

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.235 OF 2021

M/S. OZA BROTHERS THROUGH BHARAT RAMESH OZA AND ANR
VERSUS
CHAMPALAL KHUSHALCHAND BORA AND OTHERS

...
Mr. N. S. Tekale, Advocate for appellants.
Mr. R. A. Tambe, Advocate for respondent Nos.1 to 3.
Mr. A. P. Bhandari, Advocate for respondent Nos.4 and 5.

...
WITH
SECOND APPEAL NO.288 OF 2020

BHARAT PETROLEUM CORPORATION LTD. AND ANR
VERSUS
CHAMPALAL KHUSHALCHAND BORA AND OTHERS

...
Mr. A. P. Bhandari, Advocate for appellants.
Mr. R. A. Tambe, Advocate for respondent Nos.1 to 3.
Mr. N. S. Tekale, Advocate for respondent Nos.4 and 5.

...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 20.09.2021

ORDER :-

. Both these appeals have been filed by original defendant Nos.1 to 4 respectively to challenge the concurrent finding and decree passed by the Courts below. Present respondent Nos.1 to 3 – original plaintiffs filed Regular Civil Suit No.133 of 2009 before the learned 2nd Joint Civil Judge Junior Division, Shrirampur, Dist. Ahmednagar for recovery of

possession of the immovable properties along with the arrears of rent or damages. The said suit came to be decreed on 05.04.2018. Original defendant Nos.1 and 2 were directed to pay amount of Rs.20,600/- to the plaintiffs towards damages and the defendants were directed to remove their structure, construction, erection, buildings, equipments, material and other properties belonging to them and hand over the vacant and peaceful possession of the suit property to the plaintiffs within a period of two months.

2. The said judgment and decree was challenged by all the defendants together in Regular Civil Appeal No.27 of 2018 before the learned District Judge-1, Shrirampur. The said appeal came to be dismissed on 24.10.2019. Hence, these two separate appeals. One is by original defendant Nos.1 and 2 and another is by defendant Nos.3 and 4.

3. Heard learned Advocate Mr. N. S. Tekale and learned Advocate Mr. A. P. Bhandari for appellants in both the second appeals and for respondent Nos.4 and 5 in both the second appeals respectively and learned Advocate Mr. R. A. Tambe for respondent Nos. 1 to 3 in both the second appeals.

4. It is not in dispute that the original plaintiffs are the owners of Survey No.42/A, B, C, 44/A, B, C, 51/2C/A, 51/2C/B, 51/2/C/C, Final

Plot No.31, Town Planning Scheme No.4, City Survey No.1998, Municipal Property No.7363/1, 7363/2, 7363/3 situated at Gondhawani, Tal. Shrirampur, Dist. Ahmednagar, admeasuring area 1214.1 sq.m. (13068 sq.ft.) (132 x 99 sq. ft.). Further, it is not in dispute that original defendant No.1 is the lessee. Defendant No.2 is the Officer of defendant No.1. Defendant No.3 – firm is the authorized dealer of defendant No.1 and defendant No.4 is the acting partner of defendant No.3. It is further not in dispute that the erstwhile Burma Shell Oil Storage and Distribution Company of India Limited was given the lease of the suit property by original owner i.e. Predecessor of the plaintiffs – Khushalchand Kachardas Bora by lease agreement dated 08.08.1955. That lease deed was registered on 26.08.1955. The lease period that was fixed by the said agreement was 20 years and it also contended that the period could be extended by further 10 years. It was agreed that the lessee by giving two months prior notice before expiration of 20 years should communicate its willingness for the renewal. After the lease, Burma Shell Company set up its business of Petrol Pump on the suit property. In fact, in the agreement, it had also agreed that it will remove all the buildings, erections, equipments, structured materials etc. on expiry of the lease period. The company, thereafter, started its business through defendant Nos.3 and 4. Later on

Bharat Refineries Limited had taken over the assets and liabilities on 24.01.1976 and thereafter, the name of that company which took over was changed to Bharat Petroleum Corporation w.e.f. 01.08.1977. Therefore, it is stated that defendant No.1 became deemed lessee of Khushalchand Bora. The said Khushalchand Bora expired in the year 1966. The lease period expired in the year 1975. It is also an admitted position that defendant No.1 had not exercised its option of renewal of terms of lease agreement, yet, thereafter, also had continued its business from the suit property.

5. The plaintiffs had then come out with the case that defendant No.1 had transmitted premium amount by cheques to plaintiff No.2 from time to time, however, as the negotiations about fresh lease deed and finalizing rent was going on, plaintiff No.2 has not encashed the cheques. But, thereafter, since 01.06.1975, there are absolutely no payments towards the rent and till the institution of the suit, the defendants were in arrears. Therefore, plaintiffs served termination notice on 19.05.2008 and directed defendants to handover the possession. When they failed, plaintiffs filed the suit for recovery of possession, arrears of rent etc.

6. The defendants had taken up the defence about mis-joinder of necessary parties stating that defendant No.2 – Branch manager has

been wrongly added and non-joinder in respect of one of the partner of defendant No.3. It has been then stated that when defendants have made permanent structure, then the lease was irrevocable and perpetual lease. Plaintiffs cannot terminate such lease deed. It is further stated that defendant Nos.1 and 2 were always ready and willing to continue lease and, therefore, no separate renewal was necessary. It is then stated that the suit property is situated within the principal area of Municipal Council, Shrirampur. The Maharashtra Rent Control Act, 1999 is applicable and, therefore, the Court has no jurisdiction. Defendant Nos.3 and 4 contended that they are possessing the suit property since prior to 1972 and, therefore, they have become direct tenant. They denied the ownership of plaintiffs since 01.07.1985. They also alleged that they have become owner of the suit property by adverse possession.

7. After the evidence was led, the learned Trial Judge held that the plaintiffs have proved that the lease period was 20 years. They have legally terminated the said lease by serving notice on defendants. It was also held to be proved that defendant No.1 is in arrears of rent since 01.06.1973 till 31.05.2008 i.e. to the extent of Rs.19,800/-. Defendants have failed to prove that the lease was perpetual lease. The Civil Court has jurisdiction to entertain and decide the suit. Defendant Nos.3 and 4

have failed to prove that they are the owner of the suit property by adverse possession and accordingly, the suit was decreed. At the cost of repetition, it can be said that the appeal filed by the defendants has been dismissed. Hence, these second appeals.

8. It has been vehemently submitted on behalf of appellants that both the Courts below have not considered the evidence and the law points involved properly. When it is not disputed that after death of original lessee when the plaintiffs had not taken any steps, it ought to have been considered as that the lease has continued further. The plaintiffs, by their own acts, had allowed the defendants to make huge investment and, in fact, when there was tender of rent amount, it was not accepted and, therefore, it cannot be said that defendant No.1 is in arrears of rent. Substantial questions of law are arising in these cases requiring admission of second appeals and stay to the impugned judgment and decree till the decision of the second appeals.

9. Per contra, the learned Advocate appearing for original plaintiffs submitted that both the Courts below have considered all the facts in proper perspective, minutely and have given well reasoned judgment. There is absolutely no perversity and, therefore, substantial questions of law are not arising in these cases. He relied on the decision in

Radhakisan Ramnath Malpani Vs. Rajesh Dattatray Mahajan and others, [2013 (4) Mh. L. J. 266], wherein it has been held that “when the suit is for eviction and possession of open land on the ground of lease coming to an end after efflux of time, then the suit invoking ordinary jurisdiction of Civil Court for eviction of tenant and possession under the general law i.e. Transfer of Property Act, 1882, is maintainable.” Further, reliance has been placed on the decision in ***Kesri Commissariat and ors. Vs. Ministry of Food and Civil Supplies, Govt. of Maharashtra, Mumbai and anr., [AIR 2012 SC 1271]***, wherein it has been held that “when the land was given to the insurance company which was the public undertaking and insurance company inducting Government department as sub-lessee, then insurance company not being protected tenant under Section 3 of the Maharashtra Rent Control Act, its sub-lessee, who has become deemed tenant cannot enjoy better protection or privilege by ostracizing concept of premises which is spine of provision.” Further, reliance has been placed on the decision in ***Bharat Petroleum Corporation Limited Vs. Rama Chandrashekhar Vaidya and anr. [2014 ALL SCR 1062]***, wherein it has been held that “Oil Corporation, a lessee, exercising right of renewal under lease deed but no fresh lease deed was executed resulting into month to month tenancy, then the lessor can terminate lease on expiry for a period of first renewal. Having exercised

right of renewal once, Oil Corporation is not entitled to ask for second renewal under Section 5(2) of Burmah Shell (Acquisition of Undertakings in India) Act, 1976.” Further, reliance has been placed on the decision in ***Pandurang Jivaji Apte Vs. Ramchandra Gangadhar Ashtekar (dead) by Lrs and others, [AIR 1981 SC 2235]***, wherein it has been held that “when a party fails to appear in Court and the adverse inference is to be drawn, then it will have to be held that no evidence has been led by such person. Further, in this case itself it has also been held that on the findings of fact recorded by the two Courts below, which are final and which could not be normally set aside by second Appellate Court, the decree-holder cannot compel Apte or Bavdekar to produce the property before the Court or the proceeds of the sale of the property as the amount due to Apte from judgment-debtor has not still been satisfied.” Further, reliance has been placed on the decision in ***Ram Bharosey Lal Gupta (D) by L.Rs. And Ors. Vs. Hindustan Petroleum Corp. Ltd. and Anr., [2013 (4) ALL MR 409]***, wherein once again it has been held that, “when the lease period of 20 years has come to an end and after expiry of initial period of renewal also it has come to an end, then first Appellate Court was right in holding that the possession of the property by the Corporation is holding over month to month and, therefore, it is a trespasser of the said schedule property.” Similar ratio

was laid down by this Court in *Hindustan Petroleum Cor. Ltd. Vs. Chandulal Dipchand Kale*, [2007 (5) ALL MR 310], wherein it has been reiterated that status of tenant after lapse of tenancy period is practically that of an unauthorised occupant. Hence, notice under Section 106 of Transfer of Property Act would not be necessary. Possession of such a tenant is without any legal right and such appellant therein i.e. (Hindustan Petroleum Corp. Ltd.) cannot get any protection under the provisions of Maharashtra Rent Control Act, 1999.” Further, reliance has been placed on the decision in *Rahimtulla Abdul Rahiman Nakib Vs. Chandrakant Anant Moog and others*, [AIR 1982 BOMBAY 282], wherein it has been held that, “in an eviction suit by co-heirs of deceased landlord, all the co-heirs need not be joined in the notice and in the suit.” Further, reliance has been placed on the Constitution Bench decision in *V. Dhanpal Chettiar Vs. Yesodai Ammal*, [AIR 1979 SC 1745], wherein it has been held that “giving notice under Section 106 of the Transfer of Property Act is not necessary in order to get a decree a decree or order for eviction against a tenant under any State Rent Control Act.”

10. At the outset, the facts are very much clear and most of those facts are admitted. There was such lease agreement entered into between erstwhile Burma Shell Company with the predecessor of plaintiffs

Khushalchand on 08.08.1955. The period of lease was 20 years and, therefore, it would have naturally expired in the year 1975. However, it is to be noted that Khushalchand had expired in the year 1966. It also appears that since 1966 till 01.06.1975, there was payment of rent or in other words, the plaintiffs are not disputing that there was tender of rent by defendant No.1, but then it is said that plaintiff No.2 had not encashed those cheques. Till that period, it cannot be said that defendant No.1 was in arrears of rent. However, the fact has come on record that defendant No.1 has not proved that after 1975, there was tender of rent by any of the plaintiffs till institution of the suit. The notice was admittedly served for termination of lease deed on 19.05.2008. In aforesaid decisions of Hon'ble Apex Court or this Court, it has been held that even the notice about the termination of tenancy is not mandatory, yet it appears that plaintiffs had issued such notice. In spite of that notice, it appears that there was no valid tender of rent. Defendant No.1 had examined one Aneet in the form that his affidavit-in-chief was produced, but it appears that said witness did not remained present for cross-examination. Under such circumstance, it has been rightly taken by both the Courts below that there was absolutely no evidence on behalf of defendants. No doubt, it appears that defendant No.4 examined himself, but it is to be noted that admittedly defendant

No.3 is the dealer of defendant No.1 and defendant No.4 is the partner of defendant No.3. The evidence of defendant No.4 cannot be taken for defendant No.1. The rent was definitely supposed to be paid by the lessee and not by the sub-lessee to the original landlord. The adverse inference has been properly drawn under Section 114 of the Evidence Act against defendant Nos.1 and 2 by the Courts below as per the ratio laid down in ***Pandurang Apte (Supra)***.

11. As regards the jurisdiction is concerned, admittedly, the lease was to the earlier Burma Shell Company. Thereafter, all the assets and liabilities of the said company were taken by Bharat Refineries and later on that company has changed its name as Bharat Petroleum Corporation i.e. defendant No.1 which is a public sector undertaking company and, therefore, definitely, Section 3 of the Maharashtra Rent Control Act or earlier Bombay Rent Control Act was not applicable to the suit premises. It has been then so held in ***Kesri Commissariat and ors. (Supra)***, ***Ram Bharosey Lal Gupta (Supra)*** and also in view of ***Radhakisan Ramnath Malpani (Supra)*** and the fact that the lease that was granted in open space, the provisions of Transfer of Property Act would be applicable. The Civil Judge Junior Division, Shrirampur was the competent Court to entertain and decide the said suit.

12. Further, as aforesaid, the period of 20 years had come to an end in the year 1975. Even if the further clause about extension of period of lease by 10 years is also considered, then also it would come to 1985, but thereafter defendant No.1 will have to be held as the tenant holding over and the tenancy would be month to month liable to be terminated and further in view of *Hindustan Petroleum Corporation (Supra)* after the lapse of tenancy, the possession of such tenant would be equivalent to possession of an unauthorised occupant, who is not entitled to get protection under the Maharashtra Rent Control Act.

13. The stand taken by defendant Nos.3 and 4 is interesting. Though it is accepting that it is a sub dealer of defendant No.1, yet, it has challenged the title of the plaintiffs as owner and, in fact, went on to claim ownership by adverse possession after end of lease period i.e. by efflux of time. It is then noted by both the Courts below that the witness, who was examined on behalf of defendant Nos.3 and 4 has admitted in his cross-examination that the plaintiffs are owners of the vacant premises and he never made any complaint against the ownership of the suit property. This stand is also against the terms of tenancy. Defendants cannot try to protect their possession by any means.

14. Both the Courts have considered all the facts and the legal points involved correctly. The findings given by both the Courts below are absolutely not perverse and, therefore, no substantial questions of law as contemplated under Section 100 of the Code of Civil Procedure are arising in this case. Both the appeals deserve to be dismissed. Accordingly, in view of ***Kirpa Ram (deceased) through Lrs. and others Vs. Surendra Deo Gaur and others, [2021 (3) Mh.L.J. 250]***, they are dismissed.

15. After the pronouncement of the order, learned Advocate for appellants prayed to stay the effect and execution of the decree passed by the Courts below as well as today's order by this Court for a period of six months at least, as they want to approach the Hon'ble Apex Court.

16. Learned Advocate for the original plaintiffs strongly opposed the application and submitted that when the application for stay was filed at Exhibit-7 in Regular Civil Appeal No.27 of 2018, a detailed order was passed while giving stay to the execution of the decree by the first Appellate Court on 26.07.2018. The appellants were directed to deposit the contractual rent per month regularly. In addition thereto, they were directed to deposit amount of Rs.3,000/- per month towards compensation in the Court on or before 5th day of every succeeding

English Calendar month commencing from August, 2018. The appellants were directed to deposit arrears of monthly contractual rent on or before 04.08.2018. Though the arrears appears to have been deposited, yet the order regarding contractual rent to be paid regularly with the compensation amount has not been adhered to by the appellants. They were utilizing the property which is at a prime location unauthorizedly since 1975.

17. The copy of the order passed below Exhibit-7 in Regular Civil Appeal No.27 of 2018 was made available, which had given direction to the present appellants to make certain payments. It has not been shown to this Court, after the said request was made to continue the stay further to allow them to approach Hon'ble Apex Court that there was compliance in respect of the said order. However, taking into consideration the fact that there are buildings, which have been erected by defendants to run the petrol pump, further allowing certain period to defendants would be in the interest, however, it would be with the same conditions as were imposed by the first Appellate Court. The execution of the decree passed by the Courts below as well as this Court is stayed till the end of January, 2022 on condition that the appellants collectively to deposit the contractual rent per month regularly and in addition to that they shall deposit amount of Rs.10,000/- per month towards

compensation in this Court on or before 5th day of every succeeding English Calendar month commencing from August, 2018. Further, the arrears of rent as well as the compensation that was awarded by the first Appellate Court by order dated 26.07.2018, be deposited in this Court on or before 20.10.2021. In case of failure to make these payments, it would be treated that there is no stay to the execution and operation of the decree that has been passed.

[SMT. VIBHA KANKANWADI, J.]

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