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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	14.07.2021
Pronounced On	23.07.2021

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

S.A.No.349 of 2016

(Through Video Conferencing)

- 1.A.S.Shanmugam
- 2.J.Saravanan
- 3.V.Viknesh Kumar (Minor)
Rep.by his mother and next
friend Lalithaparameswari.

...Appellants/Appellants/Plaintiffs

vs.

1. The Hindustan Petroleum Corporation Ltd.,
Rep.by its General Manager,
No.17, Jamsetji Tata Road,
Mumbai.
2. The Regional Manager,
Hindustan Petroleum Corporation Ltd.,
3rd Floor, Singapore Plaza,
Cross Cut Road, Coimbatore - 12.

3. L.Muthusamy ...Respondents/Respondents/Defendants

Second Appeal filed under Section 100 of Civil Procedure Code, 1908 against the Judgment and Decree dated 17.2.2004 passed in A.S.No.31 of 2003 by the Subordinate Judge, Dharapuram, by confirming the Judgment and Decree dated 28.02.2001 passed in O.S.No.104 of 2000 by the District Munsif Court, Kangeyam.

For Appellant : Mrs.Nalini Chidambaram SC
for Mrs.C.Uma

For R1 & R2 : Mr.M.Vijayan for
M/s.King & Patridge

For R3 : Mr.R.Karthikeyan



J U D G M E N T

This second appeal has been filed against the impugned judgment and decree dated 17.2.2004 passed by the Sub-Judge, Dharapuram in A.S.No.31 of 2003.

2. By the impugned judgement and decree, the said court dismissed the aforesaid appeal filed by the appellants herein in A.S.No.31 of 2003 against the judgement and decree dated 28.2.2001 passed by the Trial Court in O.S.No.104 of 2000.

3. Though the present appeal was filed on 9.10.2004 against the impugned judgment and decree of the First Appellate Court, the appellants did not take any steps for numbering the present appeal in time. It was numbered only in the year 2016 after a lapse of 12 years since it was filed.

4. During the interregnum, the 2nd and 3rd appellants, have sold their respective share (25% each) in the suit schedule property to the 3rd respondent/3rd Defendant dealer-cum-retailer of the 1st and 2nd respondents vide two separate sale deeds dated 12.9.2013.

5. The 3rd respondent has been in occupation of the suit schedule property and has been running a petroleum retail outlet for the 1st respondent. The suit schedule property was earlier leased to Caltex Oil Refining (India) Ltd on 1.5.1972 during the life time of the predecessors of the appellants.

6. The appellants had filed the above suit against the respondents for delivery and possession of the suit schedule property leased out to the 1st respondent and for arrears of rent at the rate of Rs.750/-per month and for subsequent rent and towards cost of the suit.

7. The Trial court had dismissed the suit filed by the appellants on the ground that the lease was renewed by one of the original lessors for a period of 10 years on 1.9.1996 and therefore the suit filed by the appellants in the year 2000 was premature. The appellate Court has also re-affirmed the same.

8. When this appeal was taken up for hearing, the learned Senior counsel appearing on behalf of the appellants submitted that even as per the written statement filed before the Trial Court, the lease was to come to an end at the expiry of 10 years from 01.09.1996 and therefore it had come to an end on 21.8.2006 and despite the same, the respondents continue to be in an illegal possession of the suit schedule property of the 1st



appellant as the first appellant has not sold his share of the land to the 3rd respondent.

9. It is submitted that even if the 2nd and the 3rd appellants have sold their share to the 3rd respondent, the respondents have continued to occupy the suit schedule property of the 1st appellant through the 3rd respondent and therefore they are in illegal occupation of the same.

10. The learned Senior counsel for the appellants submits that the present appeal was therefore liable to be allowed in the light of the decision of the Hon'ble Supreme Court in Hindustan Petroleum Corporation Ltd and Another vs. Dolly Das, (1999) 4 SCC 450; Bharath Petroleum Corporation Limited vs. Rama Chandrasheskar Vaidya and Another, (2014) 1 SCC 657 and the decision of this High Court in Hindustan petroleum Corporation Ltd., by its Regional Manager, Thalamuthu Natarajan Building, Egmore, Chennai 600 008 vs. Devaraj Chordia and others, (2005) 2 CTC 401.

11. Defending the respondents, learned counsel for the respondents submits that the 2nd and 3rd appellants have sold 50% of share of their land in the suit schedule property to the 3rd respondent on 12.9.2013 vide two separate sale deeds.

12. It is submitted that the present appeal is liable to be dismissed as the appellants ought to have filed a fresh suit in the year 2006 after the lease had allegedly come to an end. It is therefore submitted that the present appeal is liable to be dismissed as not maintainable.

13. Learned counsel for the respondents further submits that a renewal of a lease arrangement on the same terms by a letter need not be registered as has been held by the Hon'ble Supreme Court in Mani Nariman Daruwala Bharuha (deceased) through LRS. and Others vs. Phiroz N.Bhatena and Others (1991) 3 SCC 141.

14. It is submitted that if the appellants had instituted a fresh suit after the cause of action for evicting the respondents arose, the respondents would have suitably defended themselves in the said proceeding.

15. It is therefore submitted that in this second appeal, the 1st appellant cannot ask for eviction of the respondents without a properly instituted proceeding for eviction.



16. It is submitted that this Court is only concerned with the correctness or otherwise of the judgment and decree impugned before it and cannot grant any relief based on the subsequent course of event which would require a separate adjudication. It is therefore submitted that this appeal was liable to be dismissed as not maintainable.

17. I have considered the arguments advanced by the learned Senior Counsel for the appellants and the learned counsel for the 1st and 2nd respondents and for the 3rd respondent.

18. Though several arguments were advanced both on behalf of the appellants and the respondents and against the renewal of the lease based on a letter dated 1.9.1996, it is not necessary for this court to delve into it at this distant point of time as admittedly period of 10 years has come to an end on 31.8.2006 even as per written statement of respondents before the Trial court.

19. Therefore, the substantial questions of law that arises for consideration in this present appeal is whether the 1st appellant should be driven to file a fresh suit/proceeding for recovery of possession from the respondents at this distant point of time and whether execution of two sale deeds dated 12.9.2013 by the 2nd and the 3rd appellants in favour of the 3rd respondent, in any manner incapacitates or inhibits the 1st appellant from pursuing with this remedy in this appeal?

20. To answer the above substantial questions of law, it should be recalled that the original lease was dated 1.5.1972. It was for a period of 10 years between the appellants' predecessor and 1st/2nd respondents predecessor mainly Caltex Oil Refining (India) Ltd/Caltex (India) Ltd.

21. However, before the aforesaid lease came to an end on 30.4.1982, 1st respondent's predecessor was taken over by the Government of India under The Caltex[Acquisition of Shares of Caltex Oil Refining (India) Ltd and the undertakings in India of Caltex (India) Ltd.] Act, 1977 with effect from 30.6.1976.

22. The 1st respondent merely stepped into the shoes of the erstwhile lessee and the Central Government by virtue of the operation of law. The 1st respondent was entitled for only one renewal on the same terms as per the existing arrangement from 30.4.1982 upto 29.4.1992.



23. As per Section 7 (3) of the said Act, the term of lease, tenancy or arrangement referred to in sub-section (1) or sub-section (2) of the said Act, such as lease or tenancy or arrangement shall, if so desired, by the Central Government, be renewed or continued, so far as may be, on the same terms and conditions on which the lease or tenancy or arraignment was originally granted or entered into.

24. Thus, the Central Government was entitled to renew the lease for a period of another ten years under law without further negotiations under the Act.

25. Under section 9(1) of the said Act, notwithstanding anything contained in sections 5, 6 and 7, the Central Government may, if it is satisfied that a Government Company was 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 Caltex India in relation to any of its undertakings in India, shall, instead of continuing to vest in the Central Government, vest in that Government Company either on the date of notification or such earlier or later date (not being appointed day) as may be specified in the notification.

26. Thus, the rights of the 1st respondent over the property of the appellants were that of the Central Government and subject to it satisfying such terms and conditions as that the Government may think fit to impose direct by notification.

27. Though, copy of the notification by virtue of which the 1st respondent was given the right to renew the lease was not filed and is not available, it is evident that the 1st respondent as a Government Company was not expected to continue to squat over and occupy the leased property after 1992 after the expiry of 10 years period of lease .

28. The 1st respondent through the 2nd respondent however continued to occupy the leased property despite the owners (Appellants and their predecessors) unwillingness to extend the lease.

29. The purpose of giving one extension of the lease/tenancy arrangement under the Act was to give a breathing time to the 1st respondent or the Central Government as the case may be, to find out an alternative site to shift and continue their business. If the owners were unwilling to renew the lease, it was not open for the respondents to sit over the property leased despite the unwillingness of the owners. The renewal of the lease for one term was not intended to give any



undue advantage to the respondents to drive the owners to the Courts for evicting them.

30. It is further noticed that even before the expiry of the original lease period on 30.4.1982, respective original lessors had issued a notice to the 1st respondent represented by the 2nd respondent to vacate the suit schedule property and deliver the same to them. They had no intention of renewing the lease.

31. Thereafter, another notice dated 1.10.1991 appears to have been issued by them to the 1st respondent to vacate and deliver the suit schedule property.

32. The 1st respondent however resisted and refused to vacate the suit schedule property. There was a subsequent renewal of the lease by the original lessors on a letter in Ex.B.4 on 1.9.1996 for a period of 10 years. This was not registered.

33. The renewal in Ex.B.4 letter dated 1.9.1996 also stated that the renewal will come into force from the date of registration of the lease. This unregistered lease was to come to an end on 31.8.2006.

34. Meanwhile, the original lessors died. The appellants issued a legal notice dated 27.10.1998 and called upon the respondents to vacate and deliver the vacant possession of the suit schedule property even though the period of lease as per Ex.B.4 renewal on 1.09.1996 had not yet come to an end.

35. As per in *Weney D' Souza vs. G.A.Conceicao & Others*, AIR 1991 SC 1551, a consent letter is not lease and hence need not be registered under Section 107 of Transfer of Property Act, 1882. The ratio in the said case cannot be used to the disadvantage of the owners.

36. The suit filed by the appellants was dismissed by the Trial Court by its judgment and decree dated 28.2.2001. The Appellate Court has re-affirmed the views of the Trial Court by the impugned judgment and decree dated 17.2.2004, as when the suit and the appeal were filed by the 1st respondent was tenant in sufferance. There has been no further renewal of the lease period which expired on 31.8.2006.

37. Order XLII of C.P.C, amended Order XLI and XLI-A applies to appeals from the Appellate Decrees to High Court of Judicature of Madras with modification contained in Order XLII.



38. In Ramesh Kumar vs. Kesho Ram, 1992 Supp(2) SCC 623, the Hon'ble Supreme Court held that normally rights and obligations of the parties are to be determined as they were when the lis commenced. It also observed that the Court is not precluded from moulding the reliefs bearing on the entitlement of the parties to relief or on aspects which bear on the moulding of the relief. All that is required is for the court to take a 'cautious cognizance' of the subsequent changes of fact and law to mould the relief.

39. In Lachmeshwar Prasad Shukul v. Keshwar Lal Chaudhari AIR 1941 FC 5, Chief Justice Sir Maurice Gwyer observed as under :

But, with regard to the question whether the court is entitled to take into account legislative changes since the decision under Appeal was given, I desire to point out that the rule adopted by the Supreme Court of the United States is the same as that which I think commends itself to all three members of this Court. In (1934) 294 US 600 at p. 607, Hughes C. J. said :

We have frequently held that in the exercise of our appellate jurisdiction we have power not only to correct error in the judgment under review but to make such disposition of the case as justice requires. And in determining what justice does require, the court is bound to consider any change, either in fact or in law, which has supervened since the judgment was entered.

And in Pasupuleti Venkateswarlu v. The Motor & General Traders, 1975 AIR 1409: 1975 SCR (3) 958, Justice Krishna Iyer observed as under:

We feel the submissions devoid of substance. First about the jurisdiction and propriety vis-a-vis circumstances which come into being subsequent to the commencement of the proceedings. It is basic to our processual jurisprudence that the right to relief must be judged to exist as on the date a suitor institutes the legal proceeding. Equally clear is the principle that procedure is the handmaid and not the mistress of the judicial process. If a fact, arising after the lis has come to court and has a fundamental



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impact on the right to relief or the manner of moulding it, is brought diligently to the notice of the tribunal, it cannot blink at it or be blind to events which stultify or render inept the decretal remedy. Equity justified bending the rules of procedure, where no specific provision or fairplay is violated, with a view to promote substantial justice-subject, of course, to the absence of other disentitling factors or just circumstances. Nor can we contemplate any limitation on this power to take note of updated facts to confine it to the trial court. If the litigation pends, the power exists, absent other special circumstances repelling report to that course in law or justice. Rulings on this point are legion, even as situations for applications of this equitable rule are myriad.

40. These principles have since been reiterated and reaffirmed in *Hasmat Rai v. Raghunath Prasad* 1981 AIR 1711: 1981 SCR (3) 605 consideration of subsequent events provided such an impact on those rights and obligations.

41. In para 9, it was observed as under :-
"When subsequent events are pleaded in the course of an appeal or proceedings of revision, the Court may, having regard to the nature of the allegations of fact on which the plea is based, permit evidence to be adduced by means of affidavits as envisaged in Rule 1 of Order 19, C.P.C. The Court may also treat any affidavit filed in support of the pleadings itself as one under the said provision and call upon the opposite side to traverse it. The Court, if it finds that having regard to the nature of the allegations, it is necessary to record oral evidence tested by oral cross-examination, may have recourse to that procedure. It may record the evidence itself or remit the matter for an enquiry and evidence. All these depend upon the factual and situational differences characterising a particular case and the nature of the plea raised. There can be no hard and fast rule governing the matter. The procedure is not to be burdened with technicalities."



42. In Mahant Dhangir and Another vs. Madan Mohan and Others, AIR 1988 SC 54 : 1987 supp SCC 528, the Court held in para 15 which reads as under:-

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"15. The sweep of the power under R. 33 is wide enough to determine any question not only between the appellant and the respondent but also between a respondent and co-respondents. The appellate Court could pass any decree or order which ought to have been passed in the circumstances of the case. The appellate Court could also pass such other decree or order as the case may require. The words "as the case may require" used in R. 33 of O. 41, have been put in wide terms to enable the appellate Court to pass any order or decree to meet the ends of justice. This Court is not giving any liberal interpretation. The rule itself is liberal enough. The only constraint that could be seen, may be: that the parties before the lower Court should be there before the appellate Court, the question raised must properly arise out of the judgment of the lower Court; it may be urged by any party to the appeal. It is true that the power of the appellate Court under R. 33 is discretionary, but it is a proper exercise of judicial discretion to determine all the questions urged in order to render complete justice between the parties. The Court should not refuse to exercise that discretion on mere technicalities."

43. After discussing the two earlier decisions in S.R. Radhakrishnan V. Neelamegam and P. Ananthakrishnan Nair v. G. Ramakrishnan (1987) 2 SCC 429, the Hon'ble Supreme Court it has been held as follows:-

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 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.



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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.

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 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.

44. In *Bharat Petroleum Corpn. Ltd. v. R. Chandramouleeswaran*, (2020) 11 SCC 718, three oil companies, namely, Bharat Petroleum Corporation Limited, Indian Oil Corporation Limited and Hindustan Petroleum Corporation Limited had raised an identical question of law relating to the right of a tenant, in terms of Section 9 of the Madras City Tenants' Protection Act, 1921 i.e. whether could direct the landlord to sell the leased hold land in whole or in part at the price fixed by the court under Section 9 of the Madras City Tenants' Protection Act, 1921.

45. There, the petroleum companies had filed a petition under Section 9 of the Madras City Tenants' Protection Act, 1921 for transfer/sale of the leasehold land in whole or in part at the price fixed by the court. The Division Bench of this Court had declined to grant the relief to the petroleum company.

46. The respondents in the present case have not demonstrated that Madras City Tenants' Protection Act, 1921 was applicable to them and rights under Section 3 and 9 of the said Act would be denied if this appeal is allowed by moulding the relief by taking note of the subsequent course of event.



47. The respondents have merely argued that if the appellants had filed a fresh suit, the respondents would have got another window of opportunity to defend themselves. The facts are clear. The respondents have stayed over the property. They have taken an undue advantage of their status as a government company and forced their presence over the property unjustly. However, Courts cannot turn nelsons eye to the gross injustice orchestrated by the respondents on the appellants who were unwillingly to take it lying down. The courts also cannot remain mute spectator and relegate the 1st appellant to file another suit at this distant point of time. The respondents have also not articulated what rights they would have lost if the relief is granted to the 1st appellant. If another litigation is allowed, the respondents would wear out the appellants by protracting the litigation for another decade.

48. The leased out property is located in Kangayam in Trippur District in Tamilnadu. If Madras City Tenants' Protection Act, 1921 was applicable to Kangayam in Trippur District in Tamilnadu, it can be certainly said, that the respondents had a valuable right which ought to be protected by relegating the 1st appellant to file a fresh suit. However, it is noticed that the Act was not applicable to Kangayam, Municipality.

49. It is noticed that the Madras City Tenants' Protection Act, 1921 was originally applicable only to the City of Madras. It later extended to other parts of the State in 1969.

50. Madras City Tenant Protection Act, 1921 (TN.Act III of 1922) was later amended to include municipal towns and townships (Act may be called the Madras City Tenant's Protection Act. 1921) as is evident from a reading of Section 2 of the Act, which reads as under:-

- " 2(a) It extends to -
 - i) the City of Madras;
 - ii).the townships of Kodaikanal, Avadi, Kathiwakkam, Ambattur, Madhavaram, Bhavanisagar, Courtallam and Mettur.
- b) The State Government may , by notification in the Tamil Nadu Government Gazette, extend this Act with effect from such date as may be specified in the notification to.-
 - i) any other municipal town;
 - ii) any other township'; or
 - iii).any specified village within eight kilometres of the City of Madras, or of



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the townships referred to in sub-clause ii) of clause (a), or of such other municipal town referred to in sub-clause (i) or township referred to in sub-clause (ii) of clause (b)“

51. By G.O.Ms.No.1285 Revenue, dated 31.5.1975 published in the Tamil Nadu Government Gazette Part II dated 25.6.1975, the Government of Tamil Nadu specified the municipal towns for the purpose of the said clause, with effect from the date of publication of the said notification in the Tamil Nadu Government Gazette.

52. Though the Tiruppur Town came within the ambit of the above notification when it was in Coimbatore District, it is noticed that Tiruppur became Revenue District on 22.2.2009.

53. Kangayam Municipality is now a town in the Tiruppur District. It has not been notified by the State Government. Thus, tenants in Tiruppur District are not entitled to the protection under Madras City Tenants' Protection Act, 1921.

54. If the Madras City Tenants' Protection Act, 1921 was applicable to Kangayam, it was open for the respondent to file an application under Section 9 of the Act when the appellants had filed O.S.No.104 of 2000 before the District Munsif Court, Kangayam. The respondents have not filed any such application.

55. In K.A. Dhairyawan v. J.R. Thakur AIR 1958 SC 789: 1959 SCR 799 it was held that as per clause (h) of Section 108 of the Transfer of Property Act, a lessee can remove all the structures and the buildings erected on the demised land while he is in possession of the property but not afterwards, meaning thereby the ownership of the building is with the lessee and not with the lessor. At the same time, nothing prevents the lessee from contracting to hand over the building or the structure erected on the land constructed by him without receiving compensation.

56. It is further noticed that the suit schedule property was not partitioned between the appellants even though the second and third appellants have sold 50% of the land to the third respondent (dealer of the first respondent) vide two lease deeds in 2013. It was incumbent on the part of the third respondent to have filed a suit for partition under Section 44 of the Transfer of Property Act, 1882. However, the 3rd defendant has also not filed any suit for partition.

57. In Pratap Rai Tanwani v. Uttam Chand, (2004) 8 SCC 490 (2004) 8 SCC 490, the Hon'ble Supreme Court held as under:



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7. It is a stark reality that the longer is the life of the litigation the more would be the number of developments sprouting up during the long interregnum. If a young entrepreneur decides to launch a new enterprise and, on that ground, he or his father seeks eviction of a tenant from the building, the proposed enterprise would not get faded out by subsequent developments during the traditional lengthy longevity of the litigation. His need may get dusted, patina might stick on its surface, nonetheless the need would remain intact. All that is needed is to erase the patina and see the gloss. It is pernicious, and we may say, unjust to shut the door before an applicant just on the eve of his reaching the finale after passing through all the previous levels of the litigation merely on the ground that certain developments occurred pendent elite, because the opposite party succeeded in prolonging the matter for such unduly long period.

58. Again in para Nos.10 & 17, the Hon'ble Supreme Court further observed as under:-

" 10. The judicial tardiness, for which unfortunately our system has acquired notoriety, causes the lis to creep through the line for long long years from the start to the ultimate termini, is a malady afflicting the system. During this long interval many many events are bound to take place which might happen in relation to the parties as well as the subject-matter of the lis. If the cause of action is to be submerged in such subsequent events on account of the malady of the system, it shatters the confidence of the litigant, despite the impairment already caused.

17. In the background of the factual position one thing which clearly emerges is that the High Court had considered the subsequent events which the appellants highlighted and tend to hold that the bona fide need continues to subsist. As observed in Hasmat Rai case [(1981) 3 SCC 103] the appellate court is required to examine, evaluate and adjudicate the subsequent events



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and their effect. This has been done in the instant case. That factual finding does not suffer from any infirmity. What the appellants have highlighted as subsequent events fall within the realm of possibility or probability of non-return and not a certainty, which is necessary to be established to show that the need has been eclipsed. "

59. In Hindustan Petroleum Corporation Ltd., vs Devaraj Chordia referred to supra by the learned senior counsel for the appellant, Hon'ble Mr. Justice Markandaya Katju, as the Chief Justice of this Court, observed as under:-

" 9. One would have expected that after 1989 the appellant herein like an honourable person would have vacated the suit property since its leasehold right ceased to exist after 1989. However, unfortunately, in our country, what is often seen is that people continue to remain in illegal possession of a property even for several years after their right to occupy the same ceased to exist. This practice has now become rampant in our country and the time has come when it must be curbed. An honourable person should vacate the property over which his lease or licence has expired and hand over possession of the same on the date of expiry of the lease or licence to the landlord/owner unless there is a fresh mutual agreement which permits him to continue in possession. It is to be noted with deep distress that the appellant which is a well known Public Sector Undertaking has blatantly violated the law and continued in possession of the suit property for 16 years beyond the term of its lease. We are indeed very sad to note that a Public Sector Undertaking has behaved in this manner. In this country the rule of law prevails and Public Sector Undertakings are subordinate to law and not above the law. In this case, the appellant which is a Public Sector Undertaking has taken the law into its own hands, which was most unfortunate and unjustified."

60. The Hon'ble Supreme Court in Hindustan Petroleum Corporation Ltd vs Dolly Das case referred to supra, while dealing with the same enactment viz. The Caltex [Acquisition of Shares of Caltex Oil Refining (India) Ltd and the undertakings in India of Caltex (India) Ltd.] Act, held as under:-



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" 12. The lease had been granted with effect from 1-10-1969 in favour of M/s Caltex (India) Ltd. and on the coming into force of the Act on 23-4-1977 the appellant had stepped into its shoes and from that day onwards the appellant has been in possession of the same till now. The crucial question whether the option for renewal either in terms of the lease deed or in terms of the Act had been availed of or not is the controversy between the parties now. Litigation between the parties has been going on from 1993 onwards. On the expiry of the term the deed provides for renewal for two terms of 10 years each on the same terms and conditions except for enhancement of rent and execution of fresh deed modifying the clause relating to renewal. The appellant gave notice of renewal in terms of the provisions of (i) the deed in the letter dated 23-5-1979, and (ii) the Act in the letter dated 13-9-1989. Now it is not necessary to examine the effect of renewal for the earlier period as even on the appellant's own showing it is invoking the statute in the latter notice and not the terms of the deed. If that is so, the appellant could seek for renewal only in terms of Section 7 of the Act which enabled it to renew the deed for a period of one term as originally granted. A covenant for renewal is not treated as a part of the terms prescribing the period of lease but only entitles a lessee to obtain a fresh lease. Renewal of lease could only be for one term and no more, but nevertheless it could be contended that the covenant for renewal was also part of the lease and, therefore, stood incorporated in the renewed lease arising under the Act. However, in the peculiar facts of this case, we think that it is not necessary to enter upon the merits of the controversy regarding the effect of clause 3 (g) of the lease deed or the rights available under the Act for renewal of the lease period. We are of the opinion that the ends of justice in this case will be met if we modify the order of the High Court in the following terms:

- (1) The appellant does not have power to claim exercise of option for any renewal of the lease beyond 30-9-1999;
- (2) The appellant seeks for and is granted



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time to hand over vacant possession of the premises in question to the respondent on or before 31-3-2000, however, subject to filing of the usual undertaking in this Court within a period of four weeks from today;

(3) Rent payable is as per the terms of the lease deed, that is, Rs 1920 per month which shall be paid till the date of handing over the vacant possession;

(4) If any arrears of rent, as stated above, have not been paid, the same shall be paid within a period of three months from today; and

(5) The order made by the High Court to the extent it is inconsistent with our order shall stand set aside."

61. The conduct of the respondent has been castigated by the Division Bench of this Court in Hindustan Petroleum Corporation Ltd. case referred to supra. It applies to the facts of the present case as well. Therefore, taking note of the subsequent development, this court is of the view that the substantial questions of law deserves to be answered in favour of the 1st appellant.

62. As Order XLI Rule 33 of CPC is applicable to this second appeal as well which normally applies to a first appeal which is of very wide purport, as an Appellate Court, this Court can pass or make such further or other decree or order as the case may require. If there are no other rights of the respondents, this Court can order eviction by moulding the relief. This is a fit case for moulding the relief as the justice would demand.

63. The appellants have been denied of thier right. The 2nd and 3rd appellants have given up the fight and have sold their share to the 3rd respondent who is a dealer of the 1st respondent. If there are no other rights of the respondents, this Court is empowered to an order eviction of the respondents.

64. As an Appellate Court, this Court can mould the relief taking note of the subsequent interest. Therefore, this Court is inclined to the relief to the 1st appellant in view of the admission in the written statement of the respondents.

65. In the light of the above discussion, this appeal deserves to be allowed partly to the extent of 50% of the land belonging to the first appellant.



66. The second respondent is therefore directed to hand over the vacant possession of 50% of the land to the appellants within a period of three months from the date of receipt of a copy of this Judgment.

67. This Second Appeal is partly allowed in terms of the above observations. No costs.

Sd/-
Assistant Registrar

True Copy//

Sub Assistant Registrar

kkd

To

1. The Sub Judge,
Dharapuram.
2. The District Munsif,
Kangeyam.
3. The Section Officer,
V.R.Section,
Madras High Court.

+1cc to Mrs.C.Uma, Advocate, S.R.No.35370
+1cc to M/s.King & Patridge , Advocate, S.R.No.35250
+2ccs to Mr.R.Karthikeyan, Advocate, S.R.No.35478

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NSK 26/10/2021