

K.S. Jadhav

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8078 OF 2022

Bharat Petroleum Corporation Ltd.& Anr. ...Petitioners
(Original Defendants)

Versus

Trade Center Developers and Builders ...Respondent
Pvt. Ltd. (Original Plaintiff)

Mr. S.R. Page a/w Eesha Jaifalkar, Advocate for the Petitioners.

Mr. G.S. Godbole a/w Mr. D.S. Patil, Advocate for Respondent.

CORAM : R.I. CHAGLA, J.

DATE : 2nd December, 2022.

ORDER :

1. Heard the learned Counsel for the parties.
2. By this Writ Petition, the Petitioner is seeking quashing and setting aside of impugned Judgment and Decree dated 22nd March, 2022 passed by the District Court at Pune, in Civil Appeal No.37 of 2020 as well as impugned Judgment and Order dated 19th October, 2019 passed by the Additional Judge, Small Causes Court at Pune in Suit No.308 of 2013. By the said

impugned Judgment and Order, the Appellate Bench of the Small Causes has upheld the Judgment and Decree dated 19th October, 2019 passed by VIth Additional Judge, Small Causes Court, Pune in Civil Suit No.308 of 2013, by which the Trial Court had decreed the suit for eviction.

3. There are few dates which are relevant to note. The suit land was leased out to the original lessee i.e. Burmah Shell Oil Storage and Distributing Company of India Ltd. on 18th February, 1954 by the Predecessor in title of the Respondent for a period of 30 years commencing from September, 1953. The period of 30 years expired in 1983. Though a clause of renewal was incorporated in the original Lease Deed, the fresh Lease Deed was never executed on the basis of said renewal clause. The Petitioner continued to be in possession.

4. On 28th December, 1997, after purchasing the suit land, the Respondent issued Notice dated 28th December, 1997 and called upon the Petitioner to vacate and handover the peaceful possession of suit property after restoring it to its former

condition. A dispute had arisen, as the Petitioner in response to the Notice on 12th January, 1998, refused to comply with the said notice. Civil Suit No.68 of 1998 was filed by the Petitioner for possession of suit property on the ground of reasonable and bonafide requirement for constructing a new building. The suit was decreed by the Trial Court on 28th May, 1999. Thereafter, in an Appeal filed by the Petitioner, the District Judge set aside the decree and remanded the suit for retrial.

5. Upon considering the submissions of the parties and giving sufficient opportunity, the Trial Judge by Judgment and Decree dated 24th March, 2000 decreed the suit and directed the Petitioner to handover vacant and peaceful possession of the suit land to the Respondent. The Petitioner filed Civil Appeal No.388 of 2000 in the District Court, Pune challenging the said Judgment and Decree and contended that the case of the Respondent is governed by the provisions of Section 13(1)(g) and not by Section 13 (1)(i) of the Bombay Rent Act. It is to be noted that during this proceedings i.e. after the Judgment and

Decree of the Trial Court dated 24th March, 2000, the Maharashtra Rent Control Act came into force from 30th March, 2000 and the Petitioner which is a Public Sector Undertaking had lost protection of the Rent Act.

6. The District Court by Judgment and Order dated 2nd May, 2001, allowed the Civil Appeal No.388 of 2001 which had been preferred by the Petitioner holding that there was no breach of terms of tenancy. The Respondent filed Writ Petition No.6458 of 2001 which petition is pending.

7. Thereafter, the Respondent sent legal notice and terminated the lease again on 18th December, 2001. The Respondent without prejudice to its rights and contentions to prosecute the Writ Petition No.6458 of 2001, filed Civil Suit No.139 of 2002 seeking the possession.

8. The Trial Court by Judgment and Order dated 19th November, 2012 dismissed the Civil Suit No.139 of 2002 on the ground that the provisions of Maharashtra Rent Control Act are not applicable to the Petitioner and also on the ground that the

suit premises is open land and the tenancy created in favour of the Defendant is a yearly tenancy and therefore, eviction notice of at least six months was necessary. The Respondent filed Civil Appeal No.1205 of 2012 in the District Court, Pune challenging the Judgment and Order dated 19th November, 2012.

9. It is to be noted that during the interregnum of the Civil Appeal No.1205 of 2012, the extended period of lease expired. This is as a result of the Lease Deed having been executed on 18th February, 1954 and the period of 30 years counted from 1st September, 1953. Thus, the first phase of 30 years was completed on 1st September, 1983 and extended period expired on 31st August, 2013.

10. Accordingly, the Petitioner filed Civil Suit No.308 of 2013 on 10th September, 2013 seeking possession of the suit land on the ground that the alleged renewed Lease term has come to an end by efflux of time.

11. The Civil Appeal No.1205 of 2012 filed by the Respondent was dismissed on 22nd July, 2014 on the ground that one

month's termination notice was not legal and valid and Section 106 of the Transfer of Properties Act contemplated notice of 6 months. The Respondent being aggrieved by the dismissal of the Civil Appeal No.1205 of 2012 filed Civil Revision Application No.941 of 2014 for setting aside the Judgment of the District Court. By Judgment and Order dated 9th February, 2017, the District Judge allowed the Civil Appeal and granted eviction decree. There is a finding of the District Judge that the tenancy was terminated by a legal and valid notice.

12. The Petitioner filed Civil Revision Application No.210 of 2017 in this Court being aggrieved by the Judgment and Order dated 9th February, 2017.

13. By Order dated 12th September, 2017 (corrected by order dated 28th September, 2017), this Court has admitted Civil Revision Application and granted interim protection in favour of the Respondent in respect of eviction decree passed on 9th February, 2017. The learned Single Judge arrived at a prima facie observation that the principle of bilateral act may not

apply to renewal of lease in question in view of Section 5 (2) of Burmah Shell (Acquisition of Undertakings in India) Act, 1976.

14. It is to be noted that this Court had clarified on 28th September, 2017 that pendency of the Civil Revision Application filed by the Petitioner and grant of ad-interim relief, will not preclude the Respondent from prosecuting Civil Suit No.308 of 2013 instituted in Small Causes Court by the Respondent.

15. The impugned Judgment and Order was passed by the Trial Court of Small Causes on 19th October, 2019 decreeing the Civil Suit No.308 of 2013 and the Appeal preferred by the Petitioner therefrom was dismissed by the impugned Judgment and Order dated 22nd March, 2022 passed by the District Judge in Civil Appeal No.37 of 2020.

16. The learned Counsel appearing for the Petitioner has submitted that the Respondent has issued prior notices of eviction which are subject matter of the aforementioned proceedings and he has referred to the order dated 12th September, 2017 (corrected by order dated 28th September, 2017)

which had been passed by this Court in Civil Revision Application No.210 of 2017. By the said order, this Court had admitted the Civil Revision Application. He has submitted that the issue of renewal of the Lease as well as issue of mesne profits for such renewal is an issue which arises in the Civil Revision Application No.210 of 2017 in which the said order was passed. He has submitted that the said order had granted ad-interim relief restraining the execution of the eviction decree. The mesne profits was to be determined which would cover the extended period and thus, was a matter which was in lis before this Court.

17. Learned Counsel for the Petitioner has submitted that the Respondent had after passing of the said order, issued third notice of termination which the Trial Court as well as Appellate Court has adjudicated upon and held that a case had been made out for eviction of the Petitioner and the Petitioner was directed to handover possession of the suit premises to the Respondent. He has submitted that the impugned Judgments and Orders

passed by the Trial Court and the District Judge, Pune run counter to the said order dated 28th September, 2017 (corrected by order dated 28th September, 2017) passed in Civil Revision Application No.210 of 2017 as the lower Court by the said impugned Judgment and Order has directed an enquiry into mesne profit to be held under Order 20 Rule 12 of Code of Civil Procedure. This issue of mesne profit is an issue which is being considered by this Court in Civil Revision Application No.210 of 2017. He has thus submitted that the impugned Judgment and Order requires to be stayed by admitting the petition on this ground.

18. Mr. Godbode, learned Counsel appearing for the Respondent has submitted that the Civil Revision Application No.210 of 2017 which had been admitted by this Court vide Order dated 12th September, 2017, is in respect of the alleged renewal of the lease for the period of 30 years i.e. prior to the extended period of alleged renewal having expired on 31st August, 2013. The determination of mesne profit which was

being considered in the Civil Revision Application No.210 of 2017 is for the period prior to the expiry of the alleged extended period of the lease. Further, he has submitted that it has been clarified in the said Order dated 12th September, 2017 as corrected in order dated 28th September, 2017 that the pendency of the Civil Revision Application No.210 of 2017 as well as grant of ad-interim relief restraining execution of eviction decree will not preclude the Respondent from prosecuting Civil Suit No.308 of 2013 instituted in the Court of Small Causes at Pune for eviction of the Petitioner. This Court had made this clarification with full knowledge that the suit has been filed by the Respondent being Civil Suit No.308 of 2013 on the expiry of the alleged extended period of the lease by efflux of time.

19. Mr. Godbole has referred to the impugned Judgment and Order of the Additional Judge of Small Causes dated 19th October, 2019 and has submitted that the only case of the Defendant which recorded therein that though it is an admitted position that the Petitioner applied for renewal of lease for a

period of 29 years, but according to the Petitioner there was no reason to issue notice to the Petitioner on 26th June, 2013 for termination of the lease. The Petitioner's case being that the lease has not been terminated according to law and accordingly, the suit for eviction be dismissed. This issue has been considered. It is observed that it is an admitted position that Lease Deed on the basis of which the Petitioner was in possession of the suit property had expired on 31st August, 2013. Accordingly, it is held that since the expiry of Lease on 31st August, 2013, the possession of the Petitioner herein is rendered unauthorized for the reason that there is no further extension to the lease dated 18th February, 1954.

20. Mr. Godbole has submitted that a concurrent finding has been arrived at by the District Judge, Pune in Regular Civil Appeal No.37 of 2020. The District Judge apart from holding that the Petitioner herein is not protected by the Rent Act as per Section 3(1)(b) thereof. It has been held that second tenure of Lease stood determined by efflux of time on 31st August, 2013.

The District Judge has considered the law laid down by this Court in **Bharat Petroleum Corporation Ltd. Vs. P. Kesavan and Anr., AIR 2004 SC 2206** which holds that in view of Section 5(2) of the Burmah Shell Act, there is automatic renewal of the lease for further period of 30 years. In the present case the automatic renewal of lease for further 30 years expired on 31st August, 2013. Further, the District Judge in **Bharat Petroleum Corporation Limited Vs. Rama Chandrashekhar Vaidya and Anr., 2013 DGLS (SC) 259** which holds that after second term of lease, there is no question of further renewal. Thus, it has been held that there cannot be second renewal of the lease period after 31st August, 2013.

21. Mr. Godbole has referred to the decision of this Court in **Bharat Petroleum Corporation Limited Vs. Jaysingh Bhagwandas Kapadia and Ors., 2021 SCC OnLine Bom 5943**, wherein this Court has held that upon the Lease Deed expiring by efflux of time and no fresh Lease Deed being executed, there can be no further extension of lease period beyond the renewal. Thus,

there has been a valid termination of lease deed.

22. Mr. Godbole has also relied upon the decision in **Sevoke Properties Vs. West Bengal State Electricity Distribution Company**, wherein it is held that there is no need of notice of termination of lease, if the lease term has expired and the lease stood determined by efflux of time. Hence, it is not necessary to issue notice of termination under Section 106 of the Transfer of Properties Act, if lease is determined by efflux of time. Hence, he has submitted that there is no merit in the present Writ Petition.

23. Having considered the submissions, in my view, considering that admittedly the extended period of Lease Deed has expired on 31st August, 2013, the Civil Suit No.308 of 2013 filed by the Respondent seeking possession of the suit land on the ground that renewed lease has come to an end by efflux of time, has been rightly decreed by the Additional Judge of Small Causes Court at Pune and upheld by the District Judge, Pune.

24. The settled position of law is that after renewal / extended

period of lease, there can be no second renewal. This has been held in *Bharat Petroleum Corporation Limited Vs. Rama Chandrashekhar Vaidya (supra)*. In the present case, the alleged renewal of lease period expired by efflux of time on 31st August, 2013 and upon such efflux of time, there is no necessity to issue notice of termination of lease and the lease determined by efflux of time.

25. There is no merit in the submission of the learned Counsel for the Petitioner that merely because there were two notices issued for eviction and that by the order dated 12th September, 2017 as corrected by order dated 28th September, 2017, the Civil Revision Application No.210/2017 preferred by the Petitioner herein had been admitted and ad-interim relief granted restraining execution of eviction decree, the Respondent herein could not have issued third notice of eviction. Further, there is no merit in the submission of the learned Counsel for the Petitioner that considering the said order dated 12th September, 2017 as corrected by order dated 28th September, 2017, the

matter of ascertaining future mesne profits was to be determined in this Civil Revision Application and despite that by the impugned Judgment and Order, the Appellate Court / District Judge, Pune instituted an enquiry as to mesne profit.

26. Since the Civil Revision Application No.210 of 2017 was concerned with the renewal / extended period of the lease, the proceedings have no relevance to the notice of eviction which is the subject matter of Civil Suit No.308 of 2013 and which has been issued by the Respondent on the ground that the extended period / renewed lease term having expired by efflux of time on 31st August, 2013. In fact this Court had clarified in the corrected order dated 28th September, 2017 that the grant of ad-interim relief restraining execution of the eviction decree will not preclude the Respondent from prosecuting Civil Suit No.308 of 2013 instituted in the Court of Small Causes at Pune. Considering that there are concurrent findings of the Court below that in view of the expiry of the extended period / renewal of the lease deed having expired by efflux of time, there

could be no second renewal of the lease period after 31st August, 2013. As per the settled law, there is no merit in the Writ Petition.

27. Accordingly, the Writ Petition is dismissed.

28. There shall be no order as to costs.

29. Learned Counsel appearing for the Petitioner seeks stay of the impugned Judgments and Orders. In view of the above findings and the settled law, the application for stay of the impugned Judgments and Orders, is not granted.

[R.I. CHAGLA, J.]