IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2017
CORAM :

THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER
And
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

O.S.A.No.256 of 2017

1. Dr.(Mrs)Kamakshi Sundaram
"The Canopy", Poes Garden,
97, Binny Road,
Chennai-600 086
represented by her Power of Attorney
Mr.C.Aryama Sundaram
2. Mrs.Haima Sundaram,
"The Canopy", Poes Garden,
97, Binny Road,
Chennai-600 086
represented by her Power of Attorney
Mr.C.Aryama Sundaram
3. Skanda Sundaram,
apartment no8B 10 Downing
No.132, Greenways Road,
R.A.Puram, Chennai.

.. Appellants/
Applicants/Plaintiffs

Vs.

Bharat Petroleum Corporation Limited
1, Ranganathan Gardens,
Off. 11th Main Road,
Anna Nagar, Chennai-600 040
Rep. by its Regional Manager

.. Respondent/
Respondent/Defendant

Prayer : Appeal filed under Order 36, Rule 1 of the Original Side Rules read with Clause 15 of the Letters Patent, against the fair and decretal order dated 19.04.2017, passed in A.No.5852 of 2015 in C.S.No.894 of 2005.

Prayer in A.No.5852/2015 : Direct the 1st respondent/1st defendant to acquire the Suit property for a sum of Rs.23 00 00 000/- (Rupees twenty three crores only)or at such market value as may be fixed by this Hon'ble Court within a date to be fixed by this Hon'ble Court failing which direct the respondent to vacate and hand over vacate possession of the suit property to the applicants.

For Appellants : Mr.Menon

For Respondent : Mr.Krishna Srinivas, for M/s.Ramasubramanian and Associates

J U D G E M E N T

[Judgement of the Court was delivered by RAJIV SHAKDHER, J.]

1. This is an appeal directed against the judgement and decree dated 19.04.2017.

2. The impugned judgement and decree was passed on an application moved by the appellants herein, who are original plaintiffs, in the suit. The application, in which, the impugned judgement and decree was passed is numbered as : A.No.5852 of 2015.

2.1. The relief sought for by the applicants, was that, a direction be issued to the respondent, i.e., Bharat Petroleum Corporation Limited, (hereafter referre to as "BPCL"), to acquire the suit property for a sum of Rs.23,00,00,000/- (Rupees twenty three crores only), or, at such market value that may be fixed by the Court.

2.2. The record shows that on 29.04.2016, the Court pegged the value of the suit property at Rs.20,28,99,000/- (Rupees twenty crores twenty eighty lakhs and ninety nine thousand only). Against the said order fixing the sale price of the property, an appeal was preferred by BPCL, which was numbered as O.S.A.No.195 of 2016.

2.3. It appears that, while, the aforementioned appeal was pending before the Division Bench, BPCL conveyed to the Court that it did not intend to buy the suit property at the price stipulated by the Court. Accordingly, the appeal was dismissed by the Division Bench vide order dated 05.10.2016.

3. It is in this background that the appellants have filed the aforementioned application.

4. The record also shows that the learned Single Judge vide order dated 08.11.2016, had directed BPCL to file an affidavit indicating therein as to the time frame within which it could handover the suit property to the appellants. As directed, BPCL filed an affidavit, wherein, thirty six (36) months was sought to vacate the suit property.

4.1. However, the learned Single Judge vide the impugned judgement and decree granted BPCL, a year's time to vacate and handover the possession of the suit property.

5. It is not disputed before us by Mr.Krishna Srinivas, who appears for BPCL that one year period, which was granted by the

learned Single Judge would end on 18.04.2018.

6. The appellants, being aggrieved by the impugned judgement, have preferred the instant appeal.

6.1. It is contended on behalf of the appellants that the learned Single Judge, firstly, had granted a year's time to BPCL to vacate the suit property, without appreciating the fact that the parties had been involved in litigation, since, 1997.

6.2. In the alternative, it is argued on behalf of the appellants that even, if, the time frame of one year had to be granted to BPCL, it ought to have been granted only, upon payment of enhanced use and occupation charges. In other words, the submission, is that, BPCL ought to have been directed to pay a market rent, or an amount, which is, at least, proximate to the prevailing market rent.

6.3. It is urged on behalf of the appellants that the tenancy, having been determined, BPCL ought to have been made liable to pay use and occupation charges, which are either equivalent to the market rent or, in the very least, are proximate to the market rent. In support of this submission, Mr.Menon, who appears for the appellants, has relied upon Section 110 of the Transfer of Property Act, 1882.

6.4. Furthermore, in order to buttress his submissions, learned counsel relied upon the judgement of the Supreme Court rendered in : Atma Ram Properties (P) Ltd. V. Federal Motors (P) Ltd., (2005) 1 SCC 705.

7. Mr.Krishna Srinivas, on the other hand, says that BPCL is a public sector undertaking, and that, the suit property is being operated as a petrol bunk, albeit, via a duly authorised dealer.

7.1. Learned counsel submits that in view of the fact that BPCL intended to wind up its affairs, at the subject petrol bunk, a considered decision was taken not to buy the suit property at the price indicated by the Court and to vacate the same, and therefore, for this purpose, to begin with, three (3) years time was sought from the Court.

7.2. Mr.Srinivas, further submits that taking into account the fact that the Court had granted year's time and having regard to the difficulties that the appellants were facing, it was decided by BPCL to vacate the property within the time stipulated by the Court.

7.3. Given these circumstances, Mr.Srinivas, says that no interference is called for with the impugned judgement, and that, even, the alternative plea advanced on behalf of the appellant ought not to be entertained.

8. We have heard the learned counsel for the parties and perused the record.

9. According to us, what emerges from the record, and these are facts, which are not in dispute, is as follows :

(i) The parties have been at lis since 1997;

(ii) A suit for possession and mesne profit had been filed by the appellants way back in 2005.

(iii) In the interregnum, BPCL filed an application under Section 9 of the Madras City Tenants' Protection Act, 1921 (in short, the 1921 Act), which was numbered as : A.No.135 of 2006. Under the provision, the tenant has the option to purchase the demised property, albeit, at the market value fixed by the Court. This, though, is subject to the caveat that the tenant is in possession of the demised property.

(iv) In fact, the record shows that, de hors this aspect, the application filed under Section 9 of the 1921 Act by the BPCL, was dismissed by a Single Judge vide order dated 17.10.2012.

(v) An appeal was preferred by BPCL against the order dated 17.10.2012, which was dismissed by the Division Bench on 20.08.2013. This order was passed in O.S.A.No.248 of 2013.

(vi) BPCL was, in fact, given liberty by the Division Bench, to file an application before the learned Single Judge in the manner known to law.

(vii) BPCL had, in fact, filed an application bearing No.1164 of 2014 to reopen Application No.135 of 2006.

(viii) This Court vide order dated 17.04.2014, allowed the aforesaid Application bearing No.1164 of 2014 and thus, restored the Application No.135 of 2006 on the condition that BPCL deposits a sum of Rs.20,00,000/- to the credit of the suit, and continues to pay a sum of Rs.1,00,000/- per month to the appellants with effect from 01.04.2014. We are told both conditions stand complied with by BPCL.

(ix) Consequently, the learned Single Judge fixed the price, at which, the suit property was to be bought by BPCL. The price was pegged at Rs.20,28,99,000/-, vide the order dated 29.04.2016, to which we have made a reference hereinabove.

(x) As indicated above, it is in this background that the appellants were forced to move an application that they be put in possession of the suit property, after BPCL had indicated that it was not interested in purchasing the same, at the price fixed by the Court.

(xi) The learned Single Judge, appreciating the difficulties faced by the appellants, passed the impugned order, however, while, doing so gave leeway of one year to BPCL to vacate the suit property.

10. According to us, given the fact that BPCL is a public sector undertaking, which is running a petrol bunk in the suit property, albeit, via a dealer, that part of the order cannot be disturbed, especially, having regard to the fact that only four

(4) months remain out of the one year period given to vacate the suit property.

10.1. The period in issue would come to an end, even according to BPCL, on 18.04.2018.

10.2. Having said so, we are inclined to, at least, partially ameliorate the difficulties faced by the appellants, by enhancing the use and occupation charges. As noted above, BPCL is paying use and occupation charges at Rs.1,00,000/- per month.

10.3. We are also conscious of the fact that an enquiry into the mesne profit, has yet not reached culmination. Therefore, the issue before us, is, as to what is the amount qua compensation that the Court should fix for the extension granted in favour of BPCL.

10.4. Concededly, the value of the suit property, as fixed by the Court vide its order dated 29.04.2016, is a sum of Rs.20,28,99,000/-.

10.5. Mr.Menon, learned counsel for the appellants, says that as a thumb-rule, the per mensem rent of most properties would, approximately, work out to 1% of the capital cost. Therefore, if, this formula is applied, which, we think is appropriate, per mensem rent of the suit property would come to a figure of Rs.20,00,000/-.

10.6. However, having regard to the fact that the enquiry into the mesne profit is still being conducted, we are inclined to fix the use and occupation charges at Rs.5,00,000/- (Rupees five lakhs only) per month. This would work out to 0.25 % of the capital cost per month.

10.7. As noted above, the impugned order was passed on 19.04.2017. Accordingly, as indicated above, for the extended period, BPCL should pay rent at the sum of Rs.5,00,000/- p.m., from the date, when, the impugned judgement and decree was passed in A.No.5852 of 2015.

10.8. The arrears for the period spanning between 19.04.2017, and 31.12.2017, will be paid within two (2) weeks from the date of receipt of a copy of the order.

10.9. From 01.01.2018, BPCL, will pay compensation at the rate Rs.5,00,000/- per month until 19.04.2018.

11. Needless to say, the amounts paid, pursuant to the order passed today, will be adjusted against the liability, if any, which may accrue, once, mesne profits are determined. In case, the Court finds that BPCL is not liable to pay mesne profits, or, the mesne profits determined are less than the amounts paid in the interregnum due adjustments will be made. In the meanwhile, the amounts received by the appellants from BPCL will be a first charge on the suit property.

12. In order to hasten the ascertainment of mesne profit, BPCL is directed to file its written statement within two (2)

weeks from today. Replication, if any, will be filed within two (2) weeks of receipt of a copy of the written statement.

12.1. The matter will be placed before the learned Single Judge by the learned Master, immediately, upon completion of pleadings.

12.2. It goes without saying that, if, any other rights flow in favour of BPCL under the 1921 Act, they will also be taken into account by the learned Single Judge, while, passing the final judgement and decree.

13. The appeal is disposed of, in the aforesaid terms.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

The Sub Assistant Registrar (O.S.),
Madras High Court.

+1cc to Mr.S.Ramasubramanian Associate, Advocate, S.R.No.90896
+1cc to Mr.Menon Karthik, Advocate, S.R.No.90791

O.S.A.No.256 of 2017

MR(CO)
RRK(31/01/2018)