

In the High Court of Judicature at Madras

Dated : 07.8.2017

Coram :

The Honourable Mr.Justice NOOTY.RAMAMOHANA RAO

and

The Honourable Mr.Justice M.DHANDAPANI

Writ Appeal No.366 of 2017 & CMP.No.5588 of 2017

The Senior Manager, Retail
Sales, Indian Oil Corporation
Ltd., No.500, Anna Salai,
Teynampet, Chennai-18.Appellant

Vs

1.Tmt.G.Bhuvaneswari
2.Tmt.J.Adi Lakshmi
3.R.Jawahar
4.R.MuthukrishnanRespondents

APPEAL under Clause 15 of the Letters Patent against the
order dated 10.2.2017 made in W.P.No.7496 of 2015.

WP.No.7496 of 2015:Petition filed under Article 226 of the
Constitution of India praying this Hon'ble Court to issue a
Writ of Mandamus directing the respondent to vacate and handover
the vacant possession of the property situated in S.No.274/4
part of Velacherry Village Mambalam-Guindy Taluk chennai (at
Present Door No.4 Tharamani-Velacheri Link Road Velalcherry
Chennai-42) to the Extent of 6080 Sq.ft. to the petitioners

For Appellant : Sri.A.L.Somayaji, SC
for M/s.AAV Partners

For Respondents:Sri.Satish Parasaran, SC for
Sri.M.Arvind Subramaniam

JUDGMENT

(Judgment was delivered by NOOTY.RAMAMOHANA RAO,J)

The writ appeal is directed against the order passed by the
learned Single Judge on 10.2.2017 rendered in W.P.No.7496 of
2015 disposing it of with certain directions.

2. The respondent in the writ petition, who is a Senior Manager of the Indian Oil Corporation (henceforth called the IOC), is the appellant before us.

3. Heard Sri.A.L.Somayaji, learned Senior Counsel appearing on behalf of the learned counsel for the appellant and Sri.Satish Parasaran, learned Senior Counsel appearing on behalf of the learned counsel for the respondents - writ petitioners.

4. The writ petition is instituted seeking a Writ of Mandamus directing the respondent therein - the appellant before us to vacate and hand over vacant possession of the property situated at Survey No.274/4 Part of Velacherry Village, Mambalam Guindy Taluk, Chennai to an extent of 6,080 sq.ft. to the writ petitioners.

5. The facts are not in controversy. The writ petitioners entered into an agreement to lease out the disputed property in the year 2000 for running a retail outlet for sale of petrol, high speed diesel oil (HSD) and other lubricants manufactured/marketed by the IOC. The lease deed was executed on 23.2.2000 for a period of 15 years commencing from 01.3.2000 and it was to expire on 28.2.2015.

6. The IOC appointed a nominee of the petitioners as 'Maintenance and Handling Contractor' to run the retail outlet instead of appointing any of the writ petitioners as a dealer of the IOC. On 23.7.2014, the IOC terminated the Maintenance and Handling Contract awarded to the writ petitioners. That was called in question in W.P.No.21685 of 2014. Since the lease period has expired on 28.2.2015, the IOC is supposed to vacate the premise and hand over vacant possession thereof to the writ petitioners. Accordingly, the writ petitioners have drawn a notice on 10.12.2014 inviting the attention of the IOC to the terms and conditions, subject to which, the lease agreement has been entered into, requesting the IOC to remove the articles and other properties lying in the leased out premises belonging to the IOC.

7. In response thereto, on 12.1.2015, the IOC directed the writ petitioners to visit their Chennai Office on 21.1.2015 for discussions on the subject of extension of lease agreement dated 23.2.2000. The minutes of the meeting have been reduced to writing. The writ petitioners made their intent clear that they are not interested in extending the lease period after the expiry of the present term by 28.2.2015. They also proposed to sell away the property due to certain family compulsions and financial constraints. They offered the property for sale to the IOC, if it is willing to purchase the property at the prevailing market rate. They also made it very clear that they are not

interested in maintaining the retail outlet or to be a dealer of the IOC elsewhere. This meeting was followed by another letter dated 28.1.2015 requiring the IOC to vacate and deliver vacant possession of the leased out property.

8. Again, the IOC proposed to conduct a round of negotiations for purchase/sale of the premises where the retail outlet was existing and for that purpose, invited the writ petitioners to visit their office on 12.2.2015 at 10.30 AM. It appears that the minutes of the meeting held on 12.2.2015 have also been reduced to writing. The minutes recorded would show that the writ petitioners were willing to sell the property in question for a consideration of Rs.20 Crores whereas as per the valuation report obtained from two Government approved valuers, the value has been worked out to Rs.7.35 Crores and Rs.7.29 Crores respectively and hence, the Negotiating Committee of the IOC offered the price of Rs.7.29 Crores based on the guideline value/valuation report. The writ petitioners were willing to extend a concession of 10% on their offer and they were willing for selling the premises for a consideration of Rs.18 Crores. The offer made by the writ petitioners was not agreed to by the IOC. Consequently, no agreement could be reached between the parties for the outright sale of the premises by the writ petitioners to the IOC.

9. It is thereafter on 16.2.2015, the writ petitioners approached the City Civil Court, Chennai and instituted O.S.No.938 of 2015 seeking mandatory injunction to restrain the defendants, their men, agents or anybody claiming through them from letting or dealing with the land in question. In turn, the IOC, it appears, also got tempted and filed O.S.No. 1039 of 2015 seeking a mandatory injunction directing the writ petitioners to renew the lease for the schedule mentioned property with effect from 01.3.2015 subject to payment of lease rentals as admitted by the second defendant therein in the letter dated 21.4.2014. They also sought for permanent injunction to restrain defendants 1 to 4 therein from evicting and dispossessing the IOC from the schedule mentioned property.

10. It is the specific assertion of the writ petitioners that O.S.No.1039 of 2015, filed by the IOC, has been dismissed for default on 03.2.2017 and that the IOC has not taken any steps for getting the matter restored by setting aside the judgment and decree of dismissal of the suit.

11. Sri.A.L.Somayaji, learned Senior Counsel would also acknowledge the fact that the said civil suit in O.S.No.1039 of 2015 had been dismissed for default, but, he would submit that the IOC has now been taking steps for getting the judgment and decree of dismissal of the suit, set aside.

12. However, we are informed that no such steps have been taken so far. Further, from 01.3.2017, the sales have also been stopped after the learned Single Judge decided the writ petition.

13. Sri.A.L.Somayaji, learned Senior Counsel had developed two objections in principle. The first one is that the writ remedy under Article 226 is not suited for securing eviction of the IOC notwithstanding the fact that the IOC might answer the description of the expression "State" for purpose of Article 12 and Part III of The Constitution. The second one is that the view taken by the Division Bench of this Court earlier in a writ petition has been reversed by the Supreme Court by the judgment rendered in the case of Bharat Petroleum Corporation Ltd. Vs. N.R.Vairamani [reported in 2004 (8) SCC 579]. Further, Sri.A.L.Somayaji, learned Senior Counsel would urge that the principle followed by the learned Single Judge for exercising discretion is an erroneous one and that the said view requires to be corrected.

14. It is also contended by Sri.A.L.Somayaji, learned Senior Counsel that oral evidence is seldom collected in writ proceedings and that only based upon the pleadings and the documents exchanged by and between the parties, a decree could not have been drawn ordering for eviction.

15. More importantly, the learned Senior Counsel would point out that the Supreme Court, in N.R.Vairamani, has categorically brought out that the rights guaranteed for the tenants under the Madras City Tenants' Protection Act, 1921, (henceforth called the Act), cannot be ignored. In fact, the Supreme Court, in N.R.Vairamani, has pointed out that remedies are available to the landlord and subject to those rights, the relationships have to be worked out by a competent civil court having jurisdiction and that a Writ Court cannot order for eviction even if the tenant is an Instrumentality of the State like in the present case.

16. It is true that a writ proceedings under Article 226 may not be an ideal remedy for securing eviction of a tenant even if that tenant is a State or an Instrumentality of the State. When once the relationship of landlord and tenant or lessor and lessee is regulated by an agreement, breach of any terms of the said agreement can only be adjudicated upon, before a court having competent jurisdiction, which provides necessary opportunity to both sides for adducing appropriate evidence, both oral and documentary. It is upon consideration of all such facts and circumstances, the civil court can pass a decree. The High Court would seldom collect evidence in a writ proceedings. Consequently, it may be difficult for this Court to render complete justice to the parties by merely looking at one term or

the other in an agreement, which sets out that the lease expires by a specified date.

17. It is true that in writ proceedings, except examining the documents or copies of the documents produced by either side, evidence is not gathered formally. It is all the more so in respect of oral evidence. Not that collection of the oral evidence is forbidden completely, but it is not resorted to, as it is more expedient and appropriate for the parties to go before the civil court, which can collect evidence, analyse the same and draw appropriate findings of fact and conclusions thereon.

18. But however, the Supreme Court, in the case of Hindustan Petroleum Corporation Ltd. Vs. Dolly Das [reported in 1999 (4) SCC 450], while dealing with somewhat similar situation where the Hindustan Petroleum Corporation Limited has asserted that that it has a right to demand for extension of lease from the lessor, has brought out the relevant principle in paragraph 9 of the said judgment in the following words :

"We may now advert to the contention that the writ remedy is not appropriate in this case. Where interpretation of a contract arises in relation to immovable property and in working such a contract or relief thereof or any other fallout thereto may have the effect of giving rise to an action in tort or for damages, the appropriate remedy would be a civil suit. But if the facts pleaded before the court are of such a nature which do not involve any complicated questions of fact needing elaborate investigation of the same, the High Court could also exercise writ jurisdiction under Article 226 of The Constitution of such matters. There can be no hard and fast rule in such matters. When the High Court has chosen to exercise its powers under Article 226 of The Constitution we cannot say that the discretion exercised in entertaining the petition is wrong."

(Emphasis is mine)

19. It is also appropriate in this context to note that the Supreme Court, in N.R.Vairamani, having noticed the judgment rendered by it earlier in Dolly Das, distinguished the decision rendered by it in Dolly Das as under:

"As rightly submitted by learned counsel for the appellants, provisions similar to Sections 3 and 9 of the Tenants Act were not under consideration in Hindustan Petroleum case [1999 (4) SCC 450].

"

20. When once a principle enunciated by a judgment of the Supreme Court rendered earlier is explained either by way of distinguishing it or rationalizing the ratio, it is the latter decision, which shall be followed by all Courts including this Court. It is only appropriate that the decision rendered by the Supreme Court in the earlier case must be understood in the context, in which, it was understood by the Supreme Court. However, the Supreme Court has pointed out that the ratio in Dolly Das is not applicable in N.R.Vairamani, because of the applicability of the provisions of the Tenants Act and the provisions contained therein, in particular, Sections 3 and 9.

21. In the instant case, it must be stated in all fairness to Sri.A.L. Somayaji, learned Senior Counsel that he was forthright and candid enough in urging that the provisions of the Tenants Act are not attracted or applicable to the case on hand. The said Act itself does not have any application to the leases, which have been entered into in the year 2000 as was done in the present case. By virtue of the provisions of the Tenants Act not getting attracted to the lease agreement entered into by and between the parties on 01.3.2000 and for that matter any other similar Enactment, the judgment rendered by the Supreme Court in N.R.Vairamani does not get attracted to the case on hand. On the other hand, the distinction, which the Supreme Court drew in paragraph 8 of the judgment in N.R.Vairamani, to distinguish Dolly Das, does not become available to the cause of the appellant corporation. Consequently, the principle enunciated in Dolly Das gets attracted.

22. In the instant case, the relevant and crucial facts are not in controversy. The period of lease of 15 years expired by 28.2.2015 and negotiations made by and between the parties for acquisition of the premises by the appellant corporation have failed. By virtue of the fact that the lease has come to an end on 28.2.2015 and that the civil suit filed by the appellant corporation seeking extension of the lease having been dismissed on 03.2.2017 and that no concrete steps have been taken for getting the suit restored and in view of the further fact that from 01.3.2017 onwards, the appellant has, in fact, stopped operating its retail outlet and sales and also in view of the assertion that the equipment for vending petrol/HSD including the underground tanks are dug out from the premises in question, it is only appropriate to hold that the discretion exercised by the learned Single Judge is not improper. The appellant shall remove and take custody of all such equipments, which belong to it, in furtherance of the order passed by the learned Single Judge.

23. In the result, the writ appeal fails and it is accordingly dismissed at the admission stage. No costs. Consequently, the above CMP is also dismissed.

Sd/-
Assistant Registrar(CS IV)

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Sub Assistant Registrar

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+2 ccs to M/s.M.Aravind Subramaniam Advocate sr 57220
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