IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	15.04.2024
Pronounced on	29.04.2024

CORAM :
THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE
AND
THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

Writ Appeal No.2053 of 2022
and C.M.P.Nos.15481 of 2022 & 3545,3550 of 2023

M/s.Bharat Petroleum Corporation Ltd.,
Rep., by its Senior Manger Legal-South,
1, Ranganathan Garden, 11th Main Road,
Anna Nagar, Post Bag No.1212,
Chennai – 600 040. ... Appellant/1st respondent

Vs.

1.Anita P.C.
2.Vikram Singh Chhabria … Respondents 1 & 2/writ petitioners
3.Hari Singh N.Chhabria
4.Hon'ble Mr.Justice Ramamurthy
(Retd.) Judge Commissioner … Respondents 3 & 4/Respondents 2 & 3

Writ Appeal filed under clause 15 of the Letters Patent against the order of learned Single Judge in W.P.No.22021 of 2014 dated 19.04.2022.

For Appellant : Mr.A.K.Sriram,
Senior Counsel
for Mr.O.S.Karthikeyan

For Respondents 1& 2 : Mr.R.Parthasarathy,
Senior Counsel
for Mr.Rahul Balaji

For Respondent 3 : Mr.R.S.Ranganadhan

J U D G M E N T

(Judgment made by the Hon'ble Mr.Justice J.Sathya Narayana Prasad)

The above writ appeal has been preferred against the impugned order dated 19.04.2022 made in W.P.No.22021 of 2014 directing the Appellant to hand over vacant and peaceful possession of the land to the respondents 1 & 2 or to the third respondent Judge Commissioner appointed by this Court and pay the arrears of market rent from April 2003 till the date of delivery of possession, within a period of three months.

Submission on behalf of the Appellant:

2. Learned senior counsel for the appellant submitted that property admeasuring an extent of 13,503 square feet bearing Municipal No.24, B, Anna Salai, Chennai – 600 015, comprised in S.No.36, Block No.7, Plot No.1, Patta No.16 situated in the Registration Sub District of Saidapet, was leased out to Burmah Shell Oil Storage and Distributing Company of India

Limited by Mrs.Eswari Bhai, for a period of 10 years commencing from 01.01.1955 valid upto 31.12.1964.

3. The aforesaid lease deed was subsequently renewed for a further period of 40 years by a way of registered lease deed bearing number 1339/1965 commencing from 01.01.1965 upto 31.12.2004. It is further submitted that consequent to the death of the landlord, Eswari Bai, the tenancy was attorned in favour of her legal heirs, namely Mr.Hari Singh Chhabria, Mr.Vikram P.Chhabria and Mrs.P.C.Anita. It is also submitted that Mr.Hari Singh N. Chhabria filed C.S.No.1242 of 1992, before the Original Side of the Madras High Court against Mr.Preetam Singh N and the 1st Respondent herein Ms.Anita P.C. for partition of the various properties mentioned in the Schedule to the plaint including the property which was leased out to the Appellant. By order 03.08.2001, made in Appl.No.5142 of 2000 in C.S.No.1242 of 1992, the 3rd Respondent was appointed as a Party Receiver. It is pertinent to mention that Appellant effected timely rentals to the 3d Respondent. Subsequently the Hon'ble Apex Court by order dated 03.03.2003, made in Civil Appeal No.2003 of 2003, appointed Sri

V.Jagadesan, Chartered Accountant as Receiver.

4. The Receiver by his letter dated 15.04.2003, enclosed the copy of the order passed by the Hon'ble Apex Court and informed the Appellant that he has been appointed as the Receiver and returned back the cheques of the Appellant which was given to Party Receiver and requested the Appellant Corporation to re-issue fresh cheques in his name. It is submitted that the Appellant Corporation subsequently sent a letter enclosing a Cheque for a sum of Rs. 19,400/- bearing number No.815653 dated 15.06.2004 being rent from 01.01.2003 to 31.12.2004 to Sri V.Jagadeesan, Receiver. The same was encashed by Sri V.Jagadeesan, Receiver on 19.06.2004, without any protest/demur accepting the rentals for the period from 01.01.2003 to 31.12.2004.

5. Learned senior counsel for the appellant further submitted that in the meanwhile the Appellant Corporation vide letter dated 05.04.2004 invoked Section 5(2) and Section 7(3) of "Burmah Shell (Acquisition of Undertaking in India) Act 2 of 1976, exercising their statutory option to renew the lease for a period of 40 years commencing from 01.01.2005 valid till 31.12.2044. It is

submitted that subsequently the Appellant came to know that Hon'ble Mr.Justice A.Ramamurthy (Retd) had been appointed as a Judge Commissioner by order dated 09.06.2007 in Application Nos. 5142 of 2000 and 2914 of 2004 in C.S.No.1242 of 1992, to enable the parties to divide the Properties on the basis of the final decree dated 22.09.1997 based on the basis of a Memo of Compromise dated 08.08.1997 including the property which has been leased out to the Appellant. Pursuant to the order dated 09.06.2007, Hon'ble Judge Commissioner was making attempts to effect publication in one English daily and one vernacular daily Tamil Nadu edition in the terms of order dated 18.07.2011 in Application Nos. 5142 of 2000 and 2194 of 2004.

6. The Appellant has got a statutory renewed lease in their favour for the period 01.01.2005 till 31.12.2044 in the subject land, the Appellant by letter dated 24.08.2011, intimated the Hon'ble Judge Commissioner of their lease hold rights in respect of item No.2 in 'B' Schedule Property and requested to note in the publications that the sale is subject to the leasehold rights of the Appellant Corporation for a period of 40 years from 01.01.2005 till 31.12.2044. Subsequently, the Writ Petition was filed for a Writ of Mandamus, directing the Appellant to handover peaceful and vacant

possession of the property bearing Municipal No.24 B, Anna Salai, Chennai-600 015, comprised in S.No.36, Block No.7, Plot No.1, Patta No.16, situated in the Registration Sub-District of Saidapet, within a time frame. The learned Judge brushed aside the submissions of the counsel for the Appellant Corporation and allowed the Writ Petition. Aggrieved by the impugned order dated 19.04.2022, the present Writ Appeal is filed by the appellant.

7. Learned senior counsel for the appellant further submitted that the learned Judge was factually wrong in concluding that the Appellant exercised its statutory 1st option for renewal during 1965 overlooking the fact that Burmah Shell Acquisition Act was never in existence in the year 1965 and the Appellant could not have exercised its statutory option for renewal during 1965. Burmah Shell Acquisition Act came into effect only during the year 1976. The Appellant first chose to invoke Section 5(2) and Section 7(3) of the Act vide its letter dated 05.04.2004. This issue is no longer Res-integra in view of the Judgement of the Hon’ble Apex Court in BPCL Vs. P.Kesavan and another reported in 2004 (9) SCC 772.

8. The learned Judge has converted the Writ Court into rent control proceeding by arriving market value of the property and also by fixing fair

rent for the property which was unwarranted in a Writ Jurisdiction. The learned Judge out not to have arrived market value of one ground more than Rs.6,00,00,000/- and the meagre rent for the subject land would fetch a minimum of Rs.20,25,450/- per month when respondents did not seek a prayer/relief, for fixation of market value of the property and fair rent in the Writ Petition. Therefore, these findings and directions are outside the scope of the main Writ Petition.

9. It was factually wrong on the part of the learned Judge to conclude that the Appellant Corporation had licensed the land to its licensee on a higher rent and is making profit by sub-leasing the property. It is further submitted that there is no question of subletting the property and the retail outlet is run by the dealer as a Licensee and no rentals are received by the Appellant Corporation from the dealer. The learned Judge ought not to have relied upon the Judgement in HPCL Vs. Dolly Das and National Company Vs. PBCL of the Hon'ble Apex Court since in both the aforementioned cases the statutory period of lease had expired and an eviction order came to be passed, whereas in the present case the statutory period of lease is in force/valid from 01.01.2005 till 31.12.2044. It is further submitted that the present case is squarely covered by the Judgment of the Hon'ble Apex Court in BPCL Vs.

Kesavan and another wherein, it has been held that renewal of lease in terms of Section 5(2) of the Act takes place by operation of law and the renewal is, therefore, not dependent upon the execution or registration of a fresh deed of lease.

10. Learned senior counsel for the appellant further submitted that the payment of arrears of rentals from April 2003 onwards in as much as rentals for the period from 01.01.2003 to 31.12.2004 was already paid by the appellant vide cheque dated 15.06.2004 bearing No.815653 for a sum of Rs.19,400/- which was enchased by Sri.V.Jagadeesan, Receiver on 19.06.2004, without any protest/demur accepting the rentals for the period from 01.01.2003 to 31.12.2004. Having accepted and encashed the rentals on 19.06.2004 without any protest/demur for the period from 01.01.2003 to 31.12.2004, the respondents are also estopped from alleging delay of 13 months in payment of rentals. It is submitted that the payment of rentals Rs.3,000/- from 01.01.2005 onwards as claimed by the respondents does not arise for two reasons. Firstly, there is no provisions in the deed for payment of rentals at Rs.3,000/- from 01.01.2005 onwards. Secondly, the cheques tendered from 01.01.2005 were returned only on the ground that lease stands

terminated and not on the ground that last paid old rentals of Rs.2,400/- were tendered by the Appellant Corporation. Having returned the cheques, the respondents cannot take advantage of their own wrong and claim default in rentals.

11. Learned senior counsel for the appellant further submitted that the Writ Petition suffers from delay and laches as the first termination notice dated 08.06.2004 was on the ground that lease is not extended. The second termination notice dated 15.06.2005 was on the ground that lease is not extended. The third termination notice was issued on 15.03.2012 was on the ground that there is no subsisting lease. Whereas the writ petition was filed during August, 2014, after a delay of 2 ½ years without giving any explanations for the delay, as such, the writ petition suffers from delay and laches. Therefore, the learned counsel for the appellant prays to set aside the impugned order dated 19.04.2022 made in W.P.No.22021 of 2014 and allow the present writ appeal.

Submission made on behalf of the Respondents 1 & 2:

12. Per contra, learned senior counsel appearing for the respondents 1

& 2 would submit that the appellant is claiming a statutory renewal of the lease deed dated 06.05.1965, for a further period of 40 years commencing from 01.01.2005 and ending with 31.12.2044, by virtue of Section 5 (2) read with Section 7(3) of the Burmah Shell (Acquisition of Undertakings in India) Act, 1976.

13. Learned senior counsel appearing for the respondents 1 & 2 would further submit the respondents' case that such renewal is possible only on the same terms and conditions as contained in the lease deed and since there is a breach/violation of the said terms and conditions by the appellant, the appellant is not entitled to the statutory renewal for the following reasons:-

a. The appellant has committed a default as contemplated under clause 4(i) of the lease deed dated 06.05.1965.

b. Due to an inter se dispute between the owners of the property in a civil suit, the matter reached the Hon'ble Supreme Court and the Hon'ble Supreme Court has appointed a Receiver to take charge of all the properties belonging to the parties, including the property in question in the present proceedings, under an Order dated 03.03.2003. In this order, there is a specific direction that the Receiver will issue notices to the tenants and occupiers of the immovable properties to attorn and pay their rents in arrears and current rents to the said Receiver.

c. Pursuant thereto, the Receiver send a letter to the Appellant on 15.04.2003, asking the Appellant to attorn its tenancy in favour of the Receiver and also specifically demanding that the Appellant pay arrears of the rent, as well as future rent in the name of "V.Jagadisan, Chartered Accountant, Receiver, appointed by Supreme Court of India, Savings Bank Account No. 42810087428, Standard Charted Bank". Along with this demand, the Receiver also enclosed a copy of the order passed by the Hon'ble Supreme Court.

d. This demand of the Receiver was acknowledged by the Appellant under its letter dated 26.05.2003, clearly undertaking to pay arrears of rent and future rents as demanded by the Receiver.

e. However, contrary to this undertaking, the Appellant tendered rent for the period from 1.1.2003 to 31.12.2004, totalling to Rs.19,200/- , for the first time only on 17.05.2004, i.e., after a delay of one year and one month from the date of demand and not within 21 days as stipulated under clause 4(i) of the lease deed. Hence, the consequences specified under clause 4 (i) of the lease deed ought to follow.

f. The next admitted default is in payment of rents from 01.01.2005. It can be seen from a perusal of clause 1 of the lease deed, that the lease starts from 1.1.1965 and the rent per quarter for the 1st 10 years will be Rs.600/- ; for the second term of 10 years will be s.1200/-; for the third term of 10 years will be Rs. 1800/- and for the last term of 10 years ending with 31.12.2004 will be Rs.2,400/- and such rent was to be paid in advance, on or before the 10th day of each quarter.

g. If the Appellant is statutorily entitled to one renewal for 40 yrs from 01.01.2005 on the same terms and conditions as stipulated in the lease deed dated 06.05.1965, the quarterly rent for the period 01.01.2005 will be Rs.3000/- (Rs.2,400 + 600 increase) and cannot go back to Rs.600 per quarter. The Appellant was fully aware of this, but has chosen only to tender Rs.2,400/- per quarter for the period from 01.01.2005, as would be clear from Appellant's letter dated 04.07.2005.

14. In the order dated 19.04.2022 under appeal, the Learned Judge has categorically found that the Appellant herein is in breach of clause 4(i) of the lease deed in as much as rent was paid only after a delay of one year and one month from the date of demand made by the Receiver and hence the lease

deed was rightly terminated by the Receiver and there is no cause to interfere with the said finding of the learned Judge.

15. Learned senior counsel appearing for the respondents 1 & 2 would further submit that where a statute (Section 5(2) read with Section 7(3) of the Burmah-Shell (Acquisition of Undertakings in India), Act, 1976) gives immunity from the rigours of the rent act for a public utility like the Appellant herein (being a Government of India Company) and where a special right or privilege is granted to any such public utility on the presumption that it must act in a certain manner, such bodies must make good such presumptions while acting by virtue of such privilege and judicial review is permissible to see if such bodies are so acting.

16. In the light of the above facts and where no complicated question needing elaborate investigation is required, a writ petition under Article 226 of the Constitution of India is maintainable against a public utility like the Appellant. It is further submitted that the Appellant is an instrumentality of State under Article 12 of the Constitution of India and any action by persons like the Appellant cannot be arbitrary; Public corporations must act in accordance with certain constitutional conscience and whether they have so

acted must be discerned from their conduct; where there is arbitrariness In the action of a public body, Article 14 springs in, as observed in **LIC vs. Escorts 1986 1 SCC 264**; every activity of a public authority like the Appellant, especially when such authority enjoys immunity from the rigours of the rent act, must be informed by reasons and guided by public interest. If a government policy or an action, even in contractual matters fails to a satisfy the test of reasonableness, it would be unconstitutional.

17. Learned senior counsel appearing for the respondents 1 & 2 would further submit that the learned Judge has specifically found that the Appellant has not acted fairly and in a Bonafide manner and these findings cannot be found fault with, in the light of the facts captured above. In so far as payment of compensation after termination is concerned, it is respectfully submitted that where the petroleum corporation (Appellant) is continuing in possession of the premises after valid termination of its Tenancy, it is an action unbecoming of a statutory corporation which is a State within the meaning of Article 12 of the Constitution of India and it will be necessary in the interest of justice to direct the Appellant to pay market rent from 01.01.2005 till date of delivery of possession.

18. Learned senior counsel appearing for the respondents 1 & 2 would further submit that the respondents have filed an Engineer's Report dated 30.09.2022 along with a statement of rent calculations based on the said report and as per the said Engineer's Report, the Engineer has taken the guideline value in the year 2003, 2014 and 2022 (accounting for periodic revision) and on the basis of the same, has arrived at the monthly rent computed from 2003 onwards for the land. The year 2003 has been reckoned for calculating rental arrears, since the Learned Judge has ordered payment of market rent from April, 2003 till the date of delivery of possession. The learned Judge has taken April 2003 as the relevant date, since the demand made by the Receiver to the Appellant for payment of arrears of rent and future rent under Clause 4(1) of the Lease Deed is dated 15.04.2003. Going by these calculations, the total arrears as on 30.04.2021 will be Rs.8,29,98,048/- and the total Arrears as on 31.03.2024 will be Rs.9,28,81,884/-. **It may be pertinent to point out that the Appellant has deposited Rs.2,00,00,0000/- to the credit of the instant appeal under an order dated 19.09.2022 passed by this court and therefore, the balance payable is Rs.7,28,81,884/-.**

19. The learned Judge, relying upon the above judgment of the Hon'ble Supreme Court, has held that the Appellant is duty bound to pay market value of rent to the respondents 1 to 3. This finding was premised on the fact that the Appellant is occupying 13503 Sq.ft. of land in the heart of Chennai for a paltry rent of Rs.2400/- per quarter (Rs.600 per month) and has a duty to act fairly, being a Statutory Corporation. This finding also does not call for any interference.

20. It was sought to be portrayed by the Appellant as though there was termination of tenancy on three dates viz., 08.06.2004, 15.06.2005 and under legal notice dated 15.03.2012. Hence, arrears of rent or damages cannot be sought for the period prior to 15.03.2012.

a. It is submitted that the notice of termination from the receiver is dated 08.06.2004 and there is no other notice of termination. The lease deed admittedly expired on 31.12.2004 and thereafter, the Receiver wrote a letter dated 15.06.2005, wherein the Receiver has only referred to his earlier notice of termination dated 08.06.2004 and demanded compliance with the same. The legal notice dated 15.03.2012 also refers to notice of termination dated

08.06.2004. Hence, it s not a case of three notices of termination as contended by the Appellant but only one notice of termination dated 08.06.2004.

b. Since the demand for the payment of rent was made as early as 15.04.2003 by the Receiver under clause 4(i) of the lease deed and since the said demand was not complied within 21 days thereafter, the appellant is liable to pay arrears of rent/damages from April 2003, till the date of handing over possession.

21. Learned senior counsel appearing for the respondents 1 & 2 has also submitted a Engineers Report dated 30.09.2022. For better appreciation, the same is extracted hereunder:

The guideline values at Anna Salai Chennai – 15 for the above mentioned years are as follows:

i)	Guideline value at Anna Salai, Chennai – 15 in the year 2003	Rs.2,793/ sft
ii)	Guideline value at Anna Salai, Chennai – 15 in the year 2014	Rs.12,000/ sft
iii)	Guideline value at Anna Salai, Chennai – 15 in the year 2022	Rs.8,040/ sft

Discussion:

22. Heard the learned counsel on either side and perused the materials available on record.

23. The main contention of the appellant is in regard to the maintainability of the writ petition. In this regard, the ***Hon'ble Supreme Court of India*** in the case of ***National Company Vs. Territory Manager Bharat Petroleum Corporation Limited and another (2021 SCC online SC 1042)*** has held as under:

> *"26. Perusal of the impugned judgment rendered by the Division Bench would reveal that though an objection with regard to maintainability of the writ petition on the ground of alternate remedy was seriously raised by the respondent No.1 BPCL, the Division Bench was not impressed much with the said submission. As a matter of fact, the Division Bench not only referred to the judgment of this Court in the case of ABL International Ltd. and another Vs. Export Credit Guarantee Corporation of India Ltd., and others but also emboldened the following observations of this Court while reproducing paragraph 19 of the said judgment, which reads thus:*
>
> *19. Therefore, it is clear from the above enunciation of law that merely because one of the parties to the*

litigation raises a dispute in regard to the facts of the case, the Court entertaining such petition under Article 226 of the Constitution is not always bound to relegate the parties to a suit.

27. The Hon'ble Division Bench also referred to the judgment in the case of Dolly Das, wherein it has been held that in similar facts, appellants therein were justified in approaching the writ Court under Article 226 of the Constitution of India and directed the HPCL to handover vacant possession and pay the monthly rent."

24. The said impediment is now no more in existence. The view taken by the Division Bench in the case of R.Ravikiran has been upheld by a Bench of three judges of this Court in the case of R.Chandramouleeswaran.

25. In the above case, initially, the lease deed vide Document No.1327/1955 was executed by Eswari Bai in favour of Burmah Shell Oil Storage and Distributing Company of India Limited giving the property for a period of 10 years with effect from 01.01.1955 on a quarterly rent of Rs.195/- payable on or before 10th day and the said lease agreement got expired on 31.12.1964. The fresh deed of lease vide Document No.1339 of 1965 was executed by Eswari Bai in favour of Burmah Shell Oil Storage and

Distributing Company of India Limited giving the property for a period of 40 years with effect from 01.01.1965 and ending on 31.12.2004. The Burmah Shell (Acquisition of Undertakings in India) Act, 1976 came into force on 24.01.1976 and M/s.Burmah-Shell Oil Storage and Distributing Company of India Limited was taken over by the Government of India. Further, with effect 12.02.1976, the name of the Burmah Shell Refineries Limited was changed to Bharat Refineries Limited and further to Bharat Petroleum Corporation Limited with effect from 01.08.1977.

(i) Under Section 5(1) of this Act, any property held in India by Burmah Shell under any lease or under any right of tenancy will automatically vest with the Central Government.

(ii) Under Section 5(2) of this Act provides with expiry of such a lease or tenancy it shall be renewed on the same terms and conditions on which, the original lease or tenancy held.

26. The appellant sent the quarterly rent for January to March 2003 (for Rs.2,400/-) and quarter for April to June 2003 (for Rs.2,400/-) under two pay orders dated 02.01.2003 and 04.04.2003 respectively to the third respondent herein instead of to the Receiver as appointed by the Hon'ble Supreme Court

of India. On 15.04.2003, a letter was sent by the Receiver to the Appellant, drawing their attention to the order dated 03.03.2003 passed by the Hon'ble Supreme Court appointing him as the Receiver. In this letter, the Receiver returned two pay orders for Rs.2,400/- each, dated 02.01.2003 and 04.04.2003 respectively issued in the name of the second respondent towards rent for the period from 01.01.2003 to 30.06.2003 and requested the Appellant to pay the rent in the name of the Receiver.

27. Extraction of 4(1) of lease deed dated 06.05.1965:

4. Provided always and it is hereby agreed as follows:

> *(i) If the rent hereby reserved or any part thereof shall be unpaid for twenty-one days after becoming payable and being formally demanded by Registered Letter or if any convenant on the lessee's part herein contained shall not be performed or observed it, shall he lawful for the lessor at any time thereafter to re-enter upon the demised premises or any part thereof in the name of the whole and thereupon this demise shall absolutely determine.*

28. The Appellant given a reply dated 26.05.2003 to the Receiver, acknowledging the Receiver's letter dated 15.04.2003 and promising to pay

the rent of Rs.2,400/- per quarter with effect from 01.01.2003 to the Receiver. However, contrary to this undertaking, the Appellant did not choose to remit the quarterly rent with effect from 01.01.2003 to 31.03.2004, in violation of Clause 4(1) of the Lease Deed dated 06.05.1965. Hence, the appellant has defaulted in paying the rentals. The Appellant by letter dated 05.04.2004 to the respondents 1 to 3, drawing their attention to section 5(2) and 7(3) of the Burmah Shell Act and expressing their desire to renew the lease for a further period of 40 years, with effect from 01.01.2005, on the same terms and conditions on which the lease was held by Appellant's predecessor. Since, the Appellant has committed wilful default in payment of rents within the time stipulated in the Lease Deed dated 06.05.1965 and are not entitled to the renewal of the lease deed by virtue of their conduct.

29. The letter dated 20.04.2004 was also sent by the Receiver to the first respondent with a copy marked to the 2nd and 3rd Respondent, putting on record the fact that the Appellant has defaulted in payment of rent from 1.1.2003, in spite of being intimated of the same in April 2003 itself and hence, the Appellant has become a defaulter. A letter dated 17.05.2004 sent by the appellant to the Receiver, enclosing a cheque dated 3.5.2004 for

Rs.19,200/-, representing the lease rental at Rs.2,400/- per quarter, for the period from 01.01.2003 to 31.12.2004 and the Receiver by letter dated 24.05.2004, returned the cheque dated 03.05.2004 on the ground that the same was not enclosed with the Receiver's letter dated 15.04.2003.

30. The letter dated 04.06.2004 was sent by the third respondent to the Receiver, intimating the default committed by the Appellant in terms of clause 4(1) of the lease deed and requesting the Receiver to take action against the Appellant and it is also stated in this letter that the Appellant will not be entitled to seek renewal of the lease since they are defaulters in payment of rent. A letter dated 08.06.2004 was sent by the Receiver to the Appellant, termination the lease in their favour. The Receiver by letter dated 15.06.2004 referring to his letter dated 08.06.2004 and intimating the appellant that since the lease had already been expired on 31.12.2004 and they have no right to continue in occupation of the property and one month time was given to the appellant to handover the vacant possession of the property.

31. The learned Judge also observed that there is a delay of more than 13 months in paying a rental and as per the terms and conditions of the lease, rent shall be paid in advance of the said quarter. Therefore, it is to be noted that there is a violation of the terms and conditions of the lease deed. The appellant has not paid the rent for the period from 01.01.2005 to 31.12.2012. If the Appellant is statutorily entitled to one renewal for 40 yrs from 01.01.2005 on the same terms and conditions as stipulated in the lease deed dated 06.05.1965, the quarterly rent for the period 01.01.2005 will be Rs.3000/- (Rs.2,400 + 600 increase) and cannot go back to Rs.2,400/- per quarter. The Appellant was fully aware of this, but has chosen only to tender Rs.2,400/- per quarter for the period from 01.01.2005, as would be clear from Appellant's letter dated 04.07.2005. A legal notice was sent out for termination on 15.03.2012 and para 7 states ***"No rents have been collected from you for the use and occupation of the subject property since January 2005".*** Despite the above legal notice the appellant has not came forward to pay the rent or vacated the premisses and handed over the possession to respondents 1 & 2.

32. As rightly contended by the learned counsel for the appellant the

Writ Court has exceeded its jurisdiction by going into the market value of the property and the rent to be paid proportionally. Since the respondents did not seek a prayer/relief for fixation of the same and the findings and directions are outside the scope of the main Writ Petition. The market value is to be determined by conducting an enquiry as per law.

33. As observed by the Hon'ble Supreme Court in para 38 of the judgment in NATIONAL COMPANY's case (cited supra) the appellant is continuing with occupation of the said premises without paying any rent. The excuses taken by the appellant is that the cheques sent by them were returned by the Receiver. But though they have taken steps to incorporate their right of renewal of lease by way of three applications before this Court, they have not taken any steps to pay the agreed rent to the property till date. The appellant would be liable to pay market rent after the date of termination of the tenancy. Therefore, as held by the Hon'ble Supreme Court, the appellant shall pay arrears of market rent from January, 2005 till the date of delivery of possession.

Conclusion:

34. In view of the above factual matrix of the case, the order passed by the learned Single Judge holding that "the appellant is not entitled to renewal of lease much less automatic renewal of lease, consequently, directing the appellant to hand over vacant and peaceful possession to the respondents 1 & 2 or to the third respondent Judge Commissioner appointed by this Court as circumstances may warrant .... and pay the arrears of market rent from April 2003 till the date of delivery of possession, within a period of three months thereafter" is hereby confirmed.

35. With regard to the fixation of market rent, the respondents 1 & 2 shall proceed against the appellant in accordance with law before the appropriate forum and such proceedings shall be initiated within a period of two months. The possession shall be handed over within four months from the date of this judgment.

36. The Appellant has deposited a sum of Rs.2,00,00,000/- (Rupees Two Crores only) to the credit of the instant appeal by an order dated 19.09.2022 passed by this Court out of which Rs.1,40,00,000/- (Rupees One

Crore Forty Lakhs only) has been withdrawn by the respondents 1 & 2, which shall be subject to further decision that would be taken in proceedings for fixation of rent and the balance amount of Rs.60,00,000/- (Rupees Sixty Lakhs only) lying to the credit of the appeal is allowed to be withdrawn by the appellant.

37. In the result, this writ appeal stands disposed of with the above directions. No costs. Consequently, connected miscellaneous petitions are also closed.

(S.V.G., CJ) **(J.S.N.P.J.)**

29.04.2024

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Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No

THE HON'BLE CHIEF JUSTICE
AND
J.SATHYA NARAYANA PRASAD,J.

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Pre-delivery judgment in
W.A.No.2053 of 2022

29.04.2024