

Hindustan Petroleum Corporation Ltd. & ... vs Shyam Co Operative Housing Society & Ors on 19 September, 1988

Equivalent citations: 1989 AIR 295, 1988 SCR SUPL. (3) 44, AIR 1989 SUPREME COURT 295, 1988 26 REPORTS 462, 1988 SCFBRC 566, 1989 BOM RC 1, (1988) 3 JT 716 (SC), (1989) MAHLR 324, (1988) 2 RENCRC 346, (1988) 2 RENTLR 678, 1988 (4) SCC 747, (1989) 2 BOM CR 82, 1988 BOM LR 90 477

Author: A.P. Sen

Bench: A.P. Sen, B.C. Ray

PETITIONER:

HINDUSTAN PETROLEUM CORPORATION LTD. & ANR.

Vs.

RESPONDENT:

SHYAM CO OPERATIVE HOUSING SOCIETY & ORS.

DATE OF JUDGMENT 19/09/1988

BENCH:

SEN, A.P. (J)

BENCH:

SEN, A.P. (J)

RAY, B.C. (J)

CITATION:

1989 AIR 295 1988 SCR Supl. (3) 44

1988 SCC (4) 747 JT 1988 (3) 716

1988 SCALE (2) 804

CITATOR INFO :

E&R 1990 SC1563 (16)

ACT:

Constitution of India--Arts. 226/139-A--Sections 15A and 2 Maharashtra Act 17 of 1975--Came into force on March 15, 1974--Subsisting Iicensee on Feb. 1, 1973--Person in occupation acquires status of deemed tenant--Entitled to protection u/s. 15A of the Act.

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Esso (Acquisition of Undertakings in India) Act 1974/Lube India Ltd., Esso Standard Refining Company of India Ltd. Amalgamation order 1974.

Sections 3. 5 and 19--Esso Standard Refining Co.,, taken over by Hindustan Petroleum Corporation Ltd.--Subsisting Licence in existence as on Feb. 1, 1973--Held Hindustan

Petroleum Corpn. Ltd. entitled to statutory protection u/s.
15A of the Bombay Rent Act.

HEADNOTE:

The Esso Eastern Inc., a Company Organised and existing under U. S. Laws was engaged in the business of distributing and marketing petroleum products manufactured by Esso Standard Refining Co. of India Ltd. and Lube India Ltd. and had established places of business in India. In order to provide residential accommodation to its employees the Co. had taken on lease and licence basis, Flat No. 35 in Block No. X in the Housing Colony known as Shyam Niwas situate at Warden Road now called Bhulabhai Desai Road, Bombay, for a period of one year in terms of the agreement in writing dt. 28th Nov., 1968 from one Smt. Nanki M. Malkani, a member of the Co-operative Society. On 4th Dec., 1968 Respondent No. 1 Shyam Cooperative Housing Society Ltd. passed a resolution admitting Petitioner No. 2 T.J. Mansukhani an employee of the Co. as a nominal member of the Society though he was not the licensee. The period of lease was initially renewed at the instance of the licensor for one year. On 29th Nov., 1971, Ms. Malkani wrote a letter to the Company saying that the agreement for lease and licence was due to expire on that date; hence the period of licence be renewed yearly, from time to time for 3 years on the expiry of each term of the licence. On this basis the lease period stood extended till Nov. 30, 1973. In the meanwhile the State of Maharashtra enacted Act 17 of 1973. Since the Esso Standard Inc. was in fact in occupation of the flat in question as on 1st Feb., 1973, it acquired the status of a tenant under

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section 15A of the Act.

On 13th March, 1974, the Esso (Acquisition of Undertakings in India) Act, 1974 came into force and from that date by virtue of subsection (1) of section 5 of the Act, the Central Govt. was deemed to be the tenant of the flat in question.

By a letter of 9th April, 1975, sent by Ms. Malkani Res. 2, to the Petr. she affirmed the terms and conditions of the licence and by her subsequent communications she informed that the Petr. who is successor-in-interest of Esso Eastern Inc. to whom she had given the flat continues in possession on the same terms and conditions of the lease.

On 11th Sept., 1980, the Society passed a resolution calling upon the Petr.--Corporation to vacate the premises and asked Ms. Malkani, Res. 2 for occupying the flat herself. Upon the Petitioner's failure to vacate the premises the Society on September 15, 1986 filed an application under section 91(1) of the Maharashtra Co-operative Society Act 1960 before the 3rd Co-operative Court

Bombay, for eviction of the petitioner and its employee. On January 1981, Petitioner No. 1 permitted its another employee to occupy the flat. The 3rd Cooperative Court after considering evidence led by the parties, dismissed the claim of the Society holding inter alia that Esso Eastern Inc. was in occupation of the flat in dispute under a subsisting licence as on Feb. 1, 1973 and thus got the protection available to a licensee under sec. 15A of the Bombay Rent Act and that the said protection could not be taken away merely by the Society making a claim for eviction u/s 91 [1] of the Act.

The Society being aggrieved appealed to the Maharashtra State- Co-operative Appellate Court. The appellate Court took the view that leave and licence agreement confers only a personal right to occupy; that right cannot be transferred nor inherited by the Hindustan Petroleum Corpn., being successor-in-interest of Esso Eastern Inc. In that view of the matter the appellate Cooperative Court held that the Petitioner Corpn. cannot be said to have taken over the right vt Esso Eastern Inc. to occupy the flat under the leave and licence agreement. Accordingly it allowed the appeal filed by the Society and decreed the claim of the Society and directed the Petr. Hindustan Petroleum Corpn. to vacate the premises in question and further directed Res. 2, Ms. Malkani to herself occupy the flat.

The Petitioner thereupon filed a Writ Petition under Article 226 of the Constitution for quashing the judgment
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and order passed by the Maharashtra State Co-operative Appellate Court. The said Writ Petition was withdrawn to this Court under Article 139A of the Constitution.

In the Writ Petition 3 questions have been raised viz (1) Whether the Hindustan Petroleum Corporation Ltd. being a Successor-in-interest of the Esso Eastern Inc. the licensee, was entitled to the protection of S. 15A of the Bombay Rents, Hotels and Lodging House Rates Control Act, 1947, (Maharashtra Act 17 of 1973) having regard to the fact that Esso Eastern Inc. was in occupation of the flat in dispute under a subsisting licence as existing on 1st February, 1973?

(2) Whether the Maharashtra State Co-operative Appellate Court was justified in holding that the licence being purely personal and upon acquisition of the Esso Eastern Inc. by the Central Government under the Esso (Acquisition of Undertakings in India) Act 1974 the agreement for leave and licence as existing on the appointed day i.e. D 13th March, 1974 under section 2(a) of that Act, stood extinguished and therefrom the right acquired by Esso Eastern Inc. under section 15A of the Bombay Rent Act of being a protected tenant in relation to the flat in question, could not be transferred to, or be vested in the Central Government under section 3 of the Acquisition Act. Further was it also justified in holding that although the Esso Eastern Inc. was

deemed to be a tenant of the disputed flat under section 15A of the Bombay Rent Act, the Central Government could not be deemed to have become the tenant thereof under Sub-s. (1) of S. 5 of the Acquisition Act merely because prior to the enactment of s. 15A of the Bombay Rent Act the premises were held by Esso Eastern Inc. on an agreement of leave and licence? (3) Whether a claim for ejection of an occupant of a flat in a cooperative housing society having been let into possession of the premises under an agreement for leave and licence executed between it and a member of the Society, by virtue of its employer having become a nominee member thereof is a "dispute touching the business of the Society" within the meaning of s. 91(1) of the Act?

Allowing the Petition (which stood transferred from the High Court to this Court) the Court,

HELD: Petitioner No. I--Hindustan Petroleum Corporation Ltd. is clearly protected under section 15A of the Bombay Rents, Hotel and Lodging House Rates Control Act 1947. [47G-1; 48A]

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That Act came into force on March 15, 1974 and in the meanwhile, the licensee Esso Eastern Inc. had already acquired the status of deemed tenant under section 15A of the Bombay Rent Act as admittedly, there was a subsisting licence as on 1st February, 1973. The appellate Court has also failed to appreciate that the name of the Esso Standard Refining Co. of India Ltd. was changed to Esso Eastern Inc. by a certificate of Amendment dated December 22, 1970 vide a Resolution passed by the Board of Directors of the Corporation on 15th December, 1970. [58D-E]

The appellate Court was clearly in error in not appreciating that under s. 3 of the Acquisition Act, the right, title and interest of Esso Eastern Inc. in relation to its undertakings in India, shall stand transferred to, and shall vest in the Central Government as from the appointed day i. e. as from 13th March, 1974. Under Sub-s. (1) of S. 5, thereof, the Central Government became the lessee or tenant, as the case may be. By sub-s. (2) thereof, on the expiry of the term of any lease or tenancy referred to in sub-s. (1) 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 Esso immediately before the appointed day. [158F, 59A]

O.N. Bhatnagar v. Smt. Rukibai Narsingdas & Ors., [1982] 3 S.C.R. 681, referred to.

JUDGMENT:

ORIGINAL JURISDICTION: Transferred Case No.7 of 1987 In Transfer Petition No. 390 of 1986.

Dr. Y.S Chitale, T .U. Mehta and R.P. Kapur for the Petitioners N.N. Keshwani, R.N. Keshwani, Ms. Madhu Moolchandani and K. Rajendra Chodhary for the Respondents. The Judgment of the Court was delivered by SEN, J. The principal question in controversy in this petition under Art. 226 of the Constitution filed by the Hindustan Petroleum Corporation Ltd., a Government of India undertaking, which has been transferred from the High Court of Bombay to this Court under Art. 139A Of the Constitution, is whether the petitioner is entitled to the protection of PG NO 48 s. 15A of the Bombay Rent, Hotel and Lodging House Rates Control Act, 1947, introduced by Maharashtra Act No. 17 of 1973 read with s. 5 of the Esso (Acquisition of Undertakings in India) Act, 1974.

Put very briefly, the essential facts are these. The Esso Eastern Inc., a company organised and existing under the laws of the State of Belaware, U.S.A., was carrying on, in India the business of distributing and marketing petroleum products manufactured by Esso Standard Refining Company of India- Ltd., and Lube India Ltd.. and had, for that purpose, established places of business in India. The company had taken several flats in the Metropolitan City of Greater Bombay and elsewhere for accommodating their employees including Flat No.35 in Block No.8 in the housing colony known as Shyam Niwas situate at Warden Road, now called Bhulabhai Desai Road, Bombay on leave and licence basis for a period of one year in terms of an agreement in writing dated 26th November, 1968 from Smt. Nanki M. Malkani. respondent No. 2 herein. On 4th December. 1968 respondent No 1 Shyam Co-operative Housing Society Ltd. passed a Resolution admitting petitioner No. 2 T.J. Nansukhani, and employee of the company as a nominal member of the society though he was not the licensee The company on 16th January, 1970 exercised the option of renewal of the licence for another year i.e. till 30th November 1970. On 29th November, 1971, respondent No. 2 Smt. Nanki M. Malkani addressed a letter to the company intimating that the agreement for leave and licence was due to expire on that date and accordingly the period of the said licence was renewed, yearly, from time to time to time years on the expiry of each term of licence i.e. on 30th November, 1972 and 30th November, 1972 and 30th November, 1973. In the meanwhile, the State Legislature of Maharashtra enacted Act No. 17 of 1973. The amendment Act also made consequential changes to which we shall presently refer. Undoubtedly, the Esso Standard Inc. was in occupation of the flat in question as on 1st February, 1973 and thus acquired the status of a tenant under s. 15A of the Act.

On 13th March. 1974. the Esso (Acquisition of Undertakings in India) Act, 1974 was brought into force. As from that date. the Central Government by virtue of sub-s. (1) of s. 5 of the Act was deemed to be the tenant of the flat in question. On 9th April. 1975, respondent No. 2 Smt. Nanki M. Malkani sent a communication to the petitioner affirming the terms and conditions of the licence. Again, on 24th March 1975, she addressed a letter confirming that she had given the aforesaid flat to Esso Eastern Inc. in December 1968 on leave and licence basis and the petitioner PG NO 49 being the successor in title of that company had been occupying the flat as licensee on the same terms and conditions. On 11th September, 1980, the society passed a resolution calling upon the petitioner Corporation to vacate the said premises and directing that respondent No. 2 Smt. Nanki M. Malkani should herself occupy the flat. Upon failure of the Corporation to vacate the premises, the society on 15th September, 1980 filed an application under s. 9I(I) of the Maharashtra Co-operative Societies Act, 1960 before the 3rd Co-operative Court, Bombay for eviction of the petitioner and its employee. On 7th January, 1981, petitioner No. I permitted another employee to occupy the flat. The 3rd

Co-operative Court, Bombay after consideration of the evidence adduced by the parties, by its well-reasoned judgment dated 6th June, 1983 dismissed the claims of the society holding inter alia that Esso Eastern Inc. was in occupation of the flat in dispute under a subsisting licence as on 1st February, 1973 and thus got the protection available to a licensee under s. 15A of the Bombay Rent Act and the said protection could not be taken away merely by the society making a claim for eviction under s. 91(I) of the Act. Aggrieved, the society went up in appeal to the Maharashtra State Co-operative Appellate Court which by its judgment dated 17th March, 1984 allowed the appeal and decreed the claim of the society requiring petitioner No. 1 Hindustan Petroleum Corporation Ltd. to vacate Flat No. 35 in Block No. 8 of the society building with a further direction that respondent No. 2 Smt. Nanki M. Malkani should occupy the flat in question herself. I hereupon, the petitioner moved the High Court under Art. 226 of the Constitution for an appropriate writ, direction or order for quashing the impugned judgment and order passed by the Maharashtra State Co-operative Appellate Court. This petition mainly raises three questions. They are [1] Whether the Hindustan Petroleum Corporation Limited being a successor-in-interest of the Esso Eastern Inc. the licensee, was entitled to the protection of s. 15A of the Bombay Rents Hotel and Lodging House Rates Control Act, 1947, introduced by the Maharashtra Act No. 17 of 1973, having regard to the fact that the Esso Eastern Inc. was in occupation of the flat in dispute under a subsisting licence as existing on 1st February 1973 (2) Whether the Maharashtra State operative Appellate Court was justified in holding that a licence being purely personal. upon acquisition of the Esso Eastern Inc. by the Central Government under the Esso (Acquisition of Undertakings in India) Act, 1974, the agreement for leave and licence as existing on the appointed day i.e. 13th March, 1974 under s. 2 (a) of that Act, stood extinguished and therefore the right acquired by Esso PG NO 50 Eastern Inc. under s. 15A of the Bombay Rent Act of being a protected tenant in relation to the flat in question, could not stand transferred to, or be vested in, the Central Government under s. 3 of the Acquisition Act. Was it also justified in holding that although the Esso Eastern Inc. was deemed to be a tenant of the disputed flat under s. 15A of the Bombay Rent Act, the Central Government could not be deemed to have become the tenant thereof under sub-s. (I) of s. 5 of the Acquisition Act merely because prior to the enactment of s. 15A of the Bombay Rent Act the premises were held by Esso Eastern Inc. on an agreement for leave and licence? (3) Whether a claim for ejectment of an occupant of a flat in a cooperative housing society having been let into possession of the premises under an agreement for leave and licence executed between it and a member of the society, by virtue of its employee having become a nominal member thereof, is a 'dispute touching the business of the society' within the meaning of s. 9 (1) of the Act. In the view that we take on the first two questions, there is no need to answer the third which is already covered by the decision of this Court in *O N. Bhatnagar v. Smt. Rukibai Narsindas & Ors.* [1982] 3 SCR 681.

The statutory provisions bearing on these questions are set out below. The relevant provision in sub-s. [I] of s. 91 of the Act, prior to its amendment, provided:

"91 (1) Notwithstanding anything contained in any other law for the time being in force, any dispute touching the parties to the disputeto the Registrar if both the parties thereto are one or other of the following:

(a) a society

(b) a member, past member or a person claiming through a member

The definition of the term 'landlord' as contained in s. 5(3) of the Bombay Rent Act was amended to include in respect of a licensee deemed to be tenant by s. 15A, the licensor who has given such licence'. The expression licensee' as defined in sub-s. (4A) thereof introduced by the Amending Act, insofar as material, reads as follows:

"(4A) 'licensee', in respect of any premises or any part thereof, means the person who is in occupation of the pre-

PG NO 51 mises or such part, as the case may be, under a subsisting agreement for licence given for a licence fee or charge' and includes any person in such occupation of any premises or part thereof in a building vesting in or leased to a cooperative housing society registered or deemed to be registered under the Maharashtra Cooperative Societies Act, 1960; but does not include a paying guest, a member of a family residing together, a person in the service or employment of the licensor etc;and the expressions "licence", "licensor" and "premises given on licence' shall be construed accordingly."

Sub-s. (1) of s. 15A of the Bombay Rent, as introduced by the Maharashtra Act No. 17 of 1973 provides:

'15A(1). Notwithstanding anything contained elsewhere in this Act or anything contrary in any other law for the time being in force, or in any contract, where any person is on February 1. 1973 in occupation of any premises, or any part thereof which is not less than a room, as a licensee he shall on that date be deemed to have become, for the purposes of this Act, the tenant of the landlord, in respect of the premises or part thereof, in his occupation." Sec. 28(1) of the Act insofar as material reads.

"28 (1). Notwithstanding anything contained in any law and notwithstanding that by reason of the amount of the claim or for any other reason, the suit or proceeding would not, but. for this provision be within its jurisdiction.

(a) in Greater Bombay, the Court of Small Causes Bombay, [aa] [b] shall have jurisdiction to entertain and try any suit or proceeding between a landlord and a tenant relating to the recovery of rent or possession of any premises to which any of the provisions of this Part applyand to decide any application made under this Act and to deal with any claim PG NO 52 or question arising out of this Act or any of its provisions and .. no other court shall have jurisdiction to entertain any such suit, proceeding or application or to deal with such claim or question."

We must then refer to the relevant provisions of the Esso Eastern Inc. The avowed object and purpose of the Esso (Acquisition of Undertakings in India) Act, 1974, as reflected in the long title is to provide for the acquisition and transfer of the right, title and interest of Esso Eastern Inc., the

foreign company, in relation to its undertakings in India with a view to ensuring co-ordinated distribution and utilisation of petroleum products distributed and marketed in India by Esso Eastern Inc. and for matters connected therewith or incidental thereto. The preamble to the Act is in these terms:

"Whereas Esso Eastern Inc. a foreign company, is carrying on, in India, the business of distributing and marketing petroleum products manufactured by Esso Standard Refining Company of India Limited and Lube India Limited, and has, for that purpose, established places of business at Bombay and other places in India;

And whereas it is expedient in the public interest that the undertakings, in India, of Esso Eastern Inc. should be acquired in order to ensure that the ownership and control of the petroleum products distributed and marketed in India by the said company are vested in the State and thereby so distributed as best to subserve the common good;"

Section 3 of the Act provides:

"3. Transfer and vesting in the Central Government of the undertakings of Esso in India--On the appointed day, the right, title and interest of Esso, in relation to its undertakings in India, shall stand transferred to and shall stand in, the Central Government.

The Act received the assent of the President on the 13th March, 1974 and published on that day became the appointed day, as defined in s. 2(a) of the Act. Sub-s. (1) of s. 5 provides:

"5. Central Government to be lessee or tenant under certain circumstances--(1) Where any property is held in India by Esso under any lease or under any right of tenancy PG NO 53 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."

Section 7(1) provides that, notwithstanding anything contained in ss. 3 4 and 6, the Central Government may, if it is satisfied that a Government company is willing to comply, or has complied, with such terms and conditions as that Government may think fit to impose direct, by notification, that the right, title and interest and the liabilities of Esso in relation to any undertaking in India shall, instead of continuing to vest in the Central Government, vest in the Government company either on the date of the notification or on such earlier or later date (not being a date earlier than the appointed day) as may be specified in the notification.

The Act makes provision that if there was any dispute with regard to what is vested in the Central Government, the proper forum was the Central Government for taking a decision. Sec. 19 of the Act reads as under:

"19. Power to remove difficulties--If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, not inconsistent with the provisions of this Act. remove the difficulty; Provided that no such order shall be made after the expiry of a period of two years from the appointed day."

In exercise of the powers conferred by sub-s.(1) of s. 7 of the Act, the Central Government, in the Ministry of Petroleum & Chemicals issued a notification No. GSR 131(F.) dated 14th March 1974. that on being satisfied that Esso Standard Refining Company of India Limited? a Government company, is willing to comply with the terms and India imposed by the Central Government, hereby directs that the right, title and interest and the liabilities of Esso Eastern Inc., in relation to its undertakings in India, shall, instead of continuing to vest in the Central Government. vest, w.e.f. the 15th day of March, 1974, in Esso Standard Refining Company of India Limited. Indubitably. as on the appointed day i.e. 13th March, 1974 PG NO 54 under s. 2(a) of the Acquisition Act, the Esso Eastern Inc. had acquired the status of a protected tenant under s. 15A of the Bombay Rent Act and the tenancy rights so acquired in relation to the flat in question stood transferred to, and became vested in, the Central Government. By virtue of the aforesaid notification issued under s. 7(1) of the Act, the rights of tenancy in the 13 flat in question instead of continuing to vest in the Central Government became vested in Esso Standard Refining Company of India Limited, a Government of India undertaking, w.e.f. 15th March, 1974. It is also necessary to mention that the Central Government held, in the name of the President, 74% of the equity share capital of the Esso Standard Refining Company of India Limited, which therefore became a Government company as defined by s. 617 of the Companies Act, 1956. On 12th July, 1974 the Company Law Board, in exercise of the powers conferred by sub-ss. (1) and (2) of s. 396 of the Companies Act, 1956, read with the notification of the Government of India in the Department of Company Affairs No. GSR 443(E) dated 18th October, 1972, made Lube India Limited a Esso Standard Refining company of India Limited (Amalgamation) Order, 1974. Cl. (3) of the said Order provided that as from the appointed day, the undertaking of Lube India Limited shall stand transferred to, and vest in, Esso Standard Refining Company of India Limited. As a result of the amalgamation of the two companies, the name of Esso Standard Refining Company of India Limited was changed to Hindustan Petroleum Corporation Limited. It is therefore evident that petition No. 1 Hindustan Petroleum Corporation Limited, a Government of India undertaking, is a successor- in-interest of Esso Eastern Inc. which acquired the status of a deemed tenant under s. 15A of the Bombay Rent Act, which right devolved on the Central Government under s. 6(1) of the Acquisition Act.

Upon these facts and the statutory provisions, the 3rd Cooperative Court rightly concluded as under:

"Thus, it is clear that there was a subsisting licence in favour of opponent No. 3 as on 1.2.73. The definition 'Licensee' as given in Section 5(4A) of the Rent Act includes inter alia a person in occupation of premises of a co-operative housing society.

PG NO 55 My findings on this issue are that the opponent No. 3 has a right to the premises against opponent No. 1 as protected tenant under Section 15A of the Rent Act."

In dealing with the question, it observed:

"The Supreme Court has clearly observed that the protection given to a licensee under a valid licence as on 1.2.73 under Act 17 of the amended Rent Act is available to a licensee of any premises or any part thereof in a building vesting in or leased to a co-operative housing society. This protection given to a licensee in the position mentioned above cannot be taken away merely by the society filing the case against the member and occupant for reliefs to the opponent member. The provisions of the two legislations are to be harmoniously interpreted and such harmonious interpretation is possible. In case the occupant of a premises gets protection under s. 15A of the Rent Act against the member, the society can implement the provisions of s. 2(16) of the Maharashtra Co-operative Societies Act, 1960 by determining the rights of the member and admitting a new member for the premises. Hence, my finding on the second part of the issue are that the rights of opponent No. 3 cannot be determined without determining the rights of opponent No. 1 i.e. Nanki M. Malkani, a co-partner member in the suit premises."

In view of these findings, the 3rd Co-operative Court held in favour of the petitioner corporation and dismissed the claim for eviction filed by the society under s. 9(1) of the Act.

Curiously enough, while allowing the appeal, the State Appellate Court has observed as follows:

"One thing is clear that Hindustan Petroleum took over the rights and liabilities of Esso Standard Eastern Co. We would like to point out that leave and licence agreement confers only a personal right to occupy ...that right cannot be transferred nor it can be inherited by Hindustan Petroleum Corporation by virtue of the merger of Esso Company with Hindustan Petroleum Corporation. Under these circumstances it has to be noted that as soon as the Esso PG NO 56 Standard Eastern Co. was taken over by Hindustan Petroleum Corporation, the rights under the leave and license agreement came to an end it cannot be said that it (Hindustan Petroleum Corporation) also took over the rights of Esso Standard Eastern Co. to occupy the flat under the leave and licence agreement.

Again it observed:

" At P. 299 of the record there is a letter dated 24.3.80 written by respondent No. 1 to the personal adviser of Hindustan Petroleum Corporation Ltd. In the first para of the said letter it is stated by respondent No. 1 that he has given the suit that to Esso Standard Eastern Inc. in December 1968 on leave and licence basis and that Hindustan Petroleum Corporation is the successor in title of the Esso Company and

that Hindustan Petroleum Corporation is occupying the said flat:

Probably in ignorance of this legal position, the respondent No. 1 wrote the above mentioned letter dated 24. 3.80 to Hindustan Petroleum Corporation Even supposing that respondent No. 1 intended that respondent No. 3 should continue as a licensee after Esso Standard Eastern Co. was taken over by respondent No. 3 it has to be noted that there was no separate leave and licence agreement with Hindustan Petroleum Corporation namely. respondent No. 3. Even assuming for the sake of argument that respondent No. 1 intended that the flat should be occupied on leave and licence basis by respondent No. 3 that leave and licence agreement was terminated by respondent No. 1 by the above mentioned letter."

Further, it observed:

"However there is absolutely no evidence to show the licence was renewed, at any time. The evidence of the witness examined on behalf of respondent No. 2 clearly shows that there was no renewal of the leave and licence agreement respondent No. 3 the leave and licence agreement automatically came to an endunder these circumstances we feel that the rights that were given under PG NO 57 the leave and licence agreement were not available to respondent No. 3"

Dr. Y.S. Chitale, learned counsel appearing for the petitioners rightly contends that the findings reached by the Appellate Court are manifestly erroneous and have caused a grave miscarriage of justice. The finding that there was no subsisting licence existing as on 1st February, 1973 to attract the provisions of s. 15A of the Bombay Rent Act in the case of the petitioner--Corporation is vitiated by its failure to give effect to the admission contained in the letter dated 24th March, 1980 written by respondent No. 2, Smt. Nanki M. Malkani which is to the effect:

"I had given the above flat to the then Esso Standard Inc. in December 1968 on leave and licence basis. You as a successor in title of that company have been occupying the flat as licensee on the same terms and conditions. As you and your predecessors in title are reputed organisation I had given the flat for your officers use in the expectation that you will return the flat. when I require it for my own use."

Besides this letter, the learned counsel for the petitioners drew our attention to a sheaf of letters exchanged between respondent No. 2 Smt. Nanki M. Malkani and the Hindustan Petroleum Corporation Ltd. showing that she accepted that there was subsisting agreement of leave and licence as late as 24th March, 1980 which must be necessary implication, give rise to the inference as to the existence of such a licence between its predecessor Esso Eastern Inc. as on 1st February, 1973 which conferred on it the status of a protected tenant under s. 15A of the Act. Indeed, the correspondence shows that it was at the behest of respondent No. 2 that every time on the expiry of a term of licence it came to be renewed from year to year till s. 15A of the Bombay Rent Act was brought into force. Thereafter, the predecessor-in-interest of the petitioner, corporation was deemed to be her tenant under s. 15A of the Bombay Rent Act. For instance, by letter dated 9th April, 1975 she wrote to the

Hindustan Petroleum Corporation Ltd. that the above flat had been in its possession since December 1, 1968. Again, by letter dated 15th November, 1976, she wrote to the Corporation forwarding the original bill of the society in support of her demand for payment of enhanced taxes and PG NO 58 charges. In view of these admissions made in these letters and more particularly in the letter dated 29th November, 1971 to Esso Eastern Inc. which reads as under:

"As the present agreement of leave and licence in regard to above flat is due to expire on 30th November, 1973 that is two years from hence, you would like me to give you an undertaking of renewal of this agreement to justify the expenditure being incurred by you now,"

the findings of the Appellate Court are clearly erroneous. On the other hand, it stands proved that Esso Eastern Inc. had acquired the status of deemed tenant or protected licensee under s. 15A of the Bombay Rent Act as on 1st February, 1973. The findings of the Appellate Court to the contrary are therefore clearly erroneous. We are unable to sustain the view taken by the Appellate Court in not giving effect to sub-s. [1] of s. 5 which vested the tenancy rights in relation to the flat in question on the Central Government as from appointed day. While it is true that a licence being personal is not capable of being transferred; there was no warrant for the assumption by the Appellate Court that the licence stood extinguished with the acquisition of the right, title and interest of Esso Eastern Inc. under s. 3 of the Acquisition Act. That Act came into force on 15th March, 1974 and in the meanwhile, the licensee Esso Eastern Inc. had already acquired the status of deemed tenant under s. 15A of the Bombay Rent Act admittedly, there was a subsisting licence as on 1st February, 1973. The Appellate Court has also failed to appreciate that the name of Esso Eastern Inc. was changed to Esso Eastern Inc. by a Certificate of Amendment dated/22nd December, 1970 vide a Resolution passed by the Board of Directors of the Corporation on 15th December, 1970. In view of all this, the finding of the Appellate Court that the Hindustan Petroleum Corporation Ltd. was entitled to the protection of s. 15A of the Bombay Rent Act clearly borders on traversity and can hardly be sustained.

The Appellate Court was clearly in error in not appreciating that s. 4. 3 of the Acquisition Act, the right, title and interest of Esso Eastern Inc. in relation to its undertakings in India, shall stand transferred to, and shall vest in, the Central Government as from the appointed day i.e. as from 13th March, 1974. Under sub-s. (1) of s. 5 thereof, the Central Government became the lessee or tenant, as the case may be. By sub-s. (2) thereof, on the expiry of the term of any or tenancy referred to in sub-s. (1), such lease or tenancy shall, if PG NO 59 so desired by the Central Government, be renewed on the same terms and conditions on which the lease or tenancy was held by Esso immediately before the appointed day. By a notification issued on the next date, the right, title and interest of the Central Government became vested in Esso Standard Refining Company of India Ltd., a Government company, w.e.f. 15th March, 1974. Furthermore, by reason of Lube India and Esso Standard Refining Company of India Ltd. Amalgamation Order, 1974 made by the Company Law Board under s. 396 [1] & (2) of the Companies Act, 1956, the undertaking of Lube India Ltd. vested in Esso Standard Refining Company of India Ltd. and immediately upon such transfer, the name of Esso Standard Refining Company of India Ltd., stood changed to Hindustan Petroleum Corporation Ltd. In the premises, petitioner No. 1 Hindustan Petroleum Corporation Ltd. is clearly protected under s. 15A of the Bombay Rents, Hotel and Lodging House Rates Control Act. 1947. In

that view of the matter, we do not think it necessary to deal with the contention as regards the applicability of s. 91 of the Maharashtra Cooperative Societies Act, 1960. All aspects arising out of the submissions as to the jurisdiction of the Registrar under s. 91(1) of the Act have already been considered by this Court on O.N. Bhatnagar's case and we reiterate the principles laid down therein.

In the result, the petition under Art. 226 of the Constitution succeeds and is allowed. The judgment and order passed by the Maharashtra State Co-operative Appellate Court dated June 6, 1983 allowing the claim of respondent No. 1 Shyam Co-operative Housing Society for eviction of the petitioners as also the proceedings initiated by it under s. 91 of the Maharashtra Co-operative Societies Act, 1960 are quashed.

Y. Lal

Petition allowed.