

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Second Appeal Nos.1167 & 1168 of 1999

COMMON JUDGMENT:

These two Second Appeals under Section 100 of the Code of Civil procedure filed by the landlord/respondent are directed against the decrees and a common judgment dated 26.11.1999 of the learned II Additional Senior Civil Judge, Vijayawada passed in A.S. No. 29 of 1992 and A.S. No. 31 of 1992, whereby, the learned Senior Civil Judge having allowed both the said appeals filed by the tenant/appellant had dismissed the cross objections filed by the landlord/respondent in AS 31 of 1992.

2. I have heard the submissions of the learned counsel for the appellant 2 to 4 ('the landlord', for short) and the learned counsel for the respondent/tenant ('the tenant', for short) in both the appeals. During the pendency of these appeals before this court, the sole appellant (landlord) had died and his legal representatives were brought on record as appellants 2 to 4, vide orders of this court in SAMP No.1000 of 2006. I have perused the material record.

3. To begin with, it is necessary to state the basic facts and the details of the two suits, in brief.

The landlord is the owner of the schedule property, which is a site. The tenant viz., Bharat Petroleum Corporation Limited having erected temporary structures and fixtures for its business in the site is in the occupation of the site. There is no dispute in regard to the landlord and tenant relationship between the parties and the identity of the property, which is the subject matter of the two suits. The landlord had brought a suit in O.S.No.727 of 1987 for eviction of the tenant and

recovery of vacant possession of the plaint schedule property after removal of the temporary erections and fixtures in the property and for recovery of arrears of rents from 01.01.1985 to 28.02.1987 and for damages for use and occupation at the rate of Rs.6,000/- per month till the date of delivery of vacant possession of the property and for costs.

The tenant had brought a suit for specific performance of contract of lease in respect of the schedule property and for a direction to the landlord to execute and register proper lease deed in favour of the plaintiff for a term of 30 years from 01.01.1987 onwards, on the same terms and conditions as are contained in the lease deed dated 10.10.1960 entered into between the parties in respect of the schedule property. Considering the commonality in the two suits, the suits were consolidated and tried jointly by the trial Court. At trial, the landlord and his supporting witnesses were examined as PWs 1 to 3 and exhibits A1 and A2 were marked on the side of the landlord. An officer of the tenant-Corporation was examined as DW1 and exhibits B1 to B17 were marked on the side of the defendant. On merits, the trial Court had dismissed the suit of the tenant filed for specific performance and had decreed the suit of the landlord and directed the tenant to deliver vacant possession of the plaint schedule site to the landlord after removing temporary erections and fixtures, if any, within two months from the date of the common judgment rendered in the suits and had further directed the tenant to pay arrears of rent from 01.01.1985 to 28.02.1987 besides damages at the rate of Rs.1,000/- per month till the delivery of vacant possession of the suit site. Aggrieved of the common judgment of the trial Court, the tenant had preferred two appeals, viz., A.S.No.29 of 1992 and 31 of 1992 before the court of first appeal. The landlord had preferred cross objections in A.S.No.31 of 1992. By the common judgment, which is now impugned, the Court of first appeal had allowed both the appeals and had dismissed the cross objections filed by the landlord and had consequently set aside the decrees and common

judgment dated 26.03.1992 of the trial Court and had dismissed the suit O.S.No.173 of 1990 filed by the landlord for eviction of the tenant and other reliefs and decreed the suit O.S.No.727 of 1987 of the tenant for specific performance and had directed the landlord to execute a registered lease deed renewing the lease in favour of the tenant. Therefore, the unsuccessful landlord had preferred these two appeals before this Court.

4. At the time of admission of these appeals, this Court had taken note of the substantial question of law raised in ground nos.(15) and (9) in Second Appeals 1167 of 1999 and 1168 of 1999 respectively. The said questions are as under:

Substantial questions of law in S.A.No.1167 of 1999:

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- (a) Whether the plaintiff is entitled to renewal of lease by virtue of Section 5 of the Burmah Shell (Acquisition of Undertakings in India) Act, 1976 when a notice as provided under Clause 3(iii) of the lease deed Ex.B-1 is not given to the tenant?
- (b) Whether the discretion exercised by the trial Court in refusing the relief of Specific Performance is liable to be interfered by the appellate court on the facts and in the circumstances of the case?
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Substantial questions of law in S.A.No.1168 of 1999:

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- (a) Whether the defendant is entitled to renewal of the lease for another period of 30 years under the provisions of the Burmah Shell (Acquisition of Undertakings in India) Act, 1976 even without exercising the option by issuing a notice as per Clause 3(iii) of the lease deed Ex.B-1?
- (b) Whether on the admitted facts and in the circumstances of the case, the plaintiff is entitled to a decree for eviction and damages as prayed for in O.S.No.727/87?

4.1 To adjudicate the *lis* and answer the substantial questions of law referred to above, it is necessary to first refer to the pleadings of

both the parties.

4.2 The pleadings of the landlord in both the suits, in brief, are as follows: 'The landlord is the owner of the suit property while the Bharat Petroleum Corporation Limited is the tenant of the suit property. The tenant had agreed to pay Rs.200/- per month at the end of every tenancy month, which commences on the first day of every calendar month. The tenant had failed to pay rents from 01.01.1985. The landlord could not encash the cheques sent by the tenant as they were neither legal nor valid. The tenant had thus committed default by withholding the payments of rents from 01.01.1985. The term of lease had expired by 31st December, 1986. The tenant is liable to vacate and deliver the suit property after 31st December, 1986. The tenant had sublet the suit premises to the 'Central Oils and Service Station' without requisite permission of the landlord. The landlord requires the suit premises for personal occupation. The landlord had issued a notice on 09.02.1987 to the tenant requiring him to pay arrears of rent and deliver vacant possession by 28.02.1987 after removing the temporary construction made by it. The suit property measures 600 Square yards. The rent per Square foot would be not less than Rs.10/-. The suit property is situated in a commercial locality. The possession of the tenant after 31.12.1986 is illegal. The landlord is restricting his claim for damages to Rs.6,000/- per month. The tenant having acknowledged the receipt of notice did neither send a reply nor vacate the premises. Therefore, the suit is filed for eviction, recovery of arrears of rents and damages and costs. The suit filed by the tenant for specific performance is not maintainable either in law or on facts. The landlord is not aware of the lease deed dated 10.10.1960. The said lease deed is neither legal nor valid nor binding upon him. The tenant is not entitled to rely upon clause 3(iii) of the alleged lease deed. The alleged letter dated 07.11.1986 said to have been addressed by the tenant to the landlord is not true. The landlord is

not liable to execute lease deed for 30 years from 01.01.1987. As the lease had expired by 31.12.1986, the tenant is bound to vacate the premises. The suit of the tenant is a counterblast to the suit filed by the landlord. The suit of the tenant is intended to protract the proceedings and the same is liable to be dismissed.'

4.3 The pleadings of the tenant in both the suits are as follows:

'The suit filed by the landlord is not maintainable either in law or on facts. The property originally leased was a land comprised in Sy.Nos.19/105, 10/518 and 10/526 situated in Vijayawada. The area let out to the defendant is 4690 sq. feet, but not 5400 sq. feet. Originally, one R. V. Raghava Rao leased out the land to the Burma Shell Oil Storage and Distribution Company of India Limited for a term of 30 years commencing from 01.01.1987. And both of them had entered into a registered lease deed on 10.10.1960. The said company had installed underground tanks and pumps and had also put up a store and sales rooms and had provided necessary facilities for operating the retail pump outlet at the suit premises. The Burmah Shell (Acquisition of Undertakings in India) Act, 1976 ('the Act', for short) was enacted by the Parliament to provide for the acquisition and transfer of the right, title and interest of the said Burmah-shell company in relation to its undertakings in India. Under the provisions of the said Act, all rights, title and interest of the said company in relation to its undertakings in India vested in the Central Government from 24.01.1976 onwards. Subsequently, the name of the said company has been changed and it is presently known as Bharat Petroleum Corporation Limited ('BPCL', for short). Under the provisions of Sections 5(2) and 7(3) of the said Act, the lease has to be renewed for a further period of 30 years on the same conditions at the option of the lessee. The renewal is statutory and the consent of the lessor is not required. The tenant thus became entitled to get the lease renewed for a further period of 30 years from 01.01.1987. The present

landlord (since deceased) had purchased the suit land in court auction in E.P.334/73 in O.S.No.130/61 on the file of the Subordinate Judge, Vijayawada. The tenancy of the Burmah-Shell company was attorned to the landlord and it was paying the agreed rent. The tenant had agreed to pay rent on or before 10th of every succeeding month. But, it has been sending the rents in advance at the beginning of each quarter i.e., rent from 1st January to 31st March is being sent during January of that year itself. As usual, the tenant has been remitting the rents through cheques from 01.01.1985 onwards. The default is on the part of the landlord in not presenting the cheques for collection. The tenant had never committed any default in payment of rent. In fact, the tenant had exercised its option for renewal of lease for another period of thirty years commencing from 01.01.1987 on the same terms and conditions through their letter dated 07.11.1986 and also requested the landlord to execute and register a lease deed. The landlord having acknowledged the said notice had neither given a reply nor executed the registered lease deed. Instead of performing his obligations, the landlord had issued notice on 09.02.1987 requiring the tenant to vacate and deliver vacant possession and had filed O.S.No.727 of 1987. The landlord is obliged under the said Act to execute a proper lease deed for a period of 30 years from 01.01.1987 on the agreed monthly rent of Rs.200/-. As the landlord had failed to execute the lease deed, the tenant had filed the suit for specific performance. By virtue of Sections 5(2) and 7(3) of the Act, the tenant has got unfettered right to continue in possession of the suit premises till 31.12.2016. The suit of the landlord, therefore, is premature. The Central Oils and Services are dealers of the tenant and they are no other than the licencees of the tenant for the specific purpose of selling petroleum products of the tenant. There is nothing illegal or unauthorised in the acts of the tenant under law. The landlord is not entitled to claim premises for the alleged personal occupation. The very demand for damages at the rate of Rs.6,000/- clearly proves the intention of the landlord. The tenant

gave reply on 23.02.1987. The tenant is not under any obligation to pay damages for use and occupation at the rate of Rs.6,000/- per month from 01.03.1987. The claim made by the landlord is superfluous and unrealistic. The suit of the landlord therefore, be dismissed with costs.'

4.4 In the landlord's suit for eviction suit, i.e., O.S.No.727 of 1987, the issues framed by the trial Court are:

- i) **Whether the plaintiff is entitled for the suit amount towards arrears of rent?**
- ii) **Whether the plaintiff is entitled for the vacant possession of the plaint schedule property?**
- iii) **Whether the plaintiff is entitled for an amount of Rs.200/- per month towards damages and use?**
- iv) **To what relief?**

4.5 In the tenant's suit for specific performance, i.e., O.S.No.173 of 1990, the issues framed by the trial Court are:

- i) **Whether the plaintiff is entitled to specific performance as prayed for in the plaint?**
- ii) **To what relief?**

As already noted, the trial Court had decreed the suit of the landlord (O.S.No.727 of 1987) and dismissed the suit of the tenant (O.S.No.173 of 1990).

4.6 In the first appeals preferred by the tenant, the following common points were framed:

- (i) **Whether the tenant is entitled to the protection under Section 5(2) and 7(3) of the Burmah-Shell (Acquisition of Undertakings in India) Act, 1976?**
- (ii) **Whether the tenant can be evicted?**
- (iii) **Whether the future damages fixed by the trial Court at Rs.1,000/- per month is proper?**
- (iv) **Whether the tenant is entitled for specific performance i.e., to get a lease deed registered from 1.1.1987 to 31.12.2016?**

The Court below by allowing the two appeals of the tenant and dismissing the cross-objections of the landlord had reversed the decrees of the trial Court.

5. The first and vital question, which needs determination for answering the questions involved in the *lis*, is –

Whether, in the facts and circumstances of the case, the tenant is entitled to seek renewal of lease for a period of thirty years from 01.01.1987 by virtue of the provisions of the Burmah-Shell (Acquisition of Undertakings in India) Act, 1976?

In the light of the undisputed and established facts, the entitlement of the tenant-Bharat Petroleum Corporation Limited to have the lease renewed as per the provisions of the said Act is no longer *res integra*.

6. The contention of the landlord is that the lease expired by 31.12.1986 and that the tenant did not seek renewal of the lease by a notice within time. Nonetheless, Sections 5(1) and 5(2) and Section 11 of the Act read as follows:

Section 5 (1):

Where any property is held in India by Burmah Shell under any lease or under any right of tenancy, the Central Government, shall on and from the appointed day, be deemed to have become the lessee or tenant, as the case may be, in respect of such property as if the lease or tenancy in relation to such property had been granted to the Central Government, and thereupon all the rights under such lease or tenancy shall be deemed to have been transferred to, and vested in, the Central Government.

Section 5 (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 Burmah Shell immediately before the

appointed day.

Section 11:

The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act or in any decree or order of any Court, tribunal or other authority”.

The lease was in existence by the time the said Act came into force.

Under the said enactment, an option is given to the Central Government to express its desire of continuing the tenancy on the expiry of the term of any lease or tenancy. The tenant herein had expressed its desire to continue the lease under exhibit A2, the reply notice. In fact, one of the two suits, viz., O.S.No.173 of 1990 is filed for specific performance of the agreement of lease. Further, the renewal of lease is being sought by virtue of the provisions of the Act. The said provisions of law of the Act are *intra vires*, as per the settled legal position. In this regard, a beneficial reference can be had to the decisions in **Mustaga Hussain v.**

Union of India^[1]; **Hindustan Petroleum Corporation Ltd. v. Dolly Das**^[2]; (ii) **Baba and Co. Nellore v. Hindustan Petroleum Co. Ltd. Mumbai and others**^[3] and (iii) **Agrimmcor Pvt. Ltd. v. Union of India (UOI) and Anr.**^[4]

A reading of the ratios in the above decisions would show that the provisions of law of the Act are not *ultra vires*, but, are *intra vires*. Therefore, the stipulation in regard to the renewal of the term of lease for a further 30 years is valid and enforceable. Hence, it follows that the tenant is entitled accordingly to seek renewal of lease and continue in the demised premises for a period of thirty years commencing from 01.01.1987, in view of the facts of the present case, the provisions of the Act and also the legal position obtaining.

7. In view of the above settled legal position and the tenant's entitlement to continue from 01.01.1987 for a term of thirty years more in the property, the learned counsel for the landlord had contended as follows: 'The tenant was and is continuing in a prime property in Vijayawada City on a meagre rent. Be that as it may, the said renewal period of 30 years is any how coming to an end by 31.12.2016. Under facts and law, the tenant is not entitled to a second renewal or extension of lease; and, after the expiry of the said 30 years period, the tenant is bound to vacate and hand over vacant peaceful possession of the property to the landlord. Therefore, a direction may be given in these appeals directing the tenant to vacate on or before 31.12.2016 and deliver vacant possession of the subject site to the landlord on 01.01.2017 as the 30 years further lease period expires/comes to an end by 31.12.2016. In support of the said submission, that such a discretionary power vested in this Court, reliance was placed on the decisions in (i) **Hindustan Petroleum Corporation Ltd. V. Dolly Das**; and (ii) **Agrimmcor Pvt. Ltd. V. Union of India (UOI) and Anr.**(2 and 4 supra). On the other hand, the learned counsel for the tenant had forcefully contended that at the end of the further term of 30 years, it is for the landlord to seek eviction as per the procedure established by law and no relief of eviction directing the tenant to vacate at the end of the renewed lease period can be granted in these appeals.

8. The facts of the cases in the decisions relied upon by the learned counsel for the landlord are akin to the facts of the case on hand. In the decision in **Agrimmcor** (supra), the Corporation is ESSO; The renewal sought was in accordance with ESSO (Acquisition of undertakings in India) Act, 1974; The renewal was for ten years ending with 31.03.1997; Therefore, while disposing of the writ petition on 30.04.1992, this Court had directed that the 2nd respondent/tenant shall handover the actual physical and vacant possession of the site in

question to the petitioner/landlord on 01.04.1997. In the next decision in **Dolly Das** (supra), the Company is Caltex and the renewal sought was in accordance with 'Caltex (Acquisition of shares of Caltex Oil Refining (India) Ltd., and Undertakings in India of Caltex (India) Act, 1977'; The term of renewal was ten years; The landlord had sought for recovery of the vacant possession of the premises at the end of the renewal lease period; In this back drop, the Supreme Court while disposing of the Civil Appeal on 13.04.1999 directed the tenant to vacate the premises and hand over vacant possession on or before 31.03.2000 as the tenant sought extension of time for giving vacant possession. In **Baba & Co. Nellore** (supra), while disposing of a writ petition on 06.01.2012, this court found that the respondent Corporation is not entitled to defend its possession over the site in question after availing the statutory option of lease for a period of 8 years, which has come to an end by 24th of October 1990 and, therefore, directed it to deliver vacant possession of the property to the petitioner within four months from the date of the receipt of a copy of the order in the writ petition. Coming to the facts of the case on hand, under facts and law, the tenant does not have the right to exercise option of any renewal of the lease beyond the 30 years period as the renewal of lease could only be for one term and no more and hence, the tenant is liable to vacate and handover possession of the property to the landlord at the end of the 30 years lease period, i.e., at the end of 31st December 2016. Therefore, in view of the precedential guidance and in the light of the fact that the tenant has not got any semblance of defence to retain possession for any further period, this Court considers it equitable, just, reasonable and fair to direct the tenant to vacate deliver vacant peaceful possession of the schedule site to the landlord on 01.01.2017 without the necessity of the landlord again filing a suit for eviction at the end of the 30 years renewal term of lease.

9. Having regard to the reasoned findings, the appeals are disposed

of accordingly confirming the decree in the suit for specific performance holding *inter alia* that the tenant is entitled to the renewal of the lease for 30 years from 01.01.1987, however, without any further right to second renewal as the renewal of lease could only be for one term and no more. However, the suit O.S.No.727 of 1987 filed by the landlord for eviction is decreed in part directing the tenant/defendant therein to vacate and handover vacant peaceful possession of the schedule property to the appellants 2 to 4 herein on 01.01.2017 as the tenant's right to defend its possession comes to an end on the said date with the end of the 30 years and as the tenant in the absence of any semblance of defence to retain possession is not entitled to continue in possession of the schedule property for any further period beyond 31.12.2016. Failing such compliance the appellants 2 to 4 are at liberty to institute a Petition for Execution in the original Court and recover vacant possession of the property from the tenant in accordance with the procedure established by law. The decrees and Common judgment of the Court below are modified accordingly and as indicated supra. There shall be no order as to costs.

Miscellaneous petitions pending, if any, in these appeals shall stand closed.

M. SEETHARAMA MURTI, J

01st July 2015
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[\[1\]](#) AIR 1981 AP283

[\[2\]](#) (1999) 4 SCC 450

[\[3\]](#) 2012 (2) ALD 752

[\[4\]](#) 1992 (2) ALT 462