



CRP.No.787/2019

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

CRP.No.787/2019 & CMP.No.5175/2019

[Video Conferencing]

1.Hindustan Petroleum Corporation Ltd.,
rep.by its Managing Director,
Having its registered office at
No.17, Jamshedhi Tata Road,
Mumbai 400 020.

2.The Chief Regional Manager
Hindustan Petroleum Corporation Ltd.,
having its Regional Office at
"Thalamuthu Natarajan Building"
3rd Floor, 8, Gandhi Irwin Road,
Egmore, Chennai 600 008.

3.The Deputy Manager-MIS
Hindustan Petroleum Corporation Ltd.,
having its Regional Office at
"Thalamuthu Natarajan Building"
3rd Floor, 8, Gandhi Irwin Road,
Egmore, Chennai 600 008.

.. Petitioners /
Defendants

Vs.



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- 1.M.N.Vitto Bai
- 2.M.S.Bhagya Laxmi
- 3.N.K.Pattammal
- 4.M.N.Balasundaram
- 5.M.N.Muthuswamy
- 6.M.N.Murugesan
- 7.Mrs.M.S.Rani
- 8.M.S.Chockalingam
- 9.Mrs.Divya Parthasarathy

.. Respondents
/ Plaintiffs

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India against the decree and judgment dated 13.07.2018 passed in CMA No.73/2015 on the file of the learned VII Additional City Civil Court, Chennai, confirming the decree and judgment dated 12.12.2011 passed in IA.No.12246/2008 in OS.No.2978/2006 on the file of the learned XVII Assistant Judge, City Civil Court, Chennai.

For Petitioners : Mr.M.Vijayan
Senior Counsel assisted by
Ms.Bensi Rema

For Respondents : M.K.Kabir, Senior Counsel
assisted by
Mr.T.Jayaraman



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ORDER

- (1) The revision petitioners are the defendants in the suit in OS.No.2978/2006 filed by the respondents herein before the learned XVII Assistant Judge, City Civil Court, Chennai.
- (2) The said suit was for ejectment. Vide a Lease Deed dated 26.04.1968, the suit property was leased out to the predecessor in interest of M/s.Hindustan Petroleum Corporation Limited [for the sake of brevity, referred to as HPCL], namely, Caltex [India] Limited. The revision petitioners / defendants have stepped into the shoes of Caltex Oil Refining [India] Limited who was the original lessee under the predecessor in interest of the respondents/plaintiffs. The lease period was for five years from 01.03.1967. After the expiry of the lease period, a fresh Lease Deed was executed on 28.09.1972 for a further period of 15 years commencing from 01.03.1972 for a monthly rent of Rs.600/- for the first 5 years and then, at the rate of Rs.700/- for the second 5 years and at the rate of Rs.800/- for the last five years.



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(3) It is admitted that the right, title and interest of Caltex [India] Limited stood transferred to and vested with the Central Government by virtue of Caltex [Acquisition of Shares of Caltex Oil Refining [India] Limited and of the Undertakings in India of Caltex [India] Limited Ordinance, 1976. By virtue of the same statute under which the Caltex [India] Limited was acquired, the right would in turn vest with Caltex Oil Refining [India] Limited which was then a Government Company. Thereafter, M/s.Caltex Oil Refining [India] Limited was amalgamated with HPCL with effect from 09.05.1978.

(4) The defendants in the Ejectment suit, viz., the revision petitioners herein, filed an Interlocutory Application in IA.No.12246/2006 in OS.No.2978/2006 under Section 9 of the Tamil Nadu City Tenants Protection Act, 1921. By an order dated 12.12.2011, the petition filed by the defendants/revision petitioners was dismissed on the ground that the petitioners/defendants are not in actual physical possession. Following the judgment of this Court in the case of ***Bharat Petroleum Corporation Limited Vs. H.A.Mohammed***



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Alumuddin reported in **2010 [1] Law Weekly 930**, the Trial Court dismissed the application. Aggrieved by the same, the revision petitioners/defendants preferred CMA.No.73/2015 before the learned VII Additional Judge, City Civil Court, Chennai. The Lower Appellate Court also dismissed the said Appeal and confirmed the order of the Trial Court holding that the defendants/revision petitioners herein are not in actual possession of the property.

- (5) It is admitted that M/s.HPCL entered into an Agreement with the dealer and the dealer is in actual possession of the property. During the course of evidence, the Manager of HPCL was examined as PW1 and he has categorically admitted that the right to enjoy the property was given to the dealer under a different Agreement. On the basis of several judgments of the Hon'ble Supreme Court and this Court, particularly the judgment reported in **2003 [3] CTC 488 [R.Radhakrishnan and Others V. Neelamegam]**, wherein it was held that the actual physical possession of land by a tenant is essential for invoking Section 9 and it is *sine qua non*. The same



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view was reiterated by the Hon'ble Supreme Court and several subsequent judgments, approving the view taken by this Court.

- (6) In the Memorandum of Grounds raised by the revision petitioners / defendants, it is stated that they are in lawful possession of the property as tenant. The finding of the Trial Court as well as the Lower Appellate Court that the revision petitioners/defendants are not in actual physical possession, is not disputed.
- (7) The learned Senior counsel appearing for the respondents/plaintiffs also relied upon several judgments of the Hon'ble Supreme Court as well as this Court on this point. The learned Senior Counsel also relied upon two recent judgments. Firstly, the judgment of the Hon'ble Supreme Court in ***National Company represented by its Managing Partner V. The Territory Manager, Bharat Petroleum Corporation Limited and Another*** in CA.No.6726/2021 dated 11.11.2021 following the decision of Larger Bench of the Hon'ble Supreme Court.
- (8) The Hon'ble Supreme Court in ***National Company case [cited supra]***, has held as follows:-



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*"18.We have perused the Agreement between the respondent No.1-BPCL and the respondent No.2 herein. Shri Kailash Vasdev, learned Senior Counsel, fairly concedes that all the agreements between the respondent No.1-BPCL and its dealers are identical. As such, when a Bench of Three Judges of this Court in the case of **Bharat Petroleum Corporation Limited V. R.Chandramouleeswaran and others** reported in **2020 [11] SCC 718 [supra]**, while considering a similar agreement between the appellant-BPCL and the dealer, has held that since the appellant tenant was not in actual physical possession, it was not entitled to the protection under the Tenants Act, the said view is bound even in the facts of the present case.*

...

21.In the result, the appeal is allowed in the following terms:

[i]The respondent No.1-BPCL is directed to vacate and hand over peaceful and vacant possession of the said premises to the appellant within a period of three months from today.



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[ii]The respondent No.1-BPCL is directed to pay arrears of market rent to the appellant from 31st December, 2009 till the date of handing over of possession."

(9) In ***Bharat Petroleum Corporation Limited V. R.Chandramouleeswaran and others*** reported in **2020 [11] SCC 718**, a Full Bench of the Hon'ble Supreme Court of India considered the scope of Section 9 in detail with reference to precedents and contextual construction of provisions of the Madras City Tenants Protection Act and has held as follows:-

"27. In view of the aforesaid discussion, we hold as under:

27.1. Sub-clauses (i) and (ii)(a) to clause (4) of Section 2 of the Act apply to all tenants who had entered into oral or unregistered written agreements or registered written agreements without any stipulation with regard to "erection of buildings" for taking land on lease, and had subsequently constructed buildings. Such tenants would be entitled



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to protection of the Act provided the tenant satisfies the conditions mentioned in sub-clauses (i) or (ii)(a) to clause (4) of Section 2 of the Act.

27.2. Para 1 of sub-clause (ii)(b) to clause (4) of Section 2 of the Act applies to tenants who are not entitled to the rights under the Act by reason of the proviso to Section 12 which stood deleted vide the Amendment Act, 1972. Para 2 of the said sub-clause applies to cases where a decree of declaration or decree or an order of possession or similar relief has been passed against a tenant on the ground that the proviso to Section 12, which was omitted by the Amendment Act, 1972, disentitles the tenant from claiming rights under the Act. Accordingly, sub-clause (b) to Section 2(4)(ii) would apply only to tenancies which were earlier excluded from the protection under the Act vide the proviso to Section 12 which stands deleted with retrospective effect vide the Amending Act, 1972. [Para 2 in sub-clause (ii)(b) to clause (4) of Section 2 of the Act, has been interpreted in different judgments by the Madras High Court, including the decision in Haridas



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Girdhardas v. M. Varadaraja Pillai, 1975 SCC OnLine Mad 112 : (1976) 89 LW 1. Pertinently, in the aforementioned case, the Madras High Court dealt with the applicability of sub-section (3-A) to Section 9 of the Act which stipulates the reopening or reviewing of a decree or order passed, in terms of the deleted proviso to Section 12 of the Act, against the interests of the tenant, that is, those who are covered under para 2 of sub-clause (ii)(b) to Section 2(4) of the Act. We are not required to examine the true impact and effect of the said para 2 or sub-section (3-A) to Section 9 of the Act as they are not relevant for the present decision. On this aspect, we make no comment.]

27.3. Sub-clause (ii)(c) to clause (4) of Section 2 states that heirs of a tenant referred to in sub-clause (i) or sub-clauses (ii)(a) or (ii)(b) would be entitled to benefit of the Act. However, it expressly excludes a sub-tenant or heirs of the sub-tenant.

28. Recording the aforesaid position, we dismiss the present appeals by the appellant, that is, the



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three petroleum companies, and uphold the orders passed by the High Court that the appellant tenants would not be entitled to the benefit and rights under the Act unless they are in actual physical possession of the building constructed by them. In other words, in case the appellants have let out or sub-let the building or given it to third parties, including dealers or licensees, they would not be entitled to protection and benefit under the Act."

- (10) In view of the settled legal position, this Court is of the view that the present Revision filed by the revision petitioners/defendants is not maintainable.
- (11) In the result, the Civil Revision Petition stands **dismissed**. No costs. Consequently, connected miscellaneous petition is closed.

18.11.2021

AP
Internet : Yes



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To

- 1.VII Additional Judge,
City Civil Court, Chennai,
- 2.XVII Assistant Judge
City Civil Court, Chennai.
- 3.Managing Director,
Hindustan Petroleum Corporation Ltd.,
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No.17, Jamshedhi Tata Road,
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S.S.SUNDAR, J.,

AP

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