

A

G. SRIDHARAMURTI

v.

HINDUSTAN PETROLEUM CORPORATION LTD. AND ANR.

SEPTEMBER 13, 1995

B

[K. RAMASWAMY, B.P. JEEVAN REDDY  
AND B.L. HANSARIA, JJ.]

*Rent and Eviction :*

C

*Karnataka Rent Control Act, 1961/Esso (Acquisition of Undertakings in India) Act, 1974 :*

D

*Sections 21(1)(f) and 23(1)—Non-agricultural land—Leased out to Esso Company—Esso Company merged into Hindustan Petroleum Corporation—Premises Transferred to Corporation—Landowners application for ejectment on ground of sub-letting—Held, Corporation became statutory tenant—Transfer was not a voluntary act of assignment of interest intra vivos—Application for ejectment dismissed.*

*Constitution of India :*

E

*Article 254(1)—Seventh Schedule, List III, Entry 6—Laws made by Parliament and Legislature of a State—Inconsistency between—Section 7 of Esso (Acquisition of Undertakings in India) Act, 1974 enacted by Parliament and section 23 of Karnataka Rent Control Act, 1961 occupying same field—Held, both cannot exist harmoniously—To the extent of inconsistency*

F

*Karnataka Act becomes void.*

G

**The appellant leased out the premises in dispute to Esso Company in July, 1969. The said company was merged into the respondent- Corporation on March 14, 1974. The appellant filed an eviction petition under section 21(1)(f) of the Karnataka Rent Control Act, 1961 against the Esso Company and the respondent-Corporation for ejectment on the ground of sub-letting. The courts below dismissed the application holding that the Esso Company did not sublet the demised premises but by virtue of statutory operation of the Esso (Acquisition of Undertakings in India) Act, 1974 the respondent-Corporation stood transposed as a tenant. The High**

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**Court affirmed the said decision. Aggrieved, the owner of the premises**

filed the appeal by special leave. A

It was contended by the appellant that in view of the non- obstante clause of sub-section (1) of section 23 of the Karnataka Rent Control Act, 1961, continuance of the respondent-Corporation in the premises would be deemed to be sub-letting within the meaning of section 21(1)(f) of the Act. B

Dismissing the appeal, this Court

**HELD :** 1.1. By statutory operation of the Esso (Acquisition of Undertakings in India) Act, 1974, the pre-existing tenancy rights held by Esso Company with the appellant initially stood transferred and vested in the Central Government, and thereafter, by operation of Section 7 of the Esso Act, the said rights in turn stood transposed and vested in the respondent-Corporation as if the respondent-Corporation statutorily became the tenant of the appellant-landlord. It is not voluntary act of the assignment of interest *intra vivos*. [638-A-B, G] C

1.2. On the Esso Act coming into force, by operation of Sections 5 and 7 thereof, the respondent-Corporation became statutory tenant and thereby it cannot be construed to be an assignment of tenancy rights, which the appellant-landlord had entered into with the Esso Company, by the Central Government in favour of the respondent-Corporation. [638-E] D

1.3. Though sub-section (1) of section 23 of the Karnataka Act employing non-obstante clause excluded operation of any other enactment, there is no specific provision in List II of the Seventh Schedule to the Constitution Covering the Act. On the other hand, by virtue of Entry 6 of List III of the Seventh Schedule, the legislature of the State and also Parliament can enact law in relation to immovable property. Since the Esso Act is a Central enactment, and latter too, the non-obstante clause in Section 7 of the Esso Act excludes the operation of Section 23 of the Karnataka Act. Both, the Karnataka Act and the Esso Act, occupy same field and both cannot exist harmoniously. So to the extent of inconsistency, the Karnataka Act becomes void by operation of Article 254 of the Constitution. [638-C-D] E

*M/s. Parasram Hamand Rao v. Shanti Prasad Narinder Kumar Jain and Anr.*, [1980] 3 SCC 565; inapplicable. F

H

A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8780 of 1995.

From the Judgment and Order dated 25/26.6.90 of the Karnataka High Court in C.R.P. No. 3628 of 1982.

B S.K. Kulkarni for Surya Kant for the Appellant.

Santosh Hegde, M.K. Michael, Rajiv Kapur and Wasim Qadri for Ms. Sushma Suri for the Respondents.

The following Order of the Court was delivered :

C Leave granted. We have heard learned counsel for the parties.

D An open space measuring 66.6 x 40 feet comprised in Survey No. 432/25 in Ward No. XVII situated at Bangalore-Bellary Trunk Road in the City of Bellary, was in the possession of Esso Company pursuant to a lease dated July 17, 1969 granted by the appellant. Esso Company was merged into respondent-Corporation on March 14, 1974. The appellant filed eviction petition under Section 21(1) (f) of the Karnataka Rent Control Act 1961 (for short, 'the Act') for ejection on the ground of sub-letting, impleading Esso Company and thereafter, the respondent-Corporation.

E The Esso (Acquisition of Undertakings in India) Act, 1974 (for short, 'the Act') came into force w.e.f. March 13, 1974. The courts below dismissed the application on the ground that the Esso Company had not sublet the demised premises but by virtue of statutory operation under the Esso Act, the respondent-Corporation stood transposed as a tenant which is an involuntary act pursuant to Section 7 of the Act; and notwithstanding the specific embargo created under Section 21 (1) (f) of the Act, it cannot be construed to be a sub-letting. The High Court also reached the same conclusion on 25/26th June, 1990 in CRP No. 3628/82. Thus this appeal by special leave.

G Shri Kulkarni, the learned counsel appearing for the appellant, contended that Section 21 (1) (f) of the Act clearly prohibits assignment or transfer "in any manner" of the interest of the tenant deeming it to be a sub-letting. Therefore, in view of the *non-obstante* clause contained in sub-section (1) of Section 23 of the Act, the continuance of the respondent-Corporation in the premises must be deemed to be due to sub-letting

H within the meaning of Section 21 (1) (f) of the Act. In support of his

contention, he placed strong reliance on a ratio laid down by this Court in *M/s. Parasram Hamand Rao v. Shanti Prasad Narinder Kumar Jain & Anr.*, [1980] 3 SCC 565, inapplicable. A

To appreciate the contentions, it is necessary to look at the provisions of the Esso Act. B

Section 5 of that Act envisages :

"5. (1) where any property is held in India by Esso under any lease or under any right of tenancy, the Central Government shall, on and from the appointed day, be deemed to have become the lessee or tenant, as the case may be, in respect of such property as if the lease or tenancy in relation to such property had been granted to the Central Government, and there upon all the rights under such lease or tenancy shall be deemed to have been transferred to and vested in the Central Government." C

Sub-sections (1) and (2) of Section 7 of the Esso Act state : D

"7. (1) Notwithstanding anything contained in sections 3, 4 and 5, the Central Government may, if it is satisfied that a Government company is willing to comply, or has complied, with such terms and conditions as that Government may think fit to impose, direct, by notification, that the right, title and interest and the liabilities of Esso in relation to any undertaking in India shall, instead of continuing to vest in the Central Government, vest in the Government company either on the date of the notification or on such earlier or later date (not being a date earlier than the appointed day) as may be specified in the notification. E

(2) Where the right, title and interest and the liabilities of Esso in relation to its undertakings in India vest in a Government company under sub-section (1), the Government company shall, on and from the date of such vesting, be deemed to have become the owner, tenant or lessee, as the case may be, in relation to such undertakings, and all the rights and liabilities of the Central Government in relation to such undertakings shall, on and from the date of such vesting, be deemed to have become the rights and liabilities, respectively, of the Government company." F

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A It would be clear from above provisions that by statutory operation of Sections 5 and 7 of the Esso (Acquisition of undertakings in India) Act, 1974, the pre-existing tenancy rights held by Esso Company with the appellant initially stood transferred and vested in the Central Government, and thereafter, by operation of Section 7 of the Esso Act, the said rights in turn stood transposed and vested in the Government company as if the

B Government company statutorily became the tenant of the appellant-landlord. It is true that sub-section (1) of Section 23 of the Act employing *non-obstante* clause excluded operation of any other enactment. But it must be remembered that there is no specific provision in List II of the Seventh Schedule to the Constitution covering the Act. On the other hand, by

C virtue of what has been stated in Entry 6 in List III of the Seventh Schedule, the legislature of the State and also Parliament can enact law in relation to immovable property. Since the Esso Act is a Central enactment, and latter too, the *non-obstante* clause in Section 7 of Esso Act excludes the operation of Section 23 of the Act. Both the Act and the Esso Act occupy same field and both cannot exist harmoniously. So to the extent of

D inconsistency, the Act becomes void by operation of Article 254 of the Constitution. On the Esso Act coming into force, by operation of Sections 5 and 7 of that Act, the respondent-Corporation became statutory tenant and thereby it cannot be construed to be an assignment of tenancy rights, which the appellant-landlord had entered into with the Esso Company, by the Central Government in favour of the Government company.

E

The ratio of *M/s. Parasram Harnand Rao's* case (supra) is inapplicable to the facts in this case. Therein, one Laxmi Bank which was a tenant with the appellant was in liquidation. The Official Liquidator had sold the tenancy rights in favour of the respondents. Thereby, the respondents became tenant of the demised premises. The landlord initiated proceedings under Section 14(1)(b) of the Delhi Rent (Control) Act contending that it amounted to sub-letting. This Court accepting the contention held that in view of the wide language employed in Section 14(1) (b), though the same was made in favour of the respondent through court, it amounted to transfer of an interest *inter se*. The ratio therein does not get

F attracted to the facts in this case in view of the statutory operation of Sections 5 and 7 of Esso Act which is not voluntary act of assignment of interests *intra vivos*.

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The appeal is accordingly dismissed. No. costs.

H R.P.

Appeal dismissed.