

[2013] 6 S.C.R. 323

RAM BHAROSEY LAL GUPTA(D) BY LRS. & ORS.

v.

M/S HINDUSTAN PETROLEUM CORP. LTD. & ANR.

(Civil Appeal No. 3902 of 2013)

APRIL 17, 2013

[CHANDRAMAULI KR. PRASAD AND
V. GOPALA GOWDA, JJ.]

Transfer of Property Act, 1882 - ss. 106 and 111(g) - Lease - Renewal of - Property leased out for 20 years - Meanwhile, property mortgaged by appellant-lessor, but later redeemed to it - Determination of tenancy by appellant u/s.106 of Transfer of Property Act on expiry of original lease period - Challenged by respondent no.1-lessee on ground that the lease deed contemplated a provision for renewal of the lease for 20 years and that a notice for renewal of the lease had already been sent to the appellant - High Court holding that appellant was under legal obligation to renew the lease term for further period of 20 years in terms of clause 3 (d) of the lease deed - Propriety - Held: Not proper -Respondent no.1 did not comply with the requirements as provided under the lease deed - It did not send notice for renewal to the mortgagee who had stepped into the shoes of the owner of the property till the same was redeemed to the appellant-lessor and thus failed to exercise its right to get renewal of lease - No deemed renewal of lease in favour of respondent no.1 in view of the notice sent to the appellant - Determination of tenancy by appellant u/s106 of the Transfer of Property Act perfectly legal and valid - Respondent no.1 also not entitled to continue as tenant with reference to s.7 of the Caltex Act as no fairness, reasonableness and non-arbitrariness on its part to avail right under that provision - Since respondent no.1 continued in possession of the property even after termination of tenancy, it is liable to pay mesne profits by way of damages

A *to appellant - Caltex [Acquisition of Shares of Caltex Oil Refining (India) Ltd. and of the Undertakings in India of Caltex (India) Limited] Act 1977 - s.7.*

B The property in question was leased out by the appellant in favour of M/s Caltex India Ltd. for 20 years from 1.07.1960 renewable and determinable as provided in the lease deed on monthly rent. The said property was mortgaged by the appellant on 12.01.1962. Meanwhile, the Caltex [Acquisition of Shares of Caltex Oil Refining (India) Ltd. and of the Undertakings in India of Caltex (India) Limited] Act 1977, came to be enacted and respondent no.1-Corporation became the successor of original lessee. The property was redeemed in favour of the appellant on 15.4.1983.

D Subsequently, the appellant issued a notice under Section 106 and 111 (g) of the Transfer of Property Act to respondent No.1 determining the tenancy of the property and directed the first respondent to vacate the same. A suit for ejection of the respondents and for possession of the property was also filed by the appellant. During pendency of the suit, the first respondent sent a notice to the appellant to execute renewal of lease deed; and also filed written statement specifically pleading that the lease deed contemplated a provision for renewal of the lease for a period of 20 years and that a notice for renewal of the lease had already been sent to the appellant.

G The trial court held that the appellant was not entitled to terminate the tenancy in view of the Act of 1977 as the said Act is a Special Act and prevails over the Transfer of Property Act. The order was set aside by the 1st appellate court. The respondents filed appeal before the High Court which allowed the same holding that the appellant-lessor was under the legal obligation to renew the lease term for further period of 20 years in terms of

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clause 3 (d) of the lease deed.

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The question which arose for consideration in the present appeal was whether the High Court was justified in setting aside the judgment of the first appellate court, by holding that there was deemed renewal of lease of the demised property for a period of 20 years from 1.07.1980 to 1.07.2000.

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Allowing the appeal, the Court

HELD: 1.1. It is an undisputed fact that the demised premises was mortgaged in favour of the mortgagee with possession as the appellant had executed mortgage deed in his favour on 12.01.1962, who continued to be a mortgagee till the appellant redeemed the said property on 15.4.1983. The first respondent had sent a notice for renewal of the lease deed to the appellant, but not to the mortgagee who had stepped into the shoes of the owner of the mortgaged property till the same was redeemed to the appellant on 15.04.1983. In view thereof, to avail the benefit of Clause 3 (d) of the lease deed, the first respondent should have sent the notice to the mortgagee of the property seeking renewal of lease of the demised property as provided under the above clause. Therefore, the first respondent Corporation failed to exercise its right to get the renewal of lease in respect of the demised premises. This aspect of the matter has been overlooked by both the trial court as well as the High Court though the first appellate court considered this aspect of the matter in its judgment. Therefore, the determination of tenancy of the demised property by the appellant under Section 106 of the Transfer of Property Act is perfectly legal and valid. The first respondent after termination of tenancy continued in possession of the property. Holding over of the suit property by the first respondent after the termination of lease is that of a trespasser not a tenant and therefore, it becomes liable to pay mesne profits by

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A way of damages to the appellants. The above important aspect of the matter has not been properly considered by the High Court. The High Court committed serious error both on facts and in law in holding that there was deemed renewal of the demised premises in favour of the first
 B respondent though it did not comply with the requirements as provided under Clause 3 (d) of the lease deed. The second appellate court wrongly interpreted
 C clause 3 (d) of the lease deed and the finding recorded by it that there was a deemed renewal of the demised property for a period of 20 years in view of the notice dated 1.4.1980 sent to the appellant but not to the mortgagee was erroneous and, therefore, liable to be set aside. [Paras 23, 24] [334-H; 335-A-H; 336-A-C]

D 1.2. The first appellate court was right in holding that the possession of the demised property by the first respondent Corporation is holding over month to month and therefore it is a trespasser of the said schedule property and therefore invoking Section 106 of the T.P. Act by the appellant and determining the tenancy by him
 E and filing the suit for arrears of rent and also decree of ejectment of the first respondent from the demised premises is legally justified. Further, with reference to Section 7 of the Caltex Act the action of the first respondent is unfair as there is no fairness,
 F reasonableness and non-arbitrariness on its part to avail the right under the above provision for continuing as a tenant in respect of the demised property. Hence, the impugned judgment of the second appellate court is set aside and the judgment and decree of the first appellate
 G court is restored. [Para 25] [337-G-H; 338-A-B]

H *Bharat Petroleum Corporation Ltd. vs. Maddula Ratnavalli and Ors.* (2007) 6 SCC 81: 2007 (5) SCR 997 and *Bharat Petroleum Corporation Ltd. vs. P.Kesavan and Anr.* (2004) 9 SCC 772: 2004 (3) SCR 811 - referred to.

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Case Law Reference:

2007 (5) SCR 997 referred to **Para 14, 16, 24**
2004 (3) SCR 811 referred to **Para 24**

A

CIVIL APPELLATE JURISDICTION : Civil Appeal No. :
3902 of 2013.

B

From the Judgment Order dated 04.07.2007 of the High
Court of Judicature at Allahabad in SA No. 1812 of 1988.

Nagendra Rai, Manita Verma, S.K. Sinha for the
Appellants.

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Sanjay Kapur, Priyanka Das, Abha R. Sharma for the
Respondents.

The Judgment of the Court was delivered by

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V. GOPALA GOWDA, J. 1. Leave granted.

2. This appeal is filed by the appellants who are owners
of the property questioning the correctness of the impugned
judgment dated 04.07.2007 passed in SA No 1812 of 1988 of
the High Court of Judicature at Allahabad wherein it

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has set aside the judgment and decree dated 10.08.1988
passed by the 1st Additional District Judge, Mainpuri in Civil
Appeal No. 45 of 1987 arising out of judgment and decree
passed by Munsif, Shikohabad dated 09.02.1987 in Original
Suit No. 32 of 1984, urging various facts and legal contentions
and prayed to set aside the impugned judgment and decree.

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3. The property in question was leased out by lease deed
dated 1.12.1960 by one Mansa Ram, father of the appellants
in favour of M/s Caltex India Ltd. the demised property
measures 120 x 100 feet situated on Agra Kanpur Road,
Shikohabad. The said property was leased out in favour of

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A M/s Caltex India Ltd. for the purpose of installing, erecting and maintaining on the said piece of land road ways and path ways and underground petrol, high speed oil tanks and delivery pumps etc. and to erect shelter for attendants and other buildings of permanent or temporary nature as well as other
 B constructions and carrying on with trade in petro and petroleum product with a right to carry on the said trade through its local dealers or agents and to use the property so demised at all times and for all purposes for an initial period of 20 years from 1.07.1960 renewable and determinable as provided in the
 C lease deed on the monthly rent of Rs.50/-. The said lease deed was registered on 06.01.1961. The said property was mortgaged to one Ram Gopal, S/o Ramdayal on 12.01.1962.

4. In the year 1977, the Parliament enacted the law, namely, the Caltex [Acquisition of Shares of Caltex Oil Refining
 D (India) Ltd. and of the undertakings in India of Caltex (India) Limited] Act 1977, being Act No. 17 of 1977 (hereinafter referred to as 'the Caltex Act') as well as of M/s Hindustan Petroleum Corporation Ltd. as the successor of the original lessee.

E 5. The first respondent Hindustan Petroleum Corporation Ltd. is the successor of original lessee. On 15.04.1983, the appellant (since deceased) redeemed the said mortgaged property and the same was accordingly informed to the first
 F respondent.

6. On 13.06.1983, the appellant issued a notice under Section 106 and 111 (g) of the Transfer of Property Act (hereinafter referred to as the T.P. Act) to respondent No.1
 G determining the tenancy of suit schedule property and directed the first respondent to vacate the same upon the expiry of the period of the notice and to hand over vacant possession of the same to him. The first respondent never sent any reply to the said notice.

H 7. A suit for ejectment of the respondents and for the

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possession of the suit schedule property was filed on 27.01.1984 despite service of notice of determination of tenancy which was neither replied nor complied with the demand for delivering the vacant possession of the leased property in favour of the appellant. The original suit was filed by the appellant seeking for arrears of rent and decree of eviction against the first respondent and to pass an appropriate decree against it. A B

8. During the pendency of the suit, on 27.06.1984 the first respondent sent a notice to the appellant to execute the renewal of lease deed and in the said notice it had made reference about their notice dated 1.04.1980, wherein it is stated that it has sent a notice to the appellant for renewal of lease deed and undisputedly the notice was not sent to the mortgagee as the leased property was mortgaged in his favour and the rent was being paid to him and he was receiving rent upto April, 1983 in respect of the suit schedule property. C D

9. The first respondent filed written statement denying the allegations made in the plaint and further specifically pleaded that the lease deed contemplated a provision for the renewal of the lease of the plot for a period of 20 years and a plea was taken that the notice for renewal of the lease was sent to the appellant. The respondent No. 2 filed an application for impleadment in the original suit proceeding which was allowed by the trial court. He also filed a written statement in the original suit. E F

10. On 09.02.1987, the trial court framed the issues and case went for trial where the suit for arrears of rent of Rs. 450/- was decreed but held that the appellant was not entitled to terminate the tenancy in view of the Act of 1977 as the said Act is a Special Act and prevails over the Transfer of Property Act. G

11. On 13.03.1987, aggrieved by the judgment and decree of the trial court the appellant filed Civil Appeal No. 45 of 1987 H

A before the 1st Additional District Judge Mainpuri. The 1st
appellate court vide its judgment dated 10.08.1988, allowed the
appeal by setting aside the judgment and decree of the trial
court after holding that the provisions of the Transfer of Property
Act apply to the property in question and the tenancy of the first
B respondent has rightly been determined by the appellant. The
respondents herein being aggrieved by the said order of the
appellate court filed second appeal No. 1812 of 1988 before
the High Court of Judicature at Allahabad. The said second
appeal was admitted on the following substantial question of
C law:

“(1) Whether under clause 3 (d) of the lease deed executed
between Mansa Ram and M/s Caltex India Ltd., the lessor
was under the legal obligation to renew the lease term for
D further period of 20 years, if the conditions of clause 3 (d)
were complied with?”

12. The second appeal was allowed by the High Court by
answering the aforesaid substantial question of law in favour
of the first respondent.

E 13. During pendency of the second appeal, the appellant
Ram Bharosey Lal Gupta expired. An application for
substitution of legal representatives of the deceased appellant
was filed by them along with applications for condonation of
delay in filing the said substitution application and setting aside
F abatement. The High Court after hearing the parties answered
the substantial question of law in the second appeal and set
aside the judgment of the first appellate court and allowed the
same by its judgment dated 04.07.2007.

G 14. The learned senior counsel Mr. Nagendra Rai has
placed strong reliance upon the decision of this Court in the
case of *Bharat Petroleum Corporation Ltd. Vs. Maddula
Ratnavalli and Ors.*¹ questioning the correctness of the finding
recorded on the substantial question of law as erroneous in law

H 1. (2007) 6 SCC 81.

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and error in law. Further, he has urged that it is the duty cast upon the court to construe the provisions of the Act 17 of 1977, strictly as the Act being expropriatory legislation. Further, it is contended that whether interpretation of provisions of Section 7 of the Caltex Act be permitted to overlook fairness, reasonableness and non-arbitrariness in action on the part of the first respondent as it is 'State' in terms of Article 12 of the Constitution of India.

15. He further contended that no notice was issued to the mortgagee to invoke the right by the first respondent under Clause 3 (d) of the lease deed for renewal of lease of the property. It is an undisputed fact that rent was being paid by the first respondent to the mortgagee till 1.04.1983 and therefore, there is no compliance of the requirement under clause 3 (d) of the lease deed seeking for renewal of the lease of the property for a period of another 20 years as per the terms and conditions laid down in the said clause. The conduct of the first respondent Corporation in continuing with the lease for a third term of 20 years commencing from 1.07.2000 to 30.06.2020 in the absence of any notice for renewal for the said period, is illegal, arbitrary and unreasonable. The High Court has failed to take into consideration the conduct of the first respondent in holding over the property of the appellants herein under the garb of automatic renewal of lease which action of the Corporation reflects undue enrichment for itself especially when the property as on date has a market value of crores of rupees.

16. It is further contended by the learned senior counsel that reasonableness, fairness and non-arbitrariness in action on the part of the first respondent Corporation should be there as it is a 'State' within the meaning of Article 12 of the Constitution. The same is not reflected in the case in hand as it has claimed renewal of lease under the Caltex Act 17 of 1977. The High Court has erred in law while interpreting the compliance of the conditions of the clause 3 (d) of the lease

A deed by the first respondent. The High Court has erred in not following the law laid down by this Court in *Bharat Petroleum Corporation Ltd. case* (supra) where duty has been cast upon the courts to construe the provisions of expropriatory legislation strictly. The High Court has also failed to take into consideration that the first respondent Corporation again took the shield of “special Act” and it cannot be permitted to enjoy any lease property in perpetuity. Further, the interpretation of clause 3 (d) of the lease deed, particularly the word “will” is not synonymous to words “obligatory” or “mandatory”. The High Court has also erred in holding that there was deemed presumption of renewal on the part of the lessor without giving two months’ advance notice before expiry of the original lease period as contemplated under clause 3 (d) of the lease deed and indisputably upon the mortgagee who had stepped into the shoes of the mortgagor as he was being paid rent by the first respondent during the relevant period of time. Therefore, the interpretation made by the High Court in holding that there was a deemed presumption of renewal on the part of the lessor in relation to the leased property is erroneous in law. Further, the High Court has failed in interpreting the provisions of Section 7 of the Caltex Act and the first respondent Corporation cannot be permitted to over look fairness, reasonableness and non-arbitrariness on its part.

17. The High Court has failed to take into consideration the conduct of the first respondent in continuing with the lease of the property for the third term of 20 years commencing from 1.07.2000 to 30.06.2020 in the absence of any notice for renewal for the said period to the owners of the property. Therefore, the learned senior counsel has prayed for setting aside the impugned judgment and decree of the High Court.

18. On the other hand, Mr. H.P. Raval, learned Additional Solicitor General appearing for the first respondent contended that the impugned judgment and order passed by the 1st appellate court is perfectly legal and valid as the same is in

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accordance with the provisions of Section 7 of the Caltex Act and the conduct of the first respondent is fair and reasonable and he has offered a sum of Rs. 5000/- per month as the rent for the period having regard to the valuation of the property and further he has contended that beyond Rs.5000/- the Corporation cannot give rent to the appellants herein. Therefore, they have offered Rs.5000/- as rent against the demand of more than Rs.30,000/- per month made by the appellant's counsel in respect of the suit schedule property.

19. With reference to the above said rival legal contentions urged on behalf of the parties this Court is required to examine as to whether the substantial question of law framed by the High Court and findings recorded in favour of the first respondent is vitiated in law and whether application of Section 7 of the Caltex Act to the leased property in question applies even though there is no fairness, reasonableness and non-arbitrariness on the part of the first respondent Corporation, is legal and valid?

20. The aforesaid points are answered in favour of the appellants by assigning the following reasons:-

The rent for the year 1960 for the vacant property was Rs.50/-. As per Clause 3 (d) of the lease deed, the renewal of the lease of the property for a period of 20 years is permissible if a desire is expressed by the lessee by issuing two months' notice to the lessor prior to expiry of the lease period of the property. Further, the renewal of lease must be for a further period of 20 years at the rate of 10% increase in the rental and containing the like covenants. This Court has examined whether the High Court was justified in setting aside the judgment and decree of the first appellate court, by holding that there is deemed renewal of the lease of the demised property for a period of 20 years from 1.07.1980 to 1.07.2000, in the absence of renewal notice issued to the mortgagee on the date of expiry of the original lease period?

A 21. The lease of the demised premises is of the year 1960 renewable on a monthly rent of Rs.50/-. The lease deed was executed in favour of M/s Caltex India Ltd. The Caltex Act was enacted in the year 1977 and the first respondent Corporation was the automatic successor of the original lessee.

B 22. It is an undisputed fact that the appellant had executed a mortgage deed on 12.01.1962 in favour of Ram Gopal S/o Ramdayal, with possession and he had been receiving rent from the first respondent up to 1.04.1983. The Caltex Act of 17 of 1977 was enacted by the Parliament and the first respondent Corporation became successor in place of the original lessee. It is an undisputed fact that the first respondent Corporation sent a notice to the appellant for renewal of the lease in its favour. It is necessary for us to appreciate the correctness of the finding recorded by the High Court on the substantial question of law regarding the deemed renewal of the lease in favour of the first respondent for a period of 20 years from 1.07.1980 to 1.7.2000. The sub-clause 3 (d) reads thus:

E “That the lessor will on the written request of the lessee made two calendar months before the expiry of the terms hereby created, and if there shall not at the time of such request by any existing breach or non-observance of any of the covenants on the part of lessee herein before contained, grant to it a tenancy of the demised premises for a further term of twenty years from the expiration of the said term at the rent of Rs. 50/- per month and containing the like covenants and provisos as are herein contained including a clause for renewal for the further term of twenty years at 10% increase in rental and containing the like covenants and provisos as are herein contained so as to give the lessee in its option two further renewals each of twenty years.”

H 23. By careful reading of the said clause of the lease deed having regard to the undisputed fact that the demised premises was mortgaged in favour of the mortgagee with possession as

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the appellant had executed mortgage deed in his favour on 12.01.1962, he continued to be a mortgagee till the property was redeemed in his favour on 15.4.1983. It is also the case of the first respondent that it had sent a notice for renewal of the lease deed to the appellant, but not to the mortgagee as he had stepped into the shoes of the owner of the mortgaged property till the same was redeemed to the appellant on 15.04.1983. In view of the above undisputed fact to avail the benefit of Clause 3 (d) of the lease deed, the first respondent should have sent the notice to the mortgagee of the property seeking renewal of lease of the demised property as provided under the above clause. Therefore, the first respondent Corporation has failed to exercise its right to get the renewal of lease in respect of the demised premises. This aspect of the matter has been overlooked by both the trial court as well as the High Court though the first appellate court considered this aspect of the matter in its judgment. Therefore, the determination of tenancy of the demised property by the appellant under Section 106 of the T.P. Act is perfectly legal and valid. Further, it has been held that the first respondent after termination of tenancy continued in possession of the property as a tenant of holding-over. Thus, in law, holding over of the suit schedule property by the first respondent after the termination of lease is that of a trespasser not a tenant and therefore, it becomes liable to pay mesne profits by way of damages to the appellants.

24. The above important aspect of the matter has not been properly considered by the High Court while answering the substantial question of law. The High Court has committed serious error both on facts and in law in holding that there is deemed renewal of the demised premises in favour of the first respondent and it has not properly interpreted Section 7 of the Caltex Act regarding the fairness, reasonableness and non arbitrariness on the part of the first respondent Corporation though it has not complied with the requirements as provided under Clause 3 (d) of the lease deed. Therefore, framing of

A substantial question of law itself in the second appeal by the High Court is bad in law as the same does not arise at all. Having regard to the undisputed facts of the case in hand, the second appellate court has not rightly interpreted clause 3 (d) of the lease deed and the same is contrary to the facts and therefore, the finding recorded on the substantial question of law and holding that there is a deemed renewal of the demised property for a period of 20 years in view of the notice dated 1.4.1980 sent to the appellant but not to the mortgagee is not only erroneous but also error in law, therefore, the said finding is liable to be set aside. In the case of *Bharat Petroleum Corporation Ltd. Vs. Maddula Ratnavalli and Ors.* (supra) this Court has interpreted the provisions of Section 5(2) and 7 (3) of *Burmah Shell (Acquisition and Undertakings in India) Act, 1976* and Section 7 (3) of the *Caltex Act 1977*, with reference to the provisions of T.P. Act. Indisputably, 1976 Act is a special statute. No doubt, it over rides the provisions of Section 107 of the T.P. Act. Undisputedly, the first respondent Corporation is a 'State' as it is a successor of Caltex India Ltd. in terms of the definition of Article 12 of the Constitution of India. In the above referred case, vide para 13, this Court has laid down the legal principles after referring to its earlier decision in the case of *Bharat Petroleum Corporation Ltd. Vs. P.Kesavan and Anr.*² The legal principle evolved therein shows that the finding recorded by the High Court in the impugned judgment on the substantial question of law is contrary to the decision of this Court as well as terms and conditions of clause 3(d) of the lease deed. The said paragraph is extracted hereunder:-

G "13. The 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.

H 2. (2004) 9 SCC 772.

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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 the 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 three-Judge Bench decision of this Court in *Bharat Petroleum Corpn. Ltd. v. P. Kesavan* wherein this Court in para 11 has held as hereunder:

11. 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."

25. In view of the undisputed facts referred to supra and the clause 3 (d) of the lease deed regarding the renewal of lease for a period of 20 years after expiry of the initial period of renewal it has come to an end on 1.7.2000. Therefore, the first appellate court was right in holding that the possession of the demised property by the first respondent Corporation is holding over month to month and therefore it is a trespasser of the said schedule property and therefore invoking Section 106 of the T.P. Act by the appellant and determining the tenancy by him and filing the suit for arrears of rent and also decree of ejectment of the first respondent from the demised premises

- A is legally justified. Further, with reference to Section 7 of the Caltex Act the action of the first respondent is unfair as there is no fairness, reasonableness and non- arbitrariness on its part to avail the right under the above provision for continuing as a tenant in respect of the demised property. Hence, we are
- B required to set aside the impugned judgment of the second appellate court and restore the judgment and decree of the first appellate court. The first respondent Corporation is not even willing to give fair and reasonable rent as it has offered only Rs.5000/- per month whereas the rental market value of the
- C property according to the appellants counsel is more than Rs.30,000/- per month.

26. Therefore, we are of the view that the aforesaid decision of this Court on all fours be applicable to the fact situation in favour of the appellants. Accordingly, for the reasons
- D stated supra we set aside the impugned judgment and order dated 04.07.2007 of the second appellate court passed in Second Appeal No.1812 of 1988 and restore the judgment and decree dated 10.08.1988 of the first Additional District Judge in Civil Appeal No. 45 of 1987. The appeal is allowed with no
- E order as to costs.

B.B.B.

Appeal allowed.