

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7178 OF 2002

WITH

CIVIL APPLICATION NO.1563 OF 2015

WITH

CIVIL APPLICATION NO.434 OF 2016

IN

WRIT PETITION NO.7178 OF 2002

Charanjit Kaur since deceased through legal heirs

Sharanjit Kaur and others

... Petitioners

Vs.

Hindustan Petroleum Corporation Limited & another ...

Respondents

WITH

WRIT PETITION NO.2330 OF 2000

WITH

CIVIL APPLICATION NO.782 OF 2016

WITH

CIVIL APPLICATION NO.292 OF 2018

WITH

CIVIL APPLICATION NO.1967 OF 2005

WITH

CIVIL APPLICATION NO.2442 OF 2009

IN

WRIT PETITION NO.2330 OF 2000

Hindustan Petroleum Corporation Limited & another...

Petitioners

Vs.

Charanjit Kaur since deceased through legal heirs

Sharanjit Kaur and others

... Respondents

Mr. A. V. Anturkar, Senior Advocate a/w. Mr. Sandeep Phatak i/b. Mr.Sugandh Deshmukh for Petitioners in W.P.No.7178 of 2002 and for Respondents in W.P.No.2330 of 2000 as also for Applicants in C.A.No.1563 of 2015, 434 of 2016, 1967 of 2005 and 2442 of 2009.

Mr. Minoo Siodia a/w. Mr. Kshitij Kadam i/b. M/s. Rustamji & Ginwala for Petitioners in W.P.No.2330 of 2000 and for Respondent No.1 in W.P.No.7178 of 2002 as also for applicants in C.A.No.782 of 2016 and 292 of 2018.

CORAM : R. G. KETKAR, J.

DATE : MARCH 1 & 8, 2019

ORAL JUDGMENT :

Heard Mr. Anturkar, learned Senior Counsel for petitioners in

W.P.No.7178 of 2002 as also for respondents in W.P.No.2330 of 2000 and Mr. Siodia, learned Counsel for petitioners in W.P.No.2330 of 2000 as also for respondents in W.P.No.7178 of 2002 at length.

2. Writ Petition No.2330 of 2000 is instituted by the Hindustan Petroleum Corporation Limited (for short 'H.P.C.L.') challenging the judgment and decree dated 29.02.2000 passed by the learned IIIrd Additional District Judge, Pune in Civil Appeal No.170 of 1991. By that order, the learned District Judge allowed the Appeal preferred by the respondents, hereinafter referred to as 'plaintiffs', and decreed the Suit only on the ground of unlawful subletting. The learned District Judge held that plaintiffs are entitled to recover possession open land bearing Survey No.446, Hissa No.5/B and Survey No.447, Hissa No.1-A admeasuring 2011.4/9 square yards and 912.2/3 square yards respectively situate at Village Bhosari, Taluka Haveli, District Pune, more particularly described in paragraph 1 of the plaint (for short 'suit property'). H.P.C.L. is directed to handover possession of the suit property to the plaintiffs within a period of three months from the date of the decree.

3. The plaintiffs had instituted Suit for recovery of possession of the suit premises inter alia invoking the grounds under Sections 13(1)(g), 13(1)(e), 13(1)(k) and 13(1)(a) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short 'Bombay Rent Act') read with under Section 108(o) of the Transfer of Property Act, 1882 (for short 'T.P.Act'). By order dated 23.01.1991, the learned trial Judge dismissed the Suit. Aggrieved by that decision, plaintiffs preferred Civil Appeal No.171 of 1991. By order dated 29.02.2000, the learned District Judge decreed the Suit inter alia on the ground of unlawful subletting contemplated under Section 13(1)(e) of the Act and declined to pass

decree under Sections 13(1)(g), 13(1)(k) and 13(a) of the Act. As the learned District Judge declined to pass eviction decree under Sections 13(1)(g), 13(1)(l), 13(1)(k) and 13(1)(a) of the Act read with Section 108(o) of the T.P. Act, plaintiffs have instituted Writ Petition No.7178 of 2002. The relevant and material facts giving rise to filing of the Present Petition, briefly stated, are as under:

4. On 10.11.1986, plaintiffs instituted Suit for recovery of possession of the suit property. The plaintiffs contended that they are in dire need of business premises for their separate independent business in view of the death of Mohindersingh Balwantsingh Anand. The plaintiffs are the heirs and legal representatives of Mohindersingh Balwantsingh Anand. They desire to have accommodation for their own business. They require the suit property for construction of their new building in the suit property. Plaintiff No.1 lost her husband (Mohindersingh) at very young age. She has to support herself and three children i.e. plaintiffs No.2 to 4. The plaintiffs are in strained financial circumstances. They have no alternative but to set up a business on the suit premises. The plaintiffs further contended that grater hardship will be caused to them than H.P.C.L. The plaintiffs further alleged that H.P.C.L. has unlawfully sublet the suit property to M/s. Bhandari, hereinafter referred to as 'defendant No.2' and as such, H.P.C.L. is liable for eviction under Section 13(1)(e) of the Act.

5. In so far as ground of change of user is concerned, plaintiffs contended that H.P.C.L. is using the suit property for the purpose not similar to sale, service, etc. of petroleum products and thus, they have changed the user of the suit premises. The plaintiffs alleged that H.P.C.L. has committed breach of the terms and conditions of the original agreement of lease. On this ground, plaintiffs sought possession

of the suit property.

6. H.P.C.L. filed written statement traversing the contentions raised in the plaint. Defendant No.2 also filed written statement denying the claim made by the plaintiffs.

7. On the basis of the pleadings of the parties, the learned trial Judge framed the necessary issues. The parties adduced evidence in support of their respective case. After considering the evidence on record, by order dated 23.01.1991, the learned trial Judge dismissed the Suit. Aggrieved by that decision, plaintiffs preferred appeal. By order dated 29.02.2000, as indicated earlier, the learned District Judge allowed the appeal. The learned District Judge decreed the Suit only on the ground of unlawful subletting as contemplated by Section 13(1)(e) of the Act. It is against this order, H.P.C.L. has preferred Writ Petition No.2330 of 2000 and plaintiffs have preferred Writ Petition No.7178 of 2002 as the learned District Judge declined to pass eviction decree on the remaining grounds.

8. In support of the Petition instituted by H.P.C.L., Mr. Siodia submitted that after dismissal of the Suit and during the pendency of the appeal before the District Court, plaintiffs entered into agreement for sale of the suit property with H.P.C.L. on 05.12.1997. He submitted that the very fact that plaintiffs entered into agreement for sale in favour of H.P.C.L. demonstrates that the need pleaded by the plaintiffs was neither reasonable nor bonafide. H.P.C.L. had instituted Suit for specific performance of contract. The Suit was decreed by the trial Court. Appeal is preferred by the plaintiffs and the same is pending in the District Court. That apart, after appreciating the evidence on record, the Courts below have concurrently held that plaintiffs have not established their

requirement. The findings recorded by the Courts below are based upon evidence on record.

9. In so far as the decree passed by the learned District Judge on the ground of unlawful subletting is concerned, he invited my attention to the Indenture of Lease dated 14.02.1964 between Mohindersingh Anand being the lessor and Caltex (India) Limited being the predecessor-in-title of H.P.C.L. In particular, clause 4(a) of the Lease Deed gave liberty to the lessee to underlet the demised premises or any part thereof to any local dealer or agent for use for all or any of the purposes aforesaid without any consent of the lessor. He has invited my attention to the Petrol / Diesel Dealer Agreement dated 26.07.1984 executed between H.P.C.L. and defendant No.2, and in particular, recital dealing with II Schedule (the outfit), clauses 19, 35 and 40 to contend that defendant No.2 is a dealer of H.P.C.L. and is a licensee. He also invited my attention to the evidence of defendant No.2 – Jaykumar Babulal Bhandari, who was examined as D.W.2. In the examination-in-chief, D.W.2 deposed that he is a dealer of H.P.C.L. He produced true copy of the agreement at exhibit-58 as the original agreement was filed in another Suit. In cross-examination, he denied suggestion that defendant No.2 are sub-tenant of H.P.C.L.

10. Mr. Siodia invited my attention to the evidence of J. M. D'souza examined by H.P.C.L. as D.W.1, and in particular paragraph 2 thereof. In paragraph 2, D.W.1 deposed that original deed is produced in C.S.No.470/79, which is pending in the Court of Civil Judge, Junior Division, Pune. The said Suit is for specific performance of renewal of period of lease. D.W.2 produced photocopy of the Lease Deed. He submitted that the learned District Judge has committed serious error in decreeing the Suit on the ground of unlawful subletting by ignoring

clause 4(a) of the Lease Deed and clauses 19, 35 and 40 of Dealership Agreement dated 26.07.1984. In support of his submissions, Mr. Siodia relied upon the following decisions:

- a. ***Shri Somvanshiya Sahastrajun Kshatriya Samaj, Trust Vs. Vardhaman Petrol Depot and another, Writ Petition No.5517 of 2006*** decided by this Court (Coram : D. K. Deshmukh, J.) on **18.01.2008**; and
- b. ***Bharat Petroleum Corporation Limited Vs. Chembur Service Station, (2011) 3 SCC 710***;

11. On the other hand, Mr. Anturkar supported the decree passed by the learned District Judge on the ground of unlawful subletting as contemplated by Section 13(1)(e) of the Act. He further submitted that aggrieved by the order passed by the learned District Judge declining to pass eviction decree under Sections 13(1)(g), (k) and (a) of the Act read with Section 108(o) of the T.P.Act, plaintiffs have instituted Writ Petition No.7178 of 2002. He submitted that merely because plaintiffs have executed agreement of sale on 05.12.1997 in favour of H.P.C.L. will not ipso facto mean that the requirement of the plaintiffs is eclipsed. He submitted that very fact that plaintiffs have entered into agreement of sale with H.P.C.L. shows that the same was entered into because of the compelling circumstances. He submitted that plaintiffs No.2 to 4 are mentally retarded children of plaintiff No.1. As the plaintiffs were not getting possession of the suit premises from H.P.C.L. because of various litigations between the parties, she was constrained to enter into agreement of sale with H.P.C.L. Mr. Anturkar submitted that as the appeal preferred by plaintiffs against the decree passed in a Suit filed by H.P.C.L. for specific performance is pending, at this stage, it cannot be claimed by H.P.C.L. that there is a merger of interest. He relied upon the decision of the Apex Court in ***H. K. Sharma Vs. Ram Lal, 2019 SCC Online SC 76***.

12. Mr. Anturkar submitted that the Courts below declined to pass decree on the ground of bonafide requirement on the ground that pleadings and evidence adduced by the plaintiffs in support of this case is vague. He submitted that the approach of the Courts below is perverse. In support of this submission, he relied upon ***Raghunath G. Panhale Vs. Chaganlal Sundarji & Co., (1999) 8 SCC 1*** to contend that bonafide requirement does not mean dire or compelling necessity. Plaintiff landlord need not have reached a level of starvation to justify getting possession of the suit premises in order to establish a business.

13. Mr. Anturkar submitted that the entire approach of the Courts below was wrong in law and perverse on facts. This Court, in exercise of powers under Article 227 of the Constitution of India, will interfere with the findings recorded by the Courts below and decree the Suit under Section 13(1)(g) of the Act. He also relied upon the following decisions:

- a. ***Baldev Singh Bajwa Vs. Monish Saini, (2005) 12 SCC 778***, and in particular paragraphs 14 to 19 thereof;
- b. ***Devinder Kumar Vs. Nachhattar Singh, (2014) 16 SCC 803*** to contend that when the plaintiff comes with the case of reasonable and bonafide requirement, the presumption is in favour of the landlord and heavy burden would lie on the tenant to establish that the need of the landlord is neither reasonable nor bonafide. In the present case, H.P.C.L. has not established that the need of the landlord is neither bonafide nor reasonable. He, therefore, submitted that the Suit instituted by the plaintiffs deserves to be decreed.

14. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on

record. In so far as Writ Petition No.2330 of 2000 is concerned, the same is directed against the order passed by the learned District Judge on 29.02.2000 by which the Suit was decreed only under Section 13(1)(e) of the Act. Section 13(1)(e) of the Act reads thus,

“13. When landlord may recover possession.-

(1) Notwithstanding anything contained in this Act but subject to the provisions of sections 15 and 15A, a landlord shall be entitled to recover possession of any premises if the Court is satisfied-

(e) that the tenant has, since the coming into operation of this Act, unlawfully sublet, or after the commencement of the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Act, 1973, unlawfully given on licence, the whole or part of the premises or assigned or transferred in any other manner his interest therein; or”

15. In order to find out whether H.P.C.L. has unlawfully sublet premises to the defendant No.2, it is necessary to consider the Lease Deed dated 14.02.1964 between Mohindersingh Anand being the lessor and Caltex (India) Limited being the predecessor-in-title of H.P.C.L. Clause 4(a) thereof reads thus,

4. Provided always and it is mutually agreed as follows:-

(a) The Lessee shall be at liberty to underlet the demised premises or any part thereof to any local dealer or agent for use for all or any of the purposes aforesaid without any consent of the Lessor.

16. A perusal of clause 4(a) shows that the lessee - Caltex (India) Limited is at liberty to underlet the demised premises or any part thereof to any local dealer or agent for use for all or any of the purposes without consent of the lessor (Mohinder Singh Anand). Thus, the lease agreement itself permits lessee to underlet the demised premises or any part thereof to local dealer or agent for use for all or any of the purposes without consent of the lessor.

17. It is also necessary to refer to the Petrol / Diesel Dealer Agreement dated 26.07.1984 executed between H.P.C.L. and defendant No.2, and in particular, recital dealing with II Schedule (the outfit), clauses 19, 35 and 40. The relevant recital in respect of Schedule II dealing with 'outfit' is to the following effect:

“ AND WHEREAS the Corporation is the Owner / Lessee of a Plot of land more particularly described in the First Schedule hereunder written and of the structures thereon (hereinafter collectively referred to as 'the premises') and has installed and / or is about to install and under the said premises the apparatus and equipment described in the Second Schedule hereto hereinafter called 'THE OUTFIT':”

18. Clause 2 records that H.P.C.L. granted to the defendant No.2 leave and licence and permission for the duration of agreement to enter on the premises described in First Schedule and to use the premises and outfit for the exclusive purpose of storing, selling and handling the products purchased at the dealer from the Corporation. The dealer shall have no right, title or interest in the premises or outfit and shall not be entitled to claim the right of lease, sub-lessee, tenant or any other interest in the premises or outfit. It was specifically agreed and declared in particular that the dealer shall not be in exclusive possession of the premises. Clause 5 records that for the use of the outfit, the dealer shall pay to the Corporation a monthly licence fee as determined in accordance with the directives issued by the Central Government from time to time. Clause 19 records that the premises and outfit shall be and remain the absolute property of the H.P.C.L. H.P.C.L. may at any time enter upon the said premises to inspect, test, repair, and to reduce and / or remove the outfit of the buildings or structures on the premises or any part thereof, affix the H.P.C.L.'s name plates thereto and / or seal the whole or any part thereof against interference by the dealer or third parties. Clause 40 records that H.P.C.L. will obtain in its name a storage licence from the Controller of Explosives for the storage of petroleum

products at the same premises and the dealer shall faithfully observe and perform all the terms and conditions of the licence.

19. In the case of **Bhart Petroleum Corporation Limited** (*supra*), the Apex Court interpreted Dispensing Pump and Selling Licence (DSPL) Agreement dated 01.04.1972, which is somewhat identical with the Dealership Agreement dated 26.07.1984. In paragraph 15, the Apex Court formulated the questions that fell for consideration. From paragraph 16 onwards, the Apex Court considered various clauses of the said agreement and also considered the definition of the 'licence' appearing in Section 52 of the Indian Easements Act, 1882. In paragraph 32, Hon'ble Mr. Justice, R. V. Raveendran observed thus,

“32. In this case, the DPSL Agreement clearly demonstrated that licence granted by the appellant enabled the licensee (respondent) to enter upon the retail outlet premises only for the limited purpose of using the facilities (that is Motor Spirit/HSD Pumps, storage tanks etc.) for purposes of sale of appellant's Motor Spirit, HSD, Motor oils, Greases or other motor accessories (together referred to as 'Products of the appellant') as a licensee of the appellant at the prices specified by the appellant. The respondent could not sell any other goods or the products of any one else. It could not charge a price different from what was stipulated by the appellant. The respondent could not enter the outlet premises if the licence granted to the respondent to sell the appellant's petrol and petroleum products was terminated. In other words, the respondent- licensee had no licence to enter the petrol pump premises or use the 'facilities', if it could not sell the products of the appellant. The relevant terms of the DPSL agreement extracted in para 17 above show that the licence was given to the licensee to enter the appellant's outlet premises and use the equipment/facilities provided by the appellant for the exclusive purpose of sale of the products of the appellant. This has been completely lost sight of by the courts below.”

20. After interpreting the terms of the agreement extracted in paragraph 16, it was observed that the licence was given to the licensee to enter the appellant's outlet premises and use the equipment/facilities

provided by the appellant for the exclusive purpose of purchase and sale of the products of the appellant. In paragraph 39, ultimately, the learned Judge held that the licensee does not have any right to use the premises nor any right to enter upon the premises after the termination of the agency. The respondent contended that it was the licensee from 01.04.1972 and therefore, become a deemed tenant under Section 15A of the Bombay Rent Act. The learned Judge held that the respondent did not become a deemed tenant and consequently could not claim protection of the Rent Control Law as a tenant. Hon'ble Mr. Justice H. L. Gokhale however disagreed on this point and observed that as the respondent was inducted prior to 01.02.1973, B.P.C.L. will have to follow the procedure laid down in the Public Premises (Eviction of Unauthorized Occupants) Act, 1971.

21. In the present case, I have already observed that defendant No.2 examined Jaykumar Babulal Bhandari as D.W.2. D.W.2 deposed that he is a dealer of H.P.C.L. In the cross-examination, he denied suggestion that defendant No.2 are sub-tenant of H.P.C.L. Thus, in the present case, defendant No.2 has not claimed protection under the Rent Control Legislation. Applying the tests laid down by the Apex Court in the case of **Bhart Petroleum Corporation Limited** (*supra*) to the facts of the present case as also after considering the various clauses of the Petrol / Diesel Dealer Agreement dated 26.07.1984, it has to be concluded that no right, title or interest was created in favour of the defendant No.2 by H.P.C.L. Defendant No.2 is merely a licensee. Defendant No.2 is governed by the terms and conditions of the agreement. In the light of the aforesaid discussion, the learned District Judge was not justified in decreeing the Suit under Section 13(1)(e) of the Act.

22. This brings me to Writ Petition No.7178 of 2002 filed by the plaintiffs challenging the judgment and decree dated 29.02.2000 passed

by the learned District Judge in respect of points No.1 and 3. Points No.1 and 3 and the findings recorded against these points read thus,

<u>Points</u>	<u>Findings</u>
(1) Whether the appellants / plaintiffs ... prove that they require the suit plot reasonably and bonafide for the construction of their own building over it for their own use and occupation?	No
(2) ...	
(3) Whether the appellants / plaintiffs prove ... that the respondent / defendant No.1 has committed the breach of terms and conditions of the original agreement of lease?	No Answered accordingly

23. The learned District Judge has considered point No.1 in paragraphs 8 to 11. In paragraph 8, the learned District Judge dealt with deposition of the plaintiff challenging order exhibit 41 and observed that the plaintiff has changed her stand taken in the pleadings. The learned District Judge observed that there is contradiction between the pleadings and evidence of the plaintiffs. She has made contrary version in respect of the bonafide need of the suit premises for their own use and occupation. In paragraph 10, after considering the evidence on record, the learned District Judge observed that the pleadings as regards reasonable and bonafide requirement as also evidence is vague. The learned District Judge thus affirmed the findings of the learned trial Judge on the issue of reasonable and bonafide requirement.

24. In so far as the trial Court judgment is concerned, the learned trial Judge has dealt with this aspect from paragraphs 11 to 13. In paragraph 12, after considering the pleadings and evidence, the learned trial Judge observed that the case pleaded by the plaintiffs is vague. The evidence given in support of that case is also vague and there is no inclination to tell the truth. After considering the facts and circumstances of the case as also the evidence, the learned trial Judge negatived ground under Section

13(1)(g) of the Act.

25. Thus, after appreciating the evidence on record, the Courts below have concurrently negated the ground of reasonable and bonafide requirement. That apart, as mentioned earlier, on 05.12.1997, plaintiffs entered into agreement of sale with none other than H.P.C.L. The Suit instituted by H.P.C.L. for specific performance is also decreed by the trial Court and the appeal preferred by the plaintiffs herein is pending before the District Court. In my opinion, the very fact that the plaintiffs entered into agreement of sale with H.P.C.L. destroys their case of reasonable and bonafide requirement. If at all the plaintiffs genuinely require the suit premises, they would not have entered into agreement of sale with H.P.C.L. The need pleaded by the plaintiffs, therefore, does not survive after entering into agreement of sale with H.P.C.L. on 05.12.1997. The need pleaded by the plaintiffs is completely eclipsed and since then is not in existence. The said issue was exhaustively dealt with in ***Seshambal (dead) through LRs Vs. M/s. Chelur Corporation, Chelur Building and others***, AIR 2010 SC 1521. In this case, the owners Shri K. Sachindanda Iyer and his wife late Smt. A. Sheshambal Sachindanda Iyer had let out for a period of 3 years the premises in dispute to the respondent No.1. After expiry of the lease period, the owners instituted the proceedings before the Rent Controller at Ernakulam on the ground that they require the same for their bonafide personal occupation within the meaning of Section 11(3) of Kerala Buildings (Lease and Rent Control Act), 1965.

26. The Rent Controller dismissed the proceedings. Aggrieved by that order, the owners appealed to the Appellate Authority and said decision was affirmed by the Appellate Authority. Aggrieved by these orders, the owners preferred Revision Application before the High Court of Kerala.

During pendency of the Revision Petition before the High Court, Shri K. Sachindanda Iyer died leaving behind his wife. The High Court set aside the concurrent findings recorded by the Authorities below.

27. Aggrieved by that decision, the tenant preferred S.L.P. before the Apex Court. During the pendency of the appeal, Smt. A. Sheshambal Sachindanda Iyer also passed away and her LRs, namely, three daughters, were brought on record. It was noted that two of the daughters were living in India, one each at Coimbatore and Bihar and the third daughter is settled in America.

28. The Apex Court referred to decisions in-

- (i) ***Kamleshwar Prasad Vs. Pradumanju Agarwal (dead) by LRs, (1997) 4 SCC 413;***
- (ii) ***Gaya Prasad Vs. Pradeep Shrivastava, 2001 (2) Mh.L.J.581;***
- (iii) ***Hasmat Rai Vs. Raghunath Prasad, (1981) 2 SCC 103;***
- (iv) ***Pasupuleti Venkateswarlu Vs. Motor and General Traders, (1975) 1 SCC 770;***
- (v) ***Om Prakash Gupta Vs. Ranbir B. Goyal, AIR 2002 SC 665.***

29. In **Om Prakash Gupta's case** (*supra*), the Apex Court observed as under:

“... although the ordinary rule of civil law is that the rights of the parties stand crystalised on the date of the institution of the suit yet the Court has power to mould the relief in case the following three conditions are satisfied:

“(i) that the relief, as claimed originally has, by reason of subsequent events, become inappropriate or cannot be granted;

(ii) that taking note of such subsequent event or changed circumstances would shorten litigation and enable complete justice being done to the parties; and

(iii) that such subsequent event is brought to the notice of the court promptly and in accordance with the rules of procedural law so that the opposite party is not taken by surprise...”

30. In view thereof, I do not find that the Courts below committed any

error while declining to pass decree under Section 13(1)(g) of the Act.

31. In the light of the aforesaid discussion, Rule is made absolute in Writ Petition No.2330 of 2000 with no order as to costs. Rule in Writ Petition No.7178 of 2002 is discharged with no order as to costs. It is made clear that the learned District Judge, who is seized of the appeal filed by the plaintiffs herein against a decree of specific performance, will decide the said appeal on the basis of evidence on record and in accordance with law, uninfluenced by the observations made in this order.

32. In view of the disposal of the main Petitions, Civil Applications do not survive and the same are disposed of accordingly.

(R. G. KETKAR, J.)

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