

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 25.8.2005.

CORAM

THE HON'BLE MR.JUSTICE AR.RAMALINGAM

C.R.P. (NPD) No.1815 of 2002
and
C.M.P.No.18952 of 2002

M/s.Bharat Petroleum
Corporation Ltd.,
a Govt. of India Enterprise,
Chennai 600 006.

Petitioner

vs.

1. Mrs.M.Nirmala
2. Mr.M.Naveen Kumar

Respondents

Civil Revision Petition against the decretal order dated 12.12.2001 in C.M.A.No.131 of 2001 on the file of the I Additional Judge, City Civil Court, Chennai preferred against the judgment and decree dated 14.8.2000 in I.A.No.6547 of 1996 in O.S.No.8922 of 1995 on the file of the XI Assistant Judge, City Civil Court, Chennai.

For petitioner : Mr.Krishna Srinivasan for
M/s.S.Ramasubramaniam & Associates

For respondents: Mr.R.Alagar, Senior Advocate for
Mr.K.V.Ananathakrishnan for R1 & R2

सत्यमेव जयते
ORDER

Aggrieved against the order passed by the I Additional Judge, City Civil Court, Chennai in C.M.A.No.131 of 2001 preferred against the order passed by the XI Assistant Judge, City Civil court, Chennai in I.A.No.6547 of 1996 in O.S.No.8922 of 1995 to the effect that the revision petitioner viz., M/s.Bharat Petroleum Corporation Limited cannot be a tenant without express or implied continuance of tenancy arrangement with the respondents viz., Nirmala and Naveen Kumar and their predecessors in title and that if at all the revision petitioner can be construed as trespasser and consequently, liable to be evicted and there is no question of benefits under section 9 of

the Tamil Nadu City Tenants Protection Act and thereby the order passed by the XI Assistant Judge, City Civil court, Chennai in I.A.No.6547 of 1996 in O.S.No.8922 of 1995 has been set aside, the present revision has been filed.

2. Learned counsel appearing for the revision petitioner, after taking me through the relevant material records, submitted that the I Additional Judge has been carried away by the rulings reported in VAIRAMANI,N.R. v. UNION OF INDIA (2001(1) CTC 1) and MOHAMED THAJF,G. v. BHARATH PETROLEUM CORPORATION LTD. (2001(1) CTC 10) in and by which, it has been held that on the strength of sections 5 and 7 of the Burmah Shell (Acquisition of Undertaking in India) Act, 1976, renewal of lease can be claimed only once and it cannot be for second term and that when there is termination of lease by efflux of time, mere payment of rent by the tenant and receipt of the same by the landlord subsequently cannot create fresh tenancy or the status of the rent payer as tenant and consequently allowed the C.M.A and set aside the order of the XI Assistant Judge, City Civil Court. He further submitted that the very same above said rulings, particularly, the ruling reported in 2001(1) CTC 1 (in Writ Appeal No.2302 of 1999 rendered by a Division Bench of this Court), has been set aside by a Division Bench of the Honourable Supreme Court in the ruling reported in BHARAT PETROLEUM CORPORATION LIMITED AND ANOTHER v. N.R. VAIRAMANI AND ANOTHER (2004(8) SCC 579) indicating therewith that the dispute upon the question of availability of benefits under section 9 of the Tamil Nadu City Tenants Protection Act cannot be gone in a writ petition and those matters have to be decided by the appropriate forum viz., Civil Court after due enquiry. He further submitted that on this score itself, the order of the I Additional Judge, City Civil Court in the C.M.A has to be set aside and the revision has to be allowed. Further, he relied upon the ruling of the Honourable Supreme court reported in BHARAT PETROLEUM CORPORATION LIMITED v. P.KESAVAN AND ANOTHER (2004(2) CTC 736) and submitted that as per the Burmah Shell (Acquisition of Undertaking in India) Act, 1976, the revision petitioner viz., Bharat Petroleum Corporation Limited can become the statutory tenant of the premises in question and there is no need for formal document for renewal of lease and the provisions of Transfer of Property Act has no application for transfer of property by virtue of operation of law under the said Act and thereby it is not open for the respondents/landlords to deny the status of Bharat petroleum Corporation Limited as a statutory tenant of the premises in question and consequent right to claim the benefits of the Tamil Nadu City Tenants Protection Act and thereby the revision petitioner is entitled to get the benefits under section 9 of the Tamil Nadu City Tenants Protection Act and consequently, the order passed by the I Additional Judge, City Civil Court, Chennai

deserves to be set aside and this revision has to be allowed.

3. On the other hand, the learned counsel appearing for the respondents submitted that the rulings relied on the side of the revision petitioner viz., 2004(8) SCC 579 and 2004(2) CTC 736 have mainly dealt with the question of maintainability of the revision petition with reference to the availability of benefits under section 9 of the Tamil Nadu City Tenants Protection Act and by operation of law also the revision petitioner can acquire the status of a statutory tenant and there is no need for formal renewal of lease deed and Transfer of Property Act has no application when there is Special Act which would prevail upon the general Act. He further submitted that the facts and circumstances of the case on hand have to be analysed and appreciated depending upon the rival contentions to find out whether the revision petitioner viz., Bharat petroleum Corporation Limited can be a tenant within the meaning of Tamil Nadu City Tenants Protection Act and thereby claim the benefits under section 9 of the said Act or not.

4. In this regard, the learned counsel appearing for the respondents/landlords pointed out that as per section 5 of the Burmah Shell (Acquisition of Undertaking in India) Act, 1976, no doubt, the leasehold right of the said Company vests with the Central Government with effect from 24.1.1976 and that as per section 7 of the said Act, there is power for the Central Government to transfer the acquired company and its rights to any Government Company and thereby in that way, the revision petitioner viz., Bharat Petroleum Corporation Limited has come into picture through the Central Government and change of name has come into force with effect from 1.8.1977. He also pointed out that at no point of time, the lessor viz., the landlords conceded for renewal of lease and instead the request for renewal made by the revision petitioner has been refused by the landlords.

5. Moreover, the counsel for the landlords, with emphasis, pointed out that the revision petitioner cannot claim the benefits under section 9 or 12 of the Tamil Nadu City Tenants Protection Act for the reasons that the original lease itself is only from 1959 and the present revision petitioner is not in actual and physical possession of the premises on the date of filing of the petition under section 9 of the Tamil Nadu City Tenants Protection Act and after amendment of the Tamil Nadu City Tenants Protection Act, there is no question of availability of benefits under section 12 also inasmuch as the lease itself has come into existence long after the qualifying date viz., 12.9.1955 and that therefore, there is no ground for claiming the benefits under section 9 of the Tamil Nadu City Tenants

Protection Act as indicated in the ruling reported in S.R.RADHAKRISHNAN v. NEELAMEGAM (2003(3) CTC SC 488 = 2003(4) LW 426) wherein the Honourable Supreme Court has stipulated important condition viz., the tenant claiming benefits under section 9 of the Tamil Nadu City Tenants Protection Act should be in actual physical possession and mere legal or constructive possession is not enough. It is more so because the right under section 9 of the Tamil Nadu City Tenants Protection Act is in the form of protection and privilege for the tenant and such right is not an absolute one and it is subject to certain conditions only. In other words, the requirement of the tenant for convenient enjoyment and the extent of land necessary for that purpose, etc. are playing main role of importance for granting the discretionary relief by the court under section 9 of the Tamil Nadu city Tenants Protection Act. He further pointed out that in the case on hand, the revision petitioner viz., Bharat Petroleum Corporation Limited has not only specifically averred in its reply notice dated 24.11.1995 to the effect that

"our business is run by our dealers on our behalf under a licence ... surrendering the site would not only cause undue hardship to the consumers but also cause irreparable loss to the dealers and their workmen for want of employment",

but also averred in the written statement filed in O.S.No.8922 of 1995 as

"if the defendant is evicted from the suit property it would not only cause undue hardship to the consumers but also cause irreparable loss to the dealers and their workmen for want of employment".

6. These specific averments thus go to indicate that the revision petitioner, as such, is not in physical, personal and immediate possession of the premises within the meaning of Tamil Nadu City Tenants Protection Act and instead the actual possession of the premises is admitted to be with the dealers of the revision petitioner and such actual possession of the dealer either as a licensee or otherwise, cannot be construed as physical and immediate possession of the revision petitioner itself. It is more so when there is no bar for the revision petitioner viz., Bharat Petroleum Corporation Limited to possess the premises by itself and have direct transaction of business by its own employees without seeking or invoking dealership to third parties. The definition of "Tenant" in the Tamil Nadu City Tenants Protection Act does not include the "sub-tenant" or his heirs. It is further to be pointed out that Central Government

and Bharat Petroleum Corporation Limited controlled by Central Government are different entities. Therefore, as rightly pointed out with emphasis by the counsel for the respondents/landlords, I am also of the considered view that the main and important aspect of physical possession is lacking and consequently, the revision petitioner, as such, cannot claim the right of benefits under section 9 of the Tamil Nadu City Tenants Protection Act.

7. No doubt, the order passed by the I Additional Judge in the C.M.A is based upon the rulings of this Court, but, those rulings have been reversed by the Honourable Supreme Court, as observed supra. Yet the facts and circumstances of this case remain to show that the revision petitioner has no right to claim the benefits under section 9 of the Tamil Nadu City Tenants Protection Act even though the revision petitioner has got statutory right to claim the status of a tenant and that it does not mean that he continues to be the tenant within the meaning of Tamil Nadu City Tenants Protection Act and thereby claim the benefits under section 9 of the Tamil Nadu City Tenants Protection Act.

8. Accordingly, in all, I am satisfied that this revision has no merits and the same is dismissed. No costs. The connected C.M.P. is also dismissed.

ssk.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The I Additional Judge,
City Civil Court,
Chennai.

2. The Record Keeper,
V.R.Section,
High Court, Chennai.

+ 1 cc to Mr.K.V.Anantha Krishnan, Advocate SR no.38791
+ 1 cc to M/s.S.Ramasubramaniam & Associates, Advocates SR No.36004

GG(CO)
SR/8.9.2005

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