

BHARAT PETROLEUM CORPN. LTD.

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v.

MADDULA RATNAVALLI AND ORS.

APRIL 27, 2007

[S.B. SINHA AND MARKANDEY KATJU, JJ.]

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Burmah Shell (Acquisition of Undertakings in India) Act, 1976—ss. 3, 5(2) and 7—Vesting of right, title and interest of Burmah Shell-lessee in Central Government and consequent Company—Renewal of lease—Claim of, by Government Company, on the same terms and condition on which Burmah Shell held the lease—Renewal of lease rejected by High Court since for 17 years during pendency of eviction suit. Government Company did not pay rent nor proved their bonafides—Held: The desire of Government Company to renew lease not bona fide and action not fair or reasonable thus claim not sustainable—Nevertheless, possession of lease holding has already been delivered—Order of High Court calls for no interference—Constitution of India, 1950—Articles 12 and 14.

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Maxims; Dura Lex Sed Lex—Meaning of—Only because a statute cause hardship, the same may not be declared ultra vires.

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Lex injusta non est lex—Meaning of—A statute must be construed justly—Unjust law is no law at all.

The Burmah Shell (Acquisition of Undertakings in India) Act, 1979 was enacted to provide for acquisition and transfer of the title, right and interest in the "Burmah Shell Oil Storage and Distributing Company of India Ltd. " to the appellant -Government company. By reason of s. 3 of the Act, the right, title and interest of Burmah Shell stood transferred to and vested in the Central Government which shall be deemed to the lessee or tenant. Under sub-section (2) of section 5 on the expiry of the terms of any lease or tenancy, such lease or tenancy shall if so desired by the Central Government be renewed on the same terms and conditions on which the lease or tenancy was held by Burmah-Shell. Central Government in exercise of its power conferred upon it under section 7 directed that the undertaking of the Burmah Shell shall vest in the appellant.

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- A Burmah Shell-predecessor-in -interest of the appellant was a lessee for a period of 30 years by virtue of lease deed executed by the respondent. The stipulated rent was Rs 50/- per month. On expiry of the period of lease, the appellant issued show cause notice exercising its purported right of renewal on the same terms and condition on which lessee-Burmah Shell held the lease.
- B Respondents did not agree. It stated that as rent has not been paid and the provisions of the Act have no application, tenancy stood terminated. It called upon the appellant to vacate and deliver possession of the premises. Appellant did not deliver the vacant possession of the tenanted premises and as such eviction suit was filed. Trial Court dismissed the suit holding that the appellant had a right to continue to occupy the leasehold as a tenant on the same terms and conditions on which the tenancy was granted. Respondent filed an appeal which was allowed. Appellant filed a Second Appeal. High Court dismissed the same. Hence the present appeal.

- D Appellant-Government Company contended that by reason of s. 5(2) read with s. 7(3) of the 1976 Act, it had an unbridled statutory right to exercise its option for renewal of the lease which in terms thereof would be deemed to have been renewed for another term of 30 years from 25.07.1989; and that the Court can interfere with the 'desire' expressed by the Government company only when it is actuated by any malice or ill-will but not when the same was either unfair or unreasonable.

- E Respondents contended that an action on the part of the appellant should conform to the doctrine of fairness and thus, the impugned judgment cannot be interfered with.

Dismissing the appeals, the Court

- F HELD: 1.1. Appellant-Government Company is a 'State' within the meaning of Article 12 of the Constitution of India. Therefore, it is 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. 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.
- G The Burmah Shell (Acquisition of Undertakings in India) Act, 1976 is a special statute. It overrides the provisions of section 107 of Transfer of Property Act, However the action of State must be judged on the touchstone of reasonableness. [Para 13] [998-E, F, G]

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Bharat Petroleum Corporation Ltd. v. P. Kesavan and Anr., [2004] 9 SCC 772, relied on. A

1.2. An executive action must be informed by reason. An unfair executive action can only survive for a potent reason. An action which is simply unfair or unreasonable would not be sustained. Objective satisfaction must be the basis for an executive action. Even subjective satisfaction on the part of a State is liable to judicial review. The 'State' acting whether as a 'landlord' or a 'tenant' is required to act *bona fide* and not arbitrarily, when the same is likely to affect prejudicially the right of others. [Para 16] [999-D, E] B

Amarnath Ashram Trust Society and Anr. v. Governor of U.P. and Ors., [1998] 1 SCC 591, referred to. C

1.3. The legal principal is that only because a statute causes hardship, the same may not be declared *ultra vires*. (*Dura Lex Sed Lex*). A statute, however, must be construed justly. An unjust law is no law at all. (*Lex injusta non est lex*). [Paras 18 and 20] [1007-A, D] D

Raghunath Rai Bareja and Anr. v. Punjab National Bank and Ors., (2006) 13 SCALE 511; *Kailash Chand and Anr. v. Dharam Dass*, [2005] 5 SCC 375 and *M/s. Ispat Industries Ltd. v. Commissioner of Customs, Mumbai*, (2006) 9 SCALE 652, referred to. E

Rreyer Stephen (2005); *Active Liberty Interpreting Our Democratic Constitution*, *Knopf Chapter on Statutory Interpretation*, P. 99, referred to. E

1.4. A statutory order or discretion exercised by a statutory authority must also be tested on the anvil of the constitutional scheme. F

[Para 24] [1008-E] F

1.5. Reasonableness and non arbitrariness are the hallmarks of an action by the State. Judged from any angle, the action on the part of the appellant does not satisfy the test of fairness or unreasonableness. It being wholly arbitrary cannot be sustained. In any event, when two views are possible, a view which satisfies the constitutional rights or requirements, must be preferred. [Paras 26 and 27] [1008-G; 1009-A] G

M/s. Dwarkadas Marfatia and Sons v. Board of Trustees of the Port of Bombay, [1989] 3 SCC 293; *Noble Resources Ltd. v. State of Orissa and Anr.*, [2006] 10 SCC 236; *State of Karnataka and Anr. v. All India Manufacturers Organisation and Ors.*, [2006] 4 SCC 683; *M.L. Kamra v. Chairman-cum-* H

A *Managing Director, New India Assurance Co. Ltd. and Anr.*, [1992] 2 SCC 36, relied on.

1.6. Right of property although is not a fundamental right, nonetheless remains a constitutional right and any *expropriatory* legislation must be construed strictly. [Para 29] [1009-D]

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Hindustan Petroleum Ltd. v. Darius Shahpur Chennat and Ors., [2005] 5 SCC 627, relied on.

1.7. In the instant case, the concurrent finding of fact is that the desire of the appellant was not *bonafide*. Further, the decree passed by the Appellate Court as upheld by the Court was put to execution by the respondents on 04.06.2006. The decree has been executed and the respondent has been put in possession of the decretal premises. In any event, possession of the lease holding has already been delivered. Respondents have received possession after a long struggle. Therefore, it is not a case where interference with the impugned judgment particularly in view of the finding of fact arrived at by the courts below is called for. [Para 30] [1009-E]

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2202 of 2007.

From the Final Judgment and Order dated 20.04.2006 of the High Court of Andhra Pradesh at Hyderabad in Second Appeal No. 80 of 2004.

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WITH

C.A. No. 2203 of 2007.

Sudhir Chandra, and Parijat Sinha for the Appellant.

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Aman Lekhi, Jaspreet Singh, Rajan Chaurasia, G.R.K. Paramahamsa, Lokesh Kumar, Manoranjan Verma and M.K. Garg for the Respondents.

The Judgment of the Court was delivered by

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S.B. SINHA, J. 1. Leave granted.

2. Appellant is a Government company. The Parliament enacted the *Burmah Shell (Acquisition of Undertakings in India) Act, 1976* (The said Act), *inter alia*, to provide for acquisition and transfer of the title, right and interest in the "*Burmah Shell Oil Storage and Distributing Company of India Ltd.*"

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to Bharat Petroleum Corporation Limited. The said Act came into force on 24.01.1976 which was the 'appointed day' fixed within the meaning of Section 2A(c) of the Act. By reason of Section 3 of the said Act the right, title and interest of Burmah Shell stood transferred to and vested in the Central Government. Section 5 of 1976 Act provides that the Central Government shall be deemed to be the lessee or tenant under the circumstances specified therein. Sub-section (2) of Section 5 which is relevant for our purpose reads thus :

"On the expiry of the terms of any lease or tenancy referred to in sub-section (1) such lease or tenancy shall if so desired by the Central Government be renewed on the same terms and conditions on which the lease or tenancy was held by Burmah-Shell immediately the appointed day."

3. It is not in dispute that the Central Government in exercise of its power conferred upon it under section 7 of the said Act directed that the undertaking of the Burmah-shell shall vest in the appellants herein which is a Government company; the consequences, *inter alia*, whereof is laid down in sub-section (3) thereof which reads as under :

"The provisions of sub-section (2) of section 5 shall apply to a lease or tenancy, which vests in a Government company, as they apply to a lease or tenancy vested in the Central Government and reference therein to the "Central Government" shall be construed as a reference to the Government company."

4. Burmah-shell, the predecessor-in-interest of the appellants was a lessee for a period of 30 years by virtue of a deed of lease which was executed on or about 25.07.1959 by the respondent. The stipulated rent was Rs.50/- per month. On expiry of the period of lease on 30.08.1985, the appellants exercised its purported right of renewal by issuing a notice on or about 24.05.1989 stating :

"On 1st August, 1977, another fresh certificate of incorporation was issued under the same section of the Companies Act, 1956, effecting the change in the name of the Company from Bharat Refineries Ltd., to Bharat Petroleum Corporation Ltd., which change as before does not affect any rights or obligations of the Company."

This is to advise you that in terms of Section 5 and Section 7(3) of

A the Burmah-Shell (Acquisition of Undertaking in India) Act, 1976, extract of which is enclosed for your reference, we desire to renew the lease for a further period of 30 years commencing from 25.7.1989 on the same terms and conditions on which the lessee above mentioned viz. Burmah-Shell Oil Storage & Distributing Co. of India Ltd., held the lease immediately before the appointed day viz. 24th January, 1976.

B 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.”

C 5. Respondents did not agree thereto. They, on the other hand, by a letter dated 26.08.1990 stated that as the rent in respect of the said land has not been paid and the provisions of the said Act have no application, the tenancy shall stand terminated with effect from 24.09.1990. Appellant was called upon to vacate and deliver possession of the said premises stating :

D “Please therefore take notice that if you fail to vacate and deliver vacant possession of the said property immediately after 24.09.1990 paying damages for use and occupation at Rs.5,000/- per month and the costs of this notice to my clients, they will be constrained to file a suit against you for appropriate reliefs and that you will also be liable for all my client’s cost.”

E 6. Despite service of the said notice, as the appellant did not deliver vacant possession of the tenanted premises; a suit for eviction was filed. In their written statement, the appellants averred:

F “The allegations that the lease expired on 24.07.1989, that the plaintiffs demanding delivery of vacant possession and arrears of rent or damages, that the plaintiffs require the plaint schedule property for their *bonafide* use for construction of shops and carrying on business are all absolutely false. The alleged requirement of the plaintiffs is false and its an afterthought and made to lend support of their claim for possession contrary to the statutory renewal/protection available to this defendant.”

G 7. By reason of a judgment dated 30.12.1999, the learned Senior Civil Judge, Anakapalle, Andhra Pradesh dismissed the said suit in view of the provisions of the 1976 Act holding that the appellant had a right to continue
H to occupy the leasehold as a tenant on the same terms and conditions on

which the tenancy was granted. An appeal preferred thereagainst, however, was allowed by the First Appellate Court opining:- A

“In the above decision, it was held that the words “if so desired means if so needed”, and it is quite likely that immediately after the undertakings were taken over by the Central Government, it could not be possible to obtain suitable alternative premises, for continuing business activities of the undertakings of the Caltex (India) and therefore, the Central Government has to be armed with the power to get the leases and tenancies renewed or continued after their expiry under sub-section (3). So the power under sec.7(3) for renewing or continuing by the Act of Parliament, and as per the Act, the defendant company got right to renew the lease on the same terms and conditions for a further period of 30 years. He further deposed that they exercised their option to renew the lease by a letter dt. 24.5.1989. Thus, D.W. has not explained or given reasons to show that the need for renewal of lease for a further period of 30 years. In the chief-examination he stated that there is a bridge viz., Sarda Bridge near lease hold premises, and bridge was closed due to heavy traffic and the traffic was diverted to bye-pass road, and therefore, the rental value of the lease hold premises is reduced. At page-4 he admitted that Subramanyam and others are the retail dealers of Bharat Petroleum Corporation and after closure of the bridge the sale of petroleum products are decreased as heavy traffic was effected. He stated that the local trade was continuing. B C D E

It is, therefore, clear from the above admission of D.W.1 that due to the closure of the bridge near the schedule premises, the highway traffic is being diverted through the bye-pass road. It is thus clear from the above evidence that there is no need for renewal of the lease. There is no allegation in the written statement that the defendant needs the premises. Therefore, it is clear from the pleadings, as well as the evidence of DW.1 that there is no need for renewal of lease. By virtue of the above provision as of right, the defendant-corporation is not entitled for renewal of lease for a further period of 30 years. It is against the spirit of the above decisions. The learned Senior Civil Judge, has lost sight of the above aspects and erroneously held that the defendant Corporation as of right, by virtue of the above provisions, is entitled for renewal of the lease. Thus the finding of the lower court that Ex.A.1 quit notice is invalid is erroneous. F G

The object of the Act is to prove better service to the public and the H

A same can be achieved only when the outlet is situated at a place
where there will be more vehicular traffic but the vehicular traffic at
the schedule premises is completely closed, and the same has been
diverted into the bye-pass road. Therefore, the defendant cannot
serve the public, as it was earlier by continuing petrol bunk in the
B schedule premises. By taking shelter under the above technicality, the
retailer of the defendant-Corporation Subramanayam and others cannot
be allowed to squat on the property for a poultry (sic paltry) monthly
rent of Rs.50/-.”

C 8. A Second Appeal preferred thereagainst by the appellant has been
dismissed by the High Court of Andhra Pradesh holding :

D “...In this case, it is an admitted fact that for 17 long years during the
pendency of this lis, neither the appellant paid the rents nor deposited
to the credit of the suit to prove their *bona fides* that there is a *bona*
E *fide* requirement, apart from their legal right to have renewal
automatically under sections 5(2) and 7(3) of the Act. Further, it is in
the evidence that as soon as the by-pass road had come up in
Anakapalle, the diesel component of the petrol bunk was closed and
the business of the appellant-company was decreased to a considerable
extent. This all shows that since the rent was only Rs.50/- per month
as agreed under Ex.B1 lease deed and the appellant though not having
F much business at the present place, just they want to enjoy the suit
land for another 30 years in the guise of sections 5(2) and 7(3) of the
Act, just for a rent of Rs.50/- per month. During the pendency of the
lis, the appellant has not come forward with any proposal to enhance
the rent. In fact, appellant did not deposit even that meager rent of
Rs.50/- per month for 17 long years. Therefore, it cannot be said that
the appellant acted fairly. The renewal was actuated by unfair and
unreasonable motives. As such, it cannot be said that in the guise of
section 5(2) of the Act, the appellant is entitled for automatic renewal.

G In view of the above discussion, whether mere expressing desire for
renewal or not furnishing reasons for renewal is necessary to be
examined in this case. May be, in *Bharat Petroleum Corporation Ltd.*
v. *P. Kesavan* (supra), the point did not arise for consideration directly,
and only as a general discussion, the Apex Court held that in view
of sections 5(2) and 7(3) of the Act, renewal is automatic. Further,
whether sections 5(2) and 7(3) of the Act are to be given a restrictive
H meaning to construe that with an intention to protect the interest of

the Government of India under the Act, the automatic renewal was contemplated of those leases, which were expired around that time i.e. 1976 also need not be gone into in this case. The very conduct of the appellant is nauseating and does not inspire the confidence of the Court to show any indulgence. No substantial question of law arises for consideration under section 100 of the Civil Procedure Code. The Second Appeal is devoid of merit and liable to be dismissed.”

9. Appellant is, thus, before us.

10. Before embarking upon the rival contentions of the parties we may, however, notice that the decree passed by the Appellate Court as affirmed by the High Court was put to execution by the respondents on 04.06.2006. Indisputably, the decree has been executed and the respondent has been put in possession of the decretal premises.

11. Mr. Sudhir Chandra, learned Senior Counsel appearing on behalf of the appellant submitted that the appellant, by reason of Section 5(2) read with Section 7(3) of the 1976 Act, had an unbridled statutory right to exercise its option for renewal of the lease which in terms thereof would be deemed to have been renewed for another term of 30 years from 25.07.1989 and in that view of the matter the impugned judgment cannot be sustained.

12. Mr. Aman Lekhi, learned Senior Counsel appearing on behalf of the respondents, on the other hand, submitted that an action on the part of the appellant should conform to the doctrine of fairness and in that view of the matter, the impugned judgment cannot be interfered with.

13. 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. 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 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 3 Judge Bench decision of this Court in *Bharat Petroleum Corporation Ltd. v. P. Kesavan & Anr.*, [2004] 9 SCC 772 wherein this Court held :

A “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.”

C 14. Whereas submission of Mr. Sudhir Chandra, learned Senior counsel is that the Court can interfere with the ‘desire’ expressed by the Government company only when it is actuated by any malice or ill-will but not when the same was either unfair or unreasonable. In fine, the contention is that the State in a matter of this nature is required to act fairly.

D 15. We do not see any incongruity in the said decision. A judgment, as is well known, must be read in its entirety. It must be construed reasonably and if necessary, in the light of the constitutional and statutory provisions.

E 16. An executive action must be informed by reason. An unfair executive action can only survive for a potent reason. An action which is simply unfair or unreasonable would not be sustained. Objective satisfaction must be the basis for an executive action. Even subjective satisfaction on the part of a State is liable to judicial review. The ‘State’ acting whether as a ‘landlord’ or a ‘tenant’ is required to act *bona fide* and not arbitrarily, when the same is likely to affect prejudicially the right of others.

F 17. In *Amarnath Ashram Trust Society & Anr. v. Governor of U.P. & Ors.*, [1998] 1 SCC 591, it was held :

G “... Thus the decision of the Government to withdraw from acquisition was based upon a misconception of the correct legal position. Such a decision has to be regarded as arbitrary and not *bona fide*. Particularly in a case where as a result of a decision taken by the Government the other party is likely to be prejudicially affected, the Government has to exercise its power *bona fide* and not arbitrarily. Even though Section 48 of the Act confers upon the State wide discretion it does not permit it to act in an arbitrary manner...”

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18. We are, however, not oblivious of the legal principle that only because a statute causes hardship, the same may not be declared *ultra vires*. (*Dura Lex Sed Lex*). We may, in this regard, notice certain principles : A

19. In *Raghunath Rai Bareja and Anr. v. Punjab National Bank and Ors.*, (2006) 13 SCALE 511, it is stated :

“Learned counsel for the respondent-Bank submitted that it will be very unfair if the appellant who is a guarantor of the loan, and director of the Company which took the loan, avoids paying the debt. While we fully agree with the learned counsel that equity is wholly in favour of the respondent-Bank, since obviously a Bank should be allowed to recover its debts, we must, however, state that it is well settled that when there is a conflict between law and equity, it is the law which has to prevail, in accordance with the Latin maxim ‘*dura lex sed lex*’, which means ‘the law is hard, but it is the law’. Equity can only supplement the law, but it cannot supplant or override it.” C

20. A statute, however, must be construed justly. An unjust law is no law at all (*Lex injusta non est lex*). D

21. In *Kailash Chand & Anr. v. Dharam Dass*, [2005] 5 SCC 375, Lahoti, C.J. opined :

“We find it difficult to accept the construction placed on the third proviso, in para 14 of the judgment in *Molar Mal* case. In *Rakesh Wadhawan v. Jagdamba Industrial Corpn.* this Court has held that a statute can never be exhaustive. The legislature is incapable of contemplating all possible situations which may arise in future litigation and in myriad circumstances. The scope is always there for the court to interpret the law with pragmatism and consistently with the demands of varying situations. The construction placed by the court on statutory provisions has to be meaningful. The legislative intent has to be found out and effectuated. E

Law is part of the social reality. G

(See *Law in the Scientific Era* by Justice Markandey Katju, 2000 Edn., p. 33.)

Though law and justice are not synonymous terms they have a close relationship, as pointed out by the American jurist Rawls. Since one H

A of the aims of the law is to provide order and peace in society, and since order and peace cannot last long if it is based on injustice, it follows that a legal system that cannot meet the demands of justice will not survive long. As Rawls says: Laws and institutions no matter how efficient and well arranged, must be reformed or abolished if they are unjust. (ibid., p. 72.)

B Clearly, law cannot be so interpreted as would cause oppression or be unjust.”

C 22. The Parliament moreover is presumed to have enacted a reasonable statute (see Breyer, Stephen (2005): Active Liberty: Interpreting Our Democratic Constitution, Knopf (Chapter on Statutory Interpretation - pg. 99 for “Reasonable Legislator Presumption”).

D 23. We may also notice that recently in *M/s. Ispat Industries Ltd. v. Commissioner of Customs, Mumbai*, (2006) 9 SCALE 652, one of us (Katju, J.) stated :

E “In this connection, it may be mentioned that according to the theory of the eminent positivist jurist Kelsen (The Pure Theory of Law) in every legal system there is a hierarchy of laws, and whenever there is conflict between a norm in a higher layer in this hierarchy and a norm in a lower layer the norm in the higher layer will prevail (see Kelsen’s ‘The General Theory of Law and State’).”

24. With that we may add that a statutory order or discretion exercised by a statutory authority must also be tested on the anvil of the constitutional scheme.

F 25. This Court number of times has laid emphasis on reasonable action on the part of the State even as a landlord. [See *M/s. Dwarkadas Marfatia & Sons v. Board of Trustees of the Port of Bombay*, [1989] 3 SCC 293 and in contractual matters – *Noble Resources Ltd. v. State of Orissa & Anr.*, [2006] 10 SCC 236 and *State of Karnataka & Anr. v. All India Manufacturers Organisation & Ors.*, [2006] 4 SCC 683].

H 26. Reasonableness and non-arbitrariness are the hallmarks of an action by the State. Judged from any angle, the action on the part of the appellant does not satisfy the test of fairness or unreasonableness. It being wholly arbitrary cannot be sustained.

27. In any event, when two views are possible, a view which satisfies A
the constitutional rights or requirements, must be preferred.

28. In *M.L. Kamra v. Chairman-cum-Managing Director, New India Assurance Co. Ltd. & Anr.*, [1992] 2 SCC 36, this Court held :

“The Court ought not to interpret the statutory provisions, unless B
compelled by their language, in such a manner as would involve its
unconstitutionality, since the legislature or the rule making authority
is presumed to enact a law which does not contravene or violate the
constitutional provisions. Therefore, there is a presumption in favour
of constitutionality of a legislation or statutory rule unless ex facie it C
violates the fundamental rights guaranteed under Part III of the
Constitution. If the provisions of a law or the rule is construed in such
a way as would make it consistent with the Constitution and another
interpretation would render the provision or the rule unconstitutional,
the Court would lean in favour of the former construction. D

29. Right of property although is not a fundamental right, nonetheless
remains a constitutional right and any expropriatory legislation must be
construed strictly. [See *Hindustan Petroleum Corporation Ltd. v. Darius
Shahpur Chennai & Ors.*, [2005] 7 SCC 627].

30. In the instant case, the concurrent finding of fact is that the desire E
of the appellant was not *bona fide*. In any event, possession of the lease
holding has already been delivered. Respondents have received possession
after a long struggle. It is, therefore not a case where we should interfere with
the impugned judgment particularly in view of the finding of fact arrived at
by the courts below.

31. For the aforementioned reasons, these appeals are dismissed with F
costs. Counsel's fee assessed at Rs. 50,000/-.

N.J.

Appeal dismissed.