IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 314 OF 2018

Bharat Petroleum Corporation Ltd. …Applicants

Versus

Mr. Pesi Homi Sanjana & Anr. …Respondents

Shivprasad Ramchandra Page, Advocate for the applicant.
Ms. Snehal Modi – Advocate for the Respondent -2.

CORAM : DAMA SESHADRI NAIDU, J.

DATE : 25th JUNE 2019.

P.C. :

Bharat Petroleum Corporation Limited (BPCL), the appellant, is a public sector oil company. The first respondent is the original owner of the leased property, and the second respondent the subsequent purchaser. After suffering a decree of eviction in the trial Court, BPCL unsuccessfully challenged before the Appellate Bench of the Small Cause Court. It has eventually come before this Court through this Civil Revision Application.

2. To begin with, in 1973 the first respondent leased a building to BPCL's predecessors, that is Burmah Shell Oil Storage and Distributing Company of India Limited ("Burmah Shell"). That leased property was to be used as a guest house and the lease was for "seven years." In 1976, however, the

parties entered into a supplementary agreement. That modified a few clauses in the initial 1973 agreement.

3. Claiming that he needed that property for its *bonafide* purpose, the original landlord, that is the first respondent, filed a suit in 1987. That suit for eviction was against BPCL, which, by then, succeeded Burmah Shell. For reasons not relevant here, the original landlord could not prosecute that suit, so the trial Court dismissed it for non-prosecution. Then, on 17.02.2010, the original landlord issued a notice under Section 106 of Transfer of Property Act, demanding BPCL to vacate the leased property and to hand over the vacant possession. Thereafter, in March 2010, BPCL replied and, later, received the original landlord's rejoinder, too.

4. Eventually, the original landlord filed TA Suit No. 37/54 of 2010 against BPCL for eviction. In April 2011, the successor landlord, that is the second respondent, brought himself on record as a subsequent purchaser. Eventually, the Trial Court decreed the suit through its judgment dated 9.04.2014. Assailing that decree of eviction, BPCL filed Appeal No. 8 of 2014 before the Appellate Bench of the Small Cause Court, at Bandra, Mumbai. Affirming the Trial Court's decree, the Appellate Bench, too, dismissed the appeal, through its judgment, dated 18.11.2017. Further aggrieved, BPCL has filed this Civil Revision Application—against the concurrent findings on the eviction.

5. Shri S. R. Page, the learned standing counsel for BPCL,

has strenuously contended that the judgments at both levels, that is by the Trial Court and by the Appellate Court, suffered from incurable legal informalities on facts and on the law. He has, nevertheless, focused his forensic energies on a singular point: that is, the lease is permanent, so the respondents have no right to evict BPCL. About how the lease has become permanent, Shri Page has drawn my attention to the initial 1973 lease deed, and also the 1976 supplementary agreement. According to him, both the agreements contained unambiguous terms about the parties' intention and the nature of the lease, as "permanent".

6. Shri Page has also drawn my attention to the successor landlord's evidence in the suit. According to him, as a later purchaser, he hardly had any knowledge about the nature of the lease. In that context, Shri Page asserts that as the original landlord has failed to examine himself as a witness, the courts below ought to have drawn adverse inference against the landlords.

7. One of the issues the trial Court framed in the suit was whether BPCL would have the advantage of the beneficial provision in Burmah Shell (Acquisition of Undertakings in India) Act, 1976. Shri Page, with candour, concedes on that point. But he insists that as the lease is permanent, the impugned judgment suffers from a gross error of judgment.

8. On the contrary, Smt. Snehal Modi, the learned counsel for the landlords, submits that the lease is anything but

permanent. It is, in fact, a month-to-month tenancy, she asserts. According to her, precisely for that reason, the original landlord issued a notice under Section 106 of Transfer of Property Act. Smt. Modi has also stressed that beyond 1976, there was no fresh agreement between the parties.

9. Thus, Smt. Modi urges that BPCL derives any advantage neither from the contract nor from the statute, to squat over the property—being a PSU, at that. To support her contention, she has relied on the *Bharat Petroleum Corporation Limited v. Rama Chandrashekhar Vaidya*[1].

10. Heard Shri S. R. Page, the learned counsel for the applicant, and Ms. Snehal Modi, the learned counsel for the respondent no. 2.

11. Indeed, BPCL has suffered a decree—and the findings are concurrent on all issues, at that. In fact, BPCL hangs onto a singular plea, that the lease is permanent. Is it? Let us examine.

12. In the first agreement of lease executed in 1973, one of the clauses reads:

> "If the Lessors shall be desirous of continuing the tenancy hereby created for any further term at the expiration of the term hereby granted and shall on or before the first day of January 1980 give to the Lessor a notice in writing of such desire and shall have paid the rent hereby reserved and performed the several stipulation herein contained and on his part to be observed up to the expiry – of the term hereby created then the Lessor will let the demised premises to the Lessees for the further term of seven years from the

1 (2014) 1 SCC 657

> first day of April 1980 at an enhanced rental of Rs. 375/- (an increase of 50%), but subject in all – other respects to the same stipulations as are herein – contained. All the contributions and other monthly payments which is Agreed upon by exchange of letters between Lessees and Lessor mentioned in Clause 2 (p) shall also be enhanced by 50% more than the amounts payable at the time of the – expiry of the Lease.”

13. In the 1976-supplementary agreement, the same clause substantially gets reflected. And it reads:

> “AND it is hereby further agreed that, if the Lessees shall be desirous of continuing the tenancy hereby created for any further term at the expiration of the term hereby granted and shall on or before the first day of January 1980 give to the Lessor a month's notice in writing of such desire and shall have paid the rent hereby reserved and performed the several stipulations herein contained and on his part to be observed up to the expiry of the term hereby created then the Lessor will let the demised premises to the Lessees for the further term of seven years form the first day of April 1980 at an enhanced rental of Rs. 1,350-00, but subject in all other respects to the same stipulations as are contained in the Principal Indenture and these presents...”

14. In the face of the clause in the 1973 agreement and that in the 1976 supplementary one, BPCL or its predecessor ought to have complied with all contractual formalities enumerated in those clauses and ought to have secured a fresh lease for whatever period. Neither Burmah Shell nor BPCL has done so. In fact, after 1976, there had been no lease deed executed. As is statutorily well entrenched, there can be no

permanent oral lease.

15. To elaborate, as Section 105 of Transfer of Property Act defines, a lease of immovable property is a transfer of a right to a transferee to enjoy the property, for a period, express or implied, or in perpetuity. It must be for a price the transferee has paid or promised to pay to the transferor, periodically or otherwise. And in the absence of a contract, or local law, or usage to the contrary, a lease of immovable property for any other purpose than agriculture and manufacturing shall be deemed to be a lease from month to month. It is terminable, on the part of either lessor or lessee, by fifteen days' notice. So declares Section 106 of the Transfer of Property Act.

16. Unmistakable is the legislative intent in Section 107 of the Transfer of Property Act. A lease of immovable property from year to year, or for any term exceeding one year or reserving a yearly rent, can be made only by a registered instrument.

17. Even otherwise, the burden of establishing that the lease is permanent squarely lay on BPCL, but it failed to discharge that burden. It has, however, taken a plea that the original tenant has failed to depose before the court. First, once any document establishes a fact and if its authenticity remains unquestioned, no party needs to go through the rigmarole of supplementing or supplanting that with oral evidence.

18. On the other hand, here, the later landlord has succeeded the former one, and BPCL continued its lease under

the later landlord, too. It has never questioned his authority to be a lessor. In that context, it is idle for BPCL to insist that the first landlord ought to have examined himself as a witness. Even the doctrine of lis pendens, though inapplicable here, allows the later purchaser to pursue all the remedies available to his predecessor; it only prohibits him to claim contrary to his predecessor's interest or travel beyond that predecessor's right.

19. I, therefore, hold that BPCL's contention that the original landlord's failure to depose himself before the Court should lead to an adverse inference against the lessor mertis no acceptance.

20. True, BPCL's counsel has drawn my attention to Burmah Shell (Acquisition of Undertakings in India) Act, 1976. He has laid emphasis on Section 5 (2) and 7. Let us examine them. Section 5 of the Act speaks of how the Central Government becomes a lessee or tenant under certain circumstances. Subsection (2) mandates that on the expiry of any lease or tenancy if the Central Government desires, that lease or tenancy must be renewed on the same terms and conditions on which it was held by Burmah Shell immediately before the appointed day. Regarding the rights Burmah Shell enjoyed, after taking over those rights the Central Government, by notification under Section 7, transferred them to, for instance, BPCL. Then, from that date, BPCL was deemed to have become the owner, tenant, or lessee, with all the rights and liabilities. And the provisions of sub-section (2) of section 5 henceforth applied to BPCL, for a

Government Company was construed as the Central Government. And BPCL is a Government Company, so it was deemed to be the Central Government.

21. In *Rama Chandrashekhar Vaidya*, the facts are almost identical. In 1979, a few months before the lease ended, the appellant oil company, incidentally the same BPCL, gave notice to the lessor invoking the renewal clause in the lease deed. It asked the lessor to renew the lease at the same rent and upon the same terms and conditions as contained in the lease. The extension was for 25 years. It informed the lessor that it was drawing up a fresh engrossment of lease for execution and registration. The lease expired in 1980, but it neither executed nor registered that "fresh endorsement," though continued as a lessee.

22. As the second twenty-five-year term was about to end, in October 2004, the appellant sent another notice for renewal of the lease. But this time, the lessor met that notice with a notice of termination. And that has led to litigation. In that factual background, the Supreme Court has held that if the appellant claimed renewal "in terms of the stipulation in the lease deed" unless there is a fresh deed of renewal, the appellant's status became that of a month-to-month tenant. And after twenty-five years, it would be ludicrous for the appellant, as a month-to-month tenant, to turn around and claim renewal of lease under section 5(2) of the Act. Beyond 1980, the appellant, in fact, continued as a month-to-month tenant.

23. Then the Supreme Court, in the alternative, has also held that if the "renewal", beginning from 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. If that be the position, then the appellant, it stressed, has already exercised and exhausted its right under Section 5(2) of the Act. So there can be no question of a second renewal in terms of the statutory provision.

24. The case-holding of *Rama Chandrashekhar Vaidya*, I reckon, squarely applies here.

Under these circumstances, I find no merit in Civil Revision Application and accordingly dismiss it with costs.

[DAMA SESHADRI NAIDU, J.]