

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 579 OF 2019

Bharat Petroleum Corporation Ltd.	]	
A Public Limited Company having its	]	
registered Office at Bharat Bhavan	]	
4 & 6, Currimbhoy Road, Ballard Estate,	]	
Mumbai – 400 001	]	... Applicants
		(Org. Defendants)

V/s.

1. Jaysingh Bhagwandas Kapadia	]	
2. Haresh Bhagwandas Kapadia	]	
3. Pravin Bhagwandas Kapadia (since deceased)	]	
3A. Mrs. Panna Pravinbhai Kapadia	]	
3B. Nilesh Pravinbhai Kapadia	]	
3C. Alpesh Pravinbhai Kapadia	]	
3D. Ritesh Pravinbhai Kapadia	]	
4. Ramesh Bhagwandas Kapadia	]	
5. Chandrasinh Damodar Kapadia (deceased)	]	
5A. Vanraj Chandrasinh Kapadia	]	
5B. Rajan Chandrasinh Kapadia	]	... Respondents
		(Org. Plaintiffs)

Mr.S.R. Page for Applicants.

Mr.PK. Dhakephalkar, Senior Advocate i/b. Mr.Jaydeep Deo for Respondents.

CORAM : A.S. GADKARI, J.

RESERVED ON : 23rd November 2021.
PRONOUNCED ON : 15th December 2021.

JUDGMENT :

1. Rule. Rule made returnable forthwith.

By consent of learned counsel for the respective parties, heard finally.

2. Heard Mr. Page, learned Advocate for the Applicants and Mr. Dhakephalkar, learned Senior Advocate for Respondents. Perused entire record.

3. Applicants/Original Defendants have impugned the Judgment and Order dated 14th December 2011 passed in favour of the Respondents directing the Applicants to deliver the vacant possession of the suit premises within 3 months from the date of passing of the said Order and to conduct an enquiry regarding mesne profits under Order 20 Rule 12 of Civil Procedure Code (for short, 'C.P.C.') and the Judgment and Order dated 4th June 2019 passed by the Appellate Bench of Court of Small Causes, Mumbai (Bandra Bench) in P.S.C.C. Appeal No. 2 of 2012 in T.E.& R. Suit No. 102/150 of 2008, dismissing the Appeal filed by the Applicants and confirming the Judgment and Decree passed by the Trial Court dated 14th December 2011.

4. Respondent Nos.1 to 4 are successors-in-title of late Bhagwandas Gordhandas Kapadia, whereas Respondent No.5 is a receiver of part of rent in respect of the suit property and as such a lessor and a landlord of the Applicants.

The suit property is a piece or parcel of land bearing Survey No.7 lying and situated at Magathane, Taluka Borivali, District Mumbai, admeasuring about 2000 sq. yards or thereabout. Late Shri Bhagwandas Gordhandas Kapadia was a Karta of his joint Hindu family including the suit property herein. Late Shri Bhagwandas G. Kapadia as a Karta of joint Hindu family entered into Deed of Lease for Pump Site with the then Burmah-Shell Oil Storage and Distributing Company of India Limited, now known as Bharat Petroleum Corporation Limited (Applicants herein) dated 9th June 1967 for a period of 20 years commencing from 1st April 1967 at an agreed monthly rent of Rs.1,500/-. The said Lease-deed expired by efflux of time on 31st March 1987 and thereafter no fresh Lease-deed was executed.

5. In view of Clause No.4(b) of the Pump Site Lease Deed dated 9th June 1967, the Applicants continued to be in possession of the suit premises as lessee at the revised rent of Rs.1875/- per month from 1st April 1987 for a further period of 20 years on the same terms and conditions in all respects, as mentioned and contend in the said Lease-Deed.

The Maharashtra Rent Control Act, 1999 (for short, 'the said Act') came into effect from 31st March 2000, thereby repealing the earlier Bombay Rent Control Act, 1947. Section 3(1)(b) of the Maharashtra Rent Control Act, 1999 postulates that, any premises let or sub-let to the companies having the paid up share capital of Rs.1 crore and more are exempted from the protection of the said Act. The Applicants are having paid up share capital of more than Rs.1 crore as well as is a Corporation and a Public Sector Undertaking and therefore under Section 3(1)(b) of the said Act, it is exempted from the protection of the said Act.

6. In furtherance of the operation of Clause No.4(b) of the said Lease-Deed, the Applicants continued to remain in possession of the suit property as lessee upto 31st March 2007 and paid revised rent of Rs.1875/- per month. As the period of Lease-Deed came to an end on 31st March 2007, the Respondents issued a notice dated 24th June 2008 and terminated the said Lease-Deed and in effect the tenancy of the Applicants.

7. It is the contention of the Applicants that, as per Section 5 and 7 of the Burmah Shell (Acquisition of Undertaking in India) Act, 1976, they are entitled for a further renewal of lease from 1st April 2007 for a further period of 29 years and therefore they refused to vacate and handover possession to the Respondents in furtherance of termination notice and requested the Respondents to renew the said Lease-Deed. The Respondents left with no

other alternative filed T.E.& R. Suit No. 102/150 of 2008 in the Court of Small Causes at Mumbai. Upon receipt of summons Applicants appeared in the said Suit and filed its written statement below Exh.8. Applicants admitted ownership of the Respondents in respect of the suit property. Applicants have also admitted execution of Pump Site Lease dated 9th June 1967. The learned Trial Court framed issues below Exh.12 and additional issues below Exh.19. The Trial Court after recording evidence and hearing the learned Advocates for the respective parties was pleased to decree the said Suit and directed the Applicants to deliver vacant possession of the suit premises within a period of three months from the date of passing of its Order dated 14th December 2011. The Applicants are unsuccessful before the Appellate Bench of the Small Causes Court at Mumbai in P.S.C.C. Appeal No. 2 of 2012 filed by it.

8. Mr.Page, learned counsel for Applicants submitted that, as per Section 5 & 7 of the Burmah Shell (Acquisition of Undertaking in India) Act, 1976, the Applicants have expressed their desire and expressed right to continue in occupation of the premises for a further period of 29 years from 1st April 2007 and therefore the Respondents are under obligation to renew the lease for further period without any demur. He however fairly conceded to the fact that, Clause No.4(b) of the said Pump Site Lease, dated 9th June 1967 is binding on the parties herein.

9. The chronology of events mentioned in para Nos.4 to 7 are the admitted facts on record.

As noted herein above, as per Clause No.4(b) of the said Lease, the period of lease was extended for a further period of 20 years from 1st April 1987 at the revised rent of Rs.1875/- on the same terms and conditions in all respects, as are mentioned/contained in the said Lease-Deed. Admittedly the Respondents have complied with their part of obligation, as per the said clause and permitted the Applicants to enjoy the suit property for a further period of 20 years from 1st April 1987. The Respondents thereafter by issuing a notice dated 24th June 2008 have validly and legally terminated the said Lease-Deed and have sought possession of their suit property from the Applicants. As noted earlier, both the Courts below have recorded concurrent finding in the present case. Perusal of entire record clearly indicates that, the Respondents have proved their case by preponderance of all probabilities and by leading cogent evidence in that behalf. In view of unambiguous Clause No.4(b) of the said Lease-Deed the Respondents had renewed the tenure of lease from 1st April 1987 for 20 years. The said Clause or other Clauses do not provide for further extension of lease period for 29 years. Therefore the contention of Applicants to that effect cannot be accepted.

10. It is to be noted here that, after termination of Lease-Deed 9th June 1967 by a legal notice dated 24th June 2008 issued by the Respondents,

the Applicants being a Public Sector Undertaking and a profit making company, instead of retaining the suit property being lessee, ought to have handed over vacant and peaceful possession of suit property gracefully to the Respondents. It appears that, the Applicants retained suit property, thereby forcing Respondents/citizens to litigate for more than 12 years, causing undue harassment to them for no reason.

11. After taking into consideration entire material available on record and perusing the Judgments of both the Courts below, this Court is of the view that, both the Courts below have properly exercised jurisdiction so vested with them and have acted in exercise of its jurisdiction legally. There is no material irregularity in the Judgments and Orders passed by both the Courts below.

12. Revision Application is accordingly dismissed.

[A.S. GADKARI, J.]

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