IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1584 OF 2007
WITH
INTERIM APPLICATION (L) NO.9613 OF 2020

Modern India Limited	...	Petitioner / Applicant
Vs.		
Union of India and others	…	Respondents

AND

CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION (ST.) NO.99618 OF 2020
WITH
INTERIM APPLICATION (ST.) NO.99620 OF 2020
IN
CIVIL REVISION APPLICATION NO.148 OF 2011

Modern India Limited	...	Applicant
Vs.		
Bharat Petroleum Corporation Ltd. and others	…	Respondents

Dr. Milind Sathe, Senior Advocate a/w. Mr. Gaurav Shrivastava a/w. Ms.Nikita Vardhan and Mr. Harsh Shah i/b. M/s. Kanga and Company for Petitioner / Applicant in W.P.No.1584 of 2007, IAL No.9613 of 2020 as also for Applicant in IAST Nos.99618 of 2020, 99620 of 2020 and C.R.A.No.148 of 2011.

Mr. Atul Damle, Senior Advocate a/w. Mr. S. R. Page for Respondent No.3 in W.P.No.1584 of 2007 and Respondent No.1 in C.R.A.No.148 of 2011. (BPCL)

Mr. Musharaf Shaikh i/b. Mr. Kiran Bhagalia for Respondent-MMRCL in IAL No.99618 of 2020 and IAL No.99620 of 2020 in C.R.A.No.148 of 2011.

Mr. Ashok R. Varma for Respondent - Union of India.

Ms. Uma Palsuledesai a/w. Mr. Dushyant Kumar, AGP for Respondent-State.

CORAM : UJJAL BHUYAN &
MADHAV J. JAMDAR, JJ.

Reserved on : SEPTEMBER 15, 2021
Pronounced on : OCTOBER 08, 2021

<u>JUDGMENT AND ORDER</u> : (*Per Ujjal Bhuyan, J.*)

Subject matter of Writ Petition No.1584 of 2007 and Civil

Revision Application No.148 of 2011 being interrelated, both were heard together and are being disposed of by this common judgment and order.

1.1. The writ petition and the civil revision application came to be tagged together after the order dated 16.03.2011 was passed in the civil revision application.

2. We have heard Dr. Milind Sathe, learned senior counsel for the petitioner in both the writ petition and the civil revision application; Mr.Atul Damle, learned senior counsel for respondent No.3 in the writ petition and respondent No.1 in the civil revision application; and Mr. A. R. Verma, learned counsel for respondent Nos.1 and 2 in the writ petition.

3. In Writ Petition No.1584 of 2007, petitioner has prayed for the following reliefs:-

a. for a declaration that provisions of sections 5 and 7 of the Burmah Shell (Acquisition of Undertakings in India) Act, 1976 are *ultra vires* and unconstitutional;

b. to set aside and quash decision of respondent No.3 contained in letter dated 25.03.2004; and

c. to handover vacant and peaceful possession of the plot of land admeasuring 1800 square yard being Cadastral Survey No.1895 of Byculla Division situated at K. Khadye Marg (formerly Arthur Road), Mahalaxmi, Mumbai.

4. In Civil Revision Application No.148 of 2011, the prayer made is for setting aside the judgment and order dated 03.12.2010 passed by the Court of Small Causes at Mumbai in Appeal No.165 of 2007 (*Modern India Limited Vs. Bharat Petroleum Corporation Limited*).

5. Relevant facts leading to filing of the two petitions and also post filing of the two petitions as brought on record may be briefly

highlighted.

6. Subject matter of both the proceedings is a plot of land owned by the petitioner *Modern India Limited* admeasuring 1800 square yards equivalent to 1505 square meters situated at Mahalaxmi, Mumbai bearing Cadastral Survey No.1895 of Byculla Division.

6.1. A lease deed was executed between Modern India Limited (earlier known as 'Modern Mills Limited') and Burmah Shell Oil Storage and Distributing Company of India Limited (for short 'Burmah Shell' hereinafter) on 29.10.1969, thereby granting on lease the aforesaid plot of land (referred to as 'the premises' hereinafter) to Burmah Shell for a period of 35 years from 01.11.1969 to 31.10.2004. Lease rent was fixed at Rs.66,000.00 per annum from 01.11.1969 to 31.10.1984; Rs.72,000.00 per annum from 01.11.1984 to 31.10.1994; and Rs.80,000.00 per annum from 01.11.1994 to 31.10.2004. In the said lease deed there was no clause for renewal of lease. In fact as per clause 2(b), at the expiration of the term of lease or a sooner determination, as the case may be, Burmah Shell shall surrender and deliver to Modern India Limited the premises.

7. The Burmah Shell (Acquisition of Undertakings in India) Act, 1976 was enacted and came into effect from 24.01.1976. Under the said Act, the undertaking of Burmah Shell in India came to be vested in the central government. Section 5 provided for central government to be the lessor or tenant under certain circumstances. Sub-section (2) thereof provided that on the expiry of the term of any lease or tenancy, 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.

7.1. Another relevant provision of the Burmah Shell (Acquisition of Undertakings in India) Act, 1976 is section 7 empowering the central government to direct vesting of the undertakings of Burmah Shell in a government company. While sub-section (1) provided that the central government may, if it is satisfied that a government company is willing to comply or has complied with such terms and conditions as the government may think fit to impose, direct that the right, title and interest and the liabilities of Burmah Shell in relation to any of its undertakings in India shall instead of continuing to vest in the central government, vest in the government company. As per sub-section (2), where the right, title and interest and liabilities of Burmah Shell in relation to its undertakings in India vest in a government company under sub-section (1), such government company shall on and from the date of vesting be deemed to have become the owner, tenant or lessee, as the case may be, in relation to such undertakings; and all the rights and liabilities of the central government in relation to such undertakings shall on and from the date of such vesting be deemed to have become the rights and liabilities of the government company.

7.2. Sub-section (3) made it clear that provisions of sub-section (2) of section 5 shall apply to a lease or a tenancy which vests in a government company as they apply to a lease or tenancy vested in the central government. Reference to the central government therein shall be construed as reference to the government company.

8. It may be mentioned that Bharat Petroleum Corporation Limited (for short 'BPCL' hereinafter) is a government company to whom central government had transferred the assets of Burmah Shell under the Burmah Shell (Acquisition of Undertakings in India) Act, 1976.

8.1. Thus BPCL became the lessee of the premises.

9. Before expiry of the lease deed dated 29.10.1969, Modern India Limited wrote a letter to BPCL on 15.06.2002 stating that the lease deed would expire on 31.10.2004. Therefore, BPCL was requested to inform

the petitioner whether it would like to renew the lease for further tenure after expiry of the lease deed and if so, the terms and conditions of renewal.

10. On 25.03.2004, BPCL addressed a letter to the petitioner stating that in terms of sections 5 and 7 of the Burmah Shell (Acquisition of Undertakings in India) Act, 1976, it had a statutory right to renew the lease for a further period of 35 years with effect from 01.11.2004 on the same terms and conditions contained in the lease deed. Therefore, it exercised the right of renewal.

11. Petitioner disputed the claim made by BPCL. In this connection, notice was issued by the petitioner to BPCL calling upon BPCL to vacate the premises and to pay *mesne* profits.

12. Thereafter petitioner filed a suit in the Small Causes Court, Mumbai on 01.11.2004 seeking a decree of eviction against BPCL and for *mesne* profits and damages. Amongst other grounds taken, it was the case of the petitioner that BPCL had no statutory protection under the Maharashtra Rent Control Act, 1999. The suit was registered as T.E.R.Suit No.125/142 of 2004. The suit was contested by BPCL by filing written statement. Evidence, both oral as well as documentary, were tendered by both the parties. However, *vide* the judgment and order dated 15.01.2007 the suit was dismissed.

13. Aggrieved by the aforesaid dismissal of the suit, petitioner preferred appeal before the Appellate Bench of the Small Causes Court, Mumbai which was registered as Appeal No.165 of 2007. In the meanwhile, petitioner also filed the related writ petition i.e., Writ Petition No.1584 of 2007 before this court seeking the reliefs as mentioned above.

Court Orders

14. In the proceedings held on 14.10.2008 this court observed that in so far constitutionality of the provisions of the Burmah Shell (Acquisition of Undertakings in India) Act, 1976 was concerned, the same stood covered by a judgment of this court in *Trade Centre Developers and Builders Private Limited Vs. Union of India*, **AIR 1985 Bombay 4**. Therefore, the court ordered that the only reliefs which survived for adjudication were prayer clauses (b) and (c) i.e., challenge to the letter dated 25.03.2004 and for handing over vacant and peaceful possession of the premises.

14.1. The writ petition was admitted for hearing *vide* order dated 09.02.2009 and as an interim measure, it was directed that without prejudice to the rights of the parties, respondent (BPCL) should pay to the petitioner the agreed rent due and payable from the year 2004 pending the dispute between the parties. It was made clear that the said direction was subject to the final decision of the court. It was further made clear that the right of the petitioner to claim increased lease rent was also one of the issues under consideration.

Developments subsequent to filing of the writ petition

15. Appellate Bench of Small Causes Court dismissed the appeal filed by the petitioner *vide* judgment and order dated 03.12.2010 holding that BPCL had statutory right for renewal of lease deed for further 35 years under section 5(2) of the Burmah Shell (Acquisition of Undertakings in India) Act, 1976. Therefore, petitioner cannot seek eviction of BPCL.

16. Taking exception to the aforesaid judgment and order dated 03.12.2010 of the Appellate Bench of the Small Causes Court affirming the judgment and order dated 15.01.2007 of the trial court, petitioner preferred the related civil revision application i.e., Civil Revision

Application No.148 of 2011.

17. This court by order dated 16.03.2011 admitted the civil revision application and passed an order that it would be appropriate if the civil revision application was heard along with the writ petition. That is how both the writ petition and the civil revision application came to be tagged together.

18. By the Repealing and Amending Act No.23 of 2016, the Burmah Shell (Acquisition of Undertakings in India) Act, 1976 was repealed by the Parliament alongwith other acts.

19. It may be mentioned that Mumbai Metro Rail Corporation Limited (MMRCL) filed Civil Application No.481 of 2017 seeking intervention in the civil revision proceedings and also seeking leave of the court for taking over possession of 518 sq.mtrs. of land from within the premises to facilitate work of underground Mahalaxmi Station, payment of compensation etc. *Vide* order dated 16.10.2019, this court directed that adequate compensation for temporary possession be deposited in the court every six months while granting liberty to MMRCL to determine compensation for permanent acquisition.

20. Interim Application (L) No.99618 of 2020 was filed by the petitioner in the civil revision application seeking directions against BPCL to furnish details of compensation received by it from MMRCL and also seeking direction to BPCL to deposit the compensation received by it from MMRCL in the High Court so as to enable the petitioner to withdraw the same, with further direction to MMRCL to pay complete compensation to the petitioner.

21. Petitioner filed another Interim Application (L) No.99620 of 2020 in the civil revision application seeking a direction to BPCL to vacate the premises for committing breach of the lease deed.

22. When Government of India invited expression of interest on 07.03.2020 for strategic disinvestment of BPCL, petitioner filed Interim Application (L) No.9613 of 2020 in the writ petition seeking a restraint order against BPCL from selling, transferring, alienating or creating third party rights in respect of the premises.

23. Though detailed submissions were made by learned counsel for the parties, it may not be necessary to elaborately deal with the same as the subject matter of the *lis* has now come down to a narrow compass. Nonetheless we may mention that Dr. Sathe, learned senior counsel for the petitioner strenuously argued that renewal of the lease deed by BPCL *vide* letter dated 25.03.2004 was not in accordance with law as no reasons were furnished and there was no elaboration as to why BPCL sought renewal of lease deed; Mr. Damle, learned senior counsel for BPCL on the other hand submits that in so far the writ petition is concerned, there is no live issue left for adjudication after dismissal of the appeal of the petitioner by the Appellate Bench of the Small Causes Court. He submits that in so far the civil revision application is concerned, there is concurrent finding by two courts below and there is no good reason as to why such finding should be disturbed.

23.1. Responding to this, Dr. Sathe submits that the lower appellate court while dismissing the appeal of the petitioner committed grave error of fact as well as of law which is required to be corrected in the revision application.

<u>Discussion</u>

24. Submissions made by learned counsel for the parties have received the due consideration of the court.

25. The Burmah Shell (Acquisition of Undertakings in India) Act,

1976 (briefly ‘the Burmah Shell Act’) was enacted to provide for the acquisition and transfer of the right, title and interest of Burmah Shell Oil Storage and Distributing Company of India Limited (already referred to as ‘Burmah Shell’) in relation to its undertakings in India with a view to ensuring co-ordinated distribution and utilization of petroleum products distributed and marketed in India by the said company and for matters connected therewith or incidental thereto. The preamble says that Burmah Shell, a foreign company, was carrying on in India the business of distributing and marketing petroleum products and for that purpose had established places of business at Bombay and other places in India. It was further mentioned that it was expedient in the public interest that the undertakings in India of Burmah Shell should be acquired in order to ensure that the ownership and control of the petroleum products distributed and marketed in India by Burmah Shell were vested in the State and thereby so distributed as best to subserve the common good.

25.1. Section 2(a) defined the ‘appointed day’ to mean the date of commencement of the Burmah Shell Act. As per section 3, on the appointed day, the right, title and interest of Burmah Shell in relation to its undertakings in India shall stand transferred to and shall vest in the central government.

25.2. Section 5 is relevant for the present discourse. The heading is, central government to be lessee or tenant under certain circumstances. As per sub-section (1), in respect of any property held by Burmah Shell in India under any lease or under any right of tenancy, the central government shall be deemed to have become the lessee or tenant, as the case may be, in respect of such property on and from the appointed day. Sub-section (2) says that on expiry of the term of any lease or tenancy referred to in sub-section (1), such lease or tenancy shall be renewed if so desired by the central government. Section 5 is quoted hereunder:-

“**5. Central Government to be lessee or tenant under**

> **certain circumstances.-** (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."

25.3. From the above, we find that in terms of sub-section (2), on expiry of the term of any lease or any tenancy which came to be vested in the central government by virtue of sub-section (1), the same shall be renewed on the same terms and conditions on which the lease or tenancy was held by Burmah Shell immediately before the appointed day, if so desired by the central government.

25.4. Section 7 deals with power of central government to direct vesting of the undertakings of Burmah Shell in a government company. The said provision also has relevance in the present proceeding and is, therefore, extracted hereunder:-

> "**7. Power of Central Government to direct vesting of the undertakings of the Burmah Shell in a Government company.-** (1) Notwithstanding anything contained in sections 3, 4 and 5, the Central Government may, if it is satisfied that a Government company is willing to comply, or has complied, with such terms and conditions as that Government may think fit to impose, direct by notification, that the right, title and interest and the liabilities of Burmah Shell in relation to any of its undertakings in India shall, instead of continuing to vest in the Central Government, vest in the Government company either on the date of the notification or on such earlier or later date (not being a date earlier than the appointed day) as may be specified in the notification.
>
> (2) Where the right, title and interest and the liabilities of Burmah Shell in relation to its undertakings in India vest in a Government company under sub- section (1), the Government

> company shall, on and from the date of such vesting, be deemed to have become the owner, tenant or lessee, as the case may be, in relation to such undertakings, and all the rights and liabilities of the Central Government in relation to such undertakings shall, on and from the date of such vesting, be deemed to have become the rights and liabilities, respectively, of the Government company.
>
> (3) The provisions of sub- section (2) of section 5 shall apply to a lease or tenancy, which vests in a Government company, as they apply to a lease or tenancy vested in the Central Government, and reference therein to the" Central Government" shall be construed as a reference to the Government company.”

25.5. Sub-section (1) of section 7 says that the central government may if it is satisfied that a government company is willing to comply or has complied with such terms and conditions as the government may think fit to impose, direct by notification that the right, title and interest and the liabilities of Burmah Shell in relation to any of its undertakings in India shall instead of continuing to vest in the central government, vest in the government company. Sub-section (2) clarifies that upon such vesting, the right, title and interest and liabilities of Burmah Shell shall be deemed to have become the right, title and interest and liabilities of the government company. In terms of sub-section (3), provisions of sub-section (2) of section 5 shall apply to a lease or tenancy which vests in a government company as they apply to a lease or tenancy vested in the central government and any reference to the central government shall be construed to be a reference to the government company.

26. As already noted in the earlier part of this judgment, BPCL is a government company to whom the central government had transferred the assets of Burmah Shell in exercise of powers under section 7 of the Burmah Shell Act. By virtue of sub-section (3) of section 7, BPCL stepped into the shoes of the central government in so far the lease deed dated 29.10.1969 is concerned and became the lessee.

27. Constitutionality of section 5(2) and section 7(3) of the ESSO (Acquisition of Undertakings in India) Act, 1974 was questioned before a Division Bench of this court in **Trade Centre Developers and Builders Private Limited** (*supra*). It may be mentioned that those two provisions were *para materia* to the provisions of section 5(2) and section 7(3) of the Burmah Shell Act. In fact both the enactments in object and substance were identical. By the said judgment this court held that the said provisions could not be termed as unconstitutional and accordingly upheld constitutionality of the said provisions.

28. This court in the order dated 14.10.2008 referred to the above decision in **Trade Centre Developers and Builders Private Limited** (*supra*) and took the view that out of the three reliefs claimed by the petitioner, the first one i.e., declaration of sections 5 and 7 of Burmah Shell Act as *ultra vires* and unconstitutional stood covered by the said judgment. Therefore, it was ordered that only the other two questions remained for consideration.

29. At this stage, we may mention that by the Repealing and Amending Act, 2016, the whole of the Burmah Shell Act was repealed along with several other enactments. However, section 4 of the Repealing Act clarified that despite repealing of the Burmah Shell Act, the same would not affect the validity, invalidity, effect or consequences of anything already done or suffered or any right, title, obligation or liability already acquired, accrued or incurred under the Burmah Shell Act; nor would it affect any pending proceeding in relation to the Burmah Shell Act.

30. That being the position, we are not inclined to entertain the challenge to constitutional validity of section 5(2) and section 7(3) of the Burmah Shell Act. Prayer No.1 is accordingly rejected.

31. This brings us to prayer Nos.2 and 3 i.e., quashing of letter dated

25.03.2004 and for a direction to BPCL to handover vacant and peaceful possession of the premises.

32. From the pleaded facts we find that a lease deed was executed between the petitioner Modern India Limited and Burmah Shell in respect of the premises on 29.10.1969. By the lease deed, the premises were granted on lease to Burmah Shell for a period of 35 years commencing from 01.11.1969 to 31.10.2004. Lease rent was fixed at Rs.66,000.00 per annum from 01.11.1969 to 31.10.1984; Rs.72,000.00 per annum from 01.11.1984 to 31.10.1994; and Rs.80,000.00 per annum from 01.11.1994 to 31.10.2004.

32.1. By virtue of the Burmah Shell Act, Burmah Shell came to be replaced by BPCL as the lessee.

33. As the term of the lease deed was on the verge of expiry petitioner wrote to BPCL on 15.06.2002 stating that the lease deed would expire on 31.10.2004. BPCL was requested to inform the petitioner as to whether it would like to renew the lease for further tenure and if so on what terms and conditions. BPCL *vide* letter dated 25.03.2004 informed the petitioner that in terms of sections 5 and 7 of the Burmah Shell Act it had a statutory right to renew the lease for a further period of 35 years with effect from 01.11.2004 on the same terms and conditions as contained in the registered lease deed which BPCL was exercising for getting the renewal for a further period of 35 years with effect from 01.11.2004.

34. Petitioner had objected to the said exercise of extension of lease by BPCL and in this connection had issued a pleader's notice dated 10.06.2004 to BPCL. BPCL was thereby called upon to vacate the premises and to handover peaceful possession thereof to the petitioner. Ultimately, petitioner filed a suit in the Small Causes Court at Mumbai which was registered as T.E.&R. Suit No.125/142 of 2004. The suit was

for recovery of possession of the premises and for *mesne* profits from the date of filing of the suit till recovery of actual physical possession. However by the judgment and order dated 15.01.2007, the suit was dismissed. While dismissing the suit, the trial court held that defendant No.1 (BPCL) had admittedly issued a letter dated 25.03.2004 exercising the right to renew the lease on the same terms for a further period of 35 years with effect from 01.11.2004.

34.1. When the petitioner preferred appeal being Appeal No.165 of 2007, the Appellate Bench in the Court of Small Causes at Mumbai dismissed the appeal *vide* judgment and order dated 03.12.2010. Referring to sections 5 and 7 of the Burmah Shell Act, the lower appellate court held that transfer of property had taken place by operation of law. Therefore, such transfer of property need not meet the requirements of the provisions of the Transfer of Property Act, 1882 or of the Indian Registration Act, 1908. Referring to the letter dated 25.03.2004 of BPCL it was held that the said letter disclosed the intention of BPCL to renew the lease for a further period of 35 years as per section 5(2) of the Burmah Shell Act. The same cannot be refused either by the petitioner or by the court. It is a statutory right given to BPCL by section 5(2) of the Burmah Shell Act. In this connection, the lower appellate court further held as follows:-

> "12. … When the defendants claim the renewal of the lease then, they have got statutory right under special law i.e., Burmah Shell Act, then Transfer of Property Act will not come into operation. As per the case law mentioned above, Transfer of Property Act is applicable to the transaction or transfer by acts of parties and not by operation of law. In the present case, when the plaintiffs once entered into transaction of transfer with the defendants, then it will be governed by the Burmah Shell Act and it will prevail over the Transfer of Property Act. In the present case, the defendants have got the right to renew the said agreement of tenancy for further 35 years. In the present case, the plaintiffs cannot claim possession of the suit premises unless and until expiration of further period which is liable to be renewed by operation of the law for further 35 years. Thus, the plaintiffs have got right to claim possession only after second term i.e., further extended period of 35 years only, and

> not prior to that. After second term of extension there is no any provision for further extension in the time by statute itself, then, plaintiffs have got right straightway to issue notice claiming possession of the suit premises. Till this date plaintiffs are not permitted to claim the possession and suit of the plaintiffs is liable to be dismissed."

34.2. Thus from the above, we find that the lower appellate court held that plaintiffs (petitioner) cannot claim possession of the suit premises until and unless the expiration of the further period liable to be renewed by operation of law which is 35 years. Though not necessary and somewhat unwarranted the lower appellate court went on to hold that the plaintiffs (petitioner) have got the right to claim possession only after the second term i.e., after the extended period of 35 years and not prior to that; after such extension, there is no provision for further extension in terms of the statute. Therefore, plaintiffs (petitioner) have got right to straightaway issue notice claiming possession of the suit premises at that stage; but prior thereto plaintiffs (petitioner) cannot claim possession.

34.3. Upholding the decision of the trial court, the lower appellate court dismissed the appeal of the petitioner by holding that plaintiffs (petitioner) are not entitled to get possession of the suit premises from the defendants (BPCL).

35. The above is a concurrent finding rendered by two courts of law. In the face of such finding returned by the civil courts, it is not possible to accede to prayer Nos.2 and 3 raised by the petitioner in the writ petition i.e., quashing of letter dated 25.03.2004 and for a direction to BPCL to handover vacant and peaceful possession of the premises to the petitioner.

36. However, at this stage we may mention that Dr. Sathe, learned senior counsel for the petitioner laid great emphasis on the expression '*if so desired by the central government*' as appearing in sub-section (2) of

section 5. To appreciate his submission, we may once again extract sub-section (2) of section 5. As noticed, under sub-section (1) of section 5 where any property is held in India by Burmah Shell under any lease or under any right of tenancy, central government shall be deemed to have become the lessee or the tenant as the case may be in respect of such property on and from the appointed day. Under sub-section (2), such lease or tenancy shall be renewed on the same terms and conditions, '*if so desired by the central government*'. Sub-section (2) of section 5 is extracted once again and reads as under:-

> "**5. Central Government to be lessee or tenant under certain circumstances.-**
> (1) ...
>
> (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."

36.1. It is his contention that BPCL is a 'state' within the meaning of Article 12 of the Constitution of India. Therefore, it has to act fairly and reasonably. The desire of the central government as expressed in sub-section (2) of section 5 cannot be based on subjective satisfaction; it must be based on objective criteria. Therefore, reasons must be given by BPCL which had stepped into the shoes of the central government and Burmah Shell as to why it desired to renew the lease agreement. In this connection, reliance has been placed on the decision of the Supreme Court in *BPCL Vs. Maddula Ratnavalli*, **(2007) 6 SCC 81**.

37. We have carefully examined the decision of the Supreme Court in **Maddula Ratnavalli** *(supra).* That was also a case where sub-section (2) of section 5 of the Burmah Shell Act, more particularly the expression '*if so desired by the central government*' came up for consideration. Supreme Court held that when the statute uses the words '*if so desired by the central government*', such a desire cannot be based upon a subjective satisfaction. It must be based on objective criteria. It

was in that context that Supreme Court held that an executive action must be informed by reason. The ‘state' acting whether as a landlord or as a tenant is required to act *bonafide* and not arbitrarily when the same is likely to affect prejudicially the rights of others.

38. Having noticed the above, we may revert back to the letter dated 25.03.2004 issued by BPCL to the petitioner informing the petitioner about its decision for renewal of the lease for a further period of 35 years with effect from 01.11.2004. BPCL stated that in terms of sections 5 and 7 of the Burmah Shell Act it had a statutory right to renew the lease for a further period of 35 years with effect from 01.11.2004 on the same terms and conditions as contained in the lease deed and, therefore, it exercised the said right. Though the letter could have been a little more elaborate but that does not in our view in any manner impeach the decision of BPCL which was expressed in a clear and unambiguous manner. This letter was in response to the letter of the petitioner dated 15.06.2002 whereby it wanted to know from BPCL as to whether it would like to renew the lease after expiry and if so on what terms and conditions. The response of BPCL as contained in the letter dated 25.03.2004 has to be read in the context of petitioner's letter dated 15.06.2002.

39. Thus in the light of the above, we do not find any good ground to interfere with the decision of BPCL as contained in the letter dated 25.03.2004. That apart, in the light of the clear finding of the civil court, the third prayer cannot also be acceded to.

40. We therefore proceed to the civil revision application but before that we may take note of the stand taken by BPCL in its reply affidavit to the writ petition.

40.1. In paragraph 3 of the reply affidavit it is stated that even before filing of the writ petition BPCL had approached the petitioner for increase in rental but petitioner did not give a proper response. Though during the pendency of the writ petition there had been negotiations between the parties, however, no conclusion could be reached as the final terms could not be agreed upon. It is stated that respondent BPCL had always been fair and reasonable in its dealing with the petitioner and 'is even now willing to negotiate for increase in the rent'.

41. We appreciate the stand taken by BPCL. We may note that in respect of the lease deed dated 29.10.1969, lease rent was fixed at Rs.66,000.00 per annum from 01.11.1969 to 31.10.1984; Rs.72,000.00 per annum from 01.11.1984 to 31.10.1994; and Rs.80,000.00 per annum from 01.11.1994 to 31.10.2004. Therefore, it is evident that there was not one uniform annual rent throughout the entire tenure of the lease period of 35 years. There was a slab for the first fifteen years which was enhanced for the next ten years and further enhanced for the last ten years. We are of the view that since BPCL had exercised its statutory right of renewal of the lease agreement on the same terms and conditions, the periodical rental enhancements in the previous lease period should also be made applicable to the renewed lease period keeping in mind various other economic factors. As held by the Supreme Court in **Maddula Ratnavalli** *(supra)*, BPCL being a 'state', while acting as a tenant is required to act in a fair, reasonable and *bona fide* manner. We are also fortified in taking the above view by the order dated 09.02.2009 passed by this court in the writ petition. This court while admitting the writ petition had directed BPCL to pay to the petitioner the agreed rent due and payable from the year 2004 during pendency of the writ petition, clarifying that the same would be subject to the final decision of the writ petition. It was also clarified that right of the petitioner to claim increased lease rent is also one of the issues under consideration.

42. In so far the civil revision application is concerned, we have already extracted the relevant portion of the judgment and order dated 03.12.2010 passed by the lower appellate court. In addition to what we

had extracted above, we may further extract the following portion from the judgment and order dated 03.12.2010:-

> "9. As per the ratio laid down in the above case law, the crux is that the transfer of property takes place by operation of law. The Transfer of Property Act is applicable to the transfer by act of the parties. A transfer by operation of law is not validated or invalidated by anything contained in the Act. The transfer takes place by operation of law, therefore, need not meet the requirements of the provisions of the Transfer of Property Act or Indian Registration Act.
>
> 10. So far as the above case law is concerned, after issuing notice by the Plaintiffs the defendants received a letter disclosing the desire of defendants to renew the said agreement of lease for further 35 years with effect from 1.11.2004 by letter dated 25.3.2004 vide Exh.14. The said letter clearly shows the intention of the defendant to renew the contract of lease for further 35 years as per Section 5(2) of Burmah Shell Act. The lease deed is also filed on record. It also gives right to the defendants to renew the same. As per para 7 of the lease deed, the lease is renewable at the desire of the lessee. In this case, when there is a written demand of renewal, it gives statutory rights to the defendants to renew the lease deed for further 35 years as per section 5(2) of Burmah Shell Act. In this case, it is an admitted position that by written letter mentioned above, the defendant has put their desire to renew the said lease for further 35 years. It will clearly show that the defendants wanted to renew the same terms and conditions and it cannot be refused either by the plaintiffs or by this Court. It is a statutory right given to the defendants by section 5(2) of the said Act.
>
> 11. When we hold that the defendants have right to get the lease deed renewed as of a statutory right, then the Transfer of Property Act and MRC Act has no application and the appellants/plaintiffs have no right to deny the same. The plaintiffs cannot avail the relief of eviction of the suit premises on the grounds mentioned by him in the plaint, because there is non-obstante clause in section 11 of the Burmah Shell Act. Section 11 speaks like this,
>
>> "The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act or in any decree or order of any Court, tribunal or other authority."
>
> As per section 11, any other law for time being in force or in any instrument having effect by virtue of law other than the Burmah Shell Act or in any decree or order of any Court,

> Tribunal or other authority. This Act will make effect on the order. As per this non-obstante clause the other Acts like Transfer of Property Act, MRC Act become ineffective and plaintiffs will not get any right to evict the defendants."

43. Not only there is a concurrent finding by the two lower courts below, we are also of the view that the findings reached are in accordance with law and do not in any manner contravene any legal provision. It is not a case of the courts below exercising jurisdiction not vested by law or had failed to exercise the jurisdiction so vested or having acted in the exercise of the jurisdiction illegally or with material irregularity. We, therefore, do not find it to be a fit case for interference in exercise of our revisional jurisdiction.

Interim Applications

44. However, following our discussion made in paragraph 41 above, we may briefly refer to the various interim applications filed in the writ petition as well as in the civil revision application.

45. Civil Application No.481 of 2017 was filed by Mumbai Metro Rail Corporation Limited for intervention in the civil revision application. It stated that for construction of the underground Mahalaxmi Station it required about 518 sq.mtrs. of land which was part of the suit land covered by the civil revision application. It was stated that 518 square meters of the land was required for temporary possession for facilitating the work out of which an area of 316 sq.mtrs. was required for permanent underground rights for Mahalaxmi Station. This court *vide* order dated 16.10.2019 permitted the applicant / intervenor - Mumbai Metro Rail Corporation Limited to deposit in court to the account of the civil revision applicant an appropriate sum to be decided by the compensation committee appointed by the applicant / intervenor every six months as advance six monthly payment towards

compensation for temporary possession of 518 sq.mtrs. of the land till completion of underground Mahalaxmi Station with liberty to the applicant / intervenor for determining the amount of compensation for permanent underground rights in respect of 316 sq.mtrs. of land. The civil application was accordingly disposed of. Order dated 16.10.2019 is extracted hereunder:-

> “. This civil application has been taken out by the Applicant, who intervenes in the matter. The Applicant is Mumbai Metro Rail Corporation. Its case is that for construction of underground Mahalaxmi Station, it requires about 518 sq. mtrs. of suit land, which is the subject matter of the present civil revision application, for temporary possession for facilitating the work, out of which an area of 316 sq. mtrs. is required for permanent underground rights for Mahalaxmi Station. Total area of 518 sq. mtrs. required by it has been shown delineated in a map annexed to the civil application. So also is delineated on the map the area of 316 sq. mtrs. required for underground permanent construction. The area of 518 sq. mtrs. is said to be admittedly in occupation of the Respondent – Bharat Petroleum Corporation Limited, who were defendants in the revision applicant’s suit for eviction, which has since been dismissed by the trial court, and the decree of the trial court has since been affirmed by the appeal court. The present CRA has been filed from these decrees. It is submitted that 518 sq. mtrs. land has been already taken possession of by the Applicant/intervenor and, to that extent, prayer clause (a) of the civil application has been rendered practically infructuous. Learned Counsel for the Respondent/original applicant accepts that possession has been taken over by the Applicant / Intervenor. The question now is only of deposit of compensation, for which the Applicant/Intervenor has made a specific prayer in prayer clause (b) of its civil application. Since possession has already been taken over by the Applicant/ Intervenor, there is no difficulty in allowing this prayer. Accordingly, the Applicant/Intervener is permitted to deposit in Court to the account of the CRA herein an appropriate sum as may be decided by the compensation committee appointed by the Applicant/Intervenor every six months as advance six monthly payment towards compensation for temporary possession of 518 sq.mtrs. land till completion of underground Mahalaxmi Station and allied construction with liberty to the Applicant/Intervenor for determining the amount of compensation for permanent underground rights in respect of 316 sq.ft. suit land at such rate as may be decided by the compensation committee appointed by the Applicant/Intervenor for determining compensation for permanent underground rights. The civil application is disposed of accordingly.”

46. While on the civil revision application we find that petitioner has filed Interim Application (L) No.99618 of 2020 in the civil revision application. Prayer made in the said interim application is for a direction - (i) to BPCL to provide the details of compensation received from Mumbai Metro Rail Corporation Limited; (ii) to grant leave to the petitioner to withdraw the amounts deposited by BPCL in court; and (iii) to direct Mumbai Metro Rail Corporation Limited to pay compensation in respect of the land to the petitioner.

46.1. No effective order has been passed in this interim application. Rather, *vide* order dated 13.07.2021 this court directed that the interim application would be heard along with the writ petition and the civil revision application.

47. Petitioner has filed another interim application being Interim Application (L) No.99620 of 2020 in the civil revision application. Prayer made in this interim application is for a declaration that BPCL had committed a breach of the terms of the lease deed dated 29.10.1969 and, therefore, the said lease deed as renewed stood terminated. Consequential prayer made is that BPCL be directed to be evicted from the premises.

47.1. Here also no effective order was passed by this court save and except the order dated 13.07.2021 directing hearing of the interim application along with the related writ petition and civil revision application.

48. That brings us to the last interim application which is Interim Application (L) No.9613 of 2020 filed by the petitioner in the writ petition. The said interim application came to be filed when petitioner came to know from an expression of interest floated by the central government on 07.03.2020 that central government was planning to sell / transfer / alienate its ownership / shareholding / stake in the BPCL.

It was in that context that prayer was made to maintain *status-quo* in respect of the premises till disposal of the writ petition.

49. This interim application, in our view, is misconceived as the matter relates to disinvestment by the central government in BPCL which is a policy matter. Unless the same is put to challenge in an appropriate proceeding, the same cannot be gone into collaterally. That apart, we are of the view that disinvestment or restructuring of BPCL may not have any impact on the ownership of the premises. In such circumstances, no order in this interim application is called for.

50. In so far Interim Application (L) No.99618 of 2020 is concerned, petitioner continues to remain the owner of the premises. As the owner, petitioner entered into the lease deed dated 29.10.1969 as the lessor. This status continues till date and remains intact. When possession of a portion of the premises is taken over by the Mumbai Metro Rail Corporation Limited, petitioner's right to receive compensation cannot be denied. Therefore, this court in the order dated 16.10.2019 passed in Civil Application No.481 of 2017 permitted Mumbai Metro Rail Corporation Limited to deposit in court to the account of the civil revision applicant (petitioner) an appropriate sum as may be decided by the compensation committee of Mumbai Metro Rail Corporation Limited every six months as advance six monthly payment towards compensation for temporary possession of 518 sq. mtrs. of the land till completion of the underground Mahalaxmi Station and allied construction. Further liberty was granted to Mumbai Metro Rail Corporation Limited to determine the amount of compensation for permanent underground rights in respect of 316 sq.ft. of the land at such rate as may be decided by the compensation committee. Therefore, in the light of such direction of this court, petitioner would be entitled to receive the compensation for temporary possession deposited in court by the Mumbai Metro Rail Corporation Limited as well as the compensation for permanent underground rights directly from the

Mumbai Metro Rail Corporation Limited.

51. However, as regards Interim Application (L) No.99260 of 2020 is concerned, we are of the view that the said application is misconceived. No such declaration as sought for by the petitioner that BPCL had breached terms of the lease deed dated 29.10.1969 and therefore the said lease deed as renewed stood terminated, can be made by the writ court or by the revisional court at the first instance. Similarly, the consequential prayer made that BPCL be evicted from the premises cannot also be acceded to.

52. Therefore, having regard to our discussions made above, we may summarize our conclusions in the following manner:-

1. Challenge to constitutional validity of section 5(2) and section 7(3) of the Burmah Shell (Acquisition of Undertakings in India) Act, 1976 is rejected. Further, we decline to interfere with the decision of BPCL as contained in the letter dated 25.03.2004 and for handing over of possession of the premises;
2. We also decline to interfere with the judgment and order dated 03.12.2010 of the lower appellate court affirming the judgment and order dated 15.01.2007 passed by the trial court in exercise of our revisional jurisdiction;
3. Petitioner would be entitled to withdraw the compensation amount deposited in court by Mumbai Metro Rail Corporation Limited pursuant to order of this court dated 16.10.2019 passed in Civil Application No.481 of 2017, along with accrued interest;
4. BPCL shall handover whatever compensation it has received from Mumbai Metro Rail Corporation Limited in connection with temporary possession of 518 sq.mtrs. of land including compensation for permanent underground rights in respect of

316 sq.mtrs. of land to the petitioner;

5. Any compensation or further compensation payable as per conclusion No.4 above shall henceforth be paid by Mumbai Metro Rail Corporation Limited directly to the petitioner; and,

6. BPCL shall enhance the rent for the renewed lease period in the manner the lease rental was enhanced periodically in terms of the lease deed dated 29.10.1969. BPCL shall hold discussions in this regard with the petitioner whereafter appropriate decision shall be taken for payment of enhanced rent periodically including arrear payment. This exercise shall be completed within a period of six weeks from the date of receipt of a copy of this judgment.

53. Accordingly both the writ petition and the civil revision application are disposed of in the above terms. All civil and interim applications are also disposed of. However, there shall be no order as to costs.

(MADHAV J. JAMDAR, J.) **(UJJAL BHUYAN, J.)**

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