IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **03.03.2017**

CORAM

THE HON'BLE MRS.JUSTICE **PUSHPA SATHYANARAYANA**

CRP PD No.1087 of 2014
and
M.P.No .1 of 2014

Hindustan Petroleum Corporation Ltd.,
rep.by its Constituted Authority and
Chief Regional Manager
Thalamuthu Natarajan Building
Egmore, Chennai 600 008. .. Petitioner

vs

S.S.Foundations Pvt.Ltd.
rep.by MDS Sathyanarayanan
45, Giriappa Road
T.Nagar, Chennai 600 017. .. Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the decree and judgment dated 23.01.2013 passed by the learned VII Additional Judge, City Civil Court, Chennai in CMA No.128 of 2010 confirming the decree and judgment dated 30.04.2010 passed by the learned III Assistant Judge, City Civil Court, Chennai in I.A.No.16860 of 2007 in O.S.No.5078 of 2007.

For Petitioner : Mr.M.Vijayan
for M/s.King and Patridge

For Respondent : Mr.Naveen Kumar Murthi
for Mr.P.G.Padmanabhan

ORDER

The defendant is the revision petitioner. Being aggrieved by the order dated 23.01.2013 passed by the learned VII Additional Judge, City Civil Court, Chennai in CMA No.128 of 2010 in confirming the order dated 30.04.2010 passed by the learned III Assistant Judge, City Civil Court, Chennai in an application filed under Section 9 of the Tamil Nadu City Tenants Protection Act,1921 [in short "The Act"] in I.A.No.16860 of 2007 in O.S.No.5078 of 2007, the present revision is filed.

2. For the sake of convenience, the parties are referred to hereunder according to their litigative status and ranking in the suit.

3. The short facts, leading to filing of this revision petition would run thus:

(i) The suit is filed by the respondent/plaintiff for a direction directing the defendant to quit and deliver vacant possession of the suit property, after removing the super structure put up by them and for recovery of arrears and damages. The said suit is filed for ejectment.

(ii) Pending suit, the defendant had taken up an application under Section 9 of the City Tenants Protection Act, 1921 to sell the land for a price to be fixed by the Court and to execute the sale deed in favour of the defendant. The said application was resisted by the owner of the land/plaintiff stating that the lease period expired as early as in 1979 and termination notice was also issued granting time till 30.06.2007. Since the defendant has not vacated, the suit came to be filed.

(iii) Only after the suit is filed, the right to file an application under Section 9 of the Act would arise for the tenant. After the termination of the tenancy in 1979, no fresh lease was created between the landlord and the defendant and the possession of the defendant, is termed as illegal. Yet another contention of the plaintiff was that the defendant is not in physical possession of the suit property from the date of tenancy and it is only their dealer, who is running the petrol bunk. Therefore, the defendant who is not in actual physical possession is not entitled to invoke the Act and prayed for the dismissal of the same.

(iv) Upon consideration, the learned III Assistant Judge, City Civil Court had dismissed the application holding that the lease has not subsisted and as on the date of the petition, the defendant is not in physical possession of the suit property. Aggrieved by the same, the defendant preferred CMA No.128 of 2010 before the learned VII Additional Judge, City Civil Court, Chennai only to be dismissed by the Appellate Court, confirming the order passed by the trial court.

(v) Challenging the same, the present revision is filed.

4. The question that would arise for consideration in the Civil Revision Petition is whether the revision petitioner is entitled to the benefits under Section 9 of the Tamil Nadu City Tenants Protection Act?

5. The respondent/plaintiff herein filed the suit in O.S.No.5078 of 2007 directing the revision petitioner/the defendant to quit and deliver vacant possession of the suit property after removing all the super structures put up by them and for other reliefs. On filing of the said ejectment suit, the revision petitioner/defendant invoked Section 9 of the City Tenants Protection Act, 1921 seeking a direction against the respondent/plaintiff for the sale of the land. The trial Court after considering all the materials available on record, declined to allow the benefits of Section 9 of the City Tenants Protection Act and the same was later confirmed by the Appellate Court, which is under challenge in this revision.

6. Admittedly, the suit property was leased out in the year 1969 for a period of five years by the predecessor of the plaintiff, viz., M/s.ESSO Standards Eastern Inc. Company, which later came to be acquired by the Central Government by an Act of Parliament known as ESSO (Acquisition of undertakings in India), the Act, 1974. Thereafter, there was a change in the name as Hindustan Petroleum Corporation Limited and a fresh Certificate of incorporation was issued. Thus the defendant stepped into the shoes of the erstwhile predecessor in interest, M/s.ESSO Standard Eastern Inc., and continued to hold the lease of the suit property without any arrears of rent either to the previous landlord or to the present landlord. Thus the tenant became the company owned company outlet [COCO] in the suit property by virtue of their long continuous possession in the suit property. The defendant desired to claim right under Section 9 of the Act. Accordingly, the application was filed in I.A.No.16860 of 1997. The said application was resisted by the landlord on various grounds. It was the contention of the landlord that after 1969, when the property was let out on lease for five years, it was

never extended beyond 1974. However, it is stated by the revision petitioner that there was another extension of five years till 1979. Even presuming that this lease was extended for the second time till 1979, after the said period came to an end, the possession of the defendant is that of a trespasser.

7. The question to be considered is whether for the purpose of seeking benefits under Section 9 of the Act, the tenant has to be in actual possession or it is suffice to have only a legal possession?

8. According to the plaintiff, the suit property is in possession of the dealer of the defendant, viz., M/s.J.J.Filling Station. Therefore, when actual physical possession is not with the defendant, the benefits of the Act cannot be claimed by them. As per Ex.P14 dated 10.08.2007, the plaintiff had issued the termination letter before the filing of the suit. On the date of the filing of the suit, up to issuance of the above said Ex.P14, the said M/s.J.J.Filling Station was not in possession of the property. They have been inducted by the defendant only after the

institution of the suit and now only they are in actual physical possession.

9. In the absence of actual physical possession, whether the defendant is entitled to the benefits of the Act, as on the date of the institution of the suit?

10. It is needless to mention that the law relating to extension of benefits of Section 9 of the Act to a lessee, who is not in actual physical possession of the suit property is no longer *res integra* in view of the decision of the Hon'ble Supreme Court reported in ***2003 (3) CTC 488 [S.R.Radhakrishnan and others vs. Neelamegam]*** wherein it has been categorically held that the actual physical possession of the demised premises is essential to maintain an application under Section 9 of the Act. Following the same, the Division Bench of this Court in its judgment reported in ***2011 (5) CTC 437 [Bharat Petroleum Corporation Ltd. vs. R.Ravikrishnan]*** had decided that the actual physical possession is a *sine qua non* to maintain an application under the Act.

11. As stated earlier, the Hon'ble Supreme Court has specifically held that actual physical possession is a must to maintain an application, under Section 9 of the Act. In the case of ***Bharat Petroleum Corporation Limited vs. Nirmala and others in CA No.1257 of 2007 decided on 03.12.2009***, the Hon'ble Supreme Court has sought to make a distinction between the word "actual physical possession" as used in Section 2(4)(ii)(b) and "possession" as used in Section 2(4)(ii)(a) of the Act. In that case also originally lease was granted in favour of the predecessor-in-interest of Oil Companies and subsequently, these companies came to be acquired by the Government of India and the Oil Companies acquired only lease hold rights of erstwhile companies and would not include the right of persons who put up superstructure unless the companies are in actual physical possession and that they can claim only legal possession. The relevant paragraphs are as under:

> "51.The subject lands are now in the possession of dealers as licensees, on the basis of respective DPSL agreements. The question is whether the oil Companies

have lost their legal possession? The provisions of DPSL agreement gives a clear indication that the dealers were given only permission to conduct the outlet in the manner suggested by the Corporation. The Petroleum products are supplied by the oil Companies. Buildings were assessed in the name of the Corporations. Explosive license, Municipal License and Corporation License also stand in the name of Corporation. The dealers are only agents and as such, their possession has to be construed to be the possession of the principal. Therefore, no right would accrue to the dealers on account of their possession of the outlets and on the strength of DPSL agreement. In fact, the Company reserved the right to terminate the agreement at any point of time and the moment the agreement is terminated, the position of the licensee would thereafter will be in the nature of a trespasser. It cannot be said that the oil Corporations have parted with their possession and as such, they would not come under the definition "tenant". Therefore, we hold that the public sector oil Companies are in legal possession of the property, though the actual possession is with the licensees.

52. Section 9 of the Act permits the tenant to make an application to the Court for an order directing the landlord to sell the property for a price to be fixed by the Court. Section 9 pre-supposes that only a tenant who is entitled to compensation under Section 3 could make an application. Therefore, the oil Corporations have to prove that they are entitled to compensation under Section 3 of

the Act. The buildings in question were put up by the predecessor-in-interest of the oil Corporations. It is the contention of the land owners that the Public Sector Oil Corporations were not the original tenants and as such, they are not entitled to compensation under Section 3 of the City Tenant Protection Act. Therefore, the term "tenant" assumes importance. ESSO Acquisition Act, Burmah Shell Acquisition Act and Caltex (Acquisition) Act were enacted to provide for the acquisition and transfer of the right, title and interest of these foreign Companies in relation to its undertakings in India. Subsequently, invoking the power conferred under Section 7(2) of the Acquisition Act, the Government of India transferred this foreign undertakings, including their right, title, interest and liabilities to BPCL and HPCL. Therefore, Public Sector Oil Companies became a tenant by operation of law. This position was confirmed by the Supreme Court in Hindustan Petroleum Corporation Ltd. and another vs. Shyam Co-operative Housing Society and others, AIR 1989 SC 295.

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55. The learned Senior Counsel for Hindustan Petroleum Corporation in C.M.A.No.336/1987 contended that in S.R.Radhakrishnan, the Supreme Court had no occasion to consider the distinction between Section 2(4)(ii)(a) and 2(4)(ii)(b) of the Act and as such, the finding that actual physical possession is sine qua non for

claiming the benefits under Section 9 of the Act, cannot be taken as a binding precedent. According to the learned senior counsel, the issue regarding physical possession within the meaning of Section 2(4)(ii)(a) was not an issue before the Supreme Court in S.R.Radhakrishnan Case and as such, observation regarding physical possession was nothing but obiter dicta. The learned senior counsel further contended that the order of remand passed by the Supreme Court in C.A.No.5903/2006 etc. batch gives a clear indication that to claim the benefits of Section 2(4)(ii)(a), legal possession alone is sufficient."

12. In view of the aforesaid provision of law, merely because the defendant is in long continuous possession and its tenant is running the petrol bunk, the revision petitioner has sought for a direction to the respondent/plaintiff to sell the minimum extent required by filing an application under Section 9 of the Act. It is now made clear that the oil companies which are in possession of the demised premises through their dealers are only having legal possession and the actual physical possession of the companies are with the dealers. Therefore, the Court below had rightly refused to entertain the application under Section 9 of the Act.

13. Following the principles laid down by the Hon'ble Apex Court followed by the judgment of the Division Bench of this Court, it is clear that the revision petitioner is not in actual physical possession of the suit property as on the date of institution of the suit and that they are only in actual legal possession through its dealer. When the possession is a *sine qua non* for maintaining the application under Section 9 of the Act, in the absence of the same, the revision petitioner cannot claim any benefit under the Act and the concurrent findings given by the Court below do not warrant any interference. No costs. Consequently, the connected miscellaneous petition is closed.

03.03.2017

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Index: yes/No
Internet: yes

PUSHPA SATHYANARAYANA,J.,

vj2

To
1. The VII Additional Judge, City Civil Court, Chennai
2. The III Assistant Judge, City Civil Court, Chennai

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