

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.  
T (S)

...APPELLANT

VER SUS

DIWAN BAHADUR VISHESHWAR NATH TRUST & ORS.  
RESPONDENT (S)

...

ORDER

Leave granted.

Diwan Bahadur Visheshwar Nath Religious and Charitable Trust are

the owners of the property, more particularly described in the Plaintiff.

The

defendant/ appellant herein is a Statutory Corporation.

It took on lease the

suit property. The agreement is dated 17<sup>th</sup>

July, 1989. It commenced with

effect from 1<sup>st</sup> April, 1988 for five years up to 31<sup>st</sup>

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 H P C L for the business  
purpose:

of Petrol Pump:

that H P C L had made temporary

constructions on the leased land and that H P C L 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.

By way of written statement H P C L alleged that lease was executed

on 17<sup>th</sup>

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 H P C L 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 H P C L 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 H P C L or by defendant Nos. 2 and 3 (Dealers) and/or whether those constructions were put up by the Dealers for and on behalf of H P C L. 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 implead ment saying that they had put up the Petrol Pu mp, Storage Tank, Sales Room etc.

Having gone through the Pl aint, 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

3

those Dealers as agents of H P C L. Apart from the said findings, even as a matter of common knowledge it appears that defendant Nos.2 and 3 were the Dealers of H P C L; that, generally Oil Companies allot lands to the Higher Bidders who are required to set up Petrol Pu mp s 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 Pu mp.

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

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

We quote hereinbelow Section 29 A:

"Section 29 A:- 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 .

4

(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.

.....  
.....  
.....

(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.

5

(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 caused or permitted to be caused substantial damage to the building;

(c) 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;

6

(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.

.....  
....."

At the outset, it may be noted that Section 29 A 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 29 A by which protection against

eviction to certain classes of tenants of land on which building exists is given.

Section 29 A(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 H P C L it becomes

7

clear that the Petrol Pump had been erected by defendant Nos. 2 and 3

(Dealers) and not by the tenant - H P C L. 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 H P C L - tenant has not itself erected the Petrol Pump at its

own expenses, it is not entitled to claim protection under Section 29 A 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



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 SL P (C) 17110 / 2007 : Mr. P.N. Gupta, Adv.

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

in SL P (C) 20635 / 2007 : Mr. CA. Sundaram, Sr.Adv.  
Mr. Amir Singh Pasrich, Adv.  
Ms. Akanaksha, Adv.

10

Ms. Meera Mathur, Adv.

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

UPON hearing counsel the Court made the following  
ORDER

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

SL P (C) Nos. 17110 & 19043 of 2007

Adjourned to 27 th  
August, 2008 .

(S. Thapar)  
PS to Registrar

(Madhu Saxena)  
Court Master

The signed order is placed on the file.