

DEPOT SUPERINTENDENT H.P. CORPN. LTD. & ANR.

v.

KOLHAPUR AGRI. MARKET COMMITTEE, KOLHAPUR

JUNE 20, 2007

[DR. ARJIT PASAYAT AND ALTAMAS KABIR, JJ.]

Lease:

Caltex (Acquisition of shares of Caltex) Oil Refining (I) Ltd. and of undertaking in India of Caltex (I) Ltd. Act, 1977—s.7(3)—Renewal of lease—Held, there is no automatic renewal and there can be renewal only if it is so desired by the Central Government—On facts, no evidence that there was any desire in that regard by Central Government—Time granted to hand over vacant possession.

Appellant-Corporation had taken the suit premises on lease from the respondent for a further period of 10 years. The period expired in December 1989. On 18.3.1989 i.e. prior to the expiry of the lease period, the appellant purportedly exercised the right of renewal of the lease deed for a period of 30 years in terms of s. 7 read with s.9 of the Caltex (Acquisition of shares of Caltex) Oil Refining (I) Ltd. and of undertaking in India of Caltex (I) Ltd. Act, 1977.

The respondent sent notice to the appellant-Corporation calling upon the Corporation to vacate the suit premises and hand over possession to the respondent. Appellant did not give back possession. Respondent filed suit for possession and mesne profit. Civil Judge decreed the suit and directed the appellants to hand over vacant possession. First appeal was dismissed. High Court while dismissing the appeal suggested that the appellants may be granted time to vacate the suit plot subject to filing of undertaking. Appellant refused to accept the condition. Hence the present appeal.

Disposing of the appeal, the Court

HELD : 1. The plea of the appellants that they are entitled to benefit of s. 7(3) of Caltex (Acquisition of shares of Caltex) Oil Refining (I) Ltd. and of undertaking in India of Caltex (I) Ltd. Act, 1977 is unacceptable as no reply

A was sent to the notice of termination and/or by referring to such right in the written statement filed in the trial court. In the year 1979 i.e. on the expiry of the lease period, if lease was to be renewed in terms of s.7(3), extension could have been granted in terms of original lease for a period of 20 years from the year 1979. The appellants are not entitled to the protection of Maharashtra Rent Control Act, 1999. [Para7] [1064-B, C]

B

2. There is no automatic renewal and there can be renewal only if it is so desired by the Central Government. There is no material placed before the courts below that there was any desire in that regard by the Central Government. In terms of the notice dated 11.4.2005 time for handing over the possession is extended up to end of June, 2009. [Para 10] [1064-F, G]

C

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2903 of 2007.

From the Final Judgment of the Court dated 10.02.2005 of the High Court of Judicature at Bombay in second Appeal No. 1375 of 2004.

D

Sanjay Kapur for the Appellants.

Shivaji M. Jadhav for the Respondents.

The Judgment of the Court was delivered by

E

DR. ARIJIT PASAYAT, J. 1. Leave granted.

2. Challenge in this appeal is to the order passed by a learned Single Judge of the Bombay High Court dismissing the Second appeal filed by the appellant. While issuing notice on 11.4.2005 it was indicated that the appellant has to indicate whether he is willing to accept the suggestions given by the High Court about vacating the premises by 2009.

F

3. Background facts in a nutshell are as follows:

Appellant is running a retail outlet Petrol Pump in the suit premises in Kolhapur for which a lease was executed on 28.12.1959 between the predecessor in interest of the appellant and the respondent for a period of 20 years with an option of renewal for a further period of ten years. The period expired in December, 1989. On 18.3.1989 i.e. prior to the expiry of the lease period, the appellant purportedly exercised the right of renewal of the lease deed for a period of 30 years in terms of Section 7 read with Section 9 of the Caltex (Acquisition of shares of Caltex) Oil Refining (I) Ltd. and of undertaking in

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India of Caltex (I) Ltd. Act, 1977 (hereinafter referred to as "the Acquisition Act").

According to the appellant, the respondent by its conduct agreed to extend the lease by accepting rent on 2nd December, 1997. On 22nd October, 1997 respondents have been noticed by the appellant-Corporation calling upon the Corporation to vacate the suit land and hand over the possession to the respondent. Respondent filed Civil Suit No. 399 of 1998 with the Court of Civil Judge, Junior Division Kolhapur on 18.4.1998 inter alia praying for possession of the suit land and mesne profit on the ground that though the respondent served upon the appellant the notice of surrender of possession of land, the appellant avoided giving back the possession.

Learned Civil Judge decreed the suit and directed the appellants to hand over vacant possession. Appellants filed Regular Civil Appeal (Regular Civil Appeal No. 375 of 2000) before the learned District Judge Kolhapur. During pendency of the Civil Appeal appellant filed an application under Order 6 Rule 17 of the Code of Civil Procedure, 1908 (in short the 'CPC') seeking inter alia the following amendment:

- (i) By virtue of the Acquisition Act, and the provisions made thereunder, Caltex India Ltd. was converted into Hindustan Petroleum Corporation Ltd.
- (ii) As per Section 7 of the Acquisition Act, the Corporation has legal right to renew the lease on the same terms and conditions after its expiry.
- (iii) The Corporation by its letter dated 18.3.1989 had intimated to the plaintiff regarding its desire to renew the lease for a further period of 30 years. So automatically the lease period has been extended for 30 years.
- (iv) The suit filed on the basis of the said notice has no legal force.

4. By order dated 2.11.2002 the amendment was allowed.

5. By order dated 4.10.2004 the Civil appeal was dismissed. Second appeal was filed by the appellant before the Bombay High Court. By the impugned order the High Court dismissed the second appeal.

6. During the hearing of the appeal to avoid litigation between two public bodies the High Court suggested that the appellants may be granted

A time to vacate the suit plot subject to filing of undertaking but the appellant refused to accept the situation. Under Section 7(3) as noted by the High Court there is no automatic renewal and there can be renewal if it is so desired by the Central Government. In the instant case the other crucial question was whether the company was entitled to second renewal. The High Court held that option of renewal was exercised in the year 1978 at that time the provisions of the Act of 1977 were already enforced.

7. During the pendency of the appeal the appellants contended that they are entitled to benefit of Section 7(3). That plea is unacceptable as no reply was sent to the notice of termination and/or by referring to such right in the written statement filed in the trial court. If in the year 1979 i.e. on the expiry of the lease period, even if lease was to be renewed in terms of Section 7(3), extension could have been granted in terms of original lease for a period of 20 years from the year 1979. It is to be noted that the appellants are not entitled to the protection of Maharashtra Rent Control Act, 1999. Accordingly, the High Court held that there was no merit in the appeal which was dismissed.

8. Stands before the High Court were reiterated in this appeal.

9. Section 7(3) reads as follows:

“7(3) On expiry of the term of any lease, tenancy or arrangement referred to in sub section (1) or sub section (2), such lease or tenancy or arrangement shall, if so desired by the Central Government, be renewed or continued, so far as may be, on the same terms and conditions on which the lease or tenancy or arrangement was originally granted or entered into.”

10. As rightly observed by the High Court that there is no automatic renewal and there can be renewal only if it is so desired by the Central Government. There is no material placed before the courts below that there was any desire in that regard by the Central Government. The appeal is, therefore, sans merit and deserves to be dismissed. But in terms of the notice dated 11.4.2005 time for handing over the possession is extended up to end of June, 2009. Undertaking in that regard shall be filed within two weeks from today. If the undertaking is not filed, this order shall not be operative.

11. The appeal is accordingly disposed of.

DG.

Appeal disposed of.