

## **Bharat Petroleum Corporation Ltd. And ... vs N.R. Vairamani And Anr on 1 October, 2004**

**Equivalent citations:** AIR 2004 SUPREME COURT 4778, 2004 AIR SCW 5457, (2004) 8 JT 171 (SC), 2004 (6) SLT 586, 2004 (8) SCC 579, 2004 SCFBRC 454, 2004 (8) JT 171, 2004 (8) SCALE 376, (2004) 24 ALLINDCAS 671 (SC), (2004) 5 CTC 74 (SC), 2004 (10) SRJ 136, (2005) 2 MAD LJ 378, (2005) 3 MAD LW 59, (2005) 2 RENCER 7, (2005) 2 RENTLR 266, (2005) 58 ALL LR 139, (2004) 4 MAD LJ 147, (2005) 1 MAD LW 209, (2004) 2 RENCER 486, (2004) 7 SUPREME 126, (2004) 4 ICC 783, (2004) 8 SCALE 376, (2004) 24 INDLD 287, (2004) 2 RENTLR 641, (2004) 2 WLC(SC)CVL 794, (2005) 2 RENCJ 170, (2005) 2 CTC 413 (MAD)

**Author:** Arijit Pasayat

**Bench:** Arijit Pasayat, C.K. Thakker

CASE NO.:

Appeal (civil) 7467 of 2003

PETITIONER:

Bharat Petroleum Corporation Ltd. and Anr.

RESPONDENT:

N.R. Vairamani and Anr.

DATE OF JUDGMENT: 01/10/2004

BENCH:

ARIJIT PASAYAT & C.K. THAKKER

JUDGMENT:

**J U D G M E N T** (WITH C.A. NO. 4463/2004) ARIJIT PASAYAT, J.

These two appeals are interlinked in the sense that identical issues in law are involved. We shall indicate the factual position in C.A. No.7467 of 2003 as basically the impugned judgment in the said case is the foundation of the judgments impugned in C.A. No.4463 of 2004.

Factual background in C.A. No.7467 of 2003 is as follows:

Undisputedly, respondent No.1 was the landlord and on the basis of a lease agreement, the appellant-Bharat Petroleum Corporation Ltd. (hereinafter referred to as the 'tenant') occupied the premises. The lease was operative from 1.4.1958 to 31.5.1978. A petrol pump was set up in the leased property. It is to be noted that the

lease dated 7.10.1960 was executed between the Erstwhile Burmah Shell Oil Storage and Distributing Co. of India Ltd. (in short 'Burmah Shell') the Predecessor-in-title of the tenant and respondent No.1. In view of the Burmah Shell (Acquisition of Undertakings in India) Act, 1976, the currency of the lease agreement was extended and on expiry of the period a request was made by the tenant for extending the currency of the lease agreement.

According to the landlord a letter of refusal was sent. The landlord filed a writ petition before the Madras High Court taking the stand that since he was not willing for renewal of the lease deed in favour of the tenant, it was liable for eviction. The tenant took the stand that certain benefits under the Tamil Nadu City Tenants' Protection Act, 1921 (in short the 'Tenants Act') were available to it. In any event, without taking recourse to the remedies available under the said Act a writ petition could not have been filed. A learned Single Judge dismissed the writ petition vide order dated 23.8.1999 permitting the landlord to take appropriate proceedings in the proper Court or forum. It was noted that what was impugned was not any order but a letter of the tenant. Though reliance was placed by the landlord on the decision of this court in Hindustan Petroleum Corporation Ltd. and Anr. v. Dolly Das (JT 1999 (3) SC 61), the High Court held that where the landlord had rejected the request for extension, the only remedy available was to take appropriate proceedings to evict the tenant by moving the appropriate Court. It was held that the matter could not have been agitated in the writ petition. The landlord filed a Writ Appeal before the Division Bench of the Madras High Court. By the impugned judgment, the High Court came to hold that since no factual controversy was involved, therefore, in the background of what has been said in Hindustan Petroleum's case (supra) the order of eviction was to be passed and accordingly allowed the writ petition.

Learned counsel for the appellants submitted that the course adopted by the Division Bench is clearly erroneous. Decision in Hindustan Petroleum's case (supra) had no application to the facts of the case. Under the Tenants Act certain benefits are available to the tenants, more particularly, in view of what is said in Sections 3 and 9 of the Tenants Act. The statutory remedies available could not have been permitted by the High Court to be by-passed by filing a writ petition. In any event, in Hindustan Petroleum's case (supra) there was no provision parallel to either Section 3 or 9 of the Tenants Act. The ratio in the said decision has, therefore, no application. It was pointed out that in terms of Section 2(4)(ii) of the Tenants Act the expression 'tenant' includes "any such person as is referred to in sub- clause (i) who continues in possession of the land after the determination of the tenancy agreement." Obviously, that refers to a statutory tenant.

It is to be noted that in the other case i.e. C.A.No.4463/2004, learned Single Judge allowed the prayer of the landlord by following the decision in the case of the other landlord (respondent No.1 in C.A.No.7467/2003). The Division Bench affirmed the view of the learned Single Judge.

According to learned counsel for the landlord in each case there was no factual controversy involved, there was no removal of the lease possible in view of what has been stated in Hindustan Petroleum's case (supra) and, therefore, the High Court was justified in directing eviction.

We find that the High Court in none of the two cases before it considered the effect of various provisions of the Tenants Act, more particularly, Sections 3 and 9 thereof. The provisions read as follows:

"Sec.3-Payment of compensation on ejectment- Every tenant shall on ejectment be entitled to be paid as compensation the value of any building, which may have been erected by him, by any of his predecessors- in-interest, or by any person not in occupation at the time of the ejectment who derived title from either of them and for which compensation has not already been paid. A tenant who is entitled to compensation for the value of any building shall also be paid the value of trees which may have been planted by him on the land and of any improvements which may have been made by him.

9. Application to court for directing the landlord to sell land. - (1)(b)(i) Any tenant who is entitled to compensation under Section 3 and against whom a suit in ejectment has been instituted or proceeding under Section 41 of the Presidency Small Cause Courts Act, 1882, taken by the landlord, may, within one month of the date of the publication of the Madras City Tenants' Protection (Amendment) Act, 1979 in the Tamil Nadu Government Gazette or of the date with effect from which this Act is extended to the municipal town, township or village in which the land is situate or within one month after the service on him of summons, apply to the court for an order that the landlord shall be directed to sell for a price to be fixed by the court, the whole or part of, the extent of land specified in the application.

(ii) Notwithstanding anything contained in clause

(a)(i) of this sub-section, any such tenant as is referred to in sub-clause (ii)(b) of clause (4) of Section 2 or his heirs, may, within a period of two months from the date of the publication of the Madras City Tenants' Protection (Amendment) Act, 1973 apply to the court [whether or not a suit for ejectment has been instituted or proceeding under Section 41 of the Presidency Small Cause Courts Act, 1882 (Central Act 15 of 1882) has been taken by the landlord or whether or not such suit or proceeding is pending] having jurisdiction to entertain a suit for ejectment or in the city of Madras either to such court or to the Presidency Small Cause Court, for an order that the landlord under the tenancy agreement shall be directed to sell for a price to be fixed by the court the whole or part of the extent of land specified in the application.

(b) On such application, the court shall first decide the minimum extent of the land which may be necessary for the convenient enjoyment by the tenant. The court shall then fix the price of the minimum extent of the land decided as aforesaid, or of the extent of the land specified in the application under clause (a) whichever is less. The price aforesaid shall be the average market value of the three years immediately preceding the date of the order. The court shall order that within a period to be

determined by the court, not being less than three months and not more than three years from the date of the order, the tenant shall pay into court or otherwise as directed the price so fixed in one or more instalments with or without interest".

As rightly submitted by learned counsel for the appellants provisions similar to Sections 3 and 9 of the Tenants Act were not under consideration in Hindustan Petroleum's case (supra).

Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In *London Graving Dock Co. Ltd. V. Horton* (1951 AC 737 at p.761), Lord Mac Dermot observed:

"The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge."

In *Home Office v. Dorset Yacht Co.* (1970 (2) All ER 294) Lord Reid said, "Lord Atkin's speech.....is not to be treated as if it was a statute definition it will require qualification in new circumstances." Megarry, J in (1971) 1 WLR 1062 observed: "One must not, of course, construe even a reserved judgment of Russell L.J. as if it were an Act of Parliament." And, in *Herrington v. British Railways Board* (1972 (2) WLR 537) Lord Morris said:

"There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case."

Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

The following words of Lord Denning in the matter of applying precedents have become locus classicus:

"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

\*\*\* \*\* "Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it."

In a writ petition some benefits available to the tenant under the Tenants Act could not have been diluted. There is some dispute about the entitlement of the tenant to get protection under the Tenants Act which can be more effectively decided in case action in terms of what is required under the Tenants Act is taken by the landlord.

Once a suit is filed by the landlord for the eviction of a tenant from land the tenant has right to apply to the court within one month from the date of the service of summons for the issuance of order directing the landlord to sell the whole or part of the extent of land as specified in the application to him for a price to be fixed by the court. On making of such an application the court is under a mandatory duty to first decide the minimum extent of the land "which may be necessary for the convenient enjoyment by the tenant". The court must hold enquiry to determine whether the tenant requires the land for his convenient enjoyment, and if so, what area or portion of the land would be necessary for his convenient enjoyment. The court may on the facts of a particular case come to the conclusion that the tenant does not require any portion of the land and in that event it may reject the application and decree the suit for ejectment and direct the landlord to pay compensation to the tenant. But if the court finds that the tenant needs the whole or any portion of the demised land for "convenient enjoyment", the court has to fix the price of the land on the basis of market value of three years immediately preceding the date of the order. The court may thereupon direct the tenant to deposit the amount so determined within a specific period being less than three months and not more than three years. If the tenant fails to pay the amount so determined, the tenant's application shall stand dismissed. Section 9 confers a privilege on a tenant against whom a suit for eviction has been filed by the landlord but that privilege is not absolute. Section 9 itself imposes restriction on the tenant's right to secure conveyance of only such portion of the holding as would be necessary for his convenient enjoyment. It creates a statutory right to purchase land through the medium of court on the fulfillment of conditions specified in Section 9 of the Tenants Act. It is not an absolute right, as the court has discretion to grant or refuse the relief for the purchase of the land. In *Swami Motor Transport (P) Ltd. v. Sri Sankaraswamigal Mull* (1963 Supp (1) SCR 282) this Court considered the question whether the right of a tenant to apply to a court for an order directing the landlord to sell the land to him for a price to be fixed by it under Section 9 of the Tenants Act is a property right. The court held, that the law of India does not recognize equitable estates, a statutory right to purchase land does not confer any right or interest in the property. The right conferred by Section 9 is a statutory right to purchase land and it does not create any interest or right to the property. The tenant's right to secure only such portion of the holding as may be necessary for his convenient enjoyment is equitable in nature. Under the common law a tenant is liable to eviction and he has no right to purchase the land demised to him at any price as well as under the Transfer of Property Act. The only right of a tenant who may have put up structure on the demised land is to remove the structure at the time of delivery of possession on the determination of the lease. Section 9 confers an additional statutory right to a tenant against whom suit for ejectment is filed to exercise an option to purchase the demised land to that extent only which he may require for convenient enjoyment of the property. The tenant has no vested right in the property instead; it is a privilege granted to him by

the statute which is equitable in nature. Whenever an application is made by a tenant before the court for issuance of direction to the landlord for the sale of the whole or part of the land to him, the court is under a mandatory duty to determine the minimum extent of the land which may be necessary for the convenient enjoyment by the tenant. This determination can obviously be made only after an enquiry is held by the court having regard to the area of the demised land and the extent of superstructure standing thereon, and the tenant's need for the land for the beneficial enjoyment of the superstructure which he may have constructed thereon. The enquiry presupposes that the tenant making the application has been in the occupation of the land and the superstructure wherein he may be either residing or carrying on business, and on his eviction he would be adversely affected. The policy underlying Section 9 of the Tenants Act is directed to safeguard the eviction of those tenants who may have constructed superstructure on the demised land, so that they may continue to occupy the same for the purposes of their residence or business. Section 9(1)(b) ordains the court to first decide the minimum extent of the land which may be necessary for the convenient enjoyment by tenant, it therefore contemplates that the tenant requires the land for the convenient enjoyment of the property. If the tenant does not occupy the land or the superstructure or if he is not residing therein or carrying on any business, the question of convenient enjoyment of the land by him could not arise. The court has to consider the need of the tenant and if it finds that the tenant does not require any part of the land, it may reject the application and direct eviction of the tenant, in that event the landlord has to pay compensation to the tenant for the superstructure.

The above position was highlighted in *P. Ananthakrishnan Nair and Anr. v. Dr. G. Ramakrishnan and Anr.* (1987 (2) SCC 429).

In paragraphs 4 and 8 of *Hindustan Petroleum Corporation v. Raja D.V. Appa Rao Bahadur* (1995 Supp (3) SCC 397) the nature of right on the successor of a tenant has been indicated. The effect of the acquisition on the operation of the Transfer of Property Act, 1882 have been dealt with in detail by a three-Judge Bench of this Court in *Bharat Petroleum Corporation Ltd. v. P. Kesavan and Anr.* (2004 (9) SCC

772). The application and relevance of these decisions shall be considered in case the landlord moves the appropriate Court and initiate proceedings as prescribed under the Tenants Act. The impugned judgment of the Division Bench of the High Court is indefensible and is set aside. It is made clear that what would be the position if the proceeding is taken under the Tenants Act, shall be decided by the appropriate Court.

The foundation of the impugned judgment in this case is the decision of the Division Bench which was assailed in C.A. No.7467 of 2003. The impugned judgment has been set aside and directions have been given as regards proceedings under the Tenants Act. Those shall also be applicable in this case.

The appeals are accordingly allowed. There will be no order as to costs.