

BHARAT PETROLEUM CORPORATION LTD.

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v.

P. KESAVAN AND ANR.

APRIL 5, 2004

[V.N. KHARE, CJ., S.B. SINHA AND S.H. KAPADIA, JJ.]

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*Burmah Shell (Acquisition of Undertakings) Act, 1976:*

*Ss. 5(1),(2),(7),(32) and 11—Lease deed with renewal clause in favour of Burmashell—On coming into force of the Act, appellant exercised its option to renew the lease—Courts below holding that since documents as per s.107 of Transfer of Property Act were not filed lease could not be renewed—Held, in view of ss.5(1) and (2) right of renewal was created in appellant and in the event of exercise of its option, existing lease stood renewed on the same terms and conditions—1976 Act, being a special statute has an overriding effect over the general law i.e. the Transfer of Property Act -However, as appellant does not want second renewal, it would pay 10 times of original rental from date of expiry of original lease—Transfer of Property Act, 1882—s.107—Constitution of India—Article 142.*

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*Maxim:*

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*'Generalia specialibus non derogant—Applicability of.*

**Predecessor-in-interest of the respondents, executed in the year 1967 a lease-deed of the suit property in favour of Burmah Shell for installation of pumps service/filling stations for 20 years with a renewal clause. By virtue of Burmah Shell (Acquisition of Undertakings) Act, 1976, the right, title and interest of Burma Shell in relation to its undertakings in India stood transferred to and vested in the Central Government w.e.f. 24.1.1976. Consequently, the appellant came in possession of the suit property. The lessor by a notice dated 4.2.1987 purported to terminate the tenancy and called upon the appellant to vacate the premises. In turn the appellant by letter dated 19.5.1987 exercised its option to renew the lease for a further period of 20 years on the existing terms and conditions. The lessor filed a suit for eviction. The trial court decreed the suit holding that although in terms of s.5 of the Act the lease could be renewed, but necessary documents**

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A as per s.107 of the Transfer of Property Act, 1882 were not filed. The first appeal filed by the lessee before the District Judge was dismissed, so also the second appeal before the High Court.

B In the appeals filed by the lessee it was contended for the appellant that the courts below erred in holding that s.107 of the Transfer of Property Act was attracted in the instant case. It was submitted that by virtue of s.11 of the 1976 Act, provisions thereof would prevail over the Transfer of Property Act.

Allowing the appeals, the Court

C HELD: 1.1. By reason of the provisions of the Burmah Shell (Acquisition of Undertakings) Act, 1976, the right, title and interest of Burmah Shell vested in the Central Government and consequently upon the appellant Company. A lease of immovable property is also an asset and/or right in an immovable property. The lease-hold right thus held by D Burmah Shell vested in the appellant. Sub-section (1) of s. 5 of the 1976 Act provides for a legal fiction in terms whereof the appellant became a lessee in respect of the leasehold. By reason of sub-s. (2) of s.5 of the Act which is imperative in character and has to be construed as such, 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 E on the same terms and conditions. The legislative scheme contained in the Act leads to only one conclusion that if Government company expresses its desire to renew the lease, the same would stand renewed on the same terms and conditions. [817-C, G, D; 818-F]

F 1.2. The Burmah Shell (Acquisition of Undertakings) Act, 1976 is a special statute *vis-a-vis* the Transfer of Property Act, 1882 which is a general statute. The maxim '*generalia specialibus non derogant*' shall thus apply; and, as admittedly the appellant has expressed its desire to renew the lease, sub-s.(7) of s.5 read with sub-s.(3) of s.7 of 1976 Act shall be attracted. Furthermore, Section 11 of the Act provides for a non-obstante G clause. An overriding effect, therefore, has been given thereby over all other laws for the time being in force. The provisions of the Transfer of Property Act have no application in a case where a transfer of property takes place by operation of law. [817-C; H; 818-A-C; 819-C]

H *Aswini Kumar Ghose and Anr. v. Arabinda Bose and Anr.*, AIR (1952) SC 369) and *Harishchandra Hegde v. State of Karnataka and Ors.*, (2004) 1

SCALE 48, relied on.

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*Indian Handicrafts Emporium and Ors. v. Union of India and Ors.*, [2003] 7 SCC 589; *D.R. Yadav and Anr. v. R.K. Singh and Anr.*, [2003] 7 SCC 110, *Union of India and Ors. v. B.N. Jha*, [2003] 4 SCC 531, *Ashok Leyland Ltd. v. State of Tamil Nadu and Anr.*, (2004) 1 SCALE 224; *M.P. Vidyut Karamchari Sangh, v. M.P. Electricity Board*, [2004] 9 SCC 755 and *Bhavnagar University v. Balitana Sugar Mill (P) Ltd. and Ors.*, [2003] 2 SCC 111, referred to.

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2. However, since the appellant is not interested in having the second renewal and would hand over possession of leasehold to the respondent, with a view to do complete justice between the parties, in exercise of jurisdiction under Article 142 of the Constitution of India, it is directed that the appellant shall pay a sum equivalent to 10 times of the original rental with effect from the date on which the original deed of lease expired.

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[820-A-B]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1383 of 1999.

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From the Judgment and Order dated 2.7.98 of the Madras High Court in S.A. No. 839 of 1998.

WITH

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C.A. Nos. 1875-1876 of 1999.

K. Ramamoorthy, Parijat Sinha, S.C. Ghosh, M.K. Mandal and S. Mukherjee for the Appellant.

K.V. Vijayakumar, for the Respondent in C.A. No. 1383/99.

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M.A. Krishna Moorthy, Nedumaran for the Respondent in C.A. Nos. 1875-76/99.

The Judgment of the Court was delivered by

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S.B. SINHA, J:

INTRODUCTION:

Whether in view of the provisions of the Burmah Shell (Acquisition of Undertakings in India), Act, 1976 (hereinafter referred to as 'the Act') the

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A appellant was entitled to a renewal of lease is the short question involved in these appeals.

FACTUAL BACKGROUND:

B The factual matrix of the matter is being noticed from Civil Appeal No. 1383 of 1999.

C A deed of lease was executed on or about 22.11.1967 by one Smt. Angammal wife of Shri Angappa Chettiar in favour of Burmah Shell Oil Storage & Distributing Company Limited (Burmah Shell) in respect of 23 acres and 16 cents of property/land situated in the town of Bhavani for a period of twenty years on a quarterly rent of Rs.300/- for the purpose of "erecting an installation and/or one or more pumps service/ filling stations together with overhead/underground tanks and other fittings for storage of petroleum products and such other facilities and buildings as the lessee may require and for carrying business is such products through such facilities and other kindered motor accessories or any other trade or business that can conveniently be carried on in the demised premises". The original lessor D allegedly executed a will bequeathing the said site to her grandson Meenashisundaram, who expired on 3.11.1971 whereafter rent used to be paid to the guardian and mother of the said Meenashisundaram, Smt. G. Chellammal.

E The appellant herein claimed itself to be a tenant in respect of the said premise relying on or on the basis of the provisions of the said Act. It is not in dispute that the lessor by a notice dated 4.2.1987 purported to terminate the tenancy calling upon the appellant herein to quit and deliver the peaceful and vacant possession as per terms of the lease deed. In reply to the said F notice, the appellant herein in terms of letter dated 26.2.1987 addressed to its advocate invoked the provisions of Sections 5(2) and 7(3) of the Act stating that it had no intention to vacate the site on the expiry of the existing lease on 30.6.1987 and wish to continue occupying the same for a period of twenty years from 1.7.1987 by paying the existing rental of Rs.500 per quarter. G By reason of letter dated 19.5.1987, the appellant herein exercised its option to renew the lease for a further period of twenty years commencing from 1.7.1989 on the same terms and conditions on which the Burmah Shell held the lease immediately prior to the appointed day. It was requested :

H "May we therefore request you to let us know when it will be convenient for you to have the lease registered on terms similar to

those existing in the current lease. On receipt of your advice in this matter, we shall take further action.” A

Despite the said letter, the tenancy was purported to have been terminated and as the appellant did not quit and deliver possession unto the lessor on expiry of the said period of lease, a suit was filed in the Court of the District Munsif, Bhawani. It appears that the appellant herein had also filed a suit for specific performance of contract which was not pressed. B

The learned Munsif decreed the suit holding, *inter alia*, that although in terms of Section 5 of the Act, the lease may be renewed for the same period but as per Section 107 of the Transfer of Property Act, necessary documents had to be executed by the company. An appeal thereagainst by the appellant herein was dismissed by the District Judge, Erode. The appellant herein filed a second appeal before the High Court of Madras which was also dismissed stating : C

“It is clear that the suit filed for renewal of the lease was only subsequent to expiry of the lease and as such it cannot be said that the affidavit he has taken steps for the renewal of the lease, especially when he kept quiet for nearly 3 years without taking any steps, in spite of the filing of the suit by the appellant. It cannot be said that the filing of the suit can be construed as step being taken for the renewal. When the suit for recovery of possession is pending, as soon as filing of suit for renewal of the lease, the appellant ought to have taken steps for joint trial. He has allowed two suits to be proceeded with, independently. That means, he wanted to take a chance before both the courts below. This conduct of the appellant cannot be appreciated. Hence, I do not find any error in the findings of the Courts below that the appellant has not taken any steps to get the lease renewed prior to the expiry of the lease. Hence, the second appeal is dismissed. Consequently, CMP 8085 of 1998 is also dismissed.” D E F

Hence this appeal. G

SUBMISSIONS :

Mr. K. Ramamoorthy, learned Senior Counsel, appearing on behalf of the appellant would submit that the High Court went wrong in passing the impugned judgment holding that Section 107 of the Transfer of Property Act H

A was attracted in the instant case. The learned counsel would urge that the provisions of the said Act, having regard to Section 11 thereof, shall prevail over the Transfer of Property Act.

B The learned counsel appearing on behalf of the respondents, on the other hand, would submit that the provisions of Section 107 of the Transfer of Property Act and Section 5(2) of the said Act should be read together so as to come to the conclusion that a registered instrument is required to be executed even if the appellant exercised its option to renew the said lease. In any event, the learned counsel would contend that keeping in view the fact that a paltry sum had been paid by way of rent for a long time, this Court with a view to do complete justice between the parties, may not interfere with the impugned judgment.

#### C STATUTORY PROVISIONS:

D The Parliament enacted the Act which came into force on or about 24.1.1976, in terms whereof the right, title and interest of Burmah Shell in relation to its undertakings in India stood transferred to and vested in the Central Government. The effect of such vesting is stated in Section 4 of the Act whereby and whereunder, *inter alia*, all assets, rights, powers, authorities and privileges and all property, movable and immovable vested in the Central Government. By reason of sub-section (1) of Section 5 of the Act where any property was held in India by Burmah Shell under any lease or under any right of tenancy, the Central Government became the lessee and tenant, as the case may be, in respect thereof as if the lease or tenancy in relation to such property had been granted to it and thereupon all the rights under such lease or tenancy was to be deemed to have been transferred to, and vested in the Central Government. Sub-section (2) of Section 5 of the Act provides that on the expiry of the term of any lease or tenancy referred to in sub-section (1), such lease or tenancy was, if so desired by the Central Government, to be renewed on the same terms and condition on which the lease and tenancy was held by Burmah Shell immediately before the appointed day. 'Appointed day' has been defined to mean the date of commencement of the said Act which, as noticed hereinbefore, has been specified on 24.1.1976. Section 7 of the said Act provides for the Central Government to direct vesting of the undertakings of the Burmah Shell in a Government company. It is not in dispute that an appropriate notification in terms of sub-section (1) of Section 7 has been issued in favour of the appellant herein. Sub-section (3) of Section 7 provides that the provisions of sub-section (2) of Section 5 shall apply to

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a lease or tenancy which vests in a Government company as tenancy in the Central Government and reference therein to the Central Government shall be construed as the reference to the Government company. Section 11 of the Act provides for a non-obstante clause stating that the provisions thereof shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than the said Act.

FINDINGS :

The said Act is a special statute *vis-a-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 upon the appellant Company. A lease of immovable property is also an asset and/or right in an immovable property. The lease-hold 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.

As would appear from the preamble of the Transfer of Property Act, the same applies only to transfer by act of parties. A transfer by operation of law is not validated or invalidated by anything contained in the Act. A transfer which takes place by operation of law, therefore, need not meet the requirement of the provisions of the Transfer of Property Act or Indian Registration Act.

The said Act is a special statute. Sub-section (2) of Section 5 thereof mandates that in the event the appellant desires to renew the lease or tenancy, the same would be renewed on the same terms and conditions on which the lease or tenancy was held by Burmah Shell immediately prior to the appointed day.

Sub-section (1) of Section 5 of the Act provides for a legal fiction in terms whereof the appellant herein became a lessee in respect of the leasehold. A legal fiction, as is well-known, must be given its full effect [See *Bhavnagar University v. Palitana Sugar Mill (P) Ltd. and Ors.*, [2003] 2 SCC 111. Sub-section (2) of Section 5 of the Act is imperative in character and must be construed as such.

The maxim 'generalia specialibus non derogant' meaning thereby that

A general things do not derogate special things shall, thus, apply in the instant case and in that view of the matter as admittedly the appellant herein has expressed its desire to renew the lease, sub-section (2) of Section 5 read with sub-section (3) of Section 7 thereof shall be attracted. [See *Indian Handicrafts Emporium and Ors. v. Union of India and Ors.*, [2003] 7 SCC 589, *D.R. Yadav and Anr. v. R.K. Singh and Anr.*, [2003] 7 SCC 110. *Union of India and Ors. v. B.N. Jha*, [2003] 4 SCC 531, *Ashok Leyland Ltd. v. State of Tamil Nadu and Anr.*, [2004] 1 SCALE 224 and *M.P. Vidyut Karamchari Sangh v. M.P. Electricity Board*, (Civil Appeal No.2510 of 2002) disposed of on 18.3.2004.

C Furthermore, Section 11 of the Act provides for a non-obstante clause. An overriding effect, therefore, has been given thereby over all other laws for the time being in force.

In *Aswini Kumar Ghose and Anr. v. Arabinda Bose and Anr.*, AIR (1952) SC 369, it was observed :

D “...The enacting part of a statute must, where it is clear, be taken to control the non obstante clause where both cannot be read harmoniously; for, even apart from such clause, a later law abrogates earlier laws clearly inconsistent with it. *Posteriores leges priores contrarias abrogant* (Broome’s Legal Maxims, Edn. 10 p. 347). Here, s. 2 entitles every Advocate of the Supreme Court as of right to practise in any High Court in India.”

F We, therefore, are of the opinion that the legislative scheme contained in the said Act leads to only one conclusion that if Government company expresses its desire to renew the lease, the same would stand renewed on the same terms and conditions.

G Section 5(2) and Section 7(3) of the Act are required to be given its purposive meaning, having regard to the object and purport the statute seeks to achieve. The Central Government by reason of the provisions of the said Act acquired running business undertakings dealing in distribution and marketing of petroleum products. The leases or tenancy for outlets are, therefore, continued to be kept with the Central Government or the Government company, as the case may be, so that no let or hindrance is placed in the matter of distribution of the products from established retails outlets, unless alternate arrangements are made. Having regard to the object of the Act, as H noticed hereinbefore, it is difficult to agree with the submission of the learned

counsel for the respondents to the effect that the expression mere desire by the Central Government or the appellant was not enough and they were required to show something more, as for example existence of need for renewal of the lease. The central Government or the Government company is a state within the meaning of Article 12 of the Constitution of India. They are required to act fairly. It is not the case of the respondents herein that desire to get the lease renewed was actuated by any malice or ill-will or the same was otherwise unfair and unreasonable. In that view of the matter, it is difficult to construe Section 5(32) of the Act as not laying down a law not contemplating automatic renewal of the lease.

The provisions of the Transfer of Property Act have no application in a case where a transfer of property takes place by operation of law.

In *Harishchandra Hegde v. State of Karnataka and Ors.*, (2004) 1 SCALE 48, it was held:

“By reason of an order passed under Section 4 of the Act, the lands are directed to be restored in the event the illegalities specified therein are discovered. The consequences contained in Section 5 of the Act applies automatically in the event an order under Section 4 of the Act is passed. Section 4 of the Act contains a non obstante clause. The said provision would, thus, apply notwithstanding anything contained in any agreement or any other Act for the time being in force. The Act is a special Act whereas the Transfer of Property Act is a general Act and in that view of the matter also Section 51 of the Transfer of Property Act will have no application and the consequences contained in Section 5 would prevail.

Section 51 of the Transfer of Property Act applies to inter vivos transfers. It, as noticed hereinbefore, does not apply to a transfer made by operation of law. If a judicial order is passed restoring the land back to a member of Scheduled Tribes in terms of the purport and object of the statute, the provisions of the Transfer of Property Act cannot be applied in such a case. The matter is governed by a special statute. Unless there exists a provision therein, an order passed thereunder cannot be supplanted or supplemented with reference to another statute.”

CONCLUSION:

For the reasons aforementioned, the impugned judgments. cannot be

A sustained and are set aside accordingly.

Before parting with this case, we may, however, place on records the statements made by Mr. M.A. Krishna Moorthy to the effect that the appellant is not interested in having the second renewal and the possession of leasehold shall be handed over to the respondent herein on the expiry of the tenure of the renewed lease i.e. tenure of the lease. With a view to do complete justice between the parties, in exercise of our jurisdiction under Article 142 of the Constitution of India, we direct that the appellant herein shall pay a sum of equivalent to 10 times of the original rental with effect from the date on which the original deed of lease expired. This order shall, however, not be treated as a precedent.

These appeals are allowed on the aforementioned terms. There shall be no order as to costs.

R.P.

Appeals allowed.