

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.5314 OF 2008
(Arising out of SLP(C) No. 20635 of 2007)

HINDUSTAN PETROLEUM CORP. LTD.

...APPELLANT (S)

VERSUS

DIWAN BAHADUR VISHESHWAR NATH TRUST
RESPONDENT(S)

...

ORDER

Leave granted.

Diwan Bahadur Visheshwar Nath Religious and Charitable Trust are the owners of the property, more particularly described in the Plaint. The defendant/appellant herein is a Statutory Corporation. It took on lease the suit property. The agreement is dated 17th July, 1989. It commenced with effect from 1st April, 1988 for five years up to 31st March, 1993.

The respondent - landlord instituted Suit No. 103 of 1993 in the Court of Munsiff, Dehradun, stating that a lease of land was executed by the Appellant - Trust in favour of HPCL for the business of Petrol Pump: that HPCL had made temporary constructions on the leased land and that HPCL had promised to remove those constructions on expiry of the lease. On the expiry of the period the Suit was instituted under Section 106 of the Transfer of Property Act.

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By way of written statement HPCL alleged that lease was executed on 17th July, 1989; that it was preceded by number of earlier leases; that under the lease permission was given for setting up a retail outlet and that subsequent to the lease HPCL had put up permanent constructions such as Dispensing Unit, Storage Tank, Sales Room etc. By way of written statement appellant contended that it was squarely protected by the provisions of the U.P. Act No. 13 of 1972. In the said written statement HPCL also categorically pleaded that permanent constructions were put up on the

demised land with the concurrence and consent of the landlord.

At this stage we may point out that one of the point which arose before the Trial Court was whether permanent constructions on the Suit land were put up by HPCL or by defendant Nos. 2 and 3 (Dealers) and/or whether those constructions were put up by the Dealers for and on behalf of HPCL. This controversy arose because by amendment, plaintiff sought possession of vacant land after removal of the structures in terms of the lease from the appellant. At that stage defendant Nos. 2 and 3 made application for impleadment saying that they had put up the Petrol Pump, Storage Tank, Sales Room etc.

Having gone through the Plaint, written statement and additional written statement along with the findings recorded by the Trial Court the position which emerges is that defendant Nos. 2 and 3 were the Dealers and that the constructions were put up by

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those Dealers as agents of HPCL. Apart from the said findings, even as a matter of common knowledge it appears that defendant Nos.2 and 3 were the Dealers of HPCL; that, generally Oil Companies allot lands to the Higher Bidders who are required to set up Petrol Pumps as consideration for allotment; that Appellant - Corporation is not in the business of construction and that it is the Dealer who as the highest bidder is generally obliged to construct the Petrol Pump.

Be that as it may, the findings of the Trial Court itself shows that defendants Nos. 2 and 3 were Dealers and Agents of HPCL.

In the light of the said findings we have to examine the provisions of Section 29A read with Section 20 of U.P. Act No. 13 of 1972, as the question which arises for determination is - whether appellant was protected under Section 29A as claimed?

We quote hereinbelow Section 29A:

"Section 29A:- Protection against eviction to certain classes of tenants of land on which building exists --

(1) For the purposes of this section, the expressions "tenant" and "landlord" shall have the meanings respectively assigned to them in clauses (a) and (j) of Section 3 with the substitution of the word "land" for the word "buildings".

(2) This section applies only to land let out, either before or after the commencement of this section, where the

tenant, with the landlord's consent has erected any permanent structure and incurred expenses in execution thereof.

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(3) Subject to the provisions hereinafter contained in this section, the provisions of Section 20 shall apply in relation to any land referred to in sub-section (2) as they apply in relation to any building.

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(7) The provisions of this section shall have effect, notwithstanding anything to the contrary contained in any contract or instrument or in any other law for the time being in force."

We also quote hereinbelow Section 20 of the said Act of 1972:

"Section 20: Bar of suit for eviction of tenant except on specified grounds. --

(1) Save as provided in sub-section (2), [***]no suit shall be instituted for the eviction of a tenant from a building, notwithstanding the determination of his tenancy by efflux of time or on the expiration of a notice to quit or in any other manner:

Provided that nothing in this sub-section shall bar a suit for the eviction of a tenant on the determination of his tenancy by efflux of time where the tenancy for a fixed term was entered into by or in pursuance of a compromise or adjustment arrived at with reference to a suit, appeal, revision or execution proceeding, which is either recorded in court or otherwise reduced to writing and signed by the tenant.

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(2) A suit for the eviction of a tenant from a building after the determination of his tenancy may be instituted on one or more of the following grounds, namely:-

(a) that the tenant is in arrears of rent for not less than four months, and has failed to pay the same to the landlord within one month from the date of service upon him of a notice of demand:

Provided that in relation to a tenant who is a member of the armed forces of the Union and in whose favour the prescribed authority under the Indian Soldiers (Litigation) Act, 1925 (Act IV of 1925) has issued a certificate that he is serving under special conditions within the meaning of Section 3 of that Act or where he has died by enemy action while so serving, then in relation to his heirs, the words "four months" in his clause shall be deemed to have been substituted by the words "one year".

(b) that the tenant has wilfully cause or permitted to be caused substantial damage to the building;

© that the tenant has without the permission in writing of the landlord made or permitted to be made by such construction or structural alteration in the building as is likely to diminish its value or utility or to disfigure it;

(d) that the tenant [has without the consent in writing of the landlord used it for a purpose other than the purpose for which he was admitted to the tenancy of the building or otherwise done any act which is inconsistent with use], or has been convicted under any law for the time being in force of an offence of using the building or allowing it to be used for illegal or immoral purposes;

(e) that the tenant has sub-let, in contravention of the provisions of Section 25, or as the case may be, of the old Act the whole or any part of the building;

(f) that the tenant has renounced his character as such or denied the title of the landlord, and that latter has not waived his right of re-entry or condoned the conduct of the tenant;

(g) that the tenant was allowed to occupy the building as part of his contract of employment under the landlord, and his employment has ceased.

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At the outset, it may be noted that Section 29A was inserted by U.P.

Act 28 of 1976. What was the reason for the said

insertion? Prior to 1976 the Act was not applicable to the vacant lands let out to tenants by the landlord. This gave rise to litigation. In order to curb litigation, Legislature inserted Section 29A by which protection against eviction to certain classes of tenants of land on which building exists is given. Section 29A(2) inter alia states that the said Section shall apply to the lands let out, where the tenant, with the landlord's consent has erected any permanent structure and incurred expenses in execution thereof. To such tenants, protection of the Rent Act is extended.

It is urged on behalf of the landlord by Shri Sundaram, learned senior counsel, that in this case if one goes by the additional written statement filed on behalf of HPCL it becomes

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clear that the Petrol Pump had been erected by defendant Nos. 2 and 3 (Dealers) and not by the tenant - HPCL. According to the learned counsel under sub-section (2) of Section 29A the tenant himself should erect permanent structure at his own expense. According to the learned senior counsel since HPCL - tenant has not itself erected the Petrol Pump at its own expenses, it is not entitled to claim protection under Section 29A of the 1972 Act and consequently according to the learned senior counsel Section 20 would not apply.

We do not find merit in this argument, particularly, when the Trial Court had given a categorical finding that defendant Nos. 2 and 3 were the Dealers and Agents of the Appellant - Corporation, who had set up the Petrol Pump. It may be that Dealers had incurred expenses to put up the Retail Outlet but they have done so for and on behalf of the Appellant. Under the lease it is the Appellant who is obliged to hand over vacant premises to the

landlord after removing the Petrol Pump. The expenses incurred by Dealer/Agent was part of the consideration. Hence, Section 29A read with Section 20 would grant protection to Appellant.

For the above reasons we are required to set aside the impugned judgment of the High Court which had failed to appreciate the controversy in proper context.

At this stage learned counsel for the landlord seeks liberty to move against HPCL for eviction in accordance with law.

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There is no question of our giving liberty as the 1972 Act gives a right to every landlord to seek eviction on satisfaction of the grounds for eviction.

For the afore-stated reasons, this Civil Appeal stands allowed with no order as to costs.

.....J.
[S.H. KAPADIA]

New Delhi,
August 26, 2008

.....J
[B. SUDERSHAN REDDY]

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ITEM NO.5 COURT NO.6 SECTION X

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).17110/2007

(From the judgment and order dated 03/11/2006 in RA No. 325/2006 & WP No.1037/2003 of The HIGH COURT OF UTTARANCHAL AT NAINITAL)

HINDUSTAN PETROLEUM CORP. LTD. Petitioner(s)

VERSUS

RAJKUMARI PADMA KUMARI & ANR. Respondent(s)

(With prayer for interim relief and office report)

WITH
SLP(C) NO. 19043 of 2007 - With appln. for permission to placed addl. documents on record and with prayer for interim relief (For F.D.)
SLP(C) NO. 20635 of 2007 - With prayer for interim relief (For F.D.)

Date: 26/08/2008 This Petition was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE S.H. KAPADIA
HON'BLE MR. JUSTICE B. SUDERSHAN REDDY

For Petitioner(s) Mr. Harish N. Salve, Sr.Adv.

Mr. S. Ganesh, Sr.Adv.
Mr. Sanjay Kapur, Adv.
Ms. Shubhra Kapur, Adv.
Mr. Rajiv Kapur, Adv.
Ms. Arti Singh, Adv.

For Respondent(s) Mr. C.A. Sundaram, Sr.Adv.
in SLP(C)17110/2007: Mr. P.N. Gupta, Adv.

in SLP(C)19043/2007: Mr. R.F. Nariman, Sr.Adv.
Mr. K.R. Sasiprabhu, Adv.
Mr. Sreegesh, Adv.
Mr. Chirag Balsara, Adv.
Ms. Bindu K. Nair, Adv.
Mr. R. Chandrachud, Adv.
Ms. Megha, Adv.

in SLP(C)20635/2007: Mr. CA. Sundaram, Sr.Adv.
Mr. Amir Singh Pasrich, Adv.
Ms. Akanksha, Adv.

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Ms. Meera Mathur, Adv.

in SLP(C)20635/2007: Mr. Anish Dayal, Adv.
Ms. Anitha Shenoy, Adv.
Mr. Siddhartha Vaid, Adv.

UPON hearing counsel the Court made the following
ORDER

SLP(C) No. 20635 of 2007
Leave granted.
The appeal is allowed with no order as to costs.

SLP(C) Nos.17110 & 19043 of 2007

Adjourned to 27th August, 2008.

(S. Thapar)
PS to Registrar

(Madhu Saxena)
Court Master

The signed order is placed on the file.