

CASE NO.:
Appeal (civil) 312 of 2002

PETITIONER:
Guntur Tobaccos Ltd

RESPONDENT:
The Transmission Coprn. of A.P. & Anr

DATE OF JUDGMENT: 11/04/2008

BENCH:
A.K. MATHUR & ALTAMAS KABIR

JUDGMENT:
J U D G M E N T
CIVIL APPEAL NO. 312 OF 2002

Altamas Kabir, J.

1. This appeal, by way of special leave, is directed against the judgment and order dated 29th December, 2000, passed by the Division Bench of the Andhra Pradesh High Court in Letters Patent Appeal No. 78 of 1988, which was preferred against the order passed by the learned single Judge in A.S. No. 610 of 1979 on 24th June, 1987.

2. As it appears from the materials on record, the appellant herein, Guntur Power and Light Limited, hereinafter referred as "GPL", was incorporated for the purpose of running an Electrical Undertaking to supply electricity to the Guntur area of Andhra Pradesh. It was granted a licence for the aforesaid purpose under the provisions of the Indian Electricity Act, 1910 and acquired various properties for the Undertaking.

3. In 1938, GPL ceased to generate electricity and it confined itself only to distribution of power. Receiving and distributing stations were located in places belonging to the GPL, outside the properties forming the subject matter of the present appeal. It is the categorical case of the appellant herein that the said properties were not used by GPL for the purposes of the Electricity Undertaking or for any other ancillary purpose from the year 1939 onwards.

4. On 3rd August, 1945, GPL granted a lease in favour of Guntur Tobacco Company, hereinafter referred to as "GTC", a sister company, in respect of two acres of land with right to construct buildings thereon in terms of Clause 5 of the registered Lease Deed and also with an option to purchase the demised land in terms of Clause 8 thereof. By another registered Lease Deed executed by GPL in favour of GTC on 4th November, 1949, a further portion of vacant land measuring one acre was also demised in favour of GTC, which is the appellant in these proceedings. Subsequently, two more lease deeds were executed by GPL in favour of GTC on 15th March, 1950 and 18th March, 1954, extending the period of the lease till the end of the year 1971. In the Lease Deed of 18th March, 1954, clause 8 containing the option of purchase was substituted by a new clause, which, inter alia,

provided that even if the lessors came to be wound up voluntarily or went into liquidation or became insolvent, or if the lessors ceased to carry on business, the lease would not terminate but would remain in full force with the right to the lessees to purchase the demised lands and buildings and structures thereon belonging to the lessors at the market value or be entitled to repayment of the market value of the buildings and super structures which may be put up by the lessees.

5. In 1956, the Government of Andhra Pradesh acquired the Electrical Undertaking from GPL in exercise of its powers under the Andhra Pradesh Electricity Supply Undertaking Acquisition Act, 1954, whereupon the Undertaking of GPL vested in the State Government with effect from 1st May, 1956. Upon such vesting, the demised premises, along with the land and buildings situated thereupon, became the property of the State Government by virtue of such acquisition. The Transmission Corporation of Andhra Pradesh, being the respondent No. 1 herein, was formed on 1st April, 1959, under Section 5 of the Electricity Supply Act, 1948, and pursuant to its policy the State Government transferred the Undertaking of GPL with all its assets to the Andhra Pradesh State Electricity Board, which became the owner of the said properties.

6. Even after formation of the respondent No. 1 Corporation, GTC continued to remain in possession of the properties in question purportedly on the strength of the Lease Deeds executed by GPL in its favour. According to the respondent No. 1 Corporation, in 1961 the Lease Deeds executed by GPL in favour of GTC came to be scrutinized and it was noticed that GPL had executed the leases in favour of GTC without obtaining requisite sanction of the Government in terms of Section 9(2) of the Indian Electricity Act, 1910 which rendered the Lease Deeds void. The Andhra Pradesh State Electricity Board was of the view that the possession of GTC was in the nature of a licence and GTC was entitled to remain in possession as long as the respondent No. 1 Corporation, as owner of the property, permitted it to do so. Consequent thereupon, the respondent No. 1 Corporation issued a letter on 9th January, 1962, to the appellant informing it that the Lease Deeds executed in its favour were void and it was also called upon to vacate the demised premises and to deliver possession thereof to the respondent No. 1 Corporation. The appellant responded to the said letter by a lawyer's notice dated 22nd January, 1962, contending that it was entitled to remain in possession of the demised property till 1971. The appellant continued to remain in possession of the demised property even after expiry of the lease and instead of vacating the same sought to exercise its option of purchase of the said properties by a notice dated 29th October, 1969. On 26th March, 1971, the respondent No. 1 Corporation by its letter called upon GTC to quit the suit properties and surrender the possession thereof to the Electricity Board by 1st January, 1972. An attempt to arrive at an amicable settlement having failed, the respondent No. 1 Corporation filed a suit, being O.S. No. 15 of 1973, in the Court of Additional Subordinate Judge, Guntur, against GTC in 1972 seeking its eviction from the suit property, being the demised properties, on the ground

that the leases in question executed and registered in favour of GTC were not valid and that GTC was liable to be evicted as mere licensees of the respondent No. 1 Corporation. The appellant herein contested the suit by filing written statement contending that although GPL had been incorporated for the purpose of distributing electricity in Guntur area and was also a licensee under the Indian Electricity Act, 1910, for the generation and distribution of electricity in the said area, in 1938 it ceased its operations relating to generation of electricity and confined itself to distribution of power only. According to the appellant, since the suit properties were no longer used by GPL from 1939 for the purposes of the Electricity Undertaking or for any other connected purpose, from 1939 it ceased to be part of the Undertaking for the purposes of generation and distribution of electricity and the Lease Deeds executed by GPL in favour of GTC were not, therefore, hit by the provisions of Section 9(2) and (3) of the Indian Electricity Act, 1910. It was also contended that since the suit properties had ceased to be part and parcel of the Electricity Undertaking after 1939, it could not have vested in the Andhra Pradesh State Electricity Board or the State Government and consequently the appellant was entitled to remain in possession of the suit properties at least till the end of 1971, particularly, when the respondent No. 1 Corporation had accepted the rents from the appellant herein in the manner stipulated in the Lease Deeds and had even issued receipts therefor. It was contended that because of the conduct of the respondent No. 1 Corporation it was estopped from disowning such relationship and could not treat the appellant as a licensee.

7. On the basis of the pleadings, initially five issues were framed, namely: -

"1. Whether the lease deeds dated 3rd August, 1945, 4th November, 1945, 15th March, 1950 and 18th March, 1954 obtained by the defendant are void under Section 9(3) of the Indian Electricity Act of 1910?

2. Whether this Court has jurisdiction to entertain the suit in view of the specific provisions of the Andhra Pradesh Buildings, Lease and Rent Control Act?

3. Whether the plaintiff is entitled to claim the future profits?

4. Whether the plaintiff is entitled to recover possession of the suit property from the defendant?

5. To what relief?"

Subsequently, two additional issues were framed on 19th August, 1976, namely: -

"1. Whether the defendant is entitled to the benefits of Section 53A of the Transfer of Property Act?

2. To what equities is the defendant entitled?"

8. The trial court decided issue No. 1 initially framed in favour of respondent No. 1 Corporation/ plaintiff and against the appellant/defendant on the ground that the Lease Deeds were void since they were contrary to Section 9(2) and (3) of the Indian

Electricity Act, 1910. The trial court also found that the said agreements of lease were not binding on the respondent No. 1 Corporation/plaintiff.

9. On issue No. 2, the trial court found that it had jurisdiction to entertain the suit.

10. On additional issue No. 1, it was held that the appellant herein/defendant was not entitled to claim protection under Section 53A of the Transfer of Property Act.

11. On issue No. 4, it was held that the respondent No. 1 Corporation/plaintiff was entitled to recover possession of the suit property from the appellant herein/defendant.

12. Issue No. 3 and additional issue No. 2 were also found in favour of the respondent No. 1 Corporation/plaintiff. Accordingly, a decree for possession was passed in its favour against the appellant/defendant.

13. The appellant herein filed an appeal before the single Judge of the Andhra Pradesh High Court, which was dismissed on 4th June, 1987, giving rise to a Letters Patent Appeal before the Division Bench of the said High Court.

14. Before the Division Bench of the High Court, it was contended that both the courts below had factually erred in arriving at a finding that the leases in question had been executed without the prior permission of the Government as contemplated under Section 9(2) of the Indian Electricity Act, 1910. It was urged that the State was fully aware of the fact that the property had been demised to the appellant herein, inasmuch as, when the appellant applied for a loan under the State Aid to Industries Act, the State Government advised the appellant to get the lease extended so that there was sufficient time for the appellant to pay back the loan. It was also submitted that the matter had been examined by the Government Solicitor at Madras and in his opinion, which has been set out in the impugned judgment, it had been indicated that the lessors of the leased lands, should execute an undertaking to the borrowing company to renew the leases until 1st May, 1971 or until the final instalment of the State Aid Loan with interest was repaid to the Government. It was contended that it is only after the said letter of the Government Solicitor that the Government extended a loan of Rs.2 lacs to the Company, which sum was also repaid during the period of the lease and during such period the leasehold property stood mortgaged with the Government.

15. On the basis of the aforesaid submission, the Division Bench of the High Court held that the properties had been demised in favour of the appellant with the implied sanction of the State Government and the lease was not therefore hit by Section 9(2) and (3) of the Indian Electricity Act, 1910.

16. Despite the aforesaid finding, the Division Bench while observing that the aforesaid finding was sufficient to grant the relief prayed for by the appellant, took note of certain further developments, namely, that though the lease was to expire in 1971, the Electricity Supply Undertakings (Acquisition) Act, 1954, came to be enacted in the meantime. The Division Bench observed that the Act had been enacted for the purpose of providing for the acquisition by the Government of all Undertakings which supplied electricity in the State of Andhra

Pradesh. Section 4 of the Act empowers the Government to pass an order in writing that an Undertaking would vest in the Government on the dates specified therein. Section 5 provides for payment of compensation to the lessee. Section 6 provides for vesting of all fixed assests, cash security, investments, documents, and obligations of the lessee Undertaking as on the date of vesting. The Division Bench found that the assets of the Undertaking stood vested with the Government in terms of an order passed in accordance with Section 3, as a result whereof, the Undertaking stood vested with the Government with effect from 1st May, 1956. The Division Bench also observed that neither the 1954 Act nor the order of vesting of 1st May, 1956, had been challenged by the appellants.

17. On the basis of the aforesaid reasoning the Division Bench came to the conclusion that since the Electricity Undertaking of the appellant had vested in the State Government from 1st May, 1956, the lessor itself had lost all rights over the property and the same stood extinguished by the promulgation of the 1954 Act. The Division Bench came to the conclusion that since the lessor had lost its rights of ownership over the property in question, the provisions in the lease deed regarding option of purchase as contained in clause 6 thereof became unenforceable against the lessor. The State Government having stepped into the shoes of the lessor, it was not empowered by the provisions of the statute to sell any part of the Undertaking to the licensees. It was held that clause 6 of the agreement could not, therefore, be enforced as it would be against public policy and would also defeat the purpose of the Act itself.

18. Thereafter, on an analysis of the provisions of the licence which had been granted to GPL, the Division Bench held that in the context of the Electricity Act, 1910, all the properties of the Electricity Undertaking remained a part of the Undertaking even if it ceased to use the same for generation or supply of electricity. Referring to the provisions of Section 3(2)(d)(ii) the Division Bench held further that what was material, was the question as to whether the properties formed part of the Electricity Undertaking when the licence had been granted to it. In arriving at the aforesaid conclusion, the Division Bench also mentioned that clause 12(b) of the licence did not mention that if generation was stopped from a particular site, that site would be excluded from the Undertaking. By holding as above, the Division Bench negated the submissions of the appellant that since the properties were no longer used for generation of electricity, it would have to be held that the said properties ceased to be the properties of the Electricity Undertaking and was not therefore affected by the Electricity Supply Undertakings (Acquisition) Act, 1954. On the basis of the aforesaid findings, the Division Bench ultimately held as follows :-

"For all these reasons, we hold that although the agreement dated 18.3.1954 was not hit by Section 9 of the Indian Electricity Act, 1910 but the second part of the agreement which gives an option to the licensee of purchasing the property cannot be enforced because of the statutory

obligation of A.P. Electricity Supply Undertakings (Acquisition) Act, 1954."

19. Mr. Pallav Sishodia, learned counsel for the appellant, while questioning the finding of the Division Bench of the High Court submitted that since the leases in question had been executed in compliance with the provisions of Section 9(2) of the Indian Electricity Act, 1910, the lessor was under an obligation to comply with the conditions relating to option of purchase as contained in clause 6 of the lease deed. It was submitted that even if the properties of the Undertaking are accepted to have vested in the State Government, the status of the lessor remained the same though the identity may have been altered and the person who had stepped into the shoes of the lessor was equally bound to give effect to the provisions of clause 6 of the lease deed in the event the lessee opted to exercise such right.

20. However, Mr. Sishodia also reiterated the submission that once the demised property was no longer used for the purpose of generation of electricity, it ceased to be a part of the Electrical Undertaking and did not, therefore, vest in the State under the 1954 Act. Mr. Sishodia urged that the Division Bench had erred in interpreting the provisions of Section 3(2)(d)(ii) along with Section 4(A) and Section 6 of the Indian Electricity Act, 1910 in arriving at a finding that till such time the licence granted for generation of power was either modified or rectified, all the properties belonging to the Undertaking would continue to remain a part of the Undertaking. It was urged that it was on account of such faulty reasoning that the Letters Patent Appeal, which was filed by the appellant, came to be dismissed.

21. It was lastly urged by Mr. Sishodia that having included the clause relating to option of purchase and having put the appellant into possession of the demised property, the appellant's possession was also protected under Section 53A of the Transfer of Property Act, 1982. In support of his said contention Mr. Sishodia referred to and relied upon the decision of this Court in *Shrimant Shamrao Suryavanshi and Anr. Vs. Pralhad Bhairoba Suryavanshi* (2002 (3) SCC 676), in which this Court observed that a person who obtained possession of the property in part-performance of an agreement of sale, could defend his possession in a suit for recovery of possession filed by the transferor or by a subsequent transferee of the property claiming under him, even if a suit for specific performance of the agreement of sale becomes barred by limitation.

22. Mr. Rakesh K. Sharma fully supported the decision of the Division Bench impugned in this appeal and submitted that no case had been made out for interference in the appeal. He reiterated the submissions made before the High Court that once the Undertaking had vested in the State in terms of the 1954 Act, all the properties of the Undertaking, whether being used or not for the generation of electricity, would stand vested in the State

Government. He also reiterated that in view of the provisions of the Indian Electricity Act the State Government was under no obligation to act in terms of the condition stipulating option of purchase by the lessee. He submitted that once the Electricity Undertaking, namely, GPL, came to be vested in the State Government under the 1954 Act and the lease was terminated by the State Government, the appellant continued to be in occupation of the demised premises as a licensee and such licence could be terminated at the will of the licensor. Mr. Sharma urged that the State Government was no longer under any obligation to comply with the provisions relating to the option of purchase contained in clause 6 of the lease agreement, since the lease deeds had ceased to be operative.

23. We have carefully considered the submissions of the respective parties and do not find any reason to disagree with the view taken by the Division Bench of the High Court, in dismissing the Letters Patent Appeal. Having regard to the opinion given by the Government Solicitor, the finding arrived at by the High Court regarding the implied consent of the State Government does not require any interference.

24. The other submission made on behalf of the appellant that, since the State Government had stepped into the shoes of the lessor, it was bound by the terms of the lease agreement and in particular clause 6 thereof, cannot also be accepted in view of the provisions of Sections 4 and 6 of the A.P. Electricity Supply Undertakings (Acquisition) Act, 1954. The defence taken on behalf of the appellant/lessee that, since the demised lands were no longer required by GPL, they ceased to be part of the Electricity Undertaking, has been rightly rejected by the High Court. The High Court has considered the matter in some detail and various decisions of this Court and other High Courts have been considered by it in ultimately coming to the conclusion that in view of Sections 4 and 6 of the 1954 Act read with the provisions of the Indian Electricity Act, 1910, all the properties of the Undertaking for which licence was granted for generation of electricity, remained a part of the Undertaking unless the licence had been modified. As has been noted by the High Court, the properties involved were mentioned and included in the licence granted to GPL and the said licence remained unchanged when on the basis of the order passed by the Government under Section 3 of the 1954 Act, all the properties of the Electricity Undertaking came to be vested in the State. Moreover, once the lease came to an end, the State Government was no longer under any obligation to act in accordance with the option given to the lessee to purchase the property.

25. In view of the above, we find no merit in the appeal and the same is accordingly dismissed, but without any order as to costs.