

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.01.2018

CORAM:
THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

W.P.No.14883 of 2015
and
Second Appeal No.632 of 2017

W.P.No.14883 of 2015:

R.Sivaprakasam

... Petitioner

vs.

1. The Joint Chief Controller of Explosives,
South Circle Office, Chennai,
A and D - Wing, Block 1 - 8,
2nd Floor, Shastri Bhavan,
No.26, Haddows Road,
Nungambakkam,
Chennai 600 006.

2. The Collector,
Tiruvallur District,
Tiruvallur.

3. M/s.Bharat Petroleum Corporation Ltd.,
(A Government of India Undertaking),
rep. by its Territory Manager,
No.1, Ranganathan Gardens,
11th Main Road, Anna Nagar,
Chennai 600 040.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus calling for the records of the 1st respondent in proceedings No.P/SC/TN/14/1441 (P33820), dated 30.04.2015, and quash the same and direct the 1st respondent herein to cancel and not to renew the explosives licence in respect of the property bearing No.77, Panchetty Road, Ponneri, Tiruvallur District.

S.A.No.632 of 2017

Bharat Petroleum Corporation Ltd.,
rep. by its Territory Manager,
No.1, Ranganathan Gardens,
11th Main Road, Anna Nagar,
Chennai 600 040.

... Appellant/Plaintiff

vs.

R.Sivaprakasam

... Respondent/Defendant

Second Appeal filed under Section 100 C.P.C. against the judgment and decree dated 14.10.2014 made in A.S.No.50 of 2013 on the file of the Sub Court, Ponneri, confirming the judgment and decree dated 03.06.2013 made in O.S.No.137 of 2006 on the file of the District Munsif, Ponneri.

* * * * *

For Petitioner in W.P.No.14883/2015: Mr.R.Parthasarathi
& Respondent in S.A.No.632/2017 for Mr.G.Jeremiah

For Appellant in S.A.No.632/2017: Mr.O.R.Santhanakrishnan

For 1st Respondent
in W.P.No.14883/2015 : Mr.A.Veeramani, CGSC

For 2nd Respondent
in W.P.No.14883/2015 : Mr.R.Venkatesh,
Government Advocate

For 3rd Respondent
in W.P.No.14883/2015 : Mr.K.Ethiraj

C O M M O N J U D G M E N T

As the issue involved in the Writ Petition and the Second Appeal is one and the same, both cases are taken up for disposal by a common judgment.

2. According to the writ petitioner, viz. R.Sivaprakasam, the property in question originally belonged to his grandfather, R.R.S.Ekambaram Chettiar, son of R.R.Subbarayalu Chettiar and he leased out the same originally in favour of M/s.Bhurma Shell Oil Storage and Distributing Company of India Limited (in short 'Bhurma Shell') for a period of 20 years from 01.10.1963 and the rent was fixed at Rs.75/- per quarter, i.e. Rs.25/- per month. Thereafter, the said Bhurma Shell Company was taken over by the Central Government and the statutory Corporation was formed under Act 2 of 1976, dated 24.01.1976 and Bharat Petroleum Corporation had continued as Lessee after 1976 till 01.10.1983 on the same terms.

3. It is further stated by the writ petitioner/Sivaprakasam that his grandfather executed a registered Will dated 24.05.1988, bequeathing the said property in his favour. The writ petitioner's grandfather did not renew the lease after 1983. After the death of the writ petitioner's grandfather, the writ petitioner had to renew the lease in the

year 1995, since Bharat Petroleum Corporation was entitled to one more renewal of lease as per the same terms and the same period in accordance with the enactment of Bhurma Shell (Acquisition undertaking in India) Act, 1976, as contemplated under Section 5 of the said Act. According to the writ petitioner, though the said property was leased to Bharat Petroleum Corporation, his grandfather was in occupation of the property as a dealer in the name and style of 'M/s.R.R.S.Ekambaram Chettiar, Chennai' and thereafter, the writ petitioner is carrying on the dealership as a partner of the said Concern till date and he is in actual physical possession of the entire property in question.

4. On 05.12.1995, the writ petitioner executed the above renewal of Lease Deed for a period of 20 years for a very low rent of Rs.135/- per quarter. Further, Bharat Petroleum Corporation came forward with another demand for the further renewal of the said lease for 30 years from 01.10.2003 on the same rent, by way of notice dated 15.07.2003, for which the writ petitioner sought a monthly rent of Rs.64,000/- per month, based upon the then prevailing market value of the property, vide reply notice dated 20.09.2003.

5. It is the case of the writ petitioner that since Bharat Petroleum Corporation was acting contrary to the provisions of Section 5 of the Bhurma Shell (Undertaking) Act 2 of 1976, he was constrained to file W.P.No.8860 of 2004 before this Court seeking a declaration as Bharat Petroleum Corporation was not entitled to any further renewal. However, the said Writ Petition was disposed of by misconstruing the same. In the meanwhile, Bharat Petroleum Corporation initiated a suit in O.S.No.137 of 2006 on the file of the District Munsif at Ponneri, by claiming further renewal of 20 years on the same terms and conditions. The said suit was dismissed on 03.06.2013 holding that Bharat Petroleum Corporation was not entitled to get a second renewal of lease as per Section 5(2) of the Bhurma Shell Act. Challenging the same, Bharat Petroleum Corporation preferred an appeal in A.S.No.50 of 2013 on the file of the Sub-Court, Ponneri and the same stood dismissed on 14.10.2014, confirming the judgment and decree made in O.S.No.137 of 2006.

6. Thereafter, the writ petitioner made a representation to the Joint Chief Controller of Explosives, Chennai on 30.03.2015 seeking to take steps to cancel the existing Explosives Licence, which stands in favour of Bharat Petroleum Corporation, as it had lost its right to the property in question, as per the provisions of Rule 153(1) of Petroleum Rules. Though the writ petitioner's representation was acknowledged, there was no response. Pursuant thereto, the writ petitioner sent a copy of the above representation dated 30.03.2015 to the Collector, Tiruvallur District and the same

was acknowledged. Hence, the writ petitioner filed W.P.No.13509 of 2015 seeking a direction to the Chief Controller of Explosives, Chennai to consider and take action on his representation, dated 30.03.2015 and this Court disposed of the said Writ Petition with a direction to the Chief Controller of Explosives, Chennai to consider the writ petitioner's representation dated 30.03.2015 within a stipulated time. However, the Chief Controller of Explosives, Chennai passed the impugned order, dated 30.04.2015, without considering the writ petitioner's claim. Challenging the same, the writ petitioner is before this Court by way of the present Writ Petition.

7. Seeking to enforce specific performance of the renewal clause, by filing O.S.No.137 of 2006 and an Appeal in A.S.No.50 of 2013, which were both dismissed, Bharat Petroleum Corporation has come up with the present Second Appeal on the ground that the Lower Appellate Court went wrong in holding that Bharat Petroleum Corporation has no semblance of right to demand extension of lease for a second term and that the suit is not maintainable on legal and on equitable basis. According to Bharat Petroleum Corporation, the Lower Appellate Court misdirected itself in holding that Bharat Petroleum Corporation is a "State" within the meaning of Article 12 of the Constitution of India and is therefore not entitled for second renewal and in holding so, the Lower Appellate Court failed to consider clause 4 of Exhibit A1, dated 05.12.1995, which contains the option for renewal.

8. Learned counsel for the writ petitioner contended that the Joint Chief Controller of Explosives, Chennai, the 1st respondent in the Writ Petition, failed to take note that Bharat Petroleum Corporation is enjoying the benefits of the property in question for a period of 20 years on the meagre payment of Rs.75/- per quarter and thereafter, on further renewal, the Corporation is paying only a meagre sum of Rs.135/- per quarter, which works out to Rs.1.50 per day for an extent of about 15,000 sq. ft. till 2003. It is his further contention that the Joint Chief Controller of Explosives, Chennai, failed to note that Bharat Petroleum Corporation, admittedly, has no valid lease and it is not at all entitled to maintain any Explosive licence in respect of the property in question.

9. In support of his case, learned counsel for the writ petitioner relied on a decision of the Apex Court in the case of Bharat Petroleum Corporation Limited vs. Rama Chandrashekhar Vaidya, (2014) 1 SCC 657, relevant portion of which, is extracted hereunder:

"6. Mr C.A. Sundaram, learned Senior Counsel appearing for the appellant, strongly argued that the right of renewal under the lease and the right of renewal in

terms of Section 5(2) of the Act are two distinct and separate rights, the former being contractual and the latter statutory. He further contended that the two rights being different in nature and arising from different sources could, therefore, be exercised separately and successively, independently of each other. Mr Sundaram contended that though in the year 1980, the Act had come into force nevertheless, the appellant chose first to exercise its right of renewal in terms of the provision in the lease. However, the exercise of the contractual right of renewal would not abrogate the appellant's statutory right as provided under Section 5(2) of the Act and at the expiry of the lease renewed in terms of the contract, it would be still open to the appellant to get a further renewal of the lease in exercise of the statutory right under Section 5(2) of the Act. In support of the submission, Mr Sundaram relied upon the decisions of this Court in Bharat Petroleum Corpn. Ltd. v. P. Kesavan [Bharat Petroleum Corpn. Ltd. v. P. Kesavan, (2004) 9 SCC 772] and Hindustan Petroleum Corpn. Ltd. v. Dolly Das [Hindustan Petroleum Corpn. Ltd. v. Dolly Das, (1999) 4 SCC 450].

13. The other possibility is that though in the renewal notice dated 17-10-1979 there is no reference to Section 5(2) of the Act, the renewal must be deemed to have taken place under that provision because the Act had come into force on 24-1-1976 and by virtue of Section 5(2) of the Act, the renewal clause of the existing lease stood superseded. If the "renewal", beginning from 1-3-1980 is to be deemed under Section 5(2) of the Act that would be a legally valid and correct renewal even in the absence of a fresh deed being executed between the parties, as was held in P. Kesavan [Bharat Petroleum Corpn. Ltd. v. P. Kesavan, (2004) 9 SCC 772]. If that be the position, then the appellant has already exercised and exhausted its right under Section 5(2) of the Act and there can be no question of a second renewal in terms of the statutory provision. Thus, viewed from any angle, the appellant cannot claim any further renewal of lease beyond 28-2-2005."

10. Learned counsel appearing for Bharat Petroleum Corporation submitted that Bharat Petroleum Corporation filed a suit for specific performance in O.S.No.297 of 1987 seeking statutory renewal of lease in respect of the property in question and the same was decreed on 22.07.1987. Later, when the writ petitioner got the ownership of the leased property, he was attorned as the lessor and rentals were paid to him by Bharat Petroleum Corporation. He further submitted that the writ petitioner executed a fresh lease, whereby, Clause 4(i) at page 9 of the document gives an option for further renewal of lease for 20 years with effect from 01.10.2003 at a quarterly rent of Rs.135/-. Thereafter, Bharat Petroleum Corporation sent a notice to the writ petitioner on 15.07.2003 seeking renewal of the said lease. In reply, the writ petitioner sent a notice to Bharat Petroleum Corporation vide letter dated 20.09.2003, demanding a fixed rent of Rs.64,000/-.

11. It is the contention of the learned counsel appearing for Bharat Petroleum Corporation that if the writ petitioner is aggrieved that the agreed rent is very low, he ought to have taken steps for legal remedy by approaching the appropriate court for fixation of fair rent for the said premises and that Bharat Petroleum Corporation, being a Public Sector Undertaking, cannot suo moto pay higher rent as demanded by the writ petitioner, as they are subjected to various procedures and audits by the statutory authorities. He further contended that the writ petitioner himself is a dealer, having a Licence Agreement with Bharat Petroleum Corporation to sell petroleum products and receive commission, and he cannot claim that Bharat Petroleum Corporation operating the said retail outlet, is causing huge loss to him, as, he himself is running the business in a leased out property.

12. To substantiate his stand, learned counsel appearing for the Bharat Petroleum Corporation, relied on a decision of this Court in the case of Bharat Petroleum Corporation Ltd. vs. Nguyen Ngoc Emalisa Mariyam Beevi, 1999 L.W. 64, wherein, it is held as under:

"8. ... The lower appellate court had not attached any weight to use of the expression "the lessor will consent". A claim for a further renewal might have originated in the shape of a request, but even then, the lessor, on the language employed, was bound to grant a renewal, inasmuch as there was no reservation of any option in the lessor, either to grant

or to decline to grant, as she had inextricably bound herself to consent to the renewal for a further period of 20 years with no further right of renewal thereafter. It is not in dispute that a written request had been made by the Corporation one month before the expiry of the period fixed under Ex.A1. Under those circumstances, having regard to the terms in which the right to secure renewal is couched, the Corporation was undoubtedly entitled to secure a renewal for a further period, i.e. for the next 20 years."

13. Heard the learned counsel on either side and perused the material documents available on record.

14. Admittedly, there is a lease Agreement for a period of 20 years as early as in the year 1963 and that there was a continuation of the lease Agreement for another period of 20 years. The writ petitioner has been paid a paltry sum of Rs.135/- per quarter and there was a demand for renewal of lease for another 30 years. The Civil Court, after taking note of the facts and circumstances of the case held that second lease is not at all permissible. Even though it has been contended by the writ petitioner that the original lease entered into in the year 1963 has not been referred to, the same has been mentioned in the grounds of appeal. Hence, it cannot be stated that Bharat Petroleum Corporation has suppressed details.

15. Even assuming that the Lower Appellate Court has failed to take into consideration clause 4 of Ex.A1, dated 05.12.1995, Bharat Petroleum Corporation will not be entitled to any relief, as renewal is not a matter of right. Further, second lease is not permissible. Under the guise of extension of renewal, Bharat Petroleum Corporation is trying to usurp the property in question, in all probabilities.

16. No question of law, muchless substantial question of law arises for consideration in this case.

17. In view of the above, as there is no renewal of Explosives licence, Bharat Petroleum Corporation cannot continue its business in the place in occupation. As there should be a finality to the litigation, driving the writ petitioner to approach the Civil Court is not going to help. Bharat Petroleum Corporation is a 'State' within the meaning of Article 12 of the Constitution of India, which is amenable to the writ jurisdiction of this Court. Hence, this Court is of the view that Bharat Petroleum Corporation has to hand over possession of the property within 45 days from the date on which a copy of

this order is made ready, otherwise, it is open to the writ petitioner to enter into the premises and take possession of the property, with the help of the jurisdictional police.

18. In fine, the Writ Petition is allowed as prayed for and the Second Appeal stands dismissed. As the conduct of Bharat Petroleum Corporation is condemnable, this Court directs Bharat Petroleum Corporation/appellant in the Second Appeal to pay a sum of Rs.2,00,000/- (Rupees Two Lakhs only) as costs to Sri Balagurukulam Primary School, Thirumangalam Road, Villivakkam, Chennai - 600049, by means of a Demand Draft, within a period of 30 days from the date of receipt of a copy of this order. Consequently, connected M.P.No.1 of 2015 in W.P.No.14883 of 2015 is closed.

19. Registry is directed to list this matter for 'reporting compliance' on 26.03.2018.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

(aeb)

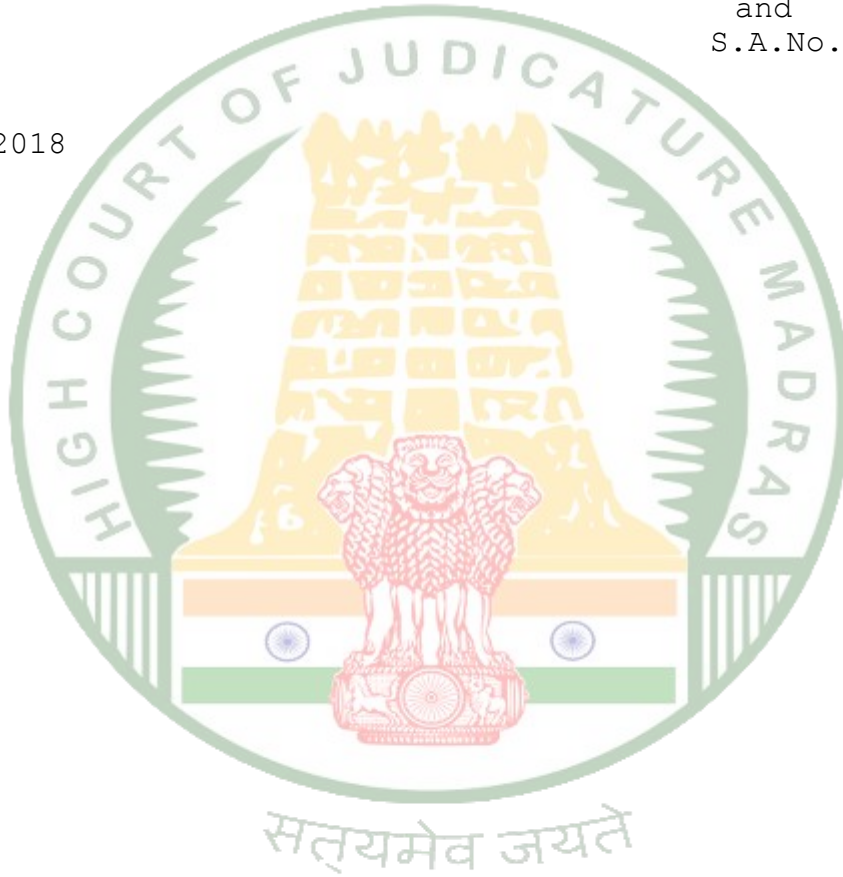
To:

1. The Joint Chief Controller of Explosives,
South Circle Office, Chennai,
A and D - Wing, Block 1 - 8,
2nd Floor, Shastri Bhavan,
No.26, Haddows Road,
Nungambakkam,
Chennai 600 006.
2. The Collector,
Tiruvallur District,
Tiruvallur.
3. The Sub Judge, Ponneri.
4. The District Munsif, Ponneri.
5. The Section Officer, V.R.Section,
High Court, Madras.(2copies)
6. The Section Officer,
Writ Section, High Court,
Madras(for post the matter on 26.03.2018)

+ 2 cc to Mr.G.Jeremiah Advocate,SR.4438,4437
+ 1 cc to Mr.K.Ethiraj Advocate,SR.4669
+ 1 cc to Mr.O.R.Santhanakrishnan Advocate,SR.4783
+ 1 cc to Mr.A.Veeramani Advocate,SR.5366
+ 1 cc to The Govt.Pleader, SR.5326

W.P.No.14883 of 2015
and
S.A.No.632 of 2017

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