

Subhash Chander vs M/S Bharat Petroleum Corporation Ltd ... on 28 January, 2022

Author: Ajay Rastogi

Bench: Abhay S. Oka, Ajay Rastogi

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(s). 7517 OF 2012

SUBHASH CHANDER & ORS.

.....Appellant(s)

VERSUS

M/S BHARAT PETROLEUM
CORPORATION LTD. (BPCL) & ANR.

.....Respondent(s)

JUDGMENT

Rastogi, J.

1. The instant appeal has been preferred by the appellants/plaintiffs assailing the judgment dated 8th July, 2009, upholding the judgment and decree of the Court of appeal dated 28th March, 2006 holding that the Civil Court has no jurisdiction to entertain and try the suit for possession in reference to the Anita Malhotra subject property and the appropriate remedy available with the appellants is to initiate proceedings for eviction of the suit property under the provisions of the Haryana (Control of Rent & Eviction) Act, 1973 (hereinafter called as "Act 1973").
2. The brief facts of the case manifest from the record are that the appellants filed a suit on the averment that their predecessor in interest Sh. Vinod Kumar was owner of the subject plot of land admeasuring 10,000 sq. feet in municipal limits, Kaithal bearing Municipal No.657/10. Undisputedly, the Act 1973 applies to the suit property in question.
3. The subject property was given on lease by late Vinod Kumar to M/s Burmah Shell Oil Storage Distributing Company Ltd. for a fixed period of 20 years at the rate of Rs.35/ per month vide lease dated 4th June, 1958 with effect from 1 st April, 1958. The lease period initially was for 20 years and

clause 10 of the lease contemplated renewal of the lease once for another 20 years. The lease period commenced from 1st April, 1958 for a period of 20 years expired on 1st April, 1978 and in terms of clause 10 of the lease deed, one extension was permissible and that renewal option for another period of 20 years was availed and that lease period also expired on 1st April, 1998.

4. At this stage, the appellants served a legal notice on the respondents dated 30th January, 1998 in which although Section 106 of the Transfer of Property Act, 1882 has not been specifically mentioned, but in pith and substance the notice was served for terminating tenancy of the respondents and later filed a civil suit for possession of the subject land on 7 th August, 1998.

5. The preliminary objection was raised by the respondents regarding jurisdiction of the Civil Court in entertaining the suit and the defence throughout was that the Act 1973 is applicable on the subject property and they can be evicted only under the provisions of the Act 1973. It is not disputed that the subject land admittedly falls within the area administered by Municipal Committee, Kaithal and the rented land is situated within the urban area and covered under the provisions of the Act 1973.

6. That before expiry of the period of lease of 20 years, the Central Government enacted Burmah Shell (Acquisition of Undertakings) Act, 1976 (hereinafter called as "Act 1976"), pursuant to which the leasehold rights were taken over by the respondents/defendants. The option of renewal of lease for another period of 20 years was availed by the respondents in terms of clause 10 of the lease deed dated 4 th June, 1958. The case of the appellants was that after lease expired on 1st April, 1998, the possession of the respondents on the suit property became unauthorised and without consent of the appellants and since the respondents failed to vacate the suit property despite a legal notice dated 30th January, 1998 being served, the appellants since required the suit property for their personal bonafide necessity for expanding their business, although had earlier filed an application under the Act 1973, as alleged on the wrong premise. It was pleaded that at least the provisions of the Act 1973 do not apply to the suit property as it is governed by the special Act enacted by the Central Government being Act 1976. In the alternative, it was pleaded by the appellants that respondent no.1 had sublet the suit property to respondent no.2 without consent of the appellants and hence the appellants are entitled to possession of the suit property and also claimed mesne profits during pendency of the suit at the market rate, in addition to three years rent prior to lapse of the renewal period and prayed for a decree for possession and recovery of mesne profits.

7. The respondents filed written statement and it was admitted that the suit property had been leased out by late Vinod Kumar to M/s Burmah Shell Oil Storage Distributing Company Ltd. and later by the Act 1976, the leasehold rights were transferred to respondent no.1. It was also admitted that they exercised their renewal option in terms of clause 10 of the lease for a period of 20 years. At the same time, it was also averred that on expiry of the lease period, the respondents became the statutory tenant of the suit property and the appellants had been receiving rent from the respondents without any demur and further averred that the Civil Court has no jurisdiction to entertain and try the suit as the same is specifically barred by the provisions of the Act 1973.

8. It was further stated that there was a relationship of landlord and tenant between the parties and the suit land is a rented land as defined under Section 2(h) of the Act 1973 and the disputes between

landlord and tenant are to be adjudicated in accordance with the provisions of the Act 1973 and the respondents being in possession as a statutory tenant of the suit property, cannot be evicted except in accordance with the provisions of Section 13 of the Act 1973 and that apart the appellants had earlier filed a petition for ejectment against the respondents before the Rent Controller on the ground of subletting and personal necessity and that has been dismissed by the Rent Controller by order dated 3rd May, 1986. An appeal against the same also came to be dismissed by the appellate authority by order dated 18th March, 1987.

9. On the basis of the pleadings of the parties, the learned trial Court by a judgment and decree dated 13th March, 2002 held that the respondents are in unauthorised possession over the suit property w.e.f. 1st April, 1998 after notice dated 30th January, 1998 under Section 106 of the Transfer of Property Act, 1882 has been served for vacating the suit property holding the appellants entitled for restoration of possession of the suit land in question.

10. On appeal being preferred by the respondents, the Court of Appeal set aside the judgment and decree of the trial Court dated 13th March, 2002 by the judgment dated 28th March, 2006 and held that the Civil Court has no jurisdiction to entertain and try the suit and the respondents are in possession of the suit property as statutory tenant and can be evicted from the suit property only under the provisions of the Act 1973. The said order came to be challenged by the appellants/plaintiffs in second appeal before the High Court and that came to be dismissed by the impugned judgment dated 8th July, 2009, being the subject matter of challenge in appeal before us.

11. The dispute between the parties pertains to as to whether the jurisdiction of the Civil Court is barred and the petition for possession filed by the appellants/plaintiffs will lie before the Rent Controller under the Act 1973.

12. Counsel for the appellants, Shri Manoj Swarup, Senior Advocate, submits that before the term of initial lease period of 20 years came to be expired on 1st April, 1978, the Central Government came with a special legislation, namely, the Burmah Shell (Acquisition of Undertakings) Act, 1976 and the High Court has failed to consider the effect of Section 11 of the Act 1976 which has an overriding effect and that excludes all other laws inconsistent with the provisions of the Act 1976, including the Act 1973 and further submits that the finding which has been recorded of the respondents being a statutory tenant under the Act 1973 is in contravention of Section 5(2) of the Act 1976 and in the absence of any fresh lease being executed by the parties only one renewal as per the lease deed originally executed dated 4th June, 1958, was permissible in law and that being availed and the term had expired on 1st April, 1998, no further extension was permissible in law and the respondents became trespassers after expiry of the lease period and the only remedy available with the appellants was to file a suit for possession of the suit property and in support of his submissions placed reliance on the judgments of this Court in Depot Superintendent, H.P. Corpn. Ltd. and Another v. Kolhapur Agricultural Market Committee, Kolhapuri, Ram Bharosey Lal Gupta(Dead) by LRs and Others v. Hindustan Petroleum Corporation Limited and Another², Bharat Petroleum Corporation Limited v. Rama Chandrashekhar Vaidya and Another³.

13. Per contra, counsel for the respondents, Shri V. Giri, Senior Advocate, while supporting the findings recorded under the impugned judgment conceded that only one term of extension of lease of 20 years was permissible and that indeed was availed and stood expired on 1st April, 1998, but further submits that the respondents became statutory tenant thereafter under the Act 1973 and they could be evicted only by invoking Section 13 of the Act 1973 which undisputedly is applicable to the subject property and thus in the given circumstances the Civil Court at least has no jurisdiction to try the suit. That being the finding recorded by the first appellate Court and confirmed by the High Court on 1 (2007) 6 SCC 159 2 (2013) 9 SCC 714 3 (2014) 1 SCC 657 dismissal of second appeal preferred at the instance of the appellants under the impugned judgment being supported by the judgment of the Constitution Bench of this Court in V. Dhanapal Chettiar v. Yesodai Ammal⁴ followed in Shyam Lal v. Deepa Dass Chela Ram Chela Garib Dass⁵, what is being urged by learned counsel for the appellants is without substance and the finding with regard to the jurisdiction being supported by the settled principles of law needs no further indulgence of this Court.

14. It may be relevant to note that in the interregnum period, title deed of the subject property in question was mortgaged with the Punjab National Bank creating security interest and after the account of the appellants became NPA, proceedings under the SARFAESI Act, 2002 were initiated against the appellants and public notice (symbolic) was issued by the secured creditor (Punjab National Bank) for securing possession of the subject property on 14th August, 2018. Pursuant thereto, a letter was sent from the office of Bharat Petroleum Corporation Ltd. on 12 th October, 2018 for withdrawal of the possession notice (symbolic) dated 14 th August, 2018 but what steps have been taken inter se is not on record. However, this Court is not concerned with this controversy 4 (1979) 4 SCC 214 5 (2016) 7 SCC 572 in the instant proceedings, but since the documents have been placed on record, the same are being noticed only for completion of the facts.

15. We have heard learned counsel for the parties and with their assistance perused the material available on record.

16. It is not disputed that the appellants are the owners of the suit property which is a plot admeasuring 10,000 square feet situated within the municipal limits of Kaithal. Their predecessor in interest, late Vinod Kumar son of Tilaj Raj had leased out the subject plot to M/s Burmah Shell Oil Storage Distributing Company Ltd. for a period of 20 years pursuant to lease deed dated 4th June, 1958 and before the expiry of the lease period, the Central Government came out with a legislation, namely, Burmah Shell (Acquisition of Undertakings) Act, 1976 and took over the rights of the lessee and transferred the same to M/s Bharat Petroleum Corporation Ltd. in exercise of its power under Section 5(2) read with Section 7(3) of the Act 1976.

17. It is also not disputed that the subject land is situated within the municipal limits of Kaithal and is governed by the Act 1973 and the term “tenant” defined under Section 2(h) includes “rented land” in question. At the same time, in terms of Section 3 of the Act 1976, on the appointed day the right, title and interest of Burmah Shell in relation to its undertaking in India stood transferred and vested in the Central Government and by a legal fiction the Central Government stepped into the shoes of Burmah Shell and became the lessee in the lease deed dated 4 nd June, 1958 and in terms of Section 5(2) read with Section 7(3) of the Act 1976, the statutory rights stood conferred on the respondents

in terms of clause 10 of lease deed/agreement for another term of 20 years on the same terms and conditions as were operating and/or existing on the date of enactment of the said Act 1976. As such, upon vesting by virtue of the provisions of the Act 1976, the respondents became the lessee in respect of the subject land in terms of the provisions of the Act which has an overriding effect by virtue of Section 11 of the Act 1976.

18. Sections 3, 5, 7 and 11 of the Act 1976, relevant for the purpose, are reproduced hereunder:

“3. Transfer and vesting in the Central Government of the undertakings of Burmah Shell in India. □On the appointed day, the right, title and interest of Burmah Shell, in relation to its undertakings in India, shall stand transferred to, and shall vest in, the Central Government.

5. Central Government to be lessor or tenant under certain circumstances. □(1) Where any property is held in India by Burmah Shell under any lease or under any right of tenancy, the Central Government shall, on and from the appointed day, be deemed to have become the lessee or tenant, as the case may be, in respect of such property as if the lease or tenancy in relation to such property had been granted to the Central Government, and thereupon all the rights under such lease or tenancy shall be deemed to have been transferred to, and vested in, the Central Government.

(2) On the expiry of the term of any lease or tenancy referred to in sub□section (1), such lease or tenancy shall, if so desired by the Central Government, be renewed on the same terms and conditions on which the lease or tenancy was held by Burmah Shell immediately before the appointed day.

7. Power of Central Government to direct vesting of the undertakings of the Burmah Shell in a Government company. □(1) Notwithstanding anything contained in sections 3, 4 and 5, 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 Burmah Shell in relation to any of its undertakings 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. (2) Where the right, title and interest and the liabilities of Burmah Shell in relation to its undertakings in India vest in a Government company under sub□section (1), the Government company shall, on and from the date of such vesting, be deemed to have become the owner, tenant or lessee, as the case may be, in relation to such undertakings, and all the rights and liabilities of the Central Government in relation to such undertakings shall, on and from the date of such vesting, be deemed to have become the rights and liabilities, respectively, of the Government company. (3) The provisions of sub□section (2) of section 5 shall apply to a lease or tenancy, which vests in a Government company, as they apply to a lease or tenancy vested in the Central Government, and reference therein to the "Central Government" shall be construed as a reference to the Government company.

11. Effect of Act on other laws. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act or in any decree or order of any court, tribunal or other authority.” [Emphasis Supplied]

19. By virtue of the statutory enactment of Act 1976, the pre-existing tenancy rights held by Burmah Shell with the appellants stood transferred and vested with the Central Government and thereafter by operation of Section 7, the said rights in turn stood transposed and vested in the Government Company (Bharat Petroleum Corporation Ltd.) as the Government Company statutorily became the tenant of the appellants/plaintiffs. The Constitution Bench of this Court in V. Dhanapal Chettiar (*supra*) had an occasion to examine the controversy as to whether in order to get a decree/order of eviction against the tenant in the State Rent Control Act, it is necessary to give a notice under Section 106 of the Transfer of Property Act, 1882 and taking note of various State enactments of the Act 1973, L.N. Untwalia, J., speaking for the Bench, observed in para 18 as under:

“Lastly our attention was drawn to the decision of this Court in Firm Sardarilal Vishwanath v. Pritam Singh [(1978) 4 SCC 1]. The lease in that case had come to an end by efflux of time. A tenant continued in possession and became a so-called statutory tenant. The argument put forward before this Court that a fresh notice under Section 106 of the Transfer of Property Act was necessary was rejected on the ground: (SCC p. 10, para 18) “Having examined the matter on authority and precedent it must be frankly confessed that no other conclusion is possible on the first principle. Lease of urban immovable property represents a contract between the lessor and the lessee. If the contract is to be put to an end it has to be terminated by a notice to quit as envisaged under Section 106 of the Transfer of Property Act. But it is equally clear as provided by Section 111 of the Transfer of Property Act that the lease of immovable property determines by various modes therein prescribed. Now, if the lease of immovable property determines in any one of the modes prescribed under Section 111, the contract of lease comes to an end, and the landlord can exercise his right of re-entry. The right of re-entry is further restricted and fettered by the provisions of the Rent Restriction Act. Nonetheless the contract of lease had expired and the tenant lessee continues in possession under the protective wing of the Rent Restriction Act until the lessee loses protection. But there is no question of terminating the contract because the contract comes to an end once the lease determines in any one of the modes prescribed under Section 111. There is, therefore, no question of giving a notice to quit to such a lessee who continued in possession after the determination of the lease i.e. after the contract came to an end under the protection of the Rent Restriction Act. If the contract once came to an end there was no question of terminating the contract over again by a fresh notice.” If we were to agree with the view that determination of lease in accordance with the Transfer of Property Act is a condition precedent to the starting of a proceeding under the State Rent Act for eviction of the tenant, we could have said so with respect that the view expressed in the above passage is quite correct because there was no question of determination of the lease again once it was determined by efflux of time. But on the

first assumption we have taken a different view of the matter and have come to the conclusion that determination of a lease in accordance with the Transfer of Property Act is unnecessary and a mere surplusage because the landlord cannot get eviction of the tenant even after such determination. The tenant continues to be so even thereafter. That being so, making out a case under the Rent Act for eviction of the tenant by itself is sufficient and it is not obligatory to found the proceeding on the basis of the determination of the lease by issue of notice in accordance with Section 106 of the Transfer of Property Act.” [Emphasis Supplied]

20. It has been held that even if the lease period is determined by forfeiture under the Transfer of Property Act, 1882, still the tenant continues to be a tenant that is to say that there is no forfeiture in the eyes of law and the tenant becomes liable to be evicted and the forfeiture comes into play only if he has incurred a liability to be evicted under the State Rent Act and not otherwise and further held that even after the expiry of the period of contractual tenancy, the tenant can be evicted only in terms of provisions of the State Rent Act which is applicable in reference the subject property in question.

21. A perusal of the scheme of the Act 1976 would show that from the appointed day, right, title and interest of Burmah Shell with effect to Section 5(1) stood transferred and vested with the Central Government and by virtue of Section 7(2), the vesting of tenancy rights with the Central Government stood further transposed and vested in Bharat Petroleum Corporation Ltd. and that became a statutory tenant by virtue of Section 7(3) of the Act. To that extent, Section 11 of the Act has an overriding effect to the provisions of other laws. That being so, the jurisdiction indeed of a civil Court is impliedly barred from the field covered specifically by the provisions of the Act 1973 and that being the complete code determining the rights of a tenant/landlord to the exclusion of the other laws, we find no error in the view expressed by the High Court in the impugned judgment holding that the jurisdiction of the Civil Court is held to be barred and remedial mechanism for ejection could be possible only under the provisions of the Act 1973.

22. The judgments on which the counsel for the appellants has placed reliance are of no assistance. In Depot Superintendent, H.P. Corp. Ltd. and Another(supra), the question arose for consideration as to whether the company was entitled for second renewal invoking the provisions of the Act 1976. It was declined by this Court holding that there is no option for further renewal which can be claimed independently under the Act 1976.

23. In Ram Bharosey Lal Gupta(Dead) by LRs and Others(supra), the substantial question of law was as to whether under clause 3(d) of the lease deed executed between the parties, (the lessor) was under a legal obligation to renew the lease term for a further period of 20 years and it was not the case where the lease has been determined or the renewal of lease term has either been availed or expired. In the given situation, certain observations have been made by this Court in para 28 of the judgment that may not be of any assistance in the given facts and circumstances.

24. The counsel further placed reliance on Bharat Petroleum Corporation Limited (supra). The question under consideration was as to whether if one term of lease has been extended under the

lease deed, whether automatic renewal of lease is permissible by virtue of Section 5(2) of the Act 1976 and it has been held by this Court that only one extension was permissible in terms of the conditions of lease deed and Section 5(2) of the Act 1976 will not be available for a further renewal.

25. In the given circumstances, we are of the considered view that no error was committed by the High Court in arriving to a conclusion that even after the expiry of the lease term of the lease deed, the respondents became a statutory tenant and jurisdiction of the Civil Court is impliedly barred and could be evicted only under the provisions of the Act 1973.

26. The appeal is devoid of merit and accordingly dismissed.

27. Pending application(s), if any, shall also stand disposed of.

.....J. (AJAY RASTOGI)J. (ABHAY S. OKA) NEW DELHI
January 28, 2022.