

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

REVIEW APPLICATION (CIVIL) NO.1 OF 2018
IN
WRIT PETITION NO.6923 OF 2016

HINDUSTAN PETROLEUM CORPORATION LTD.
VERSUS
VIMAL SUDARSHAN BAFNA

...
Advocates for Applicant : Shri Dhorde R.N. Sr. Advocate
i/b Smt. Dube Anjali (Bajpai)
Advocate for Respondent 1: Shri Patil Pradip R.
AGP for Respondents 2 to 4 : Shri Bhagat N.T.
Advocate for Respondent 5 : Shri Karpe R.R.

...

CORAM : RAVINDRA V. GHUGE, J.
Dated: January 29, 2019

...

PER COURT :-

1. The review petitioner / original respondent No.4 seeks review of the judgment dated 14.6.2017 delivered by this Court, by which, the petitions were allowed and the judgment and order passed by the Divisional Commissioner, Nasik was quashed and set aside.

2. I have heard the learned Sr. Advocate on behalf of the review petitioner and have considered the written notes of submissions, along with the judgments cited. The original petitioner has also addressed the Court and has tendered written notes of submissions.

3. At the outset, it needs to be recorded that the scope of a review

petition is not enlarged to cause a re-hearing of a writ petition. The Honourable Apex Court in the matter of Lily Thomas Vs. Union of India [AIR 2000 SC 1650], has laid down the law that a litigant seeking review has to pointedly indicate the error, which can be said to be apparent on the face of the order. The entire writ petition or the original proceedings cannot be reheard on the pretext of entertaining a review petition.

4. For the sake of brevity, the undisputed factors that were recorded while delivering the judgment sought to be reviewed, in paragraph Nos.7 and 8 are reproduced hereunder:-

"7. *The undisputed factors that emerge from these proceedings in the light of the record and the submissions of the learned Advocates are as under:-*

(i) *The location of the site at issue is CTS No.1854-A, admeasuring 14850 sq. ft. within Municipal Council limits of Shrirampur, District Ahmednagar.*

(ii) *The original owner of the said property was Sagunabai Gopalrao Mokashi, who entered into a lease deed with Standard Vacuum Oil Co. on 23.6.1954. The lease period started from 1.2.1954 and lasted till 31.1.1984.*

(iii) *It was renewed for a further period of 30 years as is*

provided in the lease agreement by way of a voluntary extension clause, upto 31.1.2014.

(iv) A RCS No.553 of 1985 was filed by the original landlord under the Bombay Rent Act seeking eviction and possession of the suit property.

(v) Original landlord, who had a lease deed with Standard Vacuum Oil Company, had sold the property to Kesharmal Kankariya during the pendency of the suit.

(vi) Shri Kankariya passed away on 16.1.2011. Prior to his death he bequeathed the property by a will deed to the petitioner.

(vii) The petitioner approached the District Collector of Ahmednagar under Rule 150 of the Petroleum Rules, 2002 for seeking revocation of the no objection granted to HPCL by the Collector, by proceeding dated 31.7.2014.

(viii) By order dated 3.11.2015, respondent No.3 / District Collector allowed the application of the petitioner and concluded that the no objection certificate deserves to be recalled.

(ix) Respondent Nos.4 and 5 approached respondent No.2 / Appellate Authority on 16.11.2015 by filing an appeal under

Section 154(2) of the Petroleum Act, 1934 and the Rules framed thereunder.

(x) By order dated 30.1.2016, the appellate authority has set aside the order of the District Collector and has restored the no objection certificate granted to respondent No.4 HPCL.

8. *Shri Patil, learned Advocate for the petitioner submits that respondent No.4 could not have continued to store petroleum products in the concerned premises unless a lease existed between the landlord and respondent No.4. In the absence of a lease, respondent No.4 would not have the legal right to use the said premises for the purpose for which it was leased out for the first time in 1954. He specifically places reliance upon paragraph Nos.33 and 34 of the judgment of the Honourable Apex Court in the case of C. Albert Morris (supra). He also placed reliance upon paragraph Nos.6 to 8 of the judgment in the Baba and Company Case (supra) and S.V.Matha Prasad (supra). "*

5. It is, therefore, apparent that the lease was not continued with the review petitioner and the District Collector had considered the legal provisions and had ordered the recalling of the no objection certificate that was issued to the Petroleum Company in the absence of the continuation of the lease with the original landlord.

6. In the instant review petition, two issues raised by the review petitioner are to be considered. Firstly, that Clause 2(c) of the Lease

Agreement would be applicable and hence, the sale resorted to by the landlord, without intimating the petroleum company of his intention to sell, would render the said sale bad in law. The landlord has averred that though the sale deed took place on 14.11.2006, an attornment notice was issued on 17.1.2007. With a corrigendum the second notice was issued on 1.2.2007. I find that the said notices were received by the petroleum company, which did not choose to offer any response in between 2007 to 2018, which is a period of about 11 years.

7. Secondly, the review petitioner has taken a ground that the provisions of the Maharashtra Rent Control Act, would be applicable and the review petitioner cannot be evicted from the premises without compliance of the due procedure. The original petitioner / landlord relies upon the judgment delivered by this Court in the matter of the said Petroleum Company - Hindustan Petroleum Corporation Ltd. Vs. Chandulal Dipchand Kale [2008(3) Bom.C.R.897], wherein, it was concluded that the provisions of Section 3(1)(b) of the Maharashtra Rent Control Act would not make the act applicable since the undertaking / Corporation at issue is established under the Central Act and has a paid up share capital of Rs. One Crore or more. Such an entity would be exempted from the operation of the sale.

8. Learned counsel for the review petitioner submits that the facts

in the said judgment are distinguishable and the ratio would not be applicable. I find that this Court has specifically drawn a conclusion in view of the provisions of law in paragraph No.24, concluding that the Maharashtra Rent Control Act viz-a-viz the HPCL, would not be applicable.

9. Considering the above, I do not find that the review petitioner has made out a case of an error apparent on the face of the order. This petition, being devoid of merits, is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

...

akl/d