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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 4293/2002

Date of decision: 21st April, 2009

NISHI GUPTA

..... Petitioner

Through Mr. V.P. Singh, Sr. Advocate with Mr.
Sanjeet Singh, Advocate.

versus

INDIAN OIL CORPORATION AND ORS.

..... Respondents

Through Mr. M.M. Kalra & Mr. Kunal Kalra,
Advocates.

Mr. Ajay Verma & Mr. Amit Mehra, Advocates for
respondent-DDA.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in the Digest ?

ORDER

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1. The petitioner- Nishi Gupta was issued letter of intent dated 4th June, 1991 by Indian Oil Corporation Limited for a retail outlet dealership at New Delhi. The letter of intent stipulated as under:-

" a) **LAND**

Procure a suitable plot of land within a
period of 4 months from the date of this letter,

duly cleared by our Delhi Divisional Office in writing. The plot of land admeasuring 36.50x30.48 mtrs. should be either purchased by you or leased to you initially for a period of 15 years, with suitable sublease clause as detailed in (b) hereunder and also with a renewal option thereafter for a minimum period of 5 years”

2. Immediately after issue of letter of intent, the petitioner entered into a lease agreement dated 24th June, 1991 in respect of land located in Khasra No. 31, Bahloopur, Khadar, Ring Road, New Delhi with one Mr. Gyan Gupta for taking on lease and running a petrol pump. Pursuant thereto, it is admitted by the counsel for the petitioner that a petrol pump was established and has been operating from the site in question.

3. The lease agreement stipulated that the lessor is absolute owner of land, building, filling pump and underground oil storage pump installed at the said site.

4. The aforesaid land is under acquisition and the petitioner claims that she is entitled to resettlement for which DDA should provide alternative land. In this connection, learned counsel for the petitioner relies upon letters dated 24th October, 2000 and 28th March, 2002 written by DDA. Learned counsel has further stated that Mr. Gyan Gupta had earlier filed Writ Petition No. 2383/1990 challenging the land acquisition proceedings in respect of the said land but the said writ petition has been dismissed. It is stated that the petitioner is ready and willing to hand over possession of the land and, therefore, the petitioner is covered by the 2003 policy and is

entitled to resitement.

5. The 20th June, 2003 policy of DDA in respect of allotment of land for petrol pump/gas godown relating to resitement stipulates as under:-

"A. Resitement:

- 1) Resitement will be made only when the existing petrol pump/gas godown site is utilized for a planned project/scheme which directly necessitates the closing down of the petrol pump/gas godown site. No resitement will be made on any other grounds. As the petrol pumps will be disposed on annual Licence fee basis rather than on upfront payment, if an allottee does not find the business lucrative due to certain other reasons, he can always chose to surrender the site.
- 2) In all cases of resitement, the existing rates for the new site will be charged and the possession of the old site will be handedover to DDA.
- 3) The alternative site will be allotted through computerized draw from the available sites for holding the draw at least 3 sites must be available on the date of holding the draw."

6. Under the aforesaid policy, existing petrol pump/gas godown sites are entitled to resitement if the existing site where the petrol pump/gas godown is existing is to be utilized for planned project/scheme, which directly necessitates closing down of the petrol pump/gas godown site. Plot on resitement cannot be given on any other ground. As per 20th June, 2003 policy, normally land reserved for petrol pump/gas godown has to be auctioned and sold to the highest bidder. The short question, which arises

for consideration is whether the petitioner is covered by Clause A relating to resitement of the aforesaid policy dated 20th June, 2003.

7. The land on which the petrol pump of the petitioner is located became subject matter of acquisition proceedings with issue of notification dated 22nd June, 1990 under Section 17(1) of the Land Acquisition Act, 1894 and also notification dated 22nd May, 1990 under Section 6 of the aforesaid Act. Both the notifications were challenged by Mr. Gyan Chand Gupta, HUF in the writ petition CW No. 2383/1990. The petitioners in the present case entered into a lease agreement with Mr. Gyan Chand Gupta on 24th June, 1991 after the acquisition proceedings had commenced and after the writ petition was filed in 1990. In these circumstances, I do not think the petitioner is entitled to allotment of a new petrol pump site under the resitement clause. The petitioner decided to take the land on lease fully conscious of the fact that the land in question was already subject matter of acquisition proceedings and is to be acquired. Resitement clause of the 20th June, 2003 policy will apply to cases where petrol pump/gas godown were already existing prior to the initiation of acquisition proceedings for planned project/scheme, which directly necessitates closing down of the petrol pump/gas godown site. It will not apply to cases where a person sets up a petrol pump/gas godown after acquisition proceedings have commenced. Any other interpretation will lead to odd results with a party setting up a petrol pump or a gas godown after

acquisition proceedings have commenced and thereupon stakes his claim for preferential allotment to alternative site on the basis of resitement clause. The word 'existing' used in resitement clause indicates that it will apply to cases where there is existing petrol pump/gas godown before the acquisition proceedings have commenced.

8. The aforesaid 20th June, 2003 policy had come up for consideration and was examined by the Supreme Court in ***M/s. Sethi Auto Service Station and Another versus Delhi Development Authority & Others***, reported in JT 2008 (11) SC 520 , wherein the Supreme Court has observed as under:-

"**30.** According to the said guidelines, a request for resitement on the ground of reduction in sales level below the prescribed limit could be entertained by the DDA provided the proposal was referred by the oil company or the Ministry. The parties are ad-idem that the cases of both the appellants for relocation were recommended by the two Oil Companies, viz., IOC and HPCL, on account of expected fall in sales because of the construction of the flyover and grid separator. However, before a final decision on the representation of the appellants could be taken, the policy of the DDA underwent revision in the year 2003. The criterion for allotment of land by the DDA for resitement of existing petrol pumps was changed. Under the revised policy, dated 20th June, 2003, a case for resitement could be considered by the DDA only under the following circumstances:

"A. Resitement:

1) Resitement will be made only when the existing petrol pump/gas godown site is utilized for a planned project/scheme which directly necessitates the closing down of the petrol

pump/gas godown site. No resitement will be made on any other grounds. As the petrol pumps will be disposed on annual Licence fee basis rather than on upfront payment, if an allottee does not find the business lucrative due to certain other reasons, he can always chose to surrender the site.

2) In all cases of resitement, the existing rates for the new site will be charged and the possession of the old site will be handed over to DDA.

3) The alternative site will be allotted through computerized draw from the available sites. For holding the draw at least 3 sites must be available on the date of holding the draw."

31. It is plain that under the new policy resitement of a petrol pump etc. is possible only when the existing petrol pump is utilized for a planned project/scheme, which directly necessitates the closing down of the petrol pump. Under the new policy, resitement on account of fall in sales etc. is not contemplated. In fact, resitement or any other ground is specifically ruled out. It is also evident from the new policy that in the event of DDA permitting resitement, the possession of the old site has to be delivered to the DDA, which presupposes that the old site was also allotted by the DDA. As noted above, the existing sites on which the two petrol pumps in question are operating were allotted by the Airport Authority of India and not by the DDA.

32. Having bestowed our anxious consideration to the facts in hand, in our judgment, the doctrine of legitimate expectation, as explained above, is not attracted in the instant case. It is manifest that even under the 1999 policy, on which the entire edifice of appellants substantive expectation of getting alternative land for resitement is built does not cast any obligation upon the DDA to relocate the petrol pumps. The

said policy merely laid down a criterion for relocation and not a mandate that under the given circumstances the DDA was obliged to provide land for the said purpose. Therefore, at best the appellants had an expectation of being considered for resitement. Their cases were duly considered, favourable recommendations were also made but by the time the final decision-making authority considered the matter, the policy underwent a change and the cases of the appellants did not meet the new criteria for allotment laid down in the new policy. We are convinced that apart from the fact that there is no challenge to the new policy, which seems to have been conceived in public interest in the light of the changed economic scenario and liberalized regime of permitting private companies to set up petrol outlets, the decision of the DDA in declining to allot land for resitement of petrol pumps, a matter of largesse, cannot be held to be arbitrary or unreasonable warranting interference. Moreover, with the change in policy, any direction in favour of the appellants in this regard would militate against the new policy of 2003. In our opinion, therefore, the principle of legitimate expectation has no application to the facts at hand."

9. The ratio of the aforesaid decision supports the stand of DDA. The Supreme Court has held that the 2003 policy is conceived in public interest and is just, fair and reasonable in light of economic scenario and liberalized regime. The argument based upon rights under the earlier 1999 policy and principle of legitimate expectation has been rejected. In paragraph 31 of the judgment, the Supreme Court has also observed that under the new policy, the possession of the old site has to be delivered to DDA and this pre-supposes that the old site is also allotted by DDA and not by a third person.

10. The reliance placed by the petitioner on letter of DDA dated 24th October, 2000 is misplaced. Letter dated 24th October, 2000

reads as under:-

“ This has the reference of your representation addressed to Hon'ble L.G., Delhi regarding allotment of land for running a retail outlet in lieu of the existing petrol pump in the name of M/s Ashish Service Station at Behlol Pur (Ring Road). In this connection, I am to informed that your request has been considered and principally(sic) agreed by the competent authority subject to the certain conditions which are being looked into;”

11. The aforesaid letter merely records that the competent authority has considered the request made by the petitioner and principally agreed with the request made by the petitioner but certain conditions were being looked into. Thus, it is not a case in which the request of the petitioner was accepted. DDA had principally agreed with the request in view of the 1999 policy but was examining conditions which had to be imposed. These were being looked into. There was no absolute and unqualified acceptance. In the integrum, DDA in 2003 changed their policy and have introduced the new policy including the clause relating to resitement quoted above. The amendment and change in the policy cannot be questioned and challenged in view of the decision of the Supreme Court in the case of ***M/s. Sethi Auto Service Station*** (supra). Indeed, the petitioner has not challenged and specifically questioned the 20th June, 2003 policy in the writ petition.

12. The operative portion of letter dated 28th March, 2002 reads as under:-

"Kindly refer to your letter No.DD/R/Aashish dated 29.10.01 on the subject cited above, in this connection it is stated that your case for resitement of land was considered at length & it is decided that the Petrol Pump can be resited only when DDA gets the possession of the land on the Petrol Pump under reference."

13. Admittedly, the petitioner did not handover possession of the land to the DDA. In the meanwhile, the Policy for allotment of alternative land on resitement was changed in view of the changed factual matrix with economic liberalization and private companies setting up petrol outlets. Now, Policy dated 28th June, 2003 holds the field and is applicable. Thus for the same reasons as mentioned in para 11 the letter dated 28th March, 2002 quoted above, does not confer any right to the petitioner to claim alternative land on resitement.

14. In view of the above, I do not find any merit in the present writ petition and the same is dismissed. No costs.

APRIL 21, 2009
VKR/P

SANJIV KHANNA, J.