forty years commencing from 1 January 1964. The Corporation agreed to pay a sum of Rs.450/- per quarter. The right, title, interest and liability of M/s. Burma Shell Oil Storage and Distribution Corporation of India Limited was taken over by the Central Government by virtue of the provisions of Burmah Shell (Acquisition of Undertakings in India) Act, 1976. The leasehold premises has been under the possession and enjoyment of the Corporation as Successor in interest of M/s. Burma Shell Oil Storage and Distribution Corporation of India Limited. Section

5(2) of Burmah Shell (Acquisition of Undertakings in India) Act, 1976 permits the Central Government to renew the lease on the same terms and conditions. The original lease period expired on 31 December 2003.

11. The Corporation filed a suit in O.S.No.49 of 2005 before the District Munsif Court, Krishnagiri for a decree directing the legal representatives of the landlord to renew the lease. The Civil Court found that no attempt was made by the Corporation for renewal of lease before the expiry of the original term. The trial Judge arrived at a factual finding against the Corporation that there was no bona fide action for renewal of lease, before filing the suit. It is to be mentioned here that such a finding was given in spite of the contention taken by the Corporation that notice of renewal was issued well before the expiry of lease period, but however, it was returned unserved. The learned District Munsif held that the Corporation is not entitled for a decree directing renewal of lease and dismissed the suit. The decree in O.S.No.49 of 2005 on the file of learned District Munsif, Krishnagiri was unsuccessfully challenged before the Principal Subordinate Judge, Krishnagiri in A.S.No.31 of 2012. The appellant thereafter filed Second Appeal in S.A.No.616 of 2013.

12. Since the Civil Court dismissed the suit filed by the Corporation for renewal of lease, the first respondent wanted the Corporation to surrender vacant possession of the site. The first respondent filed W.P.No.21778 of 2008 primarily for the purpose of issuing a writ of Mandamus directing the Corporation to surrender vacant possession.

13. The learned Single Judge considered the Second Appeal along with the Cross Objection filed by the respondents therein. The writ petition filed by the first respondent was also taken up along with the Second Appeal. The finding recorded by the Civil Court that the Corporation is not entitled for renewal was upheld by the learned Single Judge. The Second Appeal was dismissed. The decree in S.A.No.616 of 2013 has become final.

14. The learned Single Judge thereafter issued a writ directing the Corporation to surrender vacant possession of the land to the first respondent. The respondents 2 to 4 were directed to consider the representation submitted by the landlord for cancellation of explosives licence and No Objection Certificate issued under the provisions of the Petroleum Rules.

15. The core question is whether the writ petition filed by the first respondent for eviction is maintainable. There is a subsidiary question as to whether it is open to the Writ Court to direct the tenant to surrender vacant possession without filing a civil suit.

16. There is no dispute that ordinarily a writ petition would not lie in the matter of eviction proceedings. The remedy is only to approach the Civil Court. However, in the subject case, there is a finding given by the Civil Court that the Corporation is in illegal possession of the land. Even the Corporation wanted the landlord to file a civil suit for recovery of possession.

17. The Civil Court has arrived at a clear finding that the Corporation is not entitled for renewal of lease. The Corporation being a State within the meaning of Article 12 of the Constitution must have accepted the Civil Court decree with all humility after it was upheld by the High Court. The attempt now is to retain possession of the land and drag the landlord to the midst of another round of litigation. Since the trial Court held that the Corporation is not entitled to a decree for renewal of lease, there is no question of directing the landlord to file another suit for recovery of possession. Even if such a suit is filed by the landlord, the Corporation would be without any defence in view of the dismissal of the suit and the finality reached to the issue on account of the dismissal of Second Appeal.

18. The appellant is a State Owned Corporation. The learned District Munsif and the learned Subordinate Judge, Krishnagiri have concurrently held that the Corporation has miserably failed to prove readiness and willingness in performing its part of contract as required under Section 16(c) of the Specific Relief Act. The Corporation was therefore expected to surrender vacant possession of the premises to the landlord. The Corporation wanted to drag its landlord from pillar to post. The Corporation is paying only a sum of Rs.450/- per quarter even though the monthly rent as per revenue department is a sum of Rs.1,30,748.80. This appears to be the prime reason for holding over.

19. When the intra court appeal filed by the Corporation came up for hearing on an earlier occasion, taking into account the need felt by the Corporation to run the outlet, we directed the learned counsel for the Corporation to negotiate with the

first respondent for enhancement of rent. The matter was thereafter adjourned on multiple occasions. The learned Senior Counsel for the first respondent after negotiation informed us that the first respondent requested the Corporation to take the entire land on lease as it would not be possible for him to enjoy the remaining portion in view of the situation of the prime piece of land under the possession of the Corporation. However, the Corporation was not prepared either to give the market rent or to take the remaining portion of the land. On account of the unreasonable stand taken by the Corporation, the process of mediation failed.

20. The Supreme Court in *ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd.*,¹ considered the earlier decisions regarding maintainability of writ petitions in commercial matters and disputed questions of fact including *Gunwant Kaur v. Municipal Committee, Bhatinda*² and observed that in appropriate cases the writ court has jurisdiction to entertain a writ petition involving disputed questions of fact and there is no absolute bar even for entertaining petitions under Article 226 of the Constitution of India even if the matter arises out of a contractual obligation.

The Supreme Court said:

"19. Therefore, it is clear from the above enunciation of law that merely because one of the parties to the litigation raises a dispute in regard to the facts of the case, the court entertaining such petition under Article 226 of the Constitution is not always bound to relegate the parties to a suit. In the above case of *Gunwant Kaur* this Court even went to the extent of holding that in a writ petition, if the facts require, even oral evidence can be taken. This clearly shows that in an appropriate case, the writ court has the jurisdiction to entertain a writ petition involving disputed questions of fact and there is no absolute bar for entertaining a writ petition even if the same arises out of a contractual obligation and/or involves some disputed questions of fact.

21. The facts are not in dispute in the subject case. The

1 (2004) 3 SCC 553

2 (1969) 3 SCC 769

lease period expired by efflux of time on 31 December 2003. The Civil Court negatived the plea for renewal of lease. The decree has become final consequent to the dismissal of second appeal. The Corporation is now in unauthorised occupation of the premises. In view of the admitted position that there is no valid lease in favour of the Corporation, as on today, the filing of a suit for recovery of possession would be an empty formality. The suit filed by the Corporation in 2005 has attained finality on 19 February 2015. There is no point in directing the landlord at this point of time to file a suit for recovery of possession. We are therefore of the view that the Corporation has no case on facts and in law. The writ appeal is therefore an exercise in futility.

W.A.No.698 of 2015:

22. The landlord is aggrieved primarily on account of the rejection of his prayer to pay present market rent. There is no question of issuing a direction for payment of market rent. The landlord ought to have filed a petition for fixation of fair rent before the appropriate authority. The learned Single Judge was therefore perfectly correct in rejecting the request to direct the Corporation to pay the market rent. We do not find any error or illegality in the order negating the claim for payment of enhanced rent.

Conclusion:

23. In the upshot, we dismiss the intra court appeals and confirm the order passed by the learned Single Judge in W.P.No.21778 of 2012. Consequently, the connected MPs are closed. No costs.

Sd/-
Assistant Registrar(CCC)

True Copy

Sub Assistant Registrar

To

1. Bharat Petroleum Corporation Ltd.
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5. The District Collector
Krishnagiri.

+1cc to M/s.SU.Srinivasan, Advocate Sr.59346

+1cc to Mr.O.R.Sunthanakrishnan, Advocate sr.59310

+2cc to Mr.A.K.Balaji, Advocate sr.59126

Pre-delivery judgment
in W.A.Nos.590 and 698 of 2015

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srg 18/11/2015



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