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INTERPRETATION OF LEASE AND LICENSE

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BHARAT PETROLEUM CORPORATION v. **CHEMBUR SERVICE STATION**

➤ **FACTS**

First off, I would like to give background on the case. The appellant is Bharat Petroleum which is a public undertaking under Burmah Shell which was taken over by the central government of India. Burmah Shell took on lease a parcel and piece of land in Chembur Mumbai for a storage depot or service station with the right to erect and maintain all manner of equipment, plant, machinery, tanks, pumps, and structure for carrying business of sale and supply of products erected in and stored in retail petroleum outlet. The appellant got into the dealership agreement with the respondent appointing it as a dealer for selling the petroleum products of the appellant under the said RPO. A surprise inspection was conducted by the appellant in presence of the manager of the respondent and it turned out that the respondent was not using the original chip in the hardware leading to deviation in an ERA of the dispensing unit. To prevent further action, including the termination of the respondent's dealership, the appellant issued a show cause notice to the respondent on December 6, 2007, alleging that the respondent had tampered with the original chip to defraud the company's customers and make illegal gains. In a response dated 10-7-2007, the respondent refuted the allegations made in the show-cause notice. Various suits were filed by the respondent and appellant at Court of Small Causes, Bombay, High Court, and an appeal in Supreme Court.

The main issue that follows throughout is to verify whether the respondent was on lease or licensed by the Appellant for the said premises.

To analyze the issues, the concept of lease and license has to be taken into consideration.

➤ **ANALYSIS**

License and Lease

“License is defined in **Section 52 of Indian Easement Act, 1882** that is where one person grants to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called the license.”¹

According to this definition of a license, the right to do or continue to do a specific specified thing in or upon an immovable property is granted to the licensee by the owner. Legal ownership of the property, therefore, remains in the owner's hands, but the licensee is allowed to utilize the space for a certain purpose that is specified by the licensor. No new interest in the property as such has been created. Now, relating this reasoning to the current situation.

It is stated explicitly in the **Dispensing Pump and Selling License Agreement** that:

1. “The company expressed reserves to itself the right to take back while or any portion of the said premises or the said facilities or alter them at any time during the continuance of this license at its sole discretion.”²This justifies that whatever happens to the premises takes place per the owner that is the appellant.
2. The said premises and the said facilities in continuation of the license remain the absolute property and in sole possession of the company.”³This justifies the legal ownership of the appellant that is refraining the respondents from any power to continue the license on their own.
3. “The premises and the said facilities hereby licensed to the licensees shall only be used for stocking and selling/dispensing the petroleum products of the company and shall not be used for any other purpose except as may be permitted in writing by the company.”⁴This fulfills the definition of license concerning **‘particular purpose’**
4. “Neither the licensees nor the licensee’s servants or agents shall interfere in any way with the working parts of the pumps nor other equipment provided by the company”⁵That is whatever happens in the premises concerning the purpose of supplying the products or anything for agreement shall not be interfered by the

¹ Indian Easement Act 1882 s 52

² (2011)3SCC710, [2011]3SCR632

³ (2011)3SCC710, [2011]3SCR632

⁴ (2011)3SCC710, [2011]3SCR632

⁵ (2011)3SCC710, [2011]3SCR632

respondent. The deals and supply at the price decided by the appellant and on the behalf of appellant specify this as a principal and agent relationship.

5. “The license may be terminated without assigning any reason whatsoever by either party. This highlights that appellant can terminate the license at any time and for that fact, notice may not be required.”⁶ In the present case the license was terminated via a show cause notice with reasoning and also gave the respondent a chance to be heard as to why the license shall not be terminated.

Thereby I disagree with the decision of The Court of Small Causes because it allows the possession to the respondent of premises and since agreement is a license as per above justification and license doesn't give possession.

The respondent asserted that **he was a tenant of the aforementioned property**. In essence, he claimed that because the license is valid for 15 years and the premises are licensed is in lawful occupation premises, he is a tenant of the building and equipment and subtenant of the land comprising in suit premise. As a result, he can't be forced to leave the premises.

Let's first comprehend the concept of a lease to determine whether the respondent's argument is credible or not:

Lease: “Section 105 of the Transfer of Property Act defined a lease of immovable property as a transfer of a right to enjoy such property made for a certain time in consideration for a price paid or promised.”⁷

“Section 108 of the Transfer of Property Act said that the lessee is entitled to be put in possession of the property. A lease is therefore a transfer of an interest in land. The interest transferred is called the leasehold interest. The lessee can avail the right to be not excluded of the possession any time by the lessor.”⁸

- There is a transfer of interest in the property in case of a lease and the rights are passed along with the property. Lease cannot be transferred before expiry of any term without

⁶ (2011)3SCC710, [2011]3SCR632

⁷ Transfer of Property Act 1882 s 105

⁸ Transfer of Property Act 1882 s 108

notice and conditions. The lessor is entitled to maintain the suit against trespasser. In this case, the contract is itself evidential that transfer of interest in the property is denied. So per say, the rights of possession and entitlement to maintain the suit against the trespasser is denied too which makes the transfer of property comes with no heritable and transferable right with respect to sublease. On the other hand, there is no transfer of the interest in the property to acquire the right to occupy the property or to make any desirable changes in the property apart from the directed changes which are discretionary upon the Bharat Petroleum Corporation with respect to the business. Thereby, this constitutes license rather than the lease.

- Given that the dealership's contract explicitly forbade any interest from being transferred from the appellant to the respondent, I think the respondent's argument is weak in comparison to that of the appellant and the law. As a result, the appellant does not transfer any leasehold interest to the respondent. Because the aforementioned factors are of higher importance in terms of leasing, the dealer is only given instructions for the sale of the items and is not granted any personal property rights while doing his duties under the dealership agreement. According to the DPSL agreement's point 4 described above, this is justified. Hence, based on the examination of the arguments, it is clear that there is no lease, and that the licensor can discontinue the supply for which the license was originally granted, revoke the license at any moment, and take control of the premises.

SUPPORTING CASE LAWS

1. The Supreme Court stated in **C.M. Beena v. P.N. Ramachandra Rao** that "the difference between a lease and a license is to be determined by determining the true intention of the parties as decipherable from a complete reading of the document, if any, executed between the parties and the surrounding circumstances."⁹The court also concluded that the conduct of the parties before and after the formation of the relationship is relevant in determining their purpose.

In the same way, the agreement in the current case makes it abundantly clear that the appellant was granted a license, enabling the licensee (respondent) to enter the retail outlet premises only for the specific purpose of using the facilities to sell the appellant's Motor Spirit, HAD, motor oils or other motor accessories as a licensee of the appellant

⁹ MANU/SC/0254/2002

at the prices the appellant specified which is construed as “real intention” of the parties. The respondent was not permitted to sell any other items or goods. It was not permitted to charge a fee other than the one the appellant agreed to. If the respondent's license to sell the appellant's petrol and petroleum products was revoked, the respondent would not be permitted to visit the outlet premises. Post the agreement, the real intention was executed in the form of the supply of goods by the appellant and the selling of those goods by the respondent in a specified manner as following the appellant.

2. The court determined in the case of **Vayallakath Muhammodkutty v. Illikkal Moosakutty** that merely including a prohibition against subletting in a document does not transform it into a lease agreement.¹⁰ The court held that the issue of subletting typically does not come up in a license agreement. The lease or license agreement must express the aim of the parties clearly.
3. It was further ruled in **Khalil Ahmed Basher Ahmed v. Tufelhussein Samasbhai Sarangpurwala** that a contract should be interpreted as a lease agreement if an interest in an immovable property is established that allows a transferee to use it without restriction.¹¹ This indicates that the document should be read as a license if a landowner offers permission to utilize the land without any exclusivity.
4. In the case of **Mrs. M.N. Clubwala v. Fida Hussain Saheb**, the Supreme Court addressed the issue of whether a contract between the parties constitutes a landlord-tenant relationship or only a licensee-licensor relationship, and found that the party's intentions are the deciding factor.¹² This intent must be determined after carefully reviewing all pertinent agreement clauses.
5. The Delhi High Court made a significant finding in the case **Municipal Council of Delhi vs. Pradip Oil Corporation and Anr.** that a simple license does not generate an interest in the property to which it pertains. Furthermore, if no interest is generated, the agreement is valid because neither the respondent had any ownership rights to the property nor was he able to use it on his own.¹³
6. “It was said in **Associated Hotels of India Ltd. V. R.N. Kapoor** that "the line between a license and a lease is clear, but it occasionally becomes very thin or even blurred." It was once believed that the test of exclusive possession was unfailing and that granting

¹⁰ MANU/SC/0883/1996

¹¹ 1988 AIR 184, 1988 SCR (1)1057

¹² 1965 AIR 610, 1964 SCR (6) 642

¹³ 100 (2002) DLT 442, 2002 (65) DRJ 586

someone exclusive use of a property would prove beyond a reasonable doubt that they were the lessee.”¹⁴

7. “However, there was a change that was reflected in **Errington v. Errington**, in which Lord Denning reviewed the case law and concluded that, although someone who is granted exclusive possession is initially presumed to be a tenant, this will not be the case if there was no intent to establish a tenancy.”¹⁵
8. “The key issue is that an agent solely retains the principal's property on behalf of the principal, as per the ruling in **Southern Roadways Madurai v. S.M. Krishnan**. He doesn't gain any ownership stake in the property. He cannot contest the principal's ownership of the property. He cannot change it into another type or use it either. He is in the principal's ownership.”¹⁶Permission to use the premises for the specified purpose or in the specified manner, and without this permission, the occupation would have been illegal.”¹⁷

- **Remedies**

“The Transfer of Property Act details the lessee's and lessor's rights and obligations. When a license has been issued for consideration and the non-defaulting licensee is evicted by the grantor before he has completely enjoyed the privilege for which he contracted under the license, he is entitled to compensation from the grantor under the Easement Act.”¹⁸Yet, there is no right to keep holding onto the land. On similar grounds, if the respondent had a strong defense as to wrongfully terminating the license by the appellant then in that scenario also, he could only ask for compensation but not the possession.

- **Consideration specific to Maharashtra as the present case belongs to this state:**

“In accordance with section 5(4) A of the old Bombay Rent Act (similar to section 7(5) of the MRC Act) defined a licence in relation to any premises or any part of them as referring to the person who is occupying the premises or such part pursuant to an

¹⁴ MANU/SC/0168/1959: AIR 1959 SC 1262

¹⁵ Errington v. Errington (1952) 1 All E.R. 149

¹⁶ MANU/SC/0522/1989 : (1989) 4 SCC 603

¹⁷ MANU/SC/0254/2004: 2004 (3) SCC 595

¹⁸ Associates, A. L. (2022, January 11). *Lease or leave and license: Dynamics for commercial decisions - landlord & tenant - leases - india*. Lease Or Leave And License: Dynamics For Commercial Decisions - Landlord & Tenant - Leases - India. Retrieved April 11, 2023, from <https://www.mondaq.com/india/landlord-tenant---leases/1149210/lease-or-leave-and-license-dynamics-for-commercial-decisions>

existing agreement for licence granted for a licence fee or charge. In such a licence, the person occupying the space would be referred to as the licensee and could be considered a tenant for purposes of the act (similar to section 7(5) of the MRC Act) and be entitled to protection under the rent control law as a tenant.”¹⁹ Therefore, neither the old Bombay Rent Act nor the new MRC Act define a "licensee" as someone who has a licence to operate the Retail Petroleum outlet of the Appellant, a running business owned by the Appellant. Therefore, the Respondent did not acquire the status of a tenant under the Appellant or acquire the right to eviction resistance.

Maharashtra rent control act would be taken into account in courts of the state whether lower or high court of Maharashtra but the case would be dealt under Transfer of Property Act in Supreme Court.

Therefore the agreement shall be treated as a license and the license can be revoked at any time wherein the respondent can't claim the protection of his right of possession over the property or rights of the deemed tenants because it is not lease agreement.

¹⁹ Bombay Rents, Hotel and Lodging House Rates Control Act 1947 s 5(4) A
Maharashtra Rent Control Act 1999 s 7(5)