

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7836 OF 2022

BHARAT PETROLEUM CORPORATION LTD.)
BHARAT BHAVAN, 4 & 6 CURRIMBOY ROAD,)
BALLARD ESTATE, MUMBAI-400038.)...PETITIONER

V/s.

- 1) MR. FALI (ALIAS) FRAMJI JALEGAR)
GHASWALA,)
AGE : 76 YEARS, OCCU :-SERVICE,)
R/AT:3852, SOUTH MISSION PARKWAY,)
AURORA, COLANDO U.S.A,)
THROUGH CONSTITUTED ATTORNEY,)
MR. MAHENDRA JAGANNATH YEOLE,)
AGE :38 YEARS, OCCU : BUSINESS,)
R/AT. MODEL COLONY, PUNE: 411016.)
)
- 2) M/S. EVEREST AUTOMOBILES,)
A REGISTERED PARTNERSHIP FIRM.)
)
- 3) MR. ANGELO NILUS LODO)
(ANGELO EVERST LOBO),)
AGE : ADULT, OCCUPATION : BUSINESS)
)
- 4) MR. XAVIER ANTHONY LOBO,)
NO.2, 3 & 4 HAVING ADDRESS AT :)
828/48, DASTUR MEHER ROAD,)
NIRMAL NIWAS, PUNE : 411001.)
)
- 5) SHREE BAL ESTATE PVT. LTD.)
THROUGH ITS DIRECTOR,)
MR. SHARAD DATTATRAY BAL,)
AGE:ADULT, OCCUPATION : BUSINESS,)
ADD : 9, AGARKAR BHAVAN,)
LBS ROAD, PUNE: 411030.)...RESPONDENTS

Mr. Atul G. Damle, Senior Advocate, with Ms. Eesha Jaifalkar i/b Mr. S.R. Page, Advocate for the Petitioners.

Mr. Nikhil Sakhardande, Senior Advocate with Mr. Siddhesh Bhole, Mr. Yakshay Chheda, Mr Poras Shah, Advocate for Respondent No.5.

CORAM : ABHAY AHUJA, J.

RESERVED ON : 30th JUNE 2023
PRONOUNCED ON : 28th NOVEMBER 2023

JUDGMENT :

1. This Petition filed under Article 227 of the Constitution of India challenges the Judgment and Decree passed by District Judge Pune in Regular Civil Appeal no 722 of 2005.

2. By virtue of indenture of lease dated 20th October 1955 between Fali Jalegar Ghaswala and Bai Shirinbai Jalegar Ghaswala and the predecessor in title of the Petitioner Burmah Shell Oil Storage and Distributing Company of India Ltd., premises described as Modi Baug lying and being situated within the Registration District Pune, Sub-District Taluka Haveli and situate within limits of Pune Municipal Corporation at Village Bhamburda (Shivajinagar) bearing plot no.5 out of Survey No.161B/2 + 161/B/4-2/1 corresponding to City Survey No.2262 (Part) and 2270 to 2280 admeasuring as per demarcation plan

approximately 20,950 square feet equivalent to 2225.81 square meters (the “suit premises/property”), were leased out for a period of 20 years from 1st October 1954 for a monthly rent of Rs.250/- and with a clause therein for renewal of lease for a further term of 20 years by issuing notice expressing desire for the renewal of the lease on the same terms and conditions.

3. It is submitted that under the terms of the lease agreement the lease was renewed for a period of 20 years, w.e.f. 1st October 1974 upto 30th September 1994 on the same terms and conditions as in the original lease deed.

4. That on 24th January 1976 the Burmah Shell (Acquisition of Undertakings in India) Act, 1976 (hereinafter referred to as the “Burma Shell Act”) came into force. Sections 5 and 7 thereof contemplate statutory renewal of the lease for the further term as in the original lease on the same terms and conditions.

5. It is the case of the Petitioner that the Petitioner exercised the right of statutory renewal of lease under the provisions of Section 5 read with Section 7 of Burmah Shell Act on the same terms and

conditions by issuing notice dated 12th July 1994 for a further period of 20 years with effect from 1st October 1994 till 30th September 2014.

6. Mr.Damle, learned Senior Counsel for the Petitioner would submit that both the Courts below have completely erred in reading and interpreting the provisions of the Burmah Shell Act and particularly Sections 5 and 7 thereof, which clearly contemplate and provide for renewal/extension of the lease for a further term on the same terms and conditions. Learned Senior Counsel would submit that the Courts ought to have seen that the statutory renewal/extension and exercise of the said option by the Petitioner prior to expiry of the lease period in no manner provided for execution of any further agreement. The renewal was automatic, merely on communication/expression of desire to renew. In the case at hand, the Petitioner has expressed the said desire to renew in no uncertain terms vide communication dated 12th July 1994. Therefore, it ought to have been held by both the Courts below that the lease has not come to an end. Therefore, the finding ought to have been recorded by the Courts below that the notice of eviction dated 16th July 2003 was premature and without any basis particularly during the subsistence of the lease. As a consequence thereof, the suit filed on 2nd December, 2003 also ought to have been

held to be premature and dismissed as such. And that having not been done, this is a fit case for this Hon'ble Court to exercise writ jurisdiction under Article 227 of the Constitution of India and to quash and set aside the impugned judgments and decrees passed by both the Courts below. Learned Senior Counsel would submit that the finding of both the Courts below holding that the letter dated 12th July 1994 issued by the Petitioner being of no consequence, since the lease does not give a second renewal option, is completely erroneous. The courts have not correctly examined the exercise of the statutory option. Both the courts below ought to have seen that the letter dated 1st June 1977 of Shri. K.V. Naidu and the Will of Shirinbai are material documents which have been ignored by both the Courts below only on the ground that the same have not been pleaded but have been relied upon in evidence. The Courts below ought to have held that any document material and relevant in adjudicating the dispute deserves to be looked into and technicalities should not come in the way in taking such documents into consideration.

7. It is therefore submitted that the lease was subsisting at the date of issuance of notice dated 16th July 2003 as also on the date of filing of the suit by the Respondents on 2nd December 2003. Hence, the suit as

filed during subsistence of the lease being premature is not maintainable and ought to be dismissed as such. Consequently, the decrees passed by both the Courts below deserve to be set aside.

8. It is further submitted that the only witness examined by the original Plaintiff was Mr. Mahendra Yeole who was the Power of Attorney holder of the Plaintiff who had no personal knowledge of the case and hence the evidence of the said witness ought to have been discarded. Therefore, on the ground of there being no cogent evidence led on behalf of the Plaintiff, the suit ought to have been dismissed on this ground alone.

9. Mr.Damle, learned Senior Counsel for the Petitioner, would submit that, recently it has come to light through online search on the United States Government website that Mr.Fali Ghaswala passed away on 9th August 2011. That, on the demise of Mr.Ghaswala on 9th August 2011, the Power of Attorney (POA) executed in favour of Mr.Mahendra Jagannath Yeole dated 21st May 2003 ended. Thus, the POA executed by Mr.Yeole in favour of Mrs.Vrinda Sharad Bal would have no validity after the death of Mr.Fali Ghaswala on 9th August 2011. Therefore, Mrs.Vrinda Sharad Bal had no power/authority to execute the sale

deed dated 13th November 2011 in favour of Respondent no.5. Thus, the said transaction is illegal and invalid. The sale deed is bad in law and the Respondent no.5 has no right, title or interest in the suit premises, and therefore, has no right to execute the impugned judgment and decree passed against the Petitioner or to contest this Petition. Thus, on this ground alone, the impugned judgments and decrees passed by both the Courts below deserve to be set aside and the Writ Petition be allowed.

10. It is further submitted that by virtue of the notification issued by the Government of Maharashtra dated 3rd December 2009 (the "Government Notification") the change of the user of any Retail Outlet of Petrol, diesel and/or CNG site is not permitted. The Government Notification being applicable to the suit premises, the Suit premises cannot be put to any other use except of Retail Outlet. Mr. Damle, learned Senior Counsel would submit that if the writ petition is not allowed, it will result in the Petitioner being evicted from the site by the executing court and the land will be lying idle without fetching any income and the same will lead to wastage of land. Neither Petitioner nor the Respondent will be benefited out of the said process.

11. That, the Petitioner is a public sector undertaking and is supplying essential commodities such as MS and HSD to the motoring public in the locality. For a consumer travelling from Mumbai/other places to Pune city, this is the only major stop point. Therefore, if the petitioner is evicted and sales are stopped at the RO site/Petrol pump site which cannot be used for any purpose other than RO site/Petrol Pump site, irreparable loss and injury will be caused to the Petitioner and also to the motoring public. That, the Petitioner has invested considerable amount of almost Rs.1 Crore in the site to develop its facilities. Eviction of the Petitioner from the site including removal/demolition of assets will lead to substantial loss to the ex-chequer. Further new investment on the site for setting up petrol pump will lead to another substantial investment considering current material and labour cost.

12. If the Respondent is evicted, then the Respondent, its dealer, its employees, general public who is utilizing the premises for filling the petrol and diesel; all will be put to irreparable loss and the injury which cannot be compensated in terms of money. Considering the fact that the Respondent cannot put the land for any other purpose and his interest

can be protected by reasonable rentals and that principles of equity lie in favour of the Petitioner.

13. Learned Senior Counsel, therefore, submits that all contentions raised hereinabove and also the contentions raised in the Petition be considered and the Decrees passed by both the Courts below be quashed and set aside and the Writ Petition be allowed with cost.

14. On the other hand, Mr.Sakhardande, learned Senior Counsel for the Respondent no.5 would firstly submit that the findings of both Courts are concurrent and do not deserve any interference under Article 227 of the Constitution of India. Learned Senior Counsel has drawn the attention of the Court to paragraphs 17, 18 and 19 of the Trial Court judgment (page no 72 of the writ Petition), to submit that the Petitioner being a public sector undertaking having more than rupees one crore paid up share capital is not covered under the provisions of Maharashtra Rent Control Act,1999 and no protection can be sought for by the Petitioner under the said Act. That it was also observed by the Trial Court in paragraph 34 of the judgment that the renewed lease deed of 1974 was not produced before the Trial Court and thus, it is difficult to ascertain about the renewal clause of the

renewed lease deed and hence the present Petitioner has no option to renew the said lease and has correctly observed in paragraph 36 that lease had expired by efflux of time. That it has also been observed by the trial Court in paragraph 39 that the Petitioner had breached the express condition mentioned in the lease agreement of 1955 to not to sublet the suit property. It is also observed in paragraph 48 that the lease of 1955 which was renewed in 1974 is determined by efflux of time on 30th April 1994 and further the notice issued by the present Defendant No.1 for recovery is proved. The Petitioner preferred an Appeal to the District Judge Pune vide Regular Civil Appeal 722 of 2005. The same came to be dismissed. Appellate Court upheld all the observations made by the Trial Court. The Appellate Court in paragraph 17 (on page 106 of the Writ Petition) reiterated that the provisions of the Maharashtra Rent Control Act, 1999 do not apply. Further, the Appellate Court in paragraphs 23 and 24 at page 109 of the Writ Petition has concurrently found that the right of first renewal to the Petitioner was given and exhausted by the Petitioner in 1974 and due to non-production of the lease deed of 1974 it could not be ascertained that the Petitioner had a right to renew the lease further. The Appellate Court in paragraph 30 of the judgment at page no. 115 of the Writ Petition has reiterated the findings of the Trial Court and

upheld that the act of subletting the suit property was breach of lease agreement and thus the Respondent No 1 was entitled to decree of eviction. It is therefore submitted on behalf of the Respondent No 5 that the Trial Court has rightly passed an order, decree and judgment of evicting the Petitioner and further that the same was rightly upheld by the Appellate Court by giving concurrent findings. That, concurrent findings in the present proceedings are not shown to be perverse or arrived at outside the purview of law. In writ jurisdiction, findings given by Trial Court and confirmed by the Appellate Court cannot be interfered with at the instance of the Petitioner without making out a substantial cause. That no case is made out for interference and on this ground along the writ petition should be dismissed.

15. Learned Senior Counsel for the Respondent no.5 would submit that the Burmah Shell Act is not applicable in present case. That, the Act provides for renewal of the lease deed under Section 5. However, the legal position is clear that there can be only one renewal-which has been exhausted in the present case in 1974 as rightly observed by Trial Court and the Appellate Court. The present Petitioner had already availed a right of renewal in the year 1974 which was provided in the lease agreement of 1955. The present Petitioner had failed to bring on

record the lease deed of 1974 and thus it could not be ascertained if the present Petitioner has right to renew the lease deed of 1974. Further even if it is assumed, though not admitted, that the lease deed is to be renewed in 1994, the same ended in 2014.

16. Learned Senior Counsel has relied upon the decisions of this Court in the case of *Bharat Petrol Corporation Ltd. vs Rustom Behramji Colah*¹ and *Bharat Petrol Corporation Ltd. v Champalal Vithooram Jajoo*² in support of his contentions.

17. With respect to the issue regarding knowledge of the Power of Attorney Holder for acting as a witness in the Trial Court, learned Senior Counsel for the Respondent No 5 submits that the said contention was raised for first time before the Appellate Court. That the Appellate Court, in paragraph 14 of the Judgment (at page 105 of the Writ Petition) has rightly observed that in the present case, the facts are undisputed between the parties and thus there is no force in the said submission on behalf of the present Petitioner. That, the Petitioner has not shown as to which fact was not an admitted fact and as to how the Petitioner was prejudiced by the evidence of the power of attorney holder and that at any rate evidence of power of attorney holder is

1 2006 SCC Online Bom 706

2 2020 SCC Online Bom 792

based on the documents and thus cannot be discarded by any court on a request made by the petitioner. Learned Senior Counsel would submit that the letter of communication for second renewal annexed as Exhibit B in Writ Petition is not proved. That the letter of communication produced at Exhibit B on page 27 of the Writ Petition is a document which was not produced before the Trial Court. That since the letter at Exhibit B is not proved in the Trial Court and cannot be considered at this stage in Writ Petition. That it is settled position of law that new document cannot be produced at a later stage and if it is not proved in the Trial Court, it cannot be considered at a later stage. Further that the Appellate Court in its judgment in paragraph 26 has clearly made an observation that the Petitioner has failed to prove that the said letter dated 12th July 1994 was sent to renew the option to renew the lease.

18. With respect to the impact of the factum of the demise Fali Ghaswalla and the irrevocable power of attorney, it is submitted that the judgment and decree passed by the Trial Court is of the year 2005. That the Respondent No 1 was alive when the decree was passed in the Trial Court. The relationship of landlord tenant came to an end in 2005 itself on the passing of the decree for eviction. That Respondent No 1

through his Power of attorney Holder had duly executed a Development Agreement with one M/s Parth Developers in 2003. The Respondent No 1 also executed an Irrevocable Power of Attorney on 3 June 2003 in favour of M/s Parth Developers which is at page 96 SSSSS of the Writ Petition. The Irrevocable Power of Attorney of 2003 clearly grants interest in the favour of Power of Attorney Holder and can be seen in Paragraph AA which is at page 96 XXXXX and paragraph 25 at Page 96AAAAAA. Reading of these two clauses clearly shows that the Power of Attorney is one which is coupled with interest.

19. Mr.Sakhardande relies upon the decision of the Hon'ble Supreme Court in the case of ***Seth Loon Karan Sethiya v. Ivan E. John and Ors.***³ in support of the above contention, where in paragraph 5 it is observed as under :

“There is hardly any doubt that the power given by the appellant in favour of the Bank is a power coupled with interest. Section 202 of the Contract Act provides that where the agent has himself an interest in the property which forms the subject matter of the agency, the agency cannot in the absence of express contract, be terminated to the prejudice of such interest. It is settled law that where the agency is created for valuable consideration and authority is given to effectuate a security or to secure interest of agent, the authority cannot be revoked. The document itself say that the powe given to the bank is irrevocable. It must be said in fairness to Shri Chagla that he did not contest the finding of the High Court that the power in question, was irrevocable”

3 AIR 1969 SC 73

20. The Respondent No 1 along with M/s Parth Developers executed an Agreement to Sell dated 13 April 2005 in favour of Respondent No 5 which is at page no 96 AAAA of the Writ Petition. The Recital U (f) of the Agreement to Sell at page no 96 GGGG clearly refers to the Development Agreement and Power of Attorney of 2003 executed by Respondent No 1 in favour of M/s Parth Developers and Mr.Mahendra Jagannath Yeole.

21. M/s. Parth Developers executed a Power of Attorney in favour of Ms.Vrinda Sharad Bal on 9 April 2005 which was registered on 13 April 2005 and is on page no 96 DDD of the Writ Petition. Respondent No 1 executed a Sale Deed on 13 November 2013 in favour of Respondent No 5 which is at page no 96 T of the Writ Petition.

22. Learned Senior Counsel would submit that at any rate, Ghaswalla's demise in 2011 has no bearing on the Agreement to Sell and Development Agreement which were executed much prior to his demise. That this is more so as when the first decree of eviction in 2005 was passed, when Mr. Ghaswalla was alive.

23. That the Petitioner had consented for Respondent No 5 to be made a party before this Hon'ble Court in Writ Petition No 2861 of 2018 (Page 96RRRR) and before the Appeal Court in the pending appeal as it could be seen from paragraph 3 at page 99 of this Writ Petition which portion reads thus :-

“3. The appeal was initially dismissed by my predecessor for non-payment of paperbook charges by the appellant. That order was challenged by the appellant in the High Court in W.P. No 2861/2018. It seems undisputed between the parties that the plaintiff has sold suit property to the respondent no 5. So made application Exh 30 in this appeal for impleading it as party to this appeal. The plaintiff and defendant no 1 gave no objection for impleading the respondent no 5 as party to this appeal. So, the respondent no 5 is made party to this Appeal.”

(Emphasis supplied)

24. That, therefore, Petitioner is not entitled to challenge Respondent No 5 being heard in the matter and/or Respondent No 5 not being proper and necessary party with complete title to the suit property.

25. With respect to the contention of the Petitioner that the notification issued by the government relating to the use of the land, learned Senior Counsel for the Respondent No.5 submits that as per the said Government Notification, a person is precluded from carrying on any other activity on the land which is used for petrol pump,

however, it does not stop any person to hold the property without doing any activity on the said land nor does it stop a person from running a petrol pump of a different company. That thus in the present situation the Respondent No 5 is entitled to obtain vacant possession and hold the suit property without doing any kind of activity on it or on the other hand the Respondent No5 is at liberty to lease the suit property to any other petroleum company and run a petrol pump of different company.

26. Learned Senior Counsel submits that the present Writ Petition therefore be dismissed with costs.

27. I have heard Mr. Atul Damle, learned Senior Counsel for the Petitioner and Mr. Nikhil Sakhardande, learned Senior Counsel for the Respondent No.5 and with their able assistance have considered the rival contentions.

28. The basic facts are not in dispute. By Indenture of Lease dated 20th October, 1995 the suit premises were leased out by one Shirinbai Jalejar Ghaswala and the Respondent no.1 in favour of Burmah Shell Oil Storage and Distributing Company of India Limited (the

predecessor in title of the Petitioner) for a period of twenty years with effect from 1st October 1954, which lease came to be renewed on 1st October 1974 for a further period of 20 years. That, by virtue of the Burmah Shell Act, all assets of Burmah Shell Oil storage and Distributing Company of India Limited vested in the Central Government initially, and thereafter, in favour of the Petitioner.

29. The Petitioner has relied upon Sections 3, 5 and 7 of the Burmah Shell Act submitting that the Burmah Shell Act gives Petitioner the right and authority to renew the lease independent of the lease deed and that, Petitioner is a government owned company and due to Burmah Shell Act coming into force the Central Government had stepped into the shoes of Burmah Shell and also that Section 5 of the Burmah Shell Act enables the Petitioner to renew the lease deed as a matter of right.

30. It is the Petitioner's case that vide communication dated 12th July 1994, Petitioner informed that the Petitioner was exercising the statutory option of renewal of the lease for the further period of 20 years with effect from 1st October 1994 on the same terms and conditions as under the provisions of the Burmah Shell Act. On 16th July 2003, the Respondent no.1 issued eviction notice to the Petitioner

calling upon the Petitioner to vacate the suit premises. On 2nd December 2003, the Respondent no.1 viz. the original Plaintiff through his Constituted Attorney Mahendra Jagannath Yeole instituted the said Civil Suit No.3 of 2004 in the Court of Small Causes at Pune (the “said suit”), seeking decree of eviction in respect of the suit property, arrears of rent and mesne profits against the Defendants mainly on the ground that the Petitioner was not protected under the provisions of the Maharashtra Rent Control Act, 1999, as also on the ground that portion of the premises was illegally sublet in favour of Defendants no.2 to 5.

31. A written statement was filed by the Petitioner, who was the original Defendant no.1, on 2nd September 2004, whereby the contents of the plaint were denied. It was submitted on behalf of the Petitioner that after the expiry of the lease agreement on 30th September 1994, the Petitioner had another renewal option by virtue of Section 5(2) of the Burmah Shell Act. That, by letter dated 12th July 1994, the Petitioner, had exercised their right under the Burmah Shell Act renewing the lease. And therefore, it was incorrect to state that the lease period had come to an end on 30th September 1994. That, therefore, the suit filed during the subsistence of the lease period was premature and bad in law.

32. The Respondents No.2 to 4, the original Defendants No.2 to 4 had filed written statements denying Plaintiff's claim stating that they had been carrying on the business on the suit plot of land since years. That, they were neither the tenants nor the sub-tenants of the original Plaintiff and that the original Plaintiff, therefore, had no cause of action against them. That, the Plaintiff had dragged them in the suit with some ulterior motives and malafide intentions. That, they were in no way liable to pay any money as prayed for by the Plaintiff.

33. The issues were framed by the trial Court after which the parties were permitted to lead evidence. The Power of Attorney holder of the Respondent no.1 i.e. the original Plaintiff, Mr.Mahendra Jagannath Yeole filed his affidavit of evidence dated 10th September 2004. He was cross-examined on 15th February 2005 and on 22nd March 2005. On behalf of the Petitioner, evidence affidavit dated 16th April 2005 was filed by Shankar Nagappa Karajagi of the Petitioner i.e. original Defendant no.1, stating that the original Plaintiff could not claim any relief on the basis of illegal and improper notice issued by the Plaintiff on 16th July 2003. That, the contents of the plaint were therefore not true and correct and hence denied by the Petitioner and that the original Plaintiff was not entitled to any of the reliefs prayed for. The

witness was examined on 21st April 2005. Written arguments on behalf of the Petitioner were filed.

34. The Defendants claims were rejected by the Trial Court and the Suit was decreed on 15th September, 2005 holding that the lease had determined by the efflux of time, that the Defendant No.1 was in default in payment of the rent, that Defendant No.2 had sublet the suit premises to Defendants No.3 to 5 and that the Plaintiff was entitled to recovery of premises and the Defendants were directed to hand over vacant possession of the suit premises to the Plaintiff after the Appeal period was over.

35. Aggrieved by the decree, an Appeal was filed by the Petitioner on 14th October, 2005 before the District Judge Pune viz. Regular Civil Appeal No.722 of 2005.

36. The Respondent No.5 vide sale-deed dated 13th November, 2013 purchased the suit property from the Power of Attorney holder of Respondent No.1 and has become the owner of the suit land. Admittedly, pursuant to a Memorandum of Understanding /Development Agreement of 2003 between Mr. Framjee alias Fali

Jalejar Ghaswala and M/s. Parth Developers, a General Power of Attorney dated 21st May 2003 was executed by Mr. Framjee alias Fali Jalejar Ghaswala in favour of Mr.Mahendra Jagannath Yeole who was one of the partners of M/s. Parth Developers whereby power to sell the suit premises had been granted to the Power of Attorney holder (Exhibit K-3). Thereafter, the Respondent No.1 along with M/s.Parth Developers executed an Agreement to Sell dated 13th April, 2005 whereby M/s. Parth Developers agreed to sell and assign the suit premises to Shree Bal Estate Private Limited pursuant to which vide Power Of Attorney dated 9th April 2005, Mr.Mahendra Jagannath Yeole executed a POA in favour of Mr. Sharad Bal or in his absence Mrs.Vrinda Sharad Bal, Directors of the said company, and on the basis of the said Power Of Attorney, Mrs.Vrinda Sharad Bal executed the Sale Deed dated 13th November 2013 in favour of Respondent no.5.

37. The Respondent No.5 was made party to the Appeal before the District Court pursuant to an application made in that behalf and the said position is not in dispute.

38. The Appeal also came to be dismissed on 16th July, 2021. This is how the Petitioner has filed this Writ Petition challenging the order of

dismissal passed by District Judge Pune and also challenging the Decree passed by the Small Causes Court, Pune whereby Petitioner was directed to hand over the vacant possession of the suit property to the Respondent No.1.

39. It is not in dispute that both the Courts have given concurrent factual and legal findings.

40. Coming first to the contention on behalf of the Respondent No.5 that the Petitioner being a Public Sector Corporation having a paid up capital of more than Rs. 1 crore, pursuant to the provisions of Section 3(1)(b), the Maharashtra Rent Control Act would not be applicable to the Petitioner, I am in agreement with the said submission which is supported by the findings of the Trial Court as well as the Appellate Court. Clearly the Petitioner is not entitled to the protection under the Maharashtra Rent Control Act. The suit is governed by the provisions of the Small Causes Courts Act and Transfer of Property Act. That since the said suit was filed by the landlord against the tenant for recovery of possession of immovable property, the Small Causes Court has correctly exercised its jurisdiction under Section 26 of the Provincial Small Causes Courts Act.

41. The findings of the Trial Court have been confirmed by the Appellate Court in paragraph 17 of its decision which is quoted as under :

“17. The Suit is tried and decided by the Small Causes Court, Pune. There is no controversy between the parties about jurisdiction of the Small Causes Court to try and decide the suit. The only controversy is raised by the defendant No.1 is that it is entitled for protection under the Rent Control Act. However, the decisions referred above as well as Sec.3 (1) (b) of the Maharashtra Rent Control Act makes it clear that the defendant No.1 is not entitled for protection under the Maharashtra Rent Control Act. Therefore, the provisions of Transfer of Property Act will be applicable to the present case.”

42. Coming to the question whether under Section 5(2) of the Burmah Shell Act, the Petitioner is entitled to renew the lease on the same terms and conditions, the Trial Court has held that from a copy of the Lease Deed dated 20th October, 1955 it is observed that the lessee has an option to get the renewal of the lease for a further period of 20 years and as per paragraph 2(d), the option is exercisable for only one time. That it is specifically mentioned in paragraph 2(d) of the Lease Deed that for further renewal, the option shall be included in the renewed lease. It is also observed that the renewed lease deed has not been produced before the trial Court and the Appellate Court. Both the trial Court (paragraph 34) and the Appellate Court (paragraphs 23 and

24) have observed that the renewed lease deed was not produced and therefore it was difficult to ascertain about the renewal clause of the renewed lease deed and therefore the Petitioner had no option to renew the lease deed. That, the right of first renewal to the Petitioner was given and exhausted by the Petitioner in 1974. That, the lease had expired by efflux of time. Paragraphs 34, 35 and 36 of the Trial Court order are usefully reproduced as under:

“34. Copy of lease deed dt.20-10-55 is at exh.37. In para 2(d) of the lease deed, it is mentioned that the lessee has option to get renew lease for a further period of 20 years. As per para 2(d) of the lease deed, the option is exercisable for only one time. It is specifically mentioned in para 2(d) of the lease deed that for further renewal, the option shall be included in the renewed lease. In the instant case, the renewed lease deed or its copy is not on record, therefore, it cannot ascertained as to whether renewal option is included in the renewed leased deed or not. So, in my opinion, the option is already exercised by defendant no.1’s predecessor and on the basis of said option, the defendant no.1 enjoyed possession over suit property since 24-1-76 to 30-9-94. Now, the defendant no.1 has no option to renew the lease.

35. At this stage, it is necessary to mention that DW 1 has admitted in para 12 of exh. 45 that the lease period expired in the year 1994.

36. As per section 111(a) of the Transfer of Property Act, a lease of immovable property determined for efflux of time limited thereby. In the instant case, the time limited in the lease deed was upto 30-9-94. That period came to an end, therefore, I have no hesitation to mention that the lease of suit property determined by efflux of time. Moreover, in para 12, page 5 of exh.45, the DW 1 has admitted that after 1994, there was no agreement between landlord and defendant

no.1. Considering these facts, I came to conclusion that the lease expired by efflux of time on dt. 30-9-94. Hence, I answer Issue no.1 in the Affirmative.

43. Paragraphs 23 and 24 of the Appellate Court order are usefully reproduced as under:

“23. Combine reading of Secs. 3 & 5 of the said Act makes it clear that whatever leasehold rights held by Burmah Shell are transferred and vested to the defendant No.1 Sec.5 (2) of the said Act has to be read with Sec.3 & Sec.5 (1) of the said Act. If it is read so, it makes clear that no new right is created in the property/undertakings of Burmah Shell by the said Act. So, if Burmah Shell has right to renew the lease, then only as per Sec.5(2) of the said Act, the defendant No.1 will be entitled to renew the lease otherwise not. So, it becomes necessary to see the lease deed Exh.37. Its clause No.3(d) reads as :

“3(d) If the Lessee shall have given to the Lessor not less than two calendar months’ notice in writing prior to the expiration of the term reserved herein expressing a desire to renew the lease and shall have duly observed and performed all the terms and conditions hereof the Lessor will grant to the Lessee a new lease of the demised premises by way of renewal for such further term of years not exceeding 20 years as the Lessee shall desire in its absolute discretion to commence from the date of expiry hereof at the same rent and upon the same terms and conditions in all respects as are reserved and contained herein save and except this present covenant for renewal unless it is specifically agreed by both parties that a further like option shall be included in the renewal lease.’

24. The lease deed makes it clear that first renewal option was given to Burmah Shell. As noted earlier, it is undisputed that this option was exercised by Burmah Shell. The lease deed Exh.37 doesn’t give second renewal option to Burmah Shell. On the contrary it stipulates that for further

renewal option there should be stipulation in the renewed lease. The renewed lease deed is not on record nor it is case of the defendant No.1 that in the renewed lease deed there was stipulation giving option to the Burmah Shell to renew the lease. As such, in absence of renewed lease deed giving option to the defendant No.1 to renew the lease, it doesn't lie in the mouth of the defendant No.1 to say that by the letter dtd.12/07/1994 it has renewed the lease.

44. The submissions of the learned Senior Counsel for the Respondent no.5 that the communication dated 12th July, 1994 at Exhibit 'B' to the Writ Petition for the second renewal which was neither produced before the Trial Court nor proved cannot be considered at the stage of this Petition, appear to have merit. A new document cannot be produced at a later stage and if it is not proved at the trial, it cannot be considered at a later stage. The Appellate Court in paragraph 26 has clearly observed that the Petitioner has failed to prove that the said letter dated 12th July, 1994 was in fact sent to Raksheen J. Ghaswala or Farzeen Ghaswala exercising its option to renew the lease.

45. At this stage, it would also be useful to refer to the decision of this Court in the case of *Bharat Petroleum Corporation Limited vs Rustom Behramji Colah (supra)*, authored by Hon'ble (Dr.) Justice D.Y. Chandrachud (as His Lordship then was), where this Court after

analyzing the provision of Section 5 of the Burmah Shell Act as well as the decisions of the Hon'ble Supreme Court in the case of *Bharat Petroleum Corporation Limited v. P.K. Kesavan*⁴ with respect to interpretation of Section 5 as well as the decision of the Hon'ble Supreme Court in the case of *State of U.P. and Ors. v. Lalji Tandon*⁵, in the case of a similar lease observed that the Petitioner had the benefit of one renewal of the term of lease, the original term of the lease having expired in 1976. That, even thereafter on the assumption that the lease was renewed either by exercise of the option of renewal or by operation of law, the renewed term also expired in 1996. That Clause 3(c) of the Lease Deed specifically excludes a perpetual right of renewal unless the parties specifically agree otherwise. That, as in the facts of this case, there too it was observed that there was no agreement that the Petitioners would be entitled to any further renewals. That the Courts lean against a perpetual right of renewal even when the clause of renewal provides a renewal on the same terms and conditions. Paragraphs 13 to 17 of the said decision are relevant and are usefully quoted as under:

“13. At this stage it would be necessary to note the provisions of The Burmah Shell (Acquisition of Undertakings in India) Act, 1976. Sub-section (1) of Section 5, provides that "where

4 2004 AIR SCW 1989

5 (2004) 1 SCC 1

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." The effect of Section 5(1) in the present case is that the lease which was executed in favour of Burmah Shell would enure to the benefit of the Central Government as if the lease had been granted to the Central Government. The petitioner is the government company that has stepped into the shoes of the Central Government.

14. Next Section 5(2) provides that "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." The effect of Sub-section (2) of Section 5 is that the option to renew that was conferred upon Burmah Shell under Clause 3(c) of the lease would be available on the same terms and conditions to the Central Government. Clause 3(c) makes it clear that once the lease is renewed for 20 years the same terms and conditions would govern the lease during the renewed term save and except for the covenant for renewal unless both parties agreed that such an option for further renewal shall be included in the renewed lease. Admittedly no such further option had been agreed upon between the parties.

15. The provisions of the Burmah Shell (Acquisition of Undertakings in India) Act, 1976 came up for consideration before the Supreme Court in Bharat Petroleum Corporation Ltd. v. P. K. Kesavan, 2004 AIR SCW 1989. The Supreme Court held that Sub-section (1) of Section 5 provided for a legal fiction in terms whereof Bharat Petroleum Corporation became a lessee in respect of the leasehold. That legal fiction, would have to be given full effect. The Supreme Court held that Section 5(2) and Section 7(3) of the Act were required

to be given a purposive meaning, having regard to the object and purpose which the statute seeks to achieve. The Central Government by reason of the provisions of the said Act acquired running business undertakings of Burmah Shell dealing in distribution and marketing of petroleum products. There ought to be no let or hindrance in the Central Government achieving the object of the Act. In the circumstances, if the Government renewed the lease, the benefit of the renewal would stand.

16. *The question as to whether a perpetual right of renewal can be held to exist in law has been considered by the Supreme Court in the decision in State of U. P. and Ors. v. Lalji Tandun (2004) 1 SCC 1. The Supreme Court confirmed the correctness of the following propositions of law which were laid down by the Andhra Pradesh High Court, in para 15 of the judgment:*

(i) In India, the law does not prohibit a perpetual lease; clear and unambiguous language would be required to infer such a lease. If the language is ambiguous the court would opt for an interpretation negating the plea of the perpetual lease;

(ii) To find an answer to the question whether a covenant for renewal contained in the lease deed construed properly and in its real context, entitles the tenant to continue as long as he chooses by exercising the option of renewal at the end of each successive period of 5 years subject to the same terms and conditions depends on the deed of lease being read as a whole and an effort made to ascertain the intention of the parties while entering into the contract. No single clause or term should be read in isolation so as to defeat other clauses. The interpretation must be reasonable, harmonious and be deduced from the language of the document;

(iii) The court always leans against a perpetual renewal and hence where there is a clause for renewal subject to the same terms and conditions, it would be construed as giving a right to renewal for the same period as the period of the original lease, but not a right

to second or third renewal and so on unless, of course, the language is clear and unambiguous.

17. *In the present case the petitioner has had the benefit of one renewal of the term of lease. The original term of lease expired in 1976. Even thereafter on the assumption that the lease was renewed either by the exercise of the option of renewal or by operation of law, the renewed term also expired in 1996. Clause 3(c) of the covenants of the lease deed specifically excludes a perpetual right of renewal. Clause 3(c) postulates that during the renewed term, the lease would be subject to the same terms that governed the original term of lease except for the clause for renewal, unless parties specifically agree otherwise. Here there is no agreement that the petitioners would be entitled to any further renewals. The Court leans against a perpetual right of renewal even when the clause of renewal provides a renewal on the same terms and conditions. Proposition (iii) culled out from the judgment of the Supreme Court Lalji Tandon reads that in such a case the clause would be construed to allow a right of one renewal but not a second or third renewal. Here, the term of the renewed lease is also over. There is no merit in the submission that the suit was premature. Even if the lease stood renewed, that would not deprive the landlord of his right to sue for eviction on a ground for eviction being made under the Rent Act. The judgment of the Appellate bench of the Small Causes Court confirming the order of eviction does not warrant interference under Article 227 of the Constitution. For the reasons stated above, the petition is dismissed.”*

46. The decision in the case of *Bharat Petroleum Corporation Limited v Champalal Vithooram Jajoo (supra)* also reiterates the above position.

47. The legal position which emerges from the aforesaid decisions is that there can be only one renewal, which, in the present case, has

been exhausted in the year 1974, as has been concurrently observed by the two courts. The Petitioner has already availed of the right of renewal in the year 1974 which was provided in the lease agreement. There is no second renewal option. The Petitioner has failed to bring on record the lease deed and therefore it also could not be ascertained if the Petitioner had a right to renew the lease deed beyond the first renewal. Even otherwise, if the lease deed would have been renewed in the year 1994, even then the same would have ended in 2014 and therefore also there is no merit in the argument of the Petitioner.

48. Further, the Trial Court in paragraph 39 and the Appellate Court in paragraph 30 have clearly observed that the Petitioner breached the express condition mentioned in the lease agreement of 1955 not to sublet the suit property. The lease which was renewed in 1974 determined by efflux of time on 30th April 1994 and further notice issued for recovery was proved. Paragraph 39 of the Trial Court Order is usefully reproduced as under:

“39 As per section 111(g) of the Transfer of Property Act, a lease of immovable property determines in case the lessee brakes an express condition. In the instant case, in a lease deed dt.20-10-55, a lessee was not permitted to sublease the suit property. Even though the defendant no.2 sublet the suit property to defendant nos.3 to 5. As such, the defendant no.1 and 2 have brake the express condition. So,

in my opinion, the lease of the suit property determines. Hence, I have recorded affirmative findings on Issue no.2.

Paragraph 30 of the Appellate Court is also usefully reproduced as under:

“30. As held above, the lease is determined by the efflux of time on 30/09/1994. Therefore, the defendant Nos.1 to 5 have no right to remain in possession of the suit premises. The defendant No.2 has sub-let the suit premises to the defendant Nos.3 to 5. As said earlier, the suit is governed by the provisions of the Transfer of Property Act. Sub-letting the suit premises by the lessee without landlord’s consent amounts breach of lease agreement as provided U/Sec. 111(g) of the Transfer of Property Act, As said earlier, the defendant No.1 has made default in payment of rent. Therefore, the plaintiff is entitled for decree of eviction on all counts against the defendant Nos.1 to 5. So, the trial Court has rightly decreed the suit. Therefore, the impugned judgment and decree doesn’t warrant any interference. Accordingly, I answer point No.4 in the affirmative and Point No.5 in the negative. Resultantly the appeal has no merit and it deserves to be dismissed with costs. Point No.6 is answered accordingly.

49. No fault can be found with the aforesaid findings.

50. Mr. Damle, learned Senior Counsel for the Petitioner has further submitted that the demise of Mr. Fali Ghaswalla on 9th August, 2011 raises an issue relating to subsequent transfer to Respondent No.5 made on the strength of Power of Attorney. It has been submitted that, in fact, the Respondent No.5 has suppressed the material fact of the demise of Respondent No.1 from this Court when the Civil Application

No.1539 of 2019 was taken out for impleadment and on this ground alone the decree passed by the District Court in the Appeal based on the submissions of Respondent No.5 deserves to be quashed and set aside.

51. In my view Mr.Damle's arguments would not have any bearing on the transaction of sale to Respondent no.5. The Respondent no.1 had executed a Development Agreement with one M/s. Parth Developers in 2003. An irrevocable Power of Attorney was also executed by Respondent no.1 on 21st May, 2003 in favour of the partners of M/s.Parth Developers which is at page 96SSSSS of the Writ Petition. Thereafter, the Respondent no.1 along with M/s.Parth Developers executed an Agreement to Sell dated 13th April 2005 in favour of Respondent no.5 which is at page 96AAAA to the Writ Petition. Recital U(f) of the Agreement to Sell at page no.96GGGG refers to the Development Agreement and Power of Attorney of 2003 executed by Respondent no.1 in favour of M/s.Parth Developers. M/s. Parth Developers executed a Power of Attorney in favour of Mr. Sharad Bal or in his absence, Mrs.Vrinda Sharad Bal on 9th April 2005 which was registered on 13th April 2005 and which is on page no.96DDD of the

Writ Petition. It is pursuant to this Power of Attorney that Mrs.Vrinda Sharad Bal executed the Sale Deed on 13th November 2013 in favour of Respondent no.5 which is at page no.96T of the Writ Petition. The Power of Attorney dated 9th April 2005 is a General Power of Attorney by M/s. Parth Developers to Mrs.Vrinda Sharad Bal and the Respondent no.1 through Mr.Mahendra Jagannath Yeole is a consenting party to the said Power of Attorney. Mr.Ghaswala was alive when this Power of Attorney was granted to Mrs.Vrinda Sharad Bal by M/s.Parth Developers. Mr.Ghaswala was only a consenting party to this Power of Attorney. The Respondent no.1 through his Power of Attorney holder Mr.Jagannath Yeole was also a party to the Articles of Agreement to Sell dated 13th April 2005 whereby M/s.Parth Developers had sought to assign the said property to Shri Bal Estate Private Limited. Pursuant to the said agreement, the assignees had acquired the rights to enter into agreement to sell, transfer all the rights and benefits including by way of TDR, DRC accruing from the said property with the intending purchasers in the proposed building and do all such acts, deeds and things for appropriation of all the proceeds thereof in addition to the right to realize the sale and other proceeds in respect of the said property. The following paragraphs of the said agreement are usefully quoted as under :

“5. The Owners and assigners shall execute all additional arrangements/deeds/conveyances / assignments/ power of attorneys / indemnities / declarations as also any final deed of conveyance in favour of the assignees against execution hereof or as and when called upon by the assignees on terms and conditions agreed between the parties. The assignors agree to obtain a letter replying the said transfer from the original owners as and when required by the purchasers before the 10th of July, 2005.

(d) The assignees shall be entitled to enter into agreement to sale and otherwise transfer the building/s and/ or flat/s and also all rights and benefits including by way of TDR in the form of DRC occurring from the said property with the intending purchasers in the proposed building inter alia as contemplated under the provisions of the Maharashtra Ownership Flats Act, 1963/ thereundder, which may be constructed by the assignees on the said property and shall also be entitled to do all such acts, deeds and things required in that behalf and also the appropriate all proceeds thereof.

(g) The Owners and assignors agree and affirm that as a consideration of the assignees developing the property they i.e. the assignees are and shall be entitled to realize the sale of flats/shops/offices/parking spaces constructed thereupon for their exclusive benefits as also the assignees are hereby absolutely entitled to sign all agreements with their prospective purchasers for the flats/shops/offices and other structures/s constructed on the said property.”

52. It is not in dispute that at the time of entering into this agreement, Mr.Ghaswala was alive. A perusal of the Sale Deed dated 13th November 2013 clearly indicates that the Sale Deed has been executed between M/s.Framji Ghaswala, M/s.Parth Developers and Shri Bal Estate Private Limited being the parties of the first part and

Shri Bal Estate Private Limited being the party of the second part. Perusal of Clause (1) of the said Sale Deed clearly records that negotiations took place between the vendor and purchaser as a result of which parties had agreed to a consideration for sale of land of Rs.3 Crores which the purchaser had entirely paid to the vendor at the time of execution of the Articles of Agreement to Sell on 13th April 2005 i.e. prior to the execution of the Sale Deed. The vendor has also admitted and accepted and acknowledged the receipt of the said sale consideration and also acquitted, released and discharged the purchaser in respect thereof. In my view, Mr.Ghaswala's name in the Sale Deed was only nominal in as much as the Articles of Agreement of 2005 assigned the entire suit property to Shri Bal Estate Private Limited, Mr.Framji Ghaswala having already granted rights and interest in respect of the suit property in favour of M/s. Parth Developers by a Development Agreement in the year 2003 and an irrevocable Power of Attorney dated 21st May, 2003. A bare persual of the said irrevocable Power of Attorney of 2003 indicates that the said power granted interest in favour of the Power of Attorney holder. Paragraphs W, X, Y, Z, AA, AB and AC of the said power in favour of Mr.Mahendra Yeole and Seema Mahendra Yeole, the partners of M/s. Parth Developers, are usefully quoted as under :

“W. To apply for and obtain the Development Right Certificate in respect of land out of the said property which is in reservation and to use such T.D.R. on any other property and/or properties themselves or by their nominee/nominees as may be permitted from time to time.

X. To make necessary application and execute all type of Documents to use Transfer of Developments Right on the said property and obtain necessary permission thereto.

Y. To recover rent from tenants, occupants, encroachers whether authorised or otherwise and to issue receipt thereof.

Z. To negotiate with the tenants, occupants or encroachers to get the vacant possession of the premises under their occupation and for that purpose to enter into a compromise in settlement in any pending suits or litigation or proceeding before any court or authority whatsoever and in the manner the said Attorneys may deem fit and proper.

AA. To sell the flats, shops, garages, units which may be constructed on the said property and to receive the consideration amount from such prospective buyers either in whole or in part and to pass effectual receipts for the same lodge such agreements for registration with the Sub-Registrar or Registrar of Assurances, Pune or at such other place and to admit execution thereof before such authorities and for the purposes aforesaid to write or sign such letters, applications, vouchers, forms as may be necessary and to hand over to the prospective purchaser the possession of such flats, shops, garages, units to the buyers of such flats or as the case may be.

AB. To deposit any amount required to be deposited with the authorities concerned including the Pune Municipal Corporation etc; to apply for and obtain refund of any amount to deposit and to give receipts for the same.

AC. To form and get registered a co-operative society under the Maharashtra Co-operative Societies Act or a

Limited Company under the Companies Act, 1956 or Condominium of Apartment of Owners or any other organization of the purchasers of the flats, shops, apartments, etc. in the buildings to be constructed on the said property and for the purpose to correspond with and/or appear before the Registrar or the Assistant Registrar or Deputy Registrar or the Assistant Registrar of the co-operative societies the Registrar of Companies or any other Officer or authority concerned.”

53. In *Seth Loon Karan Sethiya v. Ivan E. John and Ors. (supra)* the Hon'ble Supreme Court in paragraph 5 has observed as under :

“5. There is hardly any doubt that the power given by the appellant in favour of the Bank is a power coupled with interest. That is clear both from the tenor of the document as well as from its terms. Section 202 of the Contract Act provides that where the agent has himself an interest in the property which forms the subject matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest. It is settled law that where the agency is created for valuable consideration and authority is given to effectuate a security or to secure interest of the agent, the authority cannot be revoked. The document itself says that the power given to the Bank is irrevocable. It must be said in fairness to Shri. Chagla that he did not contest the finding of the High Court that the power in question, was irrevocable.

54. From a composite reading of the Development Agreement with M/s.Parth Developers in favour of M/s.Parth Developers as well as the irrevocable Power of Attorney dated 21st May, 2003 in favour of Shri. Mahendra Jagannath Yeole and Seema Mahendra Yeole it emerges that the said arrangement between the Respondent no.1 and Parth

Developers was an agency coupled with interest. Therefore, the same cannot be revoked and is irrevocable. Mr.Sakhardande, learned Senior Counsel is absolutely right when he submits that in view of the irrevocable nature of the arrangement between the Respondent no.1 and M/s.Parth Developers under which the suit property came to be assigned to Shri. Bal Estate Private Limited pursuant to an Agreement to Sell in the year 2005 when the Respondent no.1 was still alive and when the Power of Attorney was given to Mrs.Vrinda Sharad Bal, the demise of Mr.Ghaswala in the year 2011 would have no bearing on the transaction of sale to Respondent no.5 particularly in view of the fact that in 2005 itself the entire consideration for the sale of the subject premises, when Mr.Ghaswala was still alive, was already received by M/s.Parth Developers.

55. Moreover, as far as the decree of eviction is concerned that was passed by the Trial Court in the year 2005 when the Respondent no.1 was alive. The relationship of landlord and tenant came to an end in the year 2005 itself upon the passing of the decree for eviction. The arguments of Mr.Damle with respect to the demise of Mr.Ghaswala therefore do not persuade this Court.

56. Therefore, the submission that in view of the demise of Mr.Ghaswala on 9th August 2011, the Power of Attorney executed by Mr.Ghaswala in favour of Mr.Mahendra Jagannath Yeole on 21st May 2003 ended and therefore the Sale Deed executed by Mrs.Vrinda Sharad Bal in favour of the Respondent no.5 was without any power or authority, and therefore, the said transaction was illegal and invalid, is not tenable. There does not appear to be any illegality in the said transaction of Sale Deed in favour of the Respondent no.5.

57. With respect to the contention on behalf of the Petitioner that the only witness examined by the Respondents was Mr.Mahendra Yeole, the Power of Attorney holder of the Plaintiff, who had no personal knowledge of the case and hence the evidence of the said witness ought to be discarded, this contention, in my view, has already been dealt with by the Appellate Court in paragraph 14 of the impugned judgment where the Appellate Court has rightly observed that in the present case the facts between the parties are undisputed and therefore there is no force in the said submission with respect to the Power of Attorney holder's evidence. In any event, as rightly submitted by Mr.Sakhardande, learned Senior Counsel for the Respondent no.5, the Petitioner has not shown as to which fact was not an admitted fact

and as to how the Petitioner was prejudiced by the evidence of the said Power of Attorney holder and that at any rate, the evidence of the Power of Attorney holder is based on the documents and cannot be discarded on a request made by the Petitioner.

58. It has also been contended on behalf of the Petitioner that, in any event, pursuant to Government Notification, the suit property cannot be used for any other purpose but for petrol pump use and therefore the judgments and decrees of the two Courts be set aside.

59. With respect to the above contentions of the Petitioner regarding the Government Notification relating to use of land wholly for the purpose of petrol pump, I am of the view that the said Government Notification cannot be used to set aside eviction orders, in as much as the Respondent no.5 can always lease the same to any other person or company / entity for running retail outlet of petrol / diesel / CNG. As far as the grievance of the Petitioner with respect to supplying essential commodities or with respect to public convenience for motoring public, that cannot be a subject matter of a Petition under Article 227 of the Constitution of India. A tenant facing an eviction decree cannot certainly raise it as a ground to challenge the Trial Court and Appellate

Court orders of eviction. For the above reasons, even the other connected arguments of wastage of land, loss to exchequer etc. do not, in my view, merit any consideration.

60. Both the courts have given concurrent findings. The claims of the Petitioner have been rejected and the suit has been decreed holding that the lease had determined by efflux of time. The Petitioner was in default in payment of rent, the Defendant no.2 had sublet the suit premises to Defendants no.3 to 5 and that the Plaintiff was entitled to recovery of the suit premises. Therefore, the Defendant was directed to hand over possession to the Plaintiff after the Appeal period was over. As noted above, the Appeal has also been dismissed. No fault can be found with the findings of fact and application of law to those facts. This Court in exercise of jurisdiction under Article 227 of the Constitution of India cannot re-appreciate evidence.

61. I do not find any jurisdictional error on the part of the learned trial Judge or the Appellate Court nor any illegality or perversity in the decree dated 15th September 2005 of the Trial Court or the Judgment and decree dated 16th July 2021 of the Appeal Court in dismissing the Appeal and directing the Petitioner to hand over the vacant possession

of the suit property to the Respondent no.1.

62. In view of the above discussion, the Petitioner is directed to vacate the suit property, if not already vacated, and hand over the possession to the Respondent no.5 within 8 weeks from the date of uploading this order.

63. The Writ Petition is, therefore, dismissed. No order as to costs.

(ABHAY AHUJA, J.)