

CASE NO.:
Appeal (civil) 2202 of 2007

PETITIONER:
Bharat Petroleum Corpn. Ltd

RESPONDENT:
Maddula Ratnavalli & Ors

DATE OF JUDGMENT: 27/04/2007

BENCH:
S.B. Sinha & Markandey Katju

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NO. 2202 OF 2007
[Arising out of SLP (C) No.10662 of 2006]

WITH

CIVIL APPEAL NO. OF 2007
[Arising out of SLP (C) No.18532 of 2006]

S.B. Sinha, J.

1. Leave granted.

2. Appellant is a Government company. The Parliament enacted the Burmah Shell (Acquisition of Undertakings in India) Act, 1976 (The said Act), inter alia, to provide for acquisition and transfer of the title, right and interest in the "Burmah Shell Oil Storage and Distributing Company of India Ltd." to Bharat Petroleum Corporation Limited. The said Act came into force on 24.01.1976 which was the 'appointed day' fixed within the meaning of Section 2A(c) of the Act. By reason of Section 3 of the said Act the right, title and interest of Burmah Shell stood transferred to and vested in the Central Government. Section 5 of 1976 Act provides that the Central Government shall be deemed to be the lessee or tenant under the circumstances specified therein. Sub-section (2) of Section 5 which is relevant for our purpose reads thus :

"On the expiry of the terms 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 the appointed day."

3. It is not in dispute that the Central Government in exercise of its power conferred upon it under section 7 of the said Act directed that the undertaking of the Burmah-shell shall vest in the appellant herein which is a Government company; the consequences, inter alia, wherefor is laid down in sub-section (3) thereof which reads as under :

"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."

4. Burmah-shell, the predecessor-in-interest of the appellant was a lessee for a period of 30 years by virtue of a deed of lease which was executed on or about 25.07.1959 by the respondent. The stipulated rent was Rs.50/- per month. On expiry of the period of lease on 30.08.1985, the appellant exercised its purported right of renewal by issuing a notice on or about 24.05.1989 stating :

"On 1st August, 1977, another fresh certificate of incorporation was issued under the same section of the Companies Act, 1956, effecting the change in the name of the Company from Bharat Refineries Ltd., to Bharat Petroleum Corporation Ltd., which change as before does not affect any rights or obligations of the Company.

This is to advise you that in terms of Section 5 and Section 7(3) of the Burmah-Shell (Acquisition of Undertaking in India) Act, 1976, extract of which is enclosed for your reference, we desire to renew the lease for a further period of 30 years commencing from 25.7.1989 on the same terms and conditions on which the lessee abovementioned viz. Burmah-Shell Oil Storage & Distributing Co. of India Ltd., held the lease immediately before the appointed day viz. 24th January, 1976.

May we therefore, request you to let us know when it will be convenient for you to have the lease registered on terms similar to those existing in the current lease. On receipt of your advice in this matter, we shall take further action."

5. Respondents did not agree thereto. They, on the other hand, by a letter dated 26.08.1990 stated that as the rent in respect of the said land has not been paid and the provisions of the said Act have no application, the tenancy shall stand terminated with effect from 24.09.1990. Appellant was called upon to vacate and deliver possession of the said premises stating :

"Please therefore take notice that if you fail to vacate and deliver vacant possession of the said property immediately after 24.09.1990 paying damages for use and occupation at Rs.5,000/- per month and the costs of this notice to my clients, they will be constrained to file a suit against you for appropriate reliefs and that you will also be liable for all my client's cost."

6. Despite service of the said notice, as the appellant did not deliver vacant possession of the tenanted premises; a suit for eviction was filed. In their written statement, the appellants averred:

"The allegations that the lease expired on 24.07.1989, that the plaintiffs demanding delivery of vacant possession and arrears of rent or damages, that the plaintiffs require the plaint schedule property for their bonafide use for construction of shops and carrying on business are all absolutely false. The alleged requirement of the plaintiffs is false and its an afterthought and made to lend support of their claim for possession contrary to the statutory renewal/protection available to this defendant."

7. By reason of a judgment dated 30.12.1999, the learned Senior Civil Judge, Anakapalle, Andhra Pradesh dismissed the said suit in view of the provisions of the 1976 Act holding that the appellant had a right to continue to occupy the leasehold as a tenant on the same terms and conditions on which the tenancy was granted. An appeal preferred thereagainst, however, was allowed by the First Appellate Court opining:-

"In the above decision, it was held that the words "if so desired means if so needed", and it is quite likely that immediately after the undertakings were taken over by the Central Government, it could not be possible to obtain suitable alternative premises, for continuing business activities of the undertakings of the Caltex (India) and therefore, the Central Government has to be armed with the power to get the leases and tenancies renewed or continued after their expiry under sub-section (3). So the power under sec.7(3) for renewing or continuing by the Act of Parliament, and as per the Act, the defendant company got right to renew the lease on the same terms and conditions for a further period of 30 years. He further deposed that they exercised their option to renew the lease by a letter dt. 24.5.1989. Thus, D.W. has not explained or given reasons to show that the need for renewal of lease for a further period of 30 years. In the chief-examination he stated that there is a bridge viz., Sarda Bridge near lease hold premises, and bridge was closed due to heavy traffic and the traffic was diverted to bye-pass road, and therefore, the rental value of the lease hold premises is reduced. At page-4 he admitted that Subramanyam and others are the retail dealers of Bharat Petroleum Corporation and after closure of the bridge the sale of petroleum products are decreased as heavy traffic was effected. He stated that the local trade was continuing.

It is, therefore, clear from the above admission of D.W.1 that due to the closure of the bridge near the schedule premises, the highway traffic is being diverted through the bye-pass road. It is thus clear from the above evidence that there is no need for renewal of the lease. There is no allegation in the written statement that the defendant needs the premises. Therefore, it is clear from the pleadings, as well as the evidence of DW.1 that there is no need for renewal of lease. By virtue of the above provision as of right, the defendant-corporation is not entitled for renewal of lease for a further period of 30 years. It is against the spirit of the above decisions. The learned Senior Civil Judge, has lost sight of the above aspects and erroneously held that the defendant Corporation as of right, by virtue of the above provisions, is entitled for renewal of the lease. Thus the finding of the lower court that Ex.A.1 quit notice is invalid is erroneous.

The object of the Act is to provide better service to the public and the same can be achieved only when the outlet is situated at a place where there will be more vehicular traffic but the vehicular traffic at the schedule premises is completely closed, and the same has been diverted into the bye-pass road. Therefore, the defendant cannot serve the public, as it was earlier by continuing petrol bunk in the schedule premises. By taking shelter under the above technicality, the retailer of the defendant-Corporation Subramanayam and others cannot be allowed to squat on the property for a poultry (sic paltry) monthly rent of Rs.50/-."

8. A Second Appeal preferred thereagainst by the appellant has been dismissed by the High Court of Andhra Pradesh holding :

"\005In this case, it is an admitted fact that for 17 long

years during the pendency of this lis, neither the appellant paid the rents nor deposited to the credit of the suit to prove their bona fides that there is a bona fide requirement, apart from their legal right to have renewal automatically under sections 5(2) and 7(3) of the Act. Further, it is in the evidence that as soon as the by-pass road had come up in Anakapalle, the diesel component of the petrol bunk was closed and the business of the appellant-company was decreased to a considerable extent. This all shows that since the rent was only Rs.50/- per month as agreed under Ex.B1 lease deed and the appellant though not having much business at the present place, just they want to enjoy the suit land for another 30 years in the guise of sections 5(2) and 7(3) of the Act, just for a rent of Rs.50/- per month. During the pendency of the lis, the appellant has not come forward with any proposal to enhance the rent. In fact, appellant did not deposit even that meager rent of Rs.50/- per month for 17 long years. Therefore, it cannot be said that the appellant acted fairly. The renewal was actuated by unfair and unreasonable motives. As such, it cannot be said that in the guise of section 5(2) of the Act, the appellant is entitled for automatic renewal.

In view of the above discussion, whether mere expressing desire for renewal or not furnishing reasons for renewal is necessary to be examined in this case. May be, in *Bharat Petroleum Corporation Ltd. Vs. P. Kesavan* (supra), the point did not arise for consideration directly, and only as a general discussion, the Apex Court held that in view of sections 5(2) and 7(3) of the Act, renewal is automatic. Further, whether sections 5(2) and 7(3) of the Act are to be given a restrictive meaning to construe that with an intention to protect the interest of the Government of India under the Act, the automatic renewal was contemplated of those leases, which were expired around that time i.e. 1976 also need not be gone into in this case. The very conduct of the appellant is nauseating and does not inspire the confidence of the Court to show any indulgence. No substantial question of law arises for consideration under section 100 of the Civil Procedure Code. The Second Appeal is devoid of merit and liable to be dismissed."

9. Appellant is, thus, before us.

10. Before embarking upon the rival contentions of the parties we may, however, notice that the decree passed by the Appellate Court as affirmed by the High Court was put to execution by the respondents on 04.06.2006. Indisputably, the decree has been executed and the respondent has been put in possession of the decretal premises.

11. Mr. Sudhir Chandra, learned Senior Counsel appearing on behalf of the appellant submitted that the appellant, by reason of Section 5(2) read with Section 7(3) of the 1976 Act, had an unbridled statutory right to exercise its option for renewal of the lease which in terms thereof would be deemed to have been renewed for another term of 30 years from 25.07.1989 and in that view of the matter the impugned judgment cannot be sustained.

12. Mr. Aman Lekhi, learned Senior Counsel appearing on behalf of the respondents, on the other hand, submitted that an action on the part of the appellant should conform to the doctrine of fairness and in that view of the matter, the impugned judgment cannot be interfered with.

13. Appellant-company is a 'State' within the meaning of Article

12 of the Constitution of India. It is, therefore, enjoined with a duty to act fairly and reasonably. Just because it has been conferred with a statutory power, the same by itself would not mean that exercise thereof in any manner whatsoever will meet the requirements of law. The statute uses the words "if so desired by the Central Government". Such a desire cannot be based upon a subjective satisfaction. It must be based on objective criteria. Indisputably, the 1976 Act is a special statute. It overrides the provisions of Section 107 of Transfer of Property Act. The action of the State, however, must be judged on the touchstone of reasonableness. Learned counsel for both the parties have relied upon a 3 Judge Bench decision of this Court in *Bharat Petroleum Corporation Ltd. v. P. Kesavan & Anr.* [(2004) 9 SCC 772] wherein this Court held :

"The said Act is a special statute vis-à-vis the Transfer of Property Act which is a general statute. By reason of the provisions of the said Act, the right, title and interest of *Burmah Shell* vested in the Central Government and consequently in the appellant Company. A lease of immovable property is also an asset and/or right in an immovable property. The leasehold right, thus, held by *Burmah Shell* vested in the appellant. By reason of sub-section (2) of Section 5 of the Act, a right of renewal was created in the appellant in terms whereof in the event of exercise of its option, the existing lease was renewed for a further term on the same terms and conditions. As noticed hereinbefore, Section 11 of the Act provides for a non obstante clause."

14. Whereas submission of Mr. Sudhir Chandra, learned Senior counsel is that the Court can interfere with the 'desire' expressed by the Government company only when it is actuated by any malice or ill-will but not when the same was either unfair or unreasonable. In fine, the contention is that the State in a matter of this nature is required to act fairly.

15. We do not see any incongruity in the said decision. A judgment, as is well known, must be read in its entirety. It must be construed reasonably and if necessary, in the light of the constitutional and statutory provisions.

16. An executive action must be informed by reason. An unfair executive action can only survive for a potent reason. An action which is simply unfair or unreasonable would not be sustained. Objective satisfaction must be the basis for an executive action. Even subjective satisfaction on the part of a State is liable to judicial review. The 'State' acting whether as a 'landlord' or a 'tenant' is required to act bona fide and not arbitrarily, when the same is likely to affect prejudicially the right of others.

17. In *Amarnath Ashram Trust Society & Anr. v. Governor of U.P. & Ors.* [(1998) 1 SCC 591], it was held :
"Thus the decision of the Government to withdraw from acquisition was based upon a misconception of the correct legal position. Such a decision has to be regarded as arbitrary and not bona fide. Particularly in a case where as a result of a decision taken by the Government the other party is likely to be prejudicially affected, the Government has to exercise its power bona fide and not arbitrarily. Even though Section 48 of the Act confers upon the State wide discretion it does not permit it to act in an arbitrary manner..."

18. We are, however, not oblivious of the legal principle that only because a statute causes hardship, the same may not be declared ultra vires. (*Dura Lex Sed Lex*). We may, in this regard, notice certain principles :

19. In Raghunath Rai Bareja and Anr. v. Punjab National Bank and Ors. [2006 (13) SCALE 511], it is stated :

"Learned counsel for the respondent-Bank submitted that it will be very unfair if the appellant who is a guarantor of the loan, and director of the Company which took the loan, avoids paying the debt. While we fully agree with the learned counsel that equity is wholly in favour of the respondent-Bank, since obviously a Bank should be allowed to recover its debts, we must, however, state that it is well settled that when there is a conflict between law and equity, it is the law which has to prevail, in accordance with the Latin maxim 'dura lex sed lex', which means 'the law is hard, but it is the law'. Equity can only supplement the law, but it cannot supplant or override it."

20. A statute, however, must be construed justly. An unjust law is no law at all (Lex injusta non est lex).

21. In Kailash Chand & Anr. v. Dharam Dass [(2005) 5 SCC 375], Lahoti, C.J. opined :

"We find it difficult to accept the construction placed on the third proviso, in para 14 of the judgment in Molar Mal case. In Rakesh Wadhawan v. Jagdamba Industrial Corpn. this Court has held that a statute can never be exhaustive. The legislature is incapable of contemplating all possible situations which may arise in future litigation and in myriad circumstances. The scope is always there for the court to interpret the law with pragmatism and consistently with the demands of varying situations. The construction placed by the court on statutory provisions has to be meaningful. The legislative intent has to be found out and effectuated.

Law is part of the social reality.

(See Law in the Scientific Era by Justice Markandey Katju, 2000 Edn., p. 33.)

Though law and justice are not synonymous terms they have a close relationship, as pointed out by the American jurist Rawls. Since one of the aims of the law is to provide order and peace in society, and since order and peace cannot last long if it is based on injustice, it follows that a legal system that cannot meet the demands of justice will not survive long. As Rawls says: Laws and institutions no matter how efficient and well arranged, must be reformed or abolished if they are unjust. (ibid., p. 72.)

Clearly, law cannot be so interpreted as would cause oppression or be unjust."

22. The Parliament moreover is presumed to have enacted a reasonable statute (see Breyer, Stephen (2005): Active Liberty: Interpreting Our Democratic Constitution, Knopf (Chapter on Statutory Interpretation - pg. 99 for "Reasonable Legislator Presumption").

23. We may also notice that recently in M/s. Ispat Industries Ltd. v. Commissioner of Customs, Mumbai [2006 (9) SCALE 652], one of us (Katju, J.) stated :

"In this connection, it may be mentioned that according to the theory of the eminent positivist jurist Kelsen (The Pure Theory of Law) in every legal system there is a hierarchy of laws, and whenever there is conflict between a norm in a higher layer in this hierarchy and a norm in a lower layer the norm in the higher layer will prevail (see Kelsen's 'The General Theory of Law and State')."

24. With that we may add that a statutory order or discretion exercised by a statutory authority must also be tested on the anvil of the constitutional scheme.

25. This Court number of times has laid emphasis on reasonable action on the part of the State even as a landlord. [See M/s. Dwarkadas Marfatia & Sons v. Board of Trustees of the Port of Bombay [(1989) 3 SCC 293] and in contractual matters \026 Noble Resoources Ltd. v. State of Orissa & Anr. [(2006) 10 SCC 236] and State of Karnataka & Anr. v. All India Manufacturers Organisation & Ors. [(2006) 4 SCC 683].

26. Reasonableness and non-arbitrariness are the hallmarks of an action by the State. Judged from any angle, the action on the part of the appellant does not satisfy the test of fairness or unreasonableness. It being wholly arbitrary cannot be sustained.

27. In any event, when two views are possible, a view which satisfies the constitutional rights or requirements, must be preferred.

28. In M.L. Kamra v. Chairman-cum-Managing Director, New India Assurance Co. Ltd. & Anr. [(1992) 2 SCC 36], this Court held : "The Court ought not to interpret the statutory provisions, unless compelled by their language, in such a manner as would involve its unconstitutionality, since the legislature or the rule making authority is presumed to enact a law which does not contravene or violate the constitutional provisions. Therefore, there is a presumption in favour of constitutionality of a legislation or statutory rule unless ex facie it violates the fundamental rights guaranteed under Part III of the Constitution. If the provisions of a law or the rule is construed in such a way as would make it consistent with the Constitution and another interpretation would render the provision or the rule unconstitutional, the Court would lean in favour of the former construction.

29. Right of property although is not a fundamental right, nonetheless remains a constitutional right and any expropriatory legislation must be construed strictly. [See Hindustan Petroleum Corporation Ltd. v. Darius Shahpur Chennai & Ors. [(2005) 7 SCC 627]].

30. In the instant case, the concurrent finding of fact is that the desire of the appellant was not bona fide. In any event, possession of the lease holding has already been delivered. Respondents have received possession after a long struggle. It is, therefore not a case where we should interfere with the impugned judgment particularly in view of the finding of fact arrived at by the courts below.

31. For the aforementioned reasons, these appeals are dismissed with costs. Counsel's fee assessed at Rs. 50,000/-.