

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 14.03.2018

JUDGMENT PRONOUNCED ON : 28.03.2018

CORAM

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.S.No.326 of 2000
and
Tr.C.S.No.786 of 2003

- 1.K.V.Subba Rao
- 2.Kolar Krishna Mohan
- 3.Habeeba Beevi

[Plaintiffs 1 to 3 represented by
their power of attorney holder
Mr.T.S.T.Kaznavi]

- 4.K.M.Selvan Mohammed (Died)
- 5.S.H.Yasmin Mohammed
- 6.T.S.T.Kaznavi

[Plaintiffs 5 and 6 impleaded
as per order dated 07.04.2014
in A.No.1881 of 2014]

... Plaintiffs in C.S.No.326 of 2000

Vs.

- 1.M/s.Bharat Petroleum Corporation Ltd.,
Office at No.1, Ranganatha Garden,
Off.:11th Main Road, Anna Nagar,
Chennai - 600 040.

- 2.M/s.A.R.Damodhara Mudaliar & Sons.
No.872, Poonamallee High Road,
Ponamallee, Chennai - 600 084.

... Defendants in C.S.No.326 of 2000

M/s.Bharat Petroleum Corporation Ltd.
Rep. by its Territory Manager (Retail),
Mr.K.P.Chandy,
No.1, Ranganathan Gardens,
Off. 11th Main Road, Anna Nagar,
Chennai - 600 040.

... Plaintiff in Tr.C.S.No.786 of 2003

Vs.

1.Matha Prasad
2.K.V.Subba Rao
3.Kolar Krishna Mohan
4.Habeeba Beevi

[Defendants 2 to 4 are
represented by their power of
attorney holder T.S.T.Kaznavi]

5.K.M.Selvan Mohammed (Died)
6.Mohsina Begum
7.Akbar Hussain
8.Akthar Hussain
9.M.Asma Banu
10.Sara Banu

11.S.H.Yasmin Begum
12.T.S.T.Kaznavi

[Defendants 11 and 12 are
impleaded as per order dated
21.07.2014 in A.No.3825 of
2014]

... Defendants in Tr.C.S.No.786 of 2003

PRAYER :-

C.S.No.326 of 2000 : Plaint filed under Order IV Rule 1 of O.S. Rules read with Order VII Rule 1 of Code of Civil Procedure, praying for the following judgment and decree:-

(a) directing the defendants to put the
plaintiffs in vacant possession of the Schedule

mentioned land after removing the super-structure at the cost of the defendants and on payment of such amounts that may be arrived by this Hon'ble Court, to be paid by the plaintiffs to the 1st defendant, towards the cost of construction of the super-structure;

(b) directing the defendants to pay to the plaintiffs, arrears of rent of Rs.7,000/- for the period from 01.05.1996 to 31.12.1996 at the rate of Rs.1,000/- per month;

(c) directing the defendants to pay to the plaintiffs damages for use and occupation for the period from 01.05.1997 to 31.04.2000, amounting to Rs.10,80,000/- at the rate of Rs.30,000/- per month and

(d) directing the defendants to pay the costs of the suit.

Tr.C.S.No.786 of 2003: Plaint filed under Order IV Rule 1 of O.S. Rules read with Order VII Rule 1 of Code of Civil Procedure, praying for the following judgment and decree:-

(a) directing the defendants to execute a renewed lease deed in respect of the property more fully described in Schedule A of the plaint for a further period of 27 years from the 9th day of December 1997 on a quarterly rent of Rs.3000/- on the same terms and conditions as contained in the original lease deed dated 09.03.1970 and in case of failure of the defendants to do so, appoint an officer of the court to execute and register a renewed lease deed;

(b) for a declaration that the plaintiff is entitled to occupy the suit premises for a further period of 27

years commencing from 9th day of December 1997 on a payment of quarterly rent of Rs.3000/- as per the terms and conditions of the earlier lease deed dated 09.03.1970;

- (c) for a permanent injunction restraining the defendants, their agents or servants or representatives from disturbing the peaceful possession and enjoyment by the plaintiff of the suit property and / or using the same for any lawful purpose including for running of the petrol pump outlet till the disposal of the suit and
- (d) for costs of this suit.

C.S.No.326 of 2000:

For Plaintiffs	: Mr.S.Parthasarathy, Senior Counsel for Mr.M.Balachandar
For Defendants	: Mr.O.R.Santhankrishnan for D1 Mr.M.B.Raghavan for D2

Tr.C.S.No.786 of 2003:

For Plaintiff	: Mr.O.R.Santhankrishnan
For Defendants	: Mr.S.Parthasarathy, Senior Counsel for Mr.M.Balachandar.

J U D G M E N T

Tr.C.S.No.786 of 2003 :-

This suit has been filed for specific performance seeking renewal of the lease deed dated 09.03.1970 with effect from 01.01.1970 for a further period of 27 years with effect from 09.12.1997, on the same terms and conditions as contained in the original lease deed dated 09.03.1970, for a

declaration that the plaintiff is entitled to occupy the suit premises for a further period of 27 years commencing from 09.12.1997 on payment of quarterly rent of Rs.3,000/-, for a permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the suit property by the plaintiff and for costs.

C.S.No.326 of 2000 :-

2. The defendants in Tr.C.S.No.786 of 2003 have come forward with this suit seeking recovery of possession of the suit property after removal of the superstructure, for arrears of rent for the period from 01.05.1996 to 31.12.1996, for damages for use and occupation from 01.05.1997 to 31.01.2000 at the rate of Rs.30,000/- per month, for future damages for use and occupation and for costs.

The case of the plaintiff in Tr.C.S.No.786 of 2003 in brief is as follows:-

3. The plaintiff is a Government Company engaged in production and distribution of petroleum products. In the course of its business the plaintiff's predecessor viz., M/s.Burma Shell Oil Storage Distributing Co. of India Ltd. had taken on lease the suit property under a lease deed dated 09.03.1970 for a period of 27 years commencing from 01.01.1970. The quarterly rent payable for the period from 01.01.1970 to 07.12.1977 was fixed at Rs.1,500/- per month and for the period from 08.12.1977 to 07.12.1987, the quarterly rent payable was fixed at Rs.2,400/- and for the

subsequent period the lease rent was fixed at Rs.3,000/- per quarter.

4. The predecessor of the plaintiff viz., M/s.Burma Shell Oil Storage Distributing Co. of India Ltd., was acquired by the Government of India under the Central Enactment viz., **The Burma Shell (Acquisition of Undertakings in India) Act 2 of 1976** [hereinafter called as 'the Act']. On the enactment of the said Act, the assets and liabilities of M/s.Burma Shell Oil Storage Distributing Co. of India Ltd., vested in the Central Government as per Section 5(1) of the Act and in terms of Section 7 of the Act the Central Government had transferred the interest and liabilities of the foreign company viz., M/s.Burma Shell Oil Storage Distributing Co. of India Ltd., to the plaintiff. Therefore, the plaintiff had become the lessee in respect of the property covered by the lease deed dated 09.03.1970 on and from the appointed date ie., 24th January 1976. It is claimed by the plaintiff that the defendants who were the owners of the property had been receiving the rents paid by the plaintiff as per the lease deed dated 09.03.1970.

5. According to the plaintiff, Section 5(2) of the Act enables the Central Government/ the successor oil company to exercise its option for renewal of lease for a further period of 27 years, on the expiry of the term of the lease. Claiming that the plaintiff had exercised such an option to renew the lease on 07.10.1997, the plaintiff seeks specific performance

viz., execution of lease deed for a period of 27 years with effect from 09.12.1997 subject to the same terms and conditions.

6. This suit is being resisted by the defendants who are the original owners as well as transferees from them. The defendants 2 to 5 in the said suit have filed the written statement, according to them, the option to renew the lease under Section 5(2) is to be exercised on the expiry of the lease. The lease in question having been created under the document viz., lease deed dated 09.03.1970 for a period of 27 years from 01.01.1970 had expired even on 31.12.1996. Therefore, the exercise of option by the plaintiff nearly 10 months after the expiry of the lease is not a proper exercise of option within the meaning of Section 5(2) of the Act and therefore, the plaintiff is not entitled to specific performance/ execution of lease deed in terms of Section 5(2) of the Act.

7. It is also contended that the exercise of option having been made to the vendors of the defendants who had no right and title over the property on the date of the same, cannot be said to be a valid exercise of option within the meaning of Section 5(2) of the Act. On the above contentions the defendants sought for dismissal of the suit.

8. The suit in Tr.C.S.No.786 of 2003 was filed originally as O.S.No.3652 of 2001 on the file of the VII Additioinal City Civil Court,

Chennai and thereafter, it was transferred to this Court and simultaneous trial had taken place in Tr.C.S.No.786 of 2003 and C.S.No.326 of 2000. While hearing the arguments of the counsel on either side, it is found that issues have not been framed in Tr.C.S.No.786 of 2003. However, the counsel on either side had expressed their no objection for framing of issues in Tr.C.S.No.786 of 2003 now before delivering judgment.

9. Hence, the following issues are framed in Tr.C.S.No.786 of 2003:

- 1. Whether the plaintiff had exercised the option for renewal of the lease strictly in terms of Section 5(2) of the Act?*
- 2. Whether the plaintiff is entitled to an automatic renewal of the lease?*
- 3. Whether the plaintiff had exercised the option to the knowledge of the actual owner of the property as on 07.10.1997?*
- 4. Whether the plaintiff is entitled to specific performance in terms of Section 5(2) of the Act?*
- 5. To what other reliefs the parties are entitled?*

10. The suit in C.S.No.326 of 2000 has been filed by the defendants 2 to 5 in Tr.C.S.No.786 of 2003 seeking recovery of possession.

The brief averments in the plaint in C.S.No.326 of 2000 is as follows:-

11. The 1st defendant is the Government of India Enterprise, the 2nd defendant is licensee/ dealer in petroleum products under the 1st defendant. The predecessor in interest of the 1st defendant viz., M/s.Burma Shell Oil Storage Distributing Co. of India Ltd., had taken the suit property on lease for a period of 27 years under the lease deed dated 09.03.1970. The lease commenced on 01.01.1970 and was for a period of 27 years till 31.12.1996. It is stated that the assets and liabilities of M/s.Burma Shell Oil Storage Distributing Co. of India Ltd., were taken over by the Government of India pursuant to The Burma Shell (Acquisition of Undertakings in India) Act 2 of 1976 and in terms of Section 7 of the said Act, the Central Government had by a notification dated 18.01.1982 vested the assets and liabilities of M/s.Burma Shell Oil Storage Distributing Co. of India Ltd., in the 1st defendant Company. Thus the 1st defendant Company became the lessee under the lease deed dated 09.03.1970. The 2nd defendant is stated to be the licensee of the 1st defendant.

12. According to the plaintiffs, they had purchased the schedule mentioned properties from their predecessors in interest and upon such purchase the power agent of the plaintiffs met the Territory Manager of the 1st defendant and informed them about the said purchase and also produced the copies of the documents.

13. It is also claimed that the plaintiffs power agent met Territory

Manager of the 1st defendant and even offered to sell the property to the defendant for a reasonable price. Since there was no response and lease came to an end on 31.12.1996, the plaintiffs 1 to 4 caused a lawyer's notice dated 18.09.1999 terminating the tenancy and seeking recovery of possession. In response to the said notice the 1st defendant sent a reply on 29.10.1999 claiming ignorance about the purchase and also claiming that they had exercised the option for renewal of the lease.

14. According to the plaintiffs, the said exercise of option even true will not bind the plaintiffs and will not result in an automatic renewal of the lease. It was also contended that it was open to the 1st defendant to exercise the option on the expiry of the lease and not long after the expiry of lease. The lease having expired on 31.12.1996 and the option for renewal having been exercised only on 07.10.1997, according to the plaintiffs, the said exercise of option itself is not in accordance with the letter and spirit of the provisions of Act 2 of 1976 and hence there could be no renewal in favour of the 1st defendant. Therefore, the plaintiffs have come forward with the suit claiming recovery of possession after removal of the superstructure and for other reliefs including damages.

15. This suit was resisted by the 1st defendant contending that in view of Section 5(2) of the Act, the 1st defendant is entitled to a statutory renewal on its exercise of option. According to the 1st defendant what is

required is only an exercise of option in terms of Section 5(2) of the Act and therefore, on the 1st defendant exercising an option for renewal there was an automatic statutory renewal of the lease for a further period of 27 years in terms of Section 5(2) of the Act. It is also contended that the 1st defendant had exercised its option on 07.10.1997 and therefore, it is entitled to continue in possession till expiry of the further period of 27 years from 09.12.1997.

16. It is also claimed that the suit suffers for want of cause of action. It is contended by the 1st defendant that the letter dated 07.10.1997 addressed to the earstwhile owner of the property would bind the plaintiffs who are only the successor in interest and therefore, there was an automatic statutory renewal for a further period of 27 years. Hence, the plaintiffs are not entitled to recovery of possession from the defendants. On the above pleadings, the defendants sought for dismissal of the suit.

17. On the above pleadings this Court had framed the following issues in the suit on 09.01.2001:

- 1. Whether the plaintiffs are entitled to possession as prayed for?*
- 2. Whether the plaintiffs are entitled to arrears of rent as prayed for?*
- 3. Whether the plaintiffs are entitled to mesne profits?*
- 4. Whether the plaintiffs are entitled to*

damages for use and occupation?

5. To what reliefs are the plaintiffs entitled to?

18. This suit viz., C.S.No.326 of 2000 and the other suit Tr.C.S.No.786 of 2003 were tried simultaneously. In Tr.C.S.No.786 of 2003, one Mr.Raj Kumar, the Territory Coordinator of the plaintiff viz., Bharat Petroleum Co., Ltd., was examined as PW1 and Exs.P1 to P3 were marked and one T.S.T.Kaznavi the agent of the defendants was examined as DW1. No documents were produced on the side of the defendants.

19. In C.S.No.326 of 2000 the agent of the plaintiffs viz., T.S.T.Kaznavi was examined as PW1 and one Poorna Chandran was examined as PW2 and Exs.P1 to P15 were marked. On the side of the defendants, one Sujeet Jayarajan, the Assistant Manager Sales of the 1st defendant Corporation was examined as DW1 and Mr.P.Anil Kumar, Territory Manager Retail was examined as DW2. Exs.D1 to D7 were marked on the side of the defendants.

Issue Nos.1 to 3 in Tr.C.S.No.786 of 2003:

20. The scope of the controversy in both the suits is only in respect of the renewal of the lease. The plaintiff in Tr.C.S.No.786 of 2003 claims that the benefits of the statutory renewal is provided for under Section 5(2) of The Burma Shell (Acquisition of Undertakings in India) Act 2 of 1976. The Act was enacted with the object of taking over the assets of a foreign Company called M/s.Burma Shell Oil Storage Distributing Co. of India Ltd. The Act in effect nationalizes the properties of the Foreign Company viz., M/s.Burma Shell Oil Storage Distributing Co. of India Ltd.

21. Section 5 of the Act reads as follows:

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.

(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.

22. Section 7 of the Act reads as follows:

7.(1) Notwithstanding anything contained in Section 3, 4 and 5, the Central Government may, if it is satisfied that a Government company is willing to comply, or has complied, with such terms and condition as that Government may think fit to impose, direct by notification, that the right, title and interest and the liabilities of Burmah Shell in relation to any of its undertakings in India shall, instead of continuing to vest in the Central Government, vest in the Government Company either on the date of the notification or on such earlier or later date (not being a date earlier than the appointed day) as may be specified in the notification.

(2) Where the right, title and interest and the liabilities of Burmah Shell in relation to its undertakings in India vest in a Government Company under sub-section (1), the Government company shall, on and from the date of such vesting, be deemed to have become the owner, tenant or lessee, as the case may be, in relation to such undertakings, and all the rights and liabilities of the Central Government in relation to such undertakings shall, on and from the date of such vesting, be deemed to have become the rights and liabilities, respectively, of the Government company.

(3) The provisions of sub-section (2) of section 5

shall apply to a lease or tenancy, which vests in a Government company, as they apply to a lease or tenancy vested in the Central Government and reference therein to the “Central Government” shall be construed as a reference to the Government company.

23. Section 11 of the said Act gives an overriding effect to the provisions of the Act over the other enactments.

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.

24. A reading of Section 5 and Section 7 of the Act makes it very clear that the plaintiff in Tr.C.S.No.786 of 2003 is the successor in interest of M/s.Burma Shell Oil Storage Distributing Co. of India Ltd., and all rights and liabilities of the said Company as on the date of the enactment of the Act 2 of 1976 viz., 24th January 1976 would vest in the plaintiff in Tr.C.S.No.786 of 2003. Sub-Section 2 of Section 5 enables the Central Government/ the Oil Company to exercise an option for renewal of the lease on the same terms and conditions on which the lease or tenancy was held by M/s.Burma Shell Oil Storage Distributing Co. of India Ltd., immediately before the appointed day.

25. In terms of sub-section 3 of Section 7 the provisions of sub-section 2 of Section 5 could be invoked by the Government Company in whom the properties of M/s.Burma Shell Oil Storage Distributing Co. of India Ltd., had been vested by the Central Government. It is not in dispute that the properties/ rights and liabilities of M/s.Burma Shell Oil Storage Distributing Co. of India Ltd., have been vested in the plaintiff in Tr.C.S.No.786 of 2003. Therefore, the plaintiff in Tr.C.S.No.786 of 2003 as the successor in interest of M/s.Burma Shell Oil Storage Distributing Co. of India Ltd., has the right to exercise the option for renewal of lease for a further period of 27 years in terms of sub-Section 2 of Section 5 of the Act.

26. In ***Bharat Petroleum Corporation Ltd., Vs. P.Kesavan and Another*** reported in **2004 (9) SCC 772**, the Hon'ble Supreme Court has considered the effect of Sub-Section 2 of Section 5 and has held that once an option is exercised by the Oil Company for renewal of the lease, the lease stood renewed statutorily in terms of Section 5(2) of the Act. While concluding thus the Hon'ble Supreme Court observed as follows:

“Having regard to the object of the Act, as noticed hereinbefore, it is difficult to agree with the submission of the learned counsel for the respondents to the effect that the expression of mere desire by the Central Government or the appellant was not enough and they were required to show something more, as for example, existence of

need for renewal of the lease. The Central Government or the government company is a State within the meaning of Article 12 of the Constitution of India. They are required to act fairly. It is not the case of the respondents herein that desire to get a lease renewed was actuated by any malice or ill will or the same was otherwise unfair and unreasonable. In that view of the matter, it is difficult to construe Section 5(2) of the Act as not laying down a law not contemplating automatic renewal of the lease. ”

27. It is therefore, clear that the legislative scheme contained in the said Act is that, if a Government Company expresses its desire to renew the lease the same would stand renewed on the same terms and conditions. Therefore, all that was required for the plaintiff in Tr.C.S.No.786 of 2003 is to have exercised the option for renewal of the lease or expressed its desire to renew the lease on the expiry of the original lease.

28. Mr.O.R.Santhanakrishnan, learned counsel appearing for the plaintiff in Tr.C.S.No.786 of 2003 would strenuously contend that the letter dated 07.10.1997 marked as Ex.D5 in C.S.No.326 of 2000 would amount to the exercise of option or expression of desire by the plaintiff to have the lease renewed in terms of Section 5(2) of the Act.

29. However, Mr.S.Parthasarathy, learned Senior Counsel appearing for the defendants in Tr.C.S.No.786 of 2003 would point out that the

requirements of Section 5(2) of the Act have not been strictly complied with and therefore, the plaintiff cannot claim that there has been a statutory renewal of lease as contemplated under Sub-Section 2 of Section 5 of the Act. According to Mr.S.Parthasarathy, learned Senior Counsel appearing for the defendants in Tr.C.S.No.786 of 2003, the exercise of option/ expression of desire must have been prior to the expiry of the lease. Relying upon the language of the Section 5 sub-section 2 which reads as follows:

“(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. ”

Mr.S.Parthasarathy, learned Senior Counsel would contend that the word renewal would by itself show that the legislature intended that the option to have the lease renewed should be exercised before the expiry of the lease.

30. Mr.S.Parthasarathy, learned Senior Counsel would contend that the option to renew the lease was actually exercised on 07.10.1997 that is long after the expiry of the lease on 31.12.1996. Therefore, the option to renew the lease has not been exercised properly and the lease having expired even on 31.12.1996 by a efflux of time cannot be renewed by exercising the option or expressing the desire on 07.10.1997.

31. As the second limb Mr.S.Parthasarathy, learned Senior Counsel would also contend that the letter dated 07.10.1997 in and by which the plaintiff claims to have exercised the option for renewal of the lease is addressed to the earstwhile owners of the property and the defendants in Tr.C.S.No.786 of 2003 as well as the plaintiffs in C.S.No.326 of 2000 who were the actual owners were not put on notice of such exercise of option. Therefore, there cannot be any statutory renewal of the lease in question.

32. After the lease there had been several transfers of the property by the original owner/ lessor viz., Mr.S.V.Matha Prasad. It is seen that the said S.V.Matha Prasad had sold various extents of the property to one M/s.Abdul Haleem, R.Sangeetha, Praveenkumar, Sakunthala and Heerabai under five sale deeds dated 19.04.1988, 14.03.1989, 08.02.1989, 24.01.1989 and 22.02.1989 respectively. It is also seen that the 2nd defendant in Tr.C.S.No.786 of 2003, Mr.K.V.Subba Rao had purchased an extent of 1760 sq.ft. from Mr.Heerabai under a sale deed dated 23.05.1996. The 3rd defendant, Kolar Krishnamohan had purchased an extent of 4437 sq.ft from Sakunthala under a sale deed dated 10.07.1996. The 4th defendant Habeeba Beevi has purchased an extent of 1760 sq.ft from Heera Bai under a registered sale deed dated 23.05.1996, she has also purchased an extent of 2260 sq.ft from Sangeetha under a registered sale deed dated 23.05.1996. The 5th defendant viz., K.M.Selvan Mohammed (Since deceased) had purchased an extent of 4437 sq.ft from one Praveen kumar under a sale

deed dated 18.11.1996. Copies of all these sale deeds have been marked as Ex.P2 (series) in C.S.No.326 of 2000.

33. It appears that a portion of the property was acquired by the Chennai Metro Rail Ltd., for the purposes of the Metro Rail project and according to the plaintiff in Tr.C.S.No.786 of 2003, an extent of 19170 sq.ft belonging to the defendants 1 to 5 in Tr.C.S.No.786 of 2003 is still in its possession. It is the contention of Mr.S.Parthasarathy, learned Senior Counsel appearing for the plaintiffs in C.S.No.326 of 2000 that the 1st defendant was aware of the sale transactions. Despite that they had chosen to issue the letter dated 07.10.1997 to the erstwhile owners viz., M/s, Abdul Haleem, Sangeetha, Praveen Kumar, Sakunthala and Habeeba Beevi apart from S.V.Matha Prasad who had retained only an extent of 2256 sq.ft in the property.

34. Though such contention is raised and pressed him to service very seriously by the learned Senior Counsel for the defendants in Tr.C.S.No.786 of 2003, no material has been produced by the contesting defendant in Tr.C.S.No.786 of 2003 to show that the plaintiff therein was notified of the purchases made by them before 07.10.1997 viz., the date on which the plaintiff in Tr.C.S.No.786 of 2003 purported to exercise its option for renewal of the lease. Of course, certain letters have been marked in cross

examination of PW1 in C.S.No.326 of 2000, but it is seen that those letters are dated 7th December 1997, whereas, the option for renewal of the lease was sought to be exercised by the plaintiff in Tr.C.S.No.786 of 2003 even on 07.10.1997 under Ex.P2 (series). In the absence of any material to show that the plaintiff in Tr.C.S.No.786 of 2003 was notified of the purchases made by the defendants herein, it cannot be said that the exercise of option made by the plaintiff on 07.10.1997 having been addressed to the erstwhile owner and therefore it is invalid.

35. I am therefore constrained to conclude that the contention of the defendants in Tr.C.S.No.786 of 2003/ plaintiffs in C.S.No.326 of 2000 to the effect that there cannot be a valid statutory renewal of the lease on the ground that the exercise of option was not notified to the actual owners of the property on the date of exercise of the option cannot be accepted.

36. The other contention of Mr.S.Parthasarathy, learned Senior Counsel which remains to be considered is that the exercise of option by the plaintiff in Tr.C.S.No.786 of 2003 on 07.10.1997 ie. after the expiry of the period of lease fixed under Ex.P1, lease deed dated 01.01.1970 is not in accordance with the spirit of sub-Section 2 of Section 5 of the Act. Admittedly, the lease was for a period of 27 years with effect from 01.01.1970 and the lease deed was executed on 09.03.1970. Therefore, the period of 27 years would expire on 31.12.1996. The plaintiff was obliged to

exercise its option or to express its desire to have the lease renewed before the expiry of the original lease in terms of Section 5(2) of the Act. The words *“on the expiry of the term of any lease or tenancy”* would necessarily mean that the desire to have it renewed or the exercise of the option to have it renewed should have been made prior to the expiry of the lease. A reading of Section 5(2) of the Act essentially indicates that the exercise of option must be prior to the expiry of the lease itself.

37. In Black’s Law Dictionary X Edition the word *“Expiry”* has been defined as *“The ending of a fixed period of time and esp., a formal termination on a closing date.”* In Ramanatha Iyer’s Law Lexicon the word *“Expiry”* is defined as the *“Termination of a time or period fixed by law, contract or agreement.”*

38. In *Michael Ketley vs. Claire Nicole Gilbert* reported in [2001] WLR 986 CA it was held that a requirement to make a payment on the expiry of the period is a requirement to make payment as soon as reasonably practicable after the expiry of the period, not, for example to make the payment at midnight on a particular day. Therefore, it is clear that the exercise of option for renewal or expression of desire to renew contemplated under sub-section 2 of Section 5 should have been made as soon as reasonably practicable after the expiry of the period. As already pointed out the period of lease came to an end on 31.12.1996 and the

option for renewal which ought to have been exercised on the expiry of the term was exercised only on 07.10.1997 i.e., nearly 9 months thereafter.

39. In ***Bharat Petroleum Corpn. Ltd. vs. Maddula Ratnavalli and Ors.***, reported in **2007 (6) SCC 81**, the Hon'ble Supreme Court had pointed out that an Oil Company being a state within the meaning of Article 12 of the Constitution of India is required to act fairly and reasonably and it cannot act arbitrarily. The Hon'ble Supreme Court while saying so had observed as follows:

“ The appellant Company is a state within the meaning of Article 12 of Constitution of India, it is therefore enjoined with a duty to act fairly and reasonably just because it has been conferred with a statutory power, the same by itself would not mean that exercise there of in any manner whatsoever would meet the requirement of law. “

40. These observations of the Hon'ble Supreme Court were made after the Court having considered the effect of a three Judge Bench decision of the Court in ***Bharat Petroleum Corporation Ltd., Vs. P.Kesavan and Another*** reported in **2004 (9) SCC 772** case. Subsequently, the view of the Hon'ble Supreme Court in ***Bharat Petroleum Corpn. Ltd. vs. Maddula Ratnavalli and Ors.***, reported in **2007 (6) SCC 81** was followed and reiterated by another 2 Judge Bench of the Supreme Court in ***Ram Bharosey Lal Gupta (D) By Lr. & others vs. M/S Hindustan Petroleum Corporation Ltd., and another.***

41. Therefore, apart from showing that the plaintiff corporation had acted statutorily, it should also show that it had acted fairly and reasonably. It is admitted that there was no expression of the desire to renew the lease prior to 07.10.1997, the lease having expired even on 31.12.1996, the same cannot be attempted to be renewed nearly 9 months thereafter. The term “on the expiry” has been interpreted to mean “as soon as reasonably practicable after the expiry of the period”. The attempt made by the corporation to have the lease renewed on 07.10.1997 cannot by any means be termed as soon as reasonably practicable after the expiry of the term.

42. I am therefore of the considered opinion that the corporation viz., the plaintiff in Tr.C.S.No.786 of 2003 has not exercised its option to renew the lease strictly in terms of sub-section 2 of Section 5 of the Act. Therefore, issue Nos.1 and 2 are answered against the plaintiff in Tr.C.S.No.786 of 2003 holding that the option for renewal has not been exercised strictly in the terms of Section 5(2) of the Act. Hence, plaintiff will not be entitled to automatic renewal as contemplated under Section 5(2) of the Act.

43. On the question as to whether the option for renewal has been exercised and intimation has been given to the actual owners of the

property, I have already concluded that in the absence of any evidence to show that the transfer of title was intimated to the plaintiff, the defendant cannot be allowed to contend that there was no proper intimation. Hence, issue No.3 is answered in favour of the plaintiff and against the defendants in Tr.C.S.No.786 of 2003.

Issue No.4 in Tr.C.S.No.786 of 2003:-

44. In the light of the conclusion arrived at on issue Nos.1 to 3, I am constrained to hold that the plaintiff is not entitled to a declaration that it is entitled to occupy the suit property for a further period of 27 years commencing from 9th December 1997.

Issue No.1 in C.S.No.326 of 2000:-

45. The ownership of the plaintiffs in the suit property is not in dispute. It is claimed that the lease had expired even on 31.12.1996 a notice to quit and deliver vacant possession has been sent by the plaintiffs even on 18.09.1999 under Ex.P6. In reply, the defendant viz., the corporation would contend that the option to renew the lease had been exercised on 07.10.1997 and therefore the lease automatically stood renewed. It is based on the claim that there is an automatic renewal of the lease, the defendants in C.S.No.326 of 2000 had filed a suit in Tr.C.S.No.786 of 2003. The question relating to the renewal of the lease has been considered in the said suit and it has been concluded that the 1st

defendant in C.S.No.326 of 2000 is not entitled to an automatic renewal of the lease in as much as the option to renew the lease has been exercised properly. No other defence has not been put up by the 1st defendant viz., oil Company against the claim for possession made by the plaintiffs.

46. The 2nd defendant is only a licensee under the 1st defendant and therefore if the 1st defendant is not entitled to continue as lessee the 2nd defendant is also not entitled to possession as licensee under the 1st defendant. The 1st defendant has also not invoked the provisions of Section 9 of the City Tenants Protection Act. Therefore, this issue is answered in favour of the plaintiffs holding that they are entitled to seek recovery of possession.

Issue No.2 in C.S.No.326 of 2000:-

47. There is no dispute at the bar regarding the rent payable and the rent that is being paid. There is also nothing in the evidence to show that the 1st defendant is in arrears of rent as claimed in the plaint. Therefore, this issue is answered in against of the plaintiffs holding that they are not entitled to arrears of rent.

Issue Nos.3 and 4 in C.S.No.326 of 2000:-

48. The original lease period expired as early as on 31.12.1996 and the possession of the 1st defendant thereafter could be termed only as that of the tenant holding over liable to pay the rents/ damages for use and occupation. The original lease was for an extent of about 23970 sq.ft out of

which it appears that an extent of 4800 sq.ft has been acquired by the Chennai Metro Rail Ltd and the 1st defendant in Tr.C.S.No.786 of 2003 who owned about 2256 sq.ft has also remained exparte in the said suit. It is stated at the bar that the said 2256 sq.ft has also been acquired by the Chennai Metro Rail and that is the reason why the 1st defendant is not evincing any interest in prosecuting the suit.

49. The balance extent that is said to be in possession of the plaintiff is about 16914 sq.ft. The plaintiffs have produced the Engineers report as Ex.P10 and the said Engineer has been examined as PW2 as per his report the annual fair rent worksout to Rs.2,11,42,500/- and monthly fair rent worksout to Rs.17,61,875/-. Of course, this witness has been cross examined by the learned counsel for the Corporation viz., 1st defendant in order to discredit the claim made in his report.

50. Considering the fact that the 1st defendant is a Company involved in marketing of petroleum products and it was in possession of the property as a lessee and it continued in possession by the option exercised seeking renewal of the lease for a further period of 27 years on the same terms and conditions and considering the fact that the rent fixed under the lease deed has been paid by the 1st defendant I do not think the plaintiffs could be favoured with decree for damages for use and occupation. Hence, issue Nos.3 and 4 are answered against the plaintiffs holding that they are not entitled to the reliefs of either mesne profits or damages for use and occupation.

Tr.C.S.No.786 of 2003:-

51. In the result, the suit is dismissed. Considering the nature of the dispute and the fact that the plaintiff is a Government Company there shall be no orders as to costs.

C.S.No.326 of 2000:-

52. In the result, the suit is decreed directing the defendants to vacate and handover possession of the suit property after removal of superstructure put up by the 1st defendant and handover possession of the same to the plaintiffs. Time for delivery of possession six months. In respect of other reliefs, the suit will stand dismissed and the parties are directed to bear their own costs. The connected applications are closed.

28.03.2018

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List of the Witnesses examined on the side of the Plaintiffs in C.S.No.326 of 2000:

PW1 - Mr.T.S.T.Kaznavi

PW2 - Mr.G.N.Poorna Chandran

List of Exhibits marked on the side of the Plaintiffs in C.S.No.326 of 2000:

<i>Sl.No.</i>	<i>Exhibits</i>	<i>Description of documents</i>	<i>Date</i>
1	Ex.P1	The photocopy of the lease deed entered into between Mr.Matha Prasad and Burma Shell oil storage and distributing company of India Limited.	09.03.1970
2	Ex.P2 (series)	The certified copies of sale deeds executed by the plaintiffs' predecessors in favour of the plaintiffs principals.	--
3	Ex.P3	The xerox copy of the letter written by PW1 to the Hon'ble Minister for Petroleum and Natural Gas, New Delhi.	10.08.1998
4	Ex.P4	The photocopy of the Power of Attorney executed by the plaintiffs in favour of PW1.	19.11.1998
5	Ex.P5	The photocopy of the letter written by the plaintiffs to the Territory Manager, Bharat Petroleum Corporation Limited, Chennai.	03.12.1998
6	Ex.P6	The copy of the legal notice sent by the plaintiffs through their counsel for the 1 st defendant.	18.09.1999
7	Ex.P7	The reply notice sent by the 1 st defendant to the counsel for the plaintiffs.	29.10.1999
8	Ex.P8	The letter sent by the 1 st defendant to the plaintiffs.	31.03.2000
9	Ex.P9	The copy of the rejoinder sent by the plaintiffs through their advocate to the 1 st defendant.	19.04.2000
10	Ex.P10	The report.	11.03.2012
11	Ex.P11	The certified copy of sale deed registered as Doc.No.3189 of 2009.	22.10.2009
12	Ex.P12	The analysis report for Doc.No.3189 of 2009.	--
13	Ex.P13	The certified copy of sale deed registered as Doc. No. 2029 of 2011.	28.09.2011
14	Ex.P14	The analysis report for Doc. No.2029 of 2011.	--
15	Ex.P15	The computer printout of the details of guideline value for the property.	--

List of the Witnesses examined on the side of the Defendants in C.S.No.326 of 2000:

DW1- Mr.Sujeet Jayarajan

DW2- Mr.P.Anil Kumar

List of Exhibits marked on the side of the Defendants in C.S.No.326 of 2000:

<i>Sl.No.</i>	<i>Exhibits</i>	<i>Description of documents</i>	<i>Date</i>
1	Ex.D1	The original Ex.P1 lease deed.	09.03.1970
2	Ex.D2	The letter written by Mrs.Heerabai to the 1 st defendant with copies marked.	09.12.1997
3	Ex.D3	The letter addressed by the 1 st defendant to the learned counsel for the plaintiffs.	--
4	Ex.D4	The copy of the letter addressed by the 1 st defendant to plaintiffs 1 and 3.	16.12.1997
5	Ex.D5	The copy of the letter written by the 1 st defendant to the predecessors in title of the plaintiffs.	07.10.1997
6	Ex.D6	The authorization letter.	25.01.2014
7	Ex.D7	The original of Ex.D5.	07.09.1997

List of the Witnesses examined on the side of the Plaintiffs in Tr.C.S.No.786 of 2003:

PW1 - Mr.Raj Kumar

List of Exhibits marked on the side of the Plaintiffs in Tr.C.S.No.786 of 2003:

<i>Sl.No.</i>	<i>Exhibits</i>	<i>Description of documents</i>	<i>Date</i>
1	Ex.P1	The authorization letter given in PW1's favour	--
2	Ex.P2 (series)	The certified copy of the letter sent by the plaintiff to the then lessor.	07.10.1997
3	Ex.P3	The certified copy of the lease deed entered into between the 1 st defendant and the plaintiff.	09.03.1970

List of the Witnesses examined on the side of the Defendants in Tr.C.S.No.786 of 2003:

DW1- Mr.T.S.T.Kaznavi

List of Exhibits marked on the side of the Defendants in Tr.C.S.No.786 of 2003:

--NIL--

28.03.2018

dsa

To

The Sub Assistant Registrar,
Original Side,
High Court, Madras.

R.SUBRAMANIAN,J.

dsa

**Pre-Delivery Judgment
in
C.S.No.326 of 2000
and
Tr.C.S.No.786 of 2003**

28.03.2018