



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 82 OF 2016
WITH
CIVIL APPLICATION NO.114 OF 2016

Bharat Petroleum Corporation Ltd.

...Appellant/
Applicant

Versus

Bholadasji Mandir
Sri Panchmukhi Hanuman Mandir
Ramji Mandir
Shri Satyanarayn Mandir,
Shri Murli Manaohar Mandir
Narsingwadi & Ors properties trust,
through its trustee
Kishor Gururamlakhandasji Shrivaishnav & Anr.

...Respondents.

*Adv. Girish Godbole, Senior Advocate a/w Adv. Ahmed Padela i/b The Law
Point for the Appellant/Applicant.*
Adv. R. D. Soni i/b Adv. Hrishikesh S. Shinde for the Respondents.

Coram : Sharmila U. Deshmukh, J.

Date : March 18, 2024.

P. C. :

1. By a common judgment dated 23rd September, 2015 passed by the Appellate Court in Regular Civil Appeal No. 68 of 2013 and Regular Civil Appeal No. 59 of 2013, the Appellate Court dismissed the Appeals filed by the original Defendant No. 1 and original Defendant Nos. 2 and 3 respectively confirming the judgment of the Trial Court

dated 3rd December, 2012 decreeing the suit and directing the Defendant Nos. 1 to 3 to hand over the vacant possession of the suit land to the Plaintiff within three months from the date of this order by removing the structures thereon. Two independent appeals were filed and argued separately arising out of the common judgment and hence are decided independently.

2. The present Appeal arises out of RCA No. 68 of 2013 filed by the original Defendant No. 1. For the sake of convenience, the parties are referred to by their status before the Trial Court.

3. RCS No. 164 of 2003 was filed by the Plaintiff Trust seeking recovery of possession with directions of removal of the constructions on the suit property. The suit property is described as non agricultural land bearing survey Nos. 182, 182-A, bearing CTS Nos. 5923 to 5951 and Municipal House No. 4609 situated within the limits of Nashik Municipal Corporation.

4. The case of the Plaintiff was that the Defendant No. 1 was inducted as a tenant in the suit property on 3rd October, 1972 under a duly registered lease deed executed between parties on 17th February, 1973. The Defendant No. 1 was formerly known as Burmah Shell Oil Storage and Distributing Company of India Ltd. The suit

property was an open land used for non agricultural purpose on which the Defendants have constructed some structures. Defendant Nos. 2 and 3 are the dealers and agents of the Defendant No. 1. The Plaintiff had instituted RCS No. 209 of 1983 against the Defendants under the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. The said suit was withdrawn with liberty to file a fresh suit for the same cause of action. Defendant No.1 is a public limited company and is not entitled to the protection of the Maharashtra Rent Control Act, 1999. On 14th August, 2002 the Plaintiff issued a notice to quit to the Defendant No.1 which was served on or about 19th August, 2002. Defendant Nos. 2 and 3 did not accept the notice and the postal packets were returned back to the Plaintiff with the remarks 'not claimed.' However, the notice sent under certificate of post were duly received by Defendant Nos. 2 and 3. As there was certain minor mistakes about paragraph numbers in the notice dated 14th August, 2002, vide communication dated 14th January, 2003, the said mistakes was clarified. As possession was not handed over the suit came to be filed.

5. The suit came to be resisted by the Defendant No. 1 by filing its written statement. It appears that the written statement filed on 11th August, 2003 came to be amended and the amended written

statement was filed on 30th July, 2010. The contention of the Defendant No. 1 was that the suit is not maintainable under the provisions of Transfer of Property Act, 1882 and should have been filed under the provisions of Maharashtra Rent Control Act, 1999. There is non compliance of Section 80 of the CPC 1908. The Defendant No. 1 was protected by virtue of provisions of The Burmah Shell (Acquisition Of Undertakings In India) Act, 1976 and therefore right of renewal of lease are vested with the Defendant No. 1. The previous trustee had agreed to renew the lease and entered into fresh agreement and therefore the Plaintiff are estopped from claiming recovery of possession. It was contended that the user of the property for the purpose of structuring Dharam Shala for sadhu's devotees and constructing temple is prohibited and for this reason the Plaintiff cannot claim the possession of the property.

6. Defendant Nos. 2 and 3 by filing their independent written statements contended that the initial lease was executed in the year 1954 with the erstwhile entity which was renewed in the year 1964 and lastly in the year 1972. The Defendant Nos. 2, 3 and others are in possession of the property as licensees of the Defendant No. 1 as on 1st February, 1973 and are deemed tenants of the Plaintiff protected by the provisions of rent control legislation. The Defendant Nos. 2 and

3 denied having received notice to quit from the Plaintiff.

7. The parties went to trial. The Plaintiff examined himself and the Defendant Nos. 1 and 2 examined themselves. The Trial Court held that the lease was in respect of non agricultural land and upon coming into force of Maharashtra Rent Control Act, 1999, and the Defendant No. 1 being exempted under Section 3 of Maharashtra Rent Control Act, 1999, the suit was governed by Transfer of Property Act. As regards the mandatory renewal of lease by virtue of Section 5(2) of the Burmah Shell (Acquisition Of Undertakings In India) Act, 1976, it was held that the Defendant No. 1 has not produced any document to show that they had sought renewal of lease. The Trial Court held that the notification dated 3rd December, 2009 does not prohibit institution of suit by landlord for termination of tenancy and the change of user is a matter between the Plaintiff and the Planning Authority. The Trial Court held that where the premises is exempted from the operation of the Rent Act, then sub tenants of such premises cannot claim protection under the Rent Act and thus Defendant Nos. 2 and 3 had no protection.

8. The suit was decreed as against which Regular Civil Appeal No. 59 of 2013 was filed by the original Defendant Nos. 2 and 3 and Regular Civil Appeal No. 68 of 2013 was filed by the Defendant No. 1.

By a common judgment the Appellate Court held that the Defendants are not protected after repeal of the Bombay Rent Act and the provisions of the Maharashtra Rent Control Act are not applicable to the suit premises. The Appellate Court held that there is no agreement or right to have perpetual lease and the Apex Court has recognised only one renewal of lease. It was held that the lease of the Defendants is lawfully determined and the Appeals came to be dismissed.

9. Heard Mr. Godbole, learned Senior Advocate for the Appellant and Mr. Soni, learned Counsel for the Respondents.

10. Mr. Godbole, Learned Senior Advocate appearing for Defendant No. 1 submits that by virtue of Section 5(2) and 7(3) of the Burmah Shell (Acquisition Of Undertakings In India) Act, 1976, the right accrued to the Defendant No. 1 to renew the lease deed on the same terms and conditions of the earlier lease. Pointing to Clause 4(b) of lease deeds dated 31st December, 1964 as well as the subsequent lease deed dated 3rd October, 1972, he would submit that the clause provides for a fresh lease of the demised premises and the Defendant No. 1 is entitled to lease in perpetuity. He has taken this Court through the findings of the Trial Court and the Appellate Court. He would submit that the lease stood automatically renewed in view of

Section 5 of The Burmah Shell (Acquisition Of Undertakings In India) Act, 1976. He would further submit that by virtue of the notification dated 3rd December, 2009 which restricts change of user the eviction suit could not have been decreed. He submits that learned single judge of this Court at Nagpur Bench has framed the substantial question of law as to whether the eviction suit against the Defendant can be decreed in the presence of specific restriction on change of use of subject land for the purposes apart from the petrol pump/CNG stations. He submits that as a Co-ordinate bench has framed the substantial question of law in light of the notification dated 3rd December, 2009, similar question of law is required to be framed in the present Appeal.

11. *Per contra*, Mr. Soni, Learned counsel for the Respondent-Plaintiff would submit that various judicial pronouncement of this Court as well as the Apex Court has considered the provisions of Section 5 of the Burmah Shell (Acquisition Of Undertakings In India) Act, 1976 and has held that the lessee can insist a renewal only once. He submits that in the present case, the right has already been exercised by Defendant No. 1 which has resulted into the lease deed executed on 3rd October, 1972. He submits that the period of the lease expired pursuant to which a notice to quit was issued on 14th August,

2002 under Section 106 of the Transfer of Property Act, 1882. He submits that the Trial Court as well as the Appellate Court has held that the said notice is valid and that being so, the Plaintiffs are entitled to possession. He would submit that it is an admitted position that the provisions of the rent Control Act are not applicable to the Defendant No. 1 company.

12. Considered the submissions and perused the records.

13. The admitted position is that upon expiry of the lease deed dated 31st December, 1964, the lease came to be renewed for period of ten years vide lease deed dated 3rd October, 1972. By virtue of Section 5(2) the Burmah Shell (Acquisition Of Undertakings In India) Act, 1976, the lease could be renewed only for term of 10 years which expired in the year 1992. **(State of Bihar vs Lalu Singh (2014) 1 SCC).** The right under Section 5(2) was already exhausted and in the absence of any further renewal of the lease between the parties, the status of the Defendant No. 1 became that of monthly tenant. The Defendant No. 1 continued in occupation and notice to quit was issued on 14th August, 2002. Mr. Godbole, would contend that apart from the statutory right of renewal, the terms of the lease provided for perpetual right of renewal under Clause 4(b) of the lease deed. Perusal of Clause 4(b) of the Lease deed dated 31st December, 1964

provided for renewal of the lease for one further period not exceeding 10 years. Clause 4(b) of the subsequent lease deed dated 3rd October, 1972 is blank as regards the period and term. Although the period and term is kept blank, it is clear from the said Clause that the renewal is on the same terms and conditions. For the lease to be considered as perpetual lease, there should be clear and unambiguous language to infer such a perpetual lease (**Hindustan Petroleum Company Ltd vs Navjeevan Co-operative Housing Society Ltd 2011 (5) Bom.C.R.186**). Reading of Clause 4(b) indicates that the right of renewal for given for the same period as the period mentioned in the Lease Deed dated 31st December, 1964. Thus there could not be any perpetual renewal nor any renewal beyond the period of ten years, which had already expired.

14. What was leased to the Defendant No. 1 was an open plot land and upon provisions of Maharashtra Rent Control Act, 1999 coming into force the definition of the "Premises" under Section 7(9) did not include an open land and in any event the Defendant No. 1 company was exempted from the protection afforded by the rent control legislation by virtue of Section 3 of Maharashtra Rent Control Act, 1999. The tenancy of the Defendant No. 1 being on month to month basis was validly terminated by the notice to quit dated 14th August,

2002.

15. Now in so far as the substantial question law framed by the Co-ordinate bench the notification has been issued on 3rd December, 2009. The notice to quit in the present case has been issued on 14th August, 2002 much prior to the issuance of notification. The question of law framed by the Co-ordinate Bench is in the Second Appeal of the year 2023 and does not reflect the facts of that case as to whether the tenancy was terminated prior to the notification coming into effect. As such the framing of the question of law by Co-ordinate Bench without any reference to the facts of that case cannot assist the case of the Defendant No. 1. That apart, all that the notification does is place restrictions on change of user and does not prohibit termination of tenancy.

16. Having regard to the discussion above, no substantial question of law arises in the present case. Appeal stands dismissed.

17. In view of the dismissal of the Second Appeal, the Civil Application does not survive for consideration and stands dismissed.

[Sharmila U. Deshmukh, J.]

Harish

Signed by: Harish V. Chaudhari

Designation: PA To Honourable Judge

Date: 27/03/2024 11:33:42