

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.07.2019

PRONOUNCED ON : 14.08.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P(NPD) No.1709 of 2015
and M.P.No.1 of 2015

Ravindra Gettu

.. Petitioner

VS

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1.Bharat Petroleum Corporation Limited,
Rep.by Chief Divisional Manager,
No.7, Kodambakkam High Road,
Chennai 600 034.

2.M/s.Pauls Auto Services,
M/s.Bharat Petroleum Corporation Limited,
No.15, College Road,
Chennai 600 006.

3.Territory Manager (Retail)
M/s.Bharat Petroleum Corporation Limited,
No.35, Vaidhyathan Street,
Tondiarpet, Chennai 600 083.

.. Respondents

Prayer: Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease & Rent Control) Act 1960 to set aside the order dated

19.12.2014 made in R.C.A.No.495 of 2010 passed by the VII Small Causes Court, Chennai setting aside the order and decree dated 30.06.2010 passed in R.C.O.P.No.1002 of 2007 by the XVI Judge, Small Causes Court, Chennai.

For Petitioner : M/s.Adeeba Fathima for
M/s.George Cheriyan

For Respondents : Mr.M.V.Krishnan

ORDER

The present civil revision petition has been filed against the order dated 19.12.2014 on the file of the XVI Small Causes Court, Chennai made in R.C.A.No.495 of 2010 against R.C.O.P.No.1002 of 2007. By the impugned order the Rent Control Appellate Court has allowed in R.C.A.No.495 of 2010 filed by the respondents-tenants.

2. The property devolved on the petitioner after the death of his father Late.Varadappa, who had earlier rented vacant site(the subject premises) to the respondent/predecessor namely Burmah Shell Oil Company in terms of Ex.P5. On the said land, the respondent had put up the construction to an extent of 827.43 Sq.ft.

3. As per Ex.P5 dated 08.07.1963, the lease was for a period of 30 years for the purpose of erecting one or more pump service/filling station together with underground tanks and other fittings for storage of petrol and high-speed diesel oil and for carrying on the business in such products to such facilities et cetera. The said lease would have expired on 07.07.1993.

4. Ex.P.5 lease signed in the year 1963 and it was expired on 07.07.1993. The respondents however filed O.S.No.7553 of 1995 before the XVII Assistant Judge, City Civil Court, Chennai wherein it was inter alia alleged that the respondents/predecessors had put up several constructions and pursuant to take over by the government, the respondents/predecessors became the lessee of the property by the operation of law in terms of the provisions of the Burmah Shell (Acquisition of Undertaking in India) Act, 1976 and that all the assets and liabilities of the predecessors of the respondents were transferred to the respondents. As a lessee, the respondents were entitled to renew the lease for another though the petitioner was unwilling to extend the lease.

5. Placing reliance on several decisions of the Hon'ble Supreme Court under the provisions of the aforesaid act, the learned XVII Assistant Judge, City Civil Court, Chennai in O.S.No.7553 of 1993 held that though Section 5(2)

of the Burmah Shell (Acquisition of Undertaking in India) Act, 1976 did not contemplate automatic renewal of the lease and that the respondents were well within its rights to take steps under law to compel the petitioner to register a fresh lease deed accordingly the suit was decreed.

6. Under such circumstances, the petitioner filed R.C.O.P.No.1002 of 2007 for fixation of Fair Rent. By Fair and decretal order dated 30.06.2010, the Rent Controller had fixed a Fair Rent of Rs.84,092/- per month. Aggrieved by the same, the respondents herein filed R.C.A.No.495 of 2010 which was allowed.

7. The Rent Control Appellate Court while passing the impugned order has concluded that title dispute regarding the construction put up by the respondents/predecessors cannot be decided in a Rent Control proceeding. It has further observed that, on perusal of the records in E.P5 and property tax in E.P2 and the electricity bill in E.P3, it was evident all these documents were in the name of the respondents and its predecessors.

8. The Rent Control Appellate Court has held that, if there is dispute regarding the title, regarding the construction of superstructure, the authority under the Rent Control Law has no power to decide the same. Since only

vacant land was leased to the respondents/predecessors, the rented premises was not the “building” for the purpose of the Tamil Nadu buildings (Lease Rent Control) Act.

9. By an order dated 19.12.2014, Rent Control Appellate Court allowed the Rent Control Appeal and filed by the respondents and set aside the order passed by the Rent Controller in R.C.O.P.No.1002 of 2007. Aggrieved by the same, the present Civil Revision Petition has been filed.

10. The learned counsel for the petitioner submits that the fair rent has been fixed only on the built up area of 827.43 Sq.ft., and not on the entire extent of land measuring 3 grounds and 854 Sq.ft., and therefore the order passed by the Rent Control Appellate Court was incorrect and liable to be set aside.

11. Per contra, the learned counsel for the respondents relied on the Judgment and decree dated 19.09.2002 passed in O.S.No.7553 of 1995 wherein the respondents had filed a suit for declaration that they were entitled to occupy the suit schedule premises for another period of thirty years commencing from 01.11.1962 and for a mandatory injunction to renew the

lease deed in favour of the respondents herein. The said suit has been decreed as prayed for and no further appeal was preferred by the petitioner.

12. The property in question is situated in a prime location in Chennai at College Road in Nungambakkam. The lease agreement in Ex.P.5 merely stipulated that in case the respondents/predecessors were obliged to vacate the land as a result of dispute to the rights of the landlord over the land, the landlord as the lessor of the land had to indemnify the lessee against the loss sustained on account of ejection from the demised premises including the cost of removal of the pumps et cetera as shown in the books of the lessee as well as the cost of removing the pump outfit and other structures put up by the lessee.

13. Before the Rent Controller, Ex.P1 Engineer's Report was relied and the value of the land was arrived as Rs.1,24,50,715/-and the depreciated value of the construction has been arrived at Rs.2,88,614/- to fix a fair rent of Rs.84,092/- per month.

14. The learned counsel for the respondents relied on the decision rendered by this Court in the case of **Abdul Rasheed, Kulseer Begum Vs Muslim Mahadavia Jamath committee**, 2012 (3) MWN (Civil), 517 and the

decision rendered by the Honourable Supreme Court in the case of **Kamla Devi Vs Laxmi Devi**, AIR SC 2000, 1640. Both the cases are dealt with a vacant site and open plot. In the second mentioned case it was held that open plot of land does not fall within the meaning of the term 'premises' as defined in Section 2(1) (i) of the Delhi Act.

15. **Kamla Devi versus Laxmi Devi**, the Honourable Supreme Court was concerned with the definition of the expression “premises” under the provisions of the Delhi Rent Control Act. There the lessee had put up construction without the permission of the landlord and when a case filed for a mandatory injunction to direct the respondents to remove the unauthorised construction, a compromise was stitched before the trial court.

16. The lessee became the tenant and therefore the suit was dismissed as withdrawn. Thereafter, the lease was terminated by the lessor. The lessor therefore filed the suit for evicting the lessee wherein a defence was taken by the lessee that the suit plot became a “premises” within the meaning of the Delhi Rent Control Act, 1958. Answering the issue against the lessee, the Hon'ble Supreme Court held that what was rented out was only open plot and

it did not fall within the definition of “premises” in section 2 (e) of the said Act .

17. In **A.R.Salay Mohamed Sait, etc Vs Jaffer Mohamed Sait's Memorial Dispensary Charity and others**, 1969 RCR (SC) 322, the lessee had constructed building and a shed on the land leased out to him. The question as to whether the land leased was a 'building' within the meaning of Section 2, Clause (2) of the Madras Buildings (Lease and Rent Control) Act, 1960, (for short, 'the Madras Act').

18. It was held that in determining the question whether there was a lease of a vacant land or a building within the meaning of the Madras Act, the Court must take into account both form and substance of the transaction. The landlord was aware that there were certain structures of land but what was let out was not the structures but the land. Consequently, the appeal of the tenant was dismissed on the ground that the Madras Act was not applicable and the suit was maintainable in the Civil Court.

19. This is a peculiar case where the petitioner has been forced to agree for a lease for another period of 30 years pursuant to a judgment and decree in the aforesaid civil suit filed by the respondents/predecessors on the original terms of lease for Rs.1,500/- payable quarterly. Payment of paltry rent for a property on a prime location has resulted in denial of Justice to the petitioner.

20. In present case, the petitioner's father had leased out a vacant site land to the respondents predecessor vide Ex.P.5 for a period of 30 years after the Tamil Nadu Buildings (Lease Rent Control) Act, 1960 was enacted.

21. During the currency of the said lease, the respondent's predecessor and thereafter the respondents have have put up constructions on the vacant plot that was leased to the respondents' predecessor.

22. The lease agreement also stipulated that on determination of the lease, the lessee will be entitled to remove any buildings, erections or fixtures placed on the demise premises.

23. Though the said lease had come to an end in 1.11.1992, the respondents successfully managed to get O.S.No.7553 of 1995 decreed in their

favour for a declaration that the respondents were entitled to occupy the suit premises for another 30 years commencing from 1.11.1992 on a quarterly rent of Rs.1500/- payable to the petitioner and for a mandatory injunction directing the petitioner to renew the lease for a further period of 30 years commencing from 1.11.1992 for the aforesaid rent and for a permanent injunction restraining the petitioner from interfering with the peaceful procession and enjoyment of the suit shall property.

24. It is not clear whether a new lease deed has been signed pursuant to the Judgment and decree of the trial Court.

25. Even though the petitioner has been made to suffer an unjust and unconscionable lease for another 30 years, I am unable to interfere in the present case in view of the limitation under the Tamil Nadu Buildings (Lease Rent Control) Act, 1960.

26. What was leased was only a vacant site on which respondents and its predecessor have put up construction. On determination of the lease, they are also entitled to demolish/remove the same. Construction put up by the respondents therefore belong to the respondents.

27.The provisions of the Tamil Nadu Buildings (Lease Rent Control) Act, 1960 are applicable only to “building” as defined in Section 2 (2) of the said Act. Fixation of fair rent is confined to residential or non-residential buildings alone.

28. The purport of definition of “premises” in section 2 (e) of the Delhi Rent Control is similar to the definition of the “building” in Section 2 (2) of the Tamil Nadu Buildings (Lease Rent Control) Act, 1960. Therefore, the ratio in *Kamla Devi vs. Laxmi Devi* applies to the facts of the present case.

29. Therefore, the invocation of the provisions of the Tamil Nadu Buildings (Lease Rent Control) Act, 1960 was not available to the petitioner. The remedy of the petitioner lies elsewhere and under the provisions of the said Act.

30. Therefore, I find no infirmity in the reasoning in impugned order of the learned Rent Control Appellate Court so as to interfere under the revisionary jurisdiction in favour of the petitioner-landlord.

C.SARAVANAN,J.

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31. In view of the above observation, the present Civil Revision Petition is liable to be dismissed and is hereby dismissed. No cost.

14.08.2019

Index : Yes/No
Internet : Yes/No
Speaking : Non-speaking order
kkd

To

- 1.VII Small Causes Court,
Chennai.
- 2.XVI Judge, Small Causes Court,
Chennai.



Pre-delivery order in
C.R.P(NPD) No.1709 of 2015

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