

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.02.2020

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

O.S.A.Nos.385, 386 & 446 of 2018
and
C.M.P.Nos.17416 & 20297 of 2018

O.S.A.No.385 of 2018

M/s.Bharat Petroleum Corporation Ltd.,
No.1, Ranganathan Garden,
11th Main Road,
Anna Nagar, Chennai 600 040. ... Appellant

Vs

1.K.V.Subba Rao
2.Kola Krishna Mohan
3.Mrs.K.R.Habeeba Beevi
Mr.K.M.Selvan Mohamed (Died)
4.Mrs.S.H.Yasmin Begum
5.Mr.T.S.T.Kaznavi
6.M/s.A.R.Damodara Mudaliar & Sons ... Respondents

PRAYER: Original Side Appeal filed under Section XXXVI Rule 1
of the Original Side Rules read with Clause 15 of the Letters
Patent against the Judgment and Decree dated 28.03.2018 made
in C.S.No.326 of 2000 on the file of this Court.

For Appellant : Mr.O.R.Santhana Krishnan

For Respondents : Mr.M.Balachandar for R1 to R5.
Mr.G.Masilamani, Senior Counsel
for Mr.T.Sathiyamoorthy for R6.

O.S.A.No.386 of 2018

M/s.Bharat Petroleum Corporation Ltd.,
No.1, Ranganathan Garden,
11th Main Road,
Anna Nagar, Chennai 600 040. ... Appellant

Vs

1.Mr.Matha Prasad
2.Mr.K.V.Subba Rao
3.Mr.Kolar Krishna Mohan
4.Mrs.K.R.Habeeba Beevi
Mr.K.M.Selvan Mohammed (died)

5.Mrs.Mohsina Begum
6.Mr.Akbar Hussain
7.Mr.Akthar Hussain
8.Mrs.M.Amsa Banu
9.Mrs.M.Sara Banu
10.Mrs.S.H.Yasmin Begum
11.Mr.T.S.T.Kaznavi

...Respondents

PRAYER: Original Side Appeal filed under Section XXXVI Rule 1 of the Original Side Rules read with Clause 15 of the Letters Patent against the Judgment and Decree dated 28.03.2018 made in Tr.C.S.No.786 of 2003 on the file of this Court.

For Appellant : Mr.O.R.Santhana Krishnan

For Respondents : Mr.M.Balachandar for R1 to R5.

O.S.A.No.446 of 2018

M/s.A.R.Damodara Mudaliar & Sons Appellant

Vs

1.K.V.Subba Rao
2.Kola Krishna Mohan
3.Mrs.K.R.Habeeba Beevi
Mr.K.M.Selvan Mohamed (Died)
4.Mrs.S.H.Yasmin Begum
5.Mr.T.S.T.Kaznavi
6.M/s.Bharat Petroleum Corporation Ltd.,
No.1, Ranganathan Garden,
11th Main Road,
Anna Nagar, Chennai 600 040.

...Respondents

PRAYER: Original Side Appeal filed under Section XXXVI Rule 1 of the Original Side Rules read with Clause 15 of the Letters Patent against the common Judgment and Decree dated 28.03.2018 made in C.S.No.326 of 2000 on the file of this Court.

For Appellant : Mr.G.Masilamani, Senior Counsel
for Mr.T.Sathiyamoorthy

For Respondents : Mr.M.Balachandar for R1 to R5.

Mr.O.R.Santhana Krishnan for R6.

C O M M O N J U D G M E N T

(Judgment of the Court was delivered by N.KIRUBAKARAN, J)

These appeals viz., O.S.A.Nos.385 & 386 of 2018 have been filed against the decreeing of the suit viz., C.S.No.326 of 2000 filed by the respondents 1 to 5 in O.S.A.No.385 of

2018 against the appellant in both appeals viz., Bharat Petroleum Corporation Limited and the sixth respondent in O.S.A.No.385 of 2018 for recovery of possession of the suit property and other reliefs and dismissal of Tr.C.S.No.786 of 2003 filed by the appellant against the respondents 1 to 5 seeking a direction to execute a renewed lease deed in respect of the suit property for a further period of 27 years and a quarterly rent of Rs.3,000/-, for declaration that the appellant is entitled to occupy the suit premises for a further period of 27 years commencing from 9th December 1997 and for a permanent injunction restraining the respondents from disturbing the peaceful possession and enjoyment of the suit property by the appellant.

2.The appeal in O.S.A.No.446 of 2018 has been filed by the second defendant / licensee under the first defendant viz., Bharat Petroleum Corporation Limited against the Judgment and Decree of the suit in C.S.No.326 of 2000 filed by the respondents 1 to 5 herein in O.S.A.No.385 of 2018 for recovery of possession of the suit property and other reliefs.

3.The appellant in O.S.A.Nos.385 & 386 of 2018 is a Government company engaged in production and distribution of petroleum products. The predecessor of the appellant viz., M/s.Burmah Shell Oil Storage Distributing Company of India Limited was acquired by the Government of India under the Burmah Shell [acquisition of undertakings in India] Act 2 of 1976 (herein after called as 'the Act'). By the said Act, the assets and liabilities of M/s. Burmah Shell Oil Storage Distributing Company of India Limited were vested in the Central Government as per Section 5 (1) of the Act and in terms of Section 7 of the said Act, the interests and liabilities of the said company were transferred to the appellant.

4.At the time of taking over, the said M/s.Burmah Shell Oil Storage Distributing Company of India Limited is a licensee in respect of the suit property viz., 15926 Sq.ft., situated at Old No.872 Poonamallee High Road, Chennai 600 010 under one S.V.Mathaprasad by virtue of lease deed dated 09.03.1970. Section 5 (2) of the Act enables the Central Government / the successor company viz., the appellant to exercise its option for renewal of lease for a further period of 27 years on the expiry of the term of the lease deed dated 09.03.1970 on the same terms and conditions.

5.The said S.V.Mathaprasad sold various extents of properties to Mr.M.Abdul Haleem, Mrs.R.Sangeetha, Mr.Praveen Kumar, Mrs.D.Sakuntala and Mrs.Heera Bai under five sale deeds dated 19.04.1988, 14.03.1989, 08.02.1989, 24.01.1989 and 02.02.1989 respectively. Mr.K.V.Subbarao, the first respondent herein in O.S.A.No.385 of 2018 purchased an extent of 1760 Sq.ft., from Mr.Heerabai by sale deed dated 23.05.1996. Mr.Kolar Krishna Mohan, the second defendant

herein purchased an extent of 4437 Sq.ft. from Sakunthala through sale deed dated 10.07.1996. Mr.K.R.Habeeba Bibi, the third respondent herein purchased an extent of 1760 Sq.ft. through sale deed dated 23.05.1996. She also purchased an extent of 2260 Sqft., land from Mrs.R.Sangeetha through sale deed dated 23.05.1996. Mr.K.M.Selvam Mohammed (Since deceased) purchased an extent of 4437 Sq.ft. from one Mr.Praveen Kumar under sale deed dated 18.11.1996. A portion of the land to an extent of 7056 Sq.ft. is said to have been acquired by the Chennai Metro Rail Corporation Limited for the purpose of Metro Rail Project.

6.Even though the lease came to an end on 31.12.1996, the appellant neither surrendered the lease property nor exercised their option to renew the lease and so the respondents 1 to 5 / landlords / subsequent purchasers caused lawyer's notice dated 18.09.1999 informing the appellant that the lease has come to an end by efflux of time and asked them to remove the existing superstructure and hand over the vacant possession of the land.

7.The appellant through reply dated 29.10.1999 pleaded ignorance about the purchase of the property by the respondents 1 to 5 and informed that they have exercised their option for statutory lease by virtue of letter dated 07.10.1997 issued to Mr.M.Abdul Haleem, Mrs.R.Sangeetha, Mr.Praveen Kumar, Mrs.D.Sakuntala & Mrs.Heera Bai and Mr.S.V.Mathaprasad. After getting 7056 Sq.ft., of land, the balance extent of land is 15,926 Sq.ft. which belongs to the respondents 1 to 5, even though the lease deed dated 09.03.1970 is for an extent of 21,970 Sq.ft.

8.The sixth respondent is a licensee under the appellant and is carrying on business in selling petroleum products for the vehicles. The monthly rent payable by the appellant as per the lease deed is Rs.1,000/- per month. The appellant failed to pay the monthly rent on 01.05.1996. Since the appellant is an occupant of the vast extent of property in arterial road viz., Poonamallee High Road, a sum of Rs.5,000/- has been sought under damages for use and occupation from 01.05.1997. Since the appellant has not surrendered and failed to pay the monthly rent, the respondents 1 to 5 filed a suit in C.S.No.326 of 2000 for possession as well as for arrears of rent at the rate of Rs.7,000/- from 01.05.1996 to 31.12.1996 and Rs.30,000/- per month towards damages for use and occupation from 01.05.1997 onwards.

9.The said suit was defended by the appellant alone taking the following points:-

(i)The lease deed dated 09.03.1970 is for a period of 27 years commencing from 01.01.1970 to 09.12.1997.

(ii)The appellant is entitled to statutory renewal of lease by virtue of Section 5 (1) and Section 7 (3) of the Act for a further period of 27 years commencing from 09.12.1997 on the same terms and conditions of the original lease.

(iii)The desire to renew the lease for a further period of 27 years from 09.12.1997 was conveyed by the appellant through its letter dated 07.10.1997 and thereby complied with the provisions of the above said Act.

(iv)The suit is premature and is not maintainable as the lease as the lease has been statutorily renewed for a further period of 27 years commencing from 09.12.1997.

(v)Default in the payment of rent is denied as the rents were sent on 31.03.2000 which were returned by the deceased Mr.M.Selvam Mohammed, the fourth defendant in the suit.

(vi)The sixth respondent who is the second defendant is an unnecessary party as it is only a licensee and there is no contract between the sixth respondent herein / the second defendant in the suit and the respondents who were plaintiffs in the suit.

Making all these points as defence, the appellant sought for dismissal of the suit.

10.The following questions of law were framed in the said suit viz., C.S.No.326 of 2000;

"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?"

11.Meanwhile, the appellant has filed a suit in O.S.No.3652 of 2001 against one Mr.S.V.Mathaprasad and eleven others before the VII Additional City Civil Court, Chennai praying for the following reliefs;

a)directing the defendants therein to execute a renewed lease deed for a further period of 27 years from 09.12.1997 on a quarterly rent of Rs.3,000/- on the same terms and conditions as per the original sale deed dated 09.03.1970.

b)for a declaration that the plaintiff therein and the appellant herein is entitled to occupy the suit premises for a period of 27 years commencing from 09.12.1997.

c)for a permanent injunction restraining the defendants therein from disturbing the peaceful possession and enjoyment of the appellant herein of the suit property.

12.The said suit was resisted by defendants 2 to 5/ respondents 1 to 5 herein stating that,

(i)The lease deed dated 09.03.1970 for a period of 27 years from 01.01.1970 to 31.12.1996 has come to an end after expiry of 27 years on 31.12.1996.

(ii)The appellant cannot demand renewal of lease as the appellant has not exercised their right under the said

Act.

(iii) There was no proper notice for renewal of lease even though the appellant is alleged to have written a letter dated 07.10.1997 seeking renewal of lease deed as per the Act.

(iv) As the appellant has not vacated and surrendered the leased property to the respondents 1 to 5 / owners, the suit filed in C.S.No.326 of 2000 has been filed.

13. The following issues were 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?"

14. Both the suits were tried together and a common Judgment dated 28.03.2018 was passed by the learned Single Judge by decreeing the suit in C.S.No.326 of 2000 filed by the respondents / plaintiffs and dismissing the suit filed by the appellant in Tr.C.S.No.786 of 2003 holding that,

(i) The respondents / owners are entitled to the possession of the property.

(ii) The appellant is not entitled to automatic renewal of lease as the option to renew the lease has not been properly exercised as per Section 5 (2) of the Act.

(iii) The original lease period came to an end on 31.12.1996 and the option for renewal of lease should have been exercised on the expiry of term whereas the option was exercised only on 07.10.1997.

(iv) The appellant is not entitled to occupy the suit property for a further period of 27 years.

(v) The owners / plaintiffs are not entitled to arrears of rent as the rent has been paid.

15. Against the said common Judgment passed in the above suits, these three appeals have been filed. O.S.A.No.385 & 386 of 2018 have been filed by the Bharat Petroleum Corporation Limited against decreeing of the suit filed by the respondents 1 to 5 and dismissal of their suit against the respondents. O.S.A.No.446 of 2018 has been filed by the licensee under the appellant which is the sixth respondent / second defendant in O.S.A.No.385 of 2018 against the said common Judgment.

16. All the appeals are related to the very same common Judgment dated 28.03.2018 and so all the three appeals are

heard together and this common Judgment is being passed.

17.Mr.O.R.Santhana Krishnan, learned Counsel appearing for the appellant in O.S.A.Nos.385 & 386 of 2018 would submit that,

(i)The original lease expired on 09.12.1997 as the lease was commenced from 01.01.1970 for a period of 27 years, 11 months and 8 days as per the lease deed dated 09.03.1970.

(ii)The appellant is entitled to automatic statutory renewal of lease from 09.12.1997 on the same terms and conditions as contained in the lease deed dated 09.03.1970 as per Section 5 (2) and Section 7 (3) of the Act for a further period of 27 years.

(iii)The appellant has expressed his desire to renew the lease even before the expiry of the lease i.e., on 08.12.1997 through appellant's letter dated 07.10.1997.

(iv)The monthly rents are being paid regularly and there is no default.

He further relied upon the Judgment of the Hon'ble Supreme Court in the case of "Bharat Petroleum Corporation Ltd., Vs. P.Kesavan and another" reported in "(2004) 9 Supreme Court Cases 772" to contend that if the Government company expressed its desire to renew the lease, the same would stand renewed on the same terms and conditions. Another Judgment of this Court has also been relied upon by the learned Counsel for the appellant in the case of "Hindustan Petroleum Corporation Limited Vs.Vummidi Kannan" reported in "(1992) 1 LW 59 (Madras)".

18.Mr.G.Masilamani, learned Senior Counsel for the appellant in O.S.A.No.446 of 2018 would submit that when the parties agreed that the expiry of the lease was on 08.12.1997, the said date alone should be taken as expiry date of the original lease deed dated 09.03.1970. When 08.12.1997 is the expiry of the lease, the demand for renewal of the lease as per the Act is automatic as the original lessee viz., Bharat Petroleum Corporation Limited has already issued notice on 07.10.1997 seeking renewal of the lease for a further period of 27 years.

19.The demand for renewal was sought on 07.10.1997 even before the expiry of the lease i.e. on 08.12.1997. The suit has been filed after two years of the expiry of the lease. The land lord has been receiving the rent even after the expiry of the lease and therefore, the lease is automatically renewed. When the land lord receives the rents, the lease continues. Therefore, the order of the learned Single Judge who held that the lease has expired on 31.12.1996 and there is no automatic renewal of the lease has to be set aside.

20.On the other hand, Mr.M.Balachandar, the learned

counsel for the respondents 1 to 5 / land lords would submit

that,

(i)The lease is only for a period of 27 years commencing from 01.01.1970 to 31.12.1996 as per Ex.P.1 lease deed.

(ii)Further, there is no automatic renewal of lease on the expiry of the lease i.e. on 31.12.1996 as desire to renew the lease as per the Act is belatedly made.

(iii)The tenant continues to commit default. He would submit that fair rent per month as per the evidence of PW2, architect (C.S.No.326 of 2000 & O.S.A.No.385 of 2018) for a total extent of 16914 Sq.ft., is Rs.17,61,875/-.

21.During arguments, an affidavit has been filed by the sixth respondent viz., T.S.T.Kaznavi, the power of attorney agent of respondents 1 to 3 and the husband of the fifth respondent and the owner of the suit land to an extent of 4437 Sq.ft. stating that the Government of Tamil Nadu has taken over a portion of the property leaving the balance extent of property at 15,926 Sq.ft. Hence, the fair rent of the present land at 15,926 Sq.ft. occupied by the appellant is Rs.16,60,000/-.

22.After hearing all the parties, the following points have emerged for consideration by this Court;

(i)Whether the learned Judge was correct in holding that the lease has come to an end only on 31.12.1996 and not on 08.12.1997 as contended by the appellant as per Ex.P.1 lease deed dated 09.03.1970?

(ii)Whether there is no timely desire expressed for automatic statutory renewal of the original lease deed for a further period of 27 years as per Ex.D.5 viz., appellant's letter dated 07.10.1997 issued to the predecessor in title of the respondents / owners?

(iii)Whether the other points decided by the learned Single Judge are correct or not?

23.By deciding the lease expiry date and the claim for renewal of lease for a further period of 27 years as claimed by the appellant, all the issues will be answered.

24.It is submitted by all the parties that the lease was entered into on 09.03.1970 for a period of 27 years commencing from 01.01.1970 as per Ex.P.1. However, there is a dispute with regard to the expiry of the date alone. A perusal of the second paragraph in Page 7 of the original lease deed dated 09.03.1970 marked as Ex.P.1 would make it very clear that the lease is for a period of 27 years commencing from 01.01.1970. The commencement of the lease is distinctly stated as 1st day of January 1970. The period of lease also has been stated as 27 years. If that is so, the lease would come to an end on 31.12.1996. Therefore, the finding of the learned Single Judge that the lease came to an end on 31.12.1996 cannot be interfered with.

25. Though an attempt has been made by the learned Counsel for the appellant to point out from the later part of the paragraph in Pg.No.7 of the lease that the lease came to end only on 08.12.1997, it cannot be accepted in view of the categorical terms in the first two lines of the same paragraph stating that "from the First day of January 1970 for the term of 27 years". It would have been a typographical error. Instead of 08.12.1996, it would have been typed as 08.12.1997. Having been declared by the parties themselves that the lease is only for 27 years and the said lease having expired on 31.12.1996, the appellant cannot wriggle out of the said position and unilaterally claim that the period of lease is for 27 years, 11 months and 8 days which is not intended in the lease deed. What was intended is only 27 years and therefore, this Court holds that the lease commenced on 01.01.1970 and after 27 years, it expired on 31.12.1996.

26. With regard to the claim of the appellant in Tr.C.S.No.786 of 2003 which is the subject matter of the appeal in O.S.A.No.385 of 2018 that the company is entitled to statutory renewal as proved under Section 5 (2) of the Act is concerned, the learned Judge after going through the provisions of the Act held that the appellant issued notice on 07.10.1997 marked as Ex.D.5 to the predecessor in title of the respondents / owners expressing its desire to renew the lease as per Section 5 (2) of the Act. Section 5 (2) of the Act is usefully extracted 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."

From the above it is clear that as per Section 5 (2) of the Act, on the expiry of the term of any lease, the desire to extend the lease has to be expressed. In this case, the desire was expressed on 07.10.1997 whereas the lease expired on 31.12.1996.

27. The respondents / owners have not notified that they purchased the property. Thus, the learned Judge held that the letter dated 07.10.1997 addressed to the erstwhile

owners is valid and rejected the contentions of the respondents rightly that the exercise of the option was not notified to the actual owners. As already found, the lease deed dated 09.03.1970 commenced from 01.01.1970 and ended on 31.12.1996.

28.The appellant is duty bound to exercise its option or express its desire to renew the lease before the expiry of the original lease in terms of Section 5 (2) of the Act. The learned Judge further found that the words " on the expiry of the term of any lease or tenancy" would mean necessarily that the desire to have it renewed or the exercise of the option to have it renewed should have been made as soon as reasonably, practicable after the expiry of the lease period.

29.By giving a finding as stated above, the learned Judge held that the period of lease came to an end on 31.12.1996 and option for renewal which ought to have been exercised on the expiry of the lease term, was exercised only on 07.10.1997 that is nearly nine months thereafter and held that the appellant is not entitled to automatic renewal as it has not exercised its option to renew the lease strictly in terms of Section 5 (2) of the Act.

30.For coming to the conclusion to decide about the meaning of the words "Expiry", the learned Judge referred to the Black's Law Dictionary X Edition which states "The ending of a fixed period of time and esp., a formal termination on a closing date" and referred in Ramanath Iyer's Law Lexicon in which the word "Expiry" is defined as the "Termination of a time or period fixed by law, contract or agreement".

31.The learned Judge also relied upon the Judgment in "Michael Ketley Vs. Claire Nicole Gilbert" reported in "[2001] WLR 966 CA" wherein 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. The above finding reached by the learned Single Judge with regard to the meaning of the word 'Expiry' as contemplated under Section 5 (2) of the Act cannot be found fault with.

32.The learned Judge rightly held that that lease came to an end on 31.12.1996 whereas notice dated 07.10.1997 was issued to the predecessor in title of the respondents only after nine months of the expiry of the lease. Therefore, the finding of the learned Judge that the appellant has not exercised its option to renew the lease strictly in terms of Sub-Section 2 of Section 5 of the Act is upheld. Similarly, the finding that the appellant is not entitled to make automatic renewal as contemplated under Section 5 (2) of the Act has to be upheld.

33. With regard to the Judgment of the Hon'ble Supreme Court relied upon by Mr. O.R. Santhana Krishnan, learned Counsel for the appellant in O.S.A. Nos. 385 & 386 of 2018 in the case of "Bharat Petroleum Corporation Ltd., Vs. P. Kesavan and another" reported in "(2004) 9 Supreme Court Cases 772", in which the Hon'ble Supreme Court has considered the effect of Section 5 (2) of the Act and held that once an option is exercised by the oil company for renewal of the lease, the lease should be renewed statutorily.

34. However, the learned Judge relied upon the Judgment of the Hon'ble Supreme Court in the case of "Bharat Petroleum Corporation Ltd., Vs. Maddula Ratnavalli and Ors." reported in "2007 (6) Supreme Court Cases 81" in which it has been 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 cannot act arbitrarily.

35. The said observation of the Hon'ble Supreme Court was made after considering the effect of the position of the Judgment of the Hon'ble Supreme Court in the case of "Bharat Petroleum Corporation Ltd., Vs. P. Kesavan and another" reported in "(2004) 9 Supreme Court Cases 772" which was relied upon by Mr. O.R. Santhana Krishnan. The Judgment of the Hon'ble Supreme Court in the case of "Bharat Petroleum Corporation Ltd., Vs. Maddula Ratnavalli and Ors." reported in "2007 (6) Supreme Court Cases 81" was followed and reiterated subsequently by the Division Bench of the Supreme Court in the case "Ram Bharosey Lal Gupta (D) By Lr. & others Vs. M/s Hindustan Petroleum Corporation Ltd. and another"

36. By relying upon the above Judgments, the learned Judge observed that the appellant corporation apart from showing that it had acted statutorily, it should also show that it had acted fairly and reasonably. Before 07.10.1997, after expiry of the lease period dated 31.12.1996, there was no expression of desire by the appellant to renew the lease and therefore, the learned Judge found that the expiry of the lease cannot be renewed nearly after nine months. The belated expression of the desire for renewal cannot be termed as fair and reasonable on the part of the appellant.

37. That apart, the appellant cannot contrary to the terms of the lease deed dated 09.03.1970 plead that the lease is for 27 years 11 months and 8 days. The parties should abide by the terms of the lease agreement. When the period of lease is 27 years, by no stretch of imagination, the appellant which is a State under the definition of Article 12 of the Constitution of India cannot make such unfair argument to suit the convenience. The appellant pleads for long period of lease viz., 27 years, 11 months and 8 days. Merely because the appellant issued notice dated 07.10.1997 belatedly after nine months, the appellant cannot, to suit his convenience,

plead that the lease deed was for a period ending on 09.12.1997. The action of the appellant lacks bonafide, fairness which is expected of a State. For the above reasons, the appeals are liable to be dismissed.

38. When the appellant relies upon Section 5 (2) of the Act, it should be very diligent to act by the provisions of the Act and act accordingly. The appellant cannot take its sweet time and issue notice belatedly after nine months of the expiry of the lease for renewal. When the rights of the landlords is involved and by extension of lease statutorily, definitely the rights of the landlords would be prejudiced. If that is so, the provisions of the statute has to be strictly interpreted. Therefore, when there is non-compliance of Section 5 (2) of the Act by the appellant, no benefits would accrue to the appellant.

39. Though the appellant is entitled to invoke provisions of Section 9 of the City Tenant's Provisions Act, it has not invoked such provision. Secondly, in Paragraph No.4 of the letter dated 18.09.1999 marked as Ex.P.6, the land lords who offered to sell the property have not received any response. The above facts are being considered by this Court to dismiss the appeals as more opportunities were given to the appellant either to purchase the property as offered by the respondents / owners or to invoke the benefits under Section 9 of the City Tenant's Provisions Act.

40. The claim of the respondents / owners regarding damages for use and occupation has been denied by the learned Single Judge on the ground that the appellant would be termed as tenant holding offer liable to pay the lease for damages of use and occupation. The reasoning given by the learned Judge to deny the claim towards damages for use and occupation is that the appellant is involved in marketing of petroleum products and it was in possession of the property as lessee and continues in possession by exercising option and seeks renewal of the lease for a further period of 27 years and the rent fixed by the lease deed has been paid by the appellant.

41. The appellant who has occupied the vast extent of land in arterial road paying a paltry amount of Rs.3,000/- totally from 1970 cannot continue to pay the said amount. It evades logic. At least an attempt should have been made to pay more and fair amount. The Government company cannot take advantage of its position and deprive the owner from getting fair rent for the property occupied by the appellant. Being in possession of the property, cannot deny the reasonable benefits of fair rent to the land lords. Having failed to renew the lease statutorily as per Section 5 (2) of the Act immediately after the expiry of the lease, the appellant cannot take advantage of its own wrong and deny the damages which the land lords are entitled to. However, this Court is not inclined to set aside the finding regarding denial of

damages for use and occupation.

42. Though this Court confirms the order of the learned Single Judge by which the learned Single Judge denied the prayer for damages for use and occupation from 01.05.1997 as the appellant is termed to be tenant in holding over, the appellant cannot pay a paltry old rent of Rs.1500/- per month and continue to occupy the property. When this Court questioned about the quantum of rent paid by the appellant is very low, an affidavit has been filed by one Gururaj Nagappa Sankh, Territory Manager (Retail) of the appellant/Corporation agreeing to pay a sum of Rs.70,000/- per month. Though the respondent examined P.W.2/Engineer and marked Ex.P.10/Engineer's report to prove that the fair rent works out to Rs.2,11,42,500/- per annum and Rs.17,61,875/- for fair rent, the learned Single Judge denied the claim for damages only on the ground that the appellant is a tenant holding over doing distribution of petroleum products for longer time and also exercising option to seek renewal of lease for over a period of 27 years on the same terms and conditions. Though this Court is not inclined to reverse the finding regarding denial of damages as prayed for by the respondent, since the appellant has agreed to pay a sum of Rs.70,000/- per month from the date of judgment, the interest of justice would be met by directing the appellant to pay a sum of Rs.70,000/- per month from the date of affidavit namely, OCTOBER 2018 till the date of passing of the order, within a period of four weeks and thereafter, continue to pay the enhanced rent every successive month from the date of judgment till the date of delivery to the respondents/landlords. Further, as volunteered by the respondents/landlords during the course of the arguments that they are willing to donate the amount to be received from appellant/Corporation to Junior Counsels fund to be opened by Madras Bar Association for the benefit of Junior Advocates of Madras High Court, the respondents are directed to do so.

43. As far as the appeal in O.S.A.No.446 of 2018 is concerned, as rightly stated by the appellant in the Written statement in Paragraph No.6g filed in C.S.No.326 of 2000, the appellant is only a licensee under the Bharat Petroleum Corporation Ltd. It has got no independent right. There is no privity of contract between the respondents / claimants and the appellant / licensee. Paragraph No.6g of the written statement filed by the appellant is usefully extracted as follows;

"6 (g). With regard to para 11, this Defendant states that the Second Defendant is an unnecessary party to the suit since the Second Defendant is only a Licensee of this Defendant and since the privity of contract is only between the plaintiffs and this Defendant. More so, when this Defendant is the principal and the Second Defendant is a licensee and the relationship is governed by the Dispensing Pump

Licensing Agreement".

Therefore, the appellant as a licensee has got no independent right, dehors the rights of the Bharat Petroleum Corporation Ltd.

44. That apart, the appeal is not maintainable for the simple reason that the appellant has not contested the suit by filing written statement or adducing evidence or by taking part in the trial. Therefore, independent appeal by licensee is not maintainable. The rights and liabilities of the Bharat petroleum Corporation Ltd., would govern and bind the appellant also. Therefore, this appeal is dismissed. Time for surrendering the possession is three months.

45. Therefore, the appellants in all the appeals are directed to surrender the suit property to the respondents / land lords and pay the decreed amount on or before 01.06.2020 failing which the Territory Manager shall appear before this Court.

46. In the result, these appeals are dismissed with the above directions. No costs. Consequently, connected miscellaneous petitions are closed.

47. Call the matter for reporting compliance on 08.06.2020.

Sd/-
Assistant Registrar (CCC)

//True copy//

Sub Assistant Registrar

ay

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

+1cc to Mr.T.Susindran, Advocate SR.No.16159

+2cc to Mr.O.R.Santhana Krishnan, Advocate SR.No.16140

+1cc to Mr.Manisundra Gopal, Advocate SR.No.16299

O.S.A.Nos.385, 386 & 446 of 2018
and
C.M.P.Nos.17416 & 20297 of 2018

KS (CO)
GMY (16/03/2020)

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