

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

Date of decision: 6th March, 2012

+ **LPA No. 183/2012**

% **KHANDELWAL OIL COMPANY** **....Appellant**
Through: Mr. Sanat Kumar, Adv.

Versus

INDIAN OIL CORPORATION LTD & ORS. Respondents
Through: Mr. M.M. Kalra & Mr. Kunal Kalra,
Adv. for R-1.
Mr. Ajay Verma, Adv. for R-2.
Mr. Amit Mehra, Adv. for R-2.

CORAM :-

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

JUDGMENT

RAJIV SAHAI ENDLAW, J.

1. This Intra-Court appeal impugns the judgment dated 20th October, 2011 of the Learned Single Judge dismissing W.P.(C) No.8776/2009 preferred by the appellant, as also the order dated 14th December, 2011 dismissing the petition for review filed by the appellant. The counsels for the respondents appeared on advance notice and we have with the consent of the counsels, heard them at length at this stage.

2. The appellant was a dealer since the year 1975 of M/s IBP Co. Ltd. being the predecessor of the respondent no.1 Indian Oil Corporation Ltd. (IOC) with the petrol pump at village Rasulpur on the State Highway (SH-33), Mathura Bharatpur Road, District Mathura, U.P. It appears that the appellant in or about the year 1997-98 applied for resitement of his retail outlet from Mathura to Chandigarh. The then IBP Co. Ltd. vide its letter dated 16th February, 1998 sought approval of the Ministry of Petroleum and Natural Gas, Govt. of India for such resitement of the appellant. While seeking the said approval, it was stated that the appellant was “C” site retail outlet situated in a isolated area at the border of Rajasthan and Haryana; that the law and order situation in UP is far from satisfactory and criminal activities were increasing in the area; a partner of the appellant had also been attacked and an attempt was also made to kidnap him. The Ministry, vide its letter dated 16th April, 1999 granted permission for the appellant being resited at Chandigarh subject to the resited location meeting the volume distance norms. It further appears that the appellant thereafter sought resitement at National Capital Region (NCR) instead of at Chandigarh and approval thereof was also granted by the Ministry vide its letter dated 20th March, 2001.

3. It is further the case of the appellant that though IBP Co. Ltd. had requested various land owning agencies to allot suitable land for resitement of the appellant but upon the merger of IBP Co. Ltd. with the respondent no.1 IOC, the respondent no.1 IOC stopped pursuing the case for resitement of the appellant. The appellant then filed W.P.(C) No.7022/2008 which was however withdrawn on 26th September, 2008 with liberty to file afresh if need arose, after submitting a representation to the respondent no.1 IOC.

4. The appellant submitted a representation dated 14th October, 2008 to the respondent no.1 IOC. The respondent no.1 IOC however informed that it was not obligatory on the respondent no.1 IOC to arrange the land in the NCR region for resitement of the appellant and it was the responsibility of the appellant to arrange for land and infrastructure for resitement to be effected.

5. The appellant thereafter filed the writ petition from which this appeal arises contending that, it was the responsibility of the respondent no.1 IOC to arrange the land as was evident from the respondent no.1 IOC and IBP Co. Ltd. also writing to the various land owning agencies in this regard. The respondent no.1 IOC however in its counter affidavit pleaded that since the existing retail outlet of the appellant was not an “A” site, there was no

responsibility on the respondent no.1 IOC to procure land for resitement of the appellant. The appellant in rejoinder pleaded that the respondent no.1 IOC had been describing the existing site of the appellant sometimes as a “B” site and sometimes as “C” site; that however the existing site of the appellant was an “A” site in as much as the existing retail outlet at village Rasulpur on the State Highway (SH-33), Mathura Bharatpur Road, District Mathura, U.P. was situated on a land taken on lease by the respondent no.1 IOC in its own name. The appellant in the aforesaid writ petition had also impleaded DDA as respondent no.2 seeking mandamus for allotment of land for resitement of the appellant. It was however the contention of the respondent no.2 DDA that since the year 2003 the Policy of the respondent no.2 DDA had been to make all such allotments by public auction and which Policy had been upheld by the Supreme Court.

6. The Learned Single Judge dismissed the writ petition holding that the appellant in the writ petition had not raised the issue that its existing site was an “A” category site; that the respondent no.1 IOC had consistently taken the stand that the appellant’s existing site was “B” category site; that these disputes of fact could not be adjudicated in writ jurisdiction. The Learned Single Judge further held that even if the appellant’s existing site

were to be held to be “A” category site the appellant did not automatically become entitled to claim resitment at Delhi at the cost of the respondent no.1 IOC. It was also the contention of the appellant before the Learned Single Judge that the respondent no.1 IOC had in four other cases upgraded the category “B” dealerships to category “A” dealerships. The Learned Single Judge however held that the respondent no.1 could not be expected to purchase land out of its own funds in a public auction at Delhi to relocate the appellant from village Rasulpur on the State Highway (SH-33), Mathura Bharatpur Road, District Mathura, U.P at Delhi.

7. The counsel for the appellant has before us not insisted upon resitment at Delhi and has given up the claim against the respondent no.2 DDA. He however seeks a direction for the respondent no.1 IOC to apply in the remaining NCR for allotment of land for such resitment. It is also offered that upon such an application being made by the respondent no.1 IOC, the appellant shall pursue the same.

8. The counsel for the respondent no.1 IOC per contra has contended that if the respondent no.1 were to apply for the land it would imply that the respondent no.1 IOC will have to pay for the same and which neither is it ready to nor it is liable to.

9. We have enquired from the counsel for the appellant as to what is the right of the appellant to compel the respondent no.1 IOC to at its own cost acquire land for resitement of the appellant. No such right has been disclosed. The only argument of the counsel for the appellant is that some others have been upgraded from category “B” to category “A”.

10. More than 14 years have elapsed since the time appellant had applied for resitement citing law and order and safety issues. We have enquired whether there has been any incident or any FIR has been lodged by the appellant in the last 14 years. The answer is in the negative. On the contrary, there has been a sea change in the last 14 years. Not only has there been a huge development in the area and the existing site of the appellant can no longer be said to be secluded but also improvement in the law and order situation as is evident from the last 14 years being incident free. There has also been change in the Policy of the respondent no.1 IOC and other oil companies regarding allotment of petrol pump sites. The matter has gone till the Supreme Court and guidelines have been laid down. We are of the opinion that directing the respondent no.1 IOC to, obviously at a huge cost acquire land for resitement of the appellant will necessarily have to be at the cost of some other eligible and needy person in accordance with the

prevalent guidelines. We may also mention that at the time when the appellant had applied for resitement and permission therefor was granted, there was no such understanding that the land for such resitement would be acquired by the then IBP Co. Ltd. which has merged with the respondent no.1 IOC. There is no document to show that for the reason of the respondent no.1 IOC / its predecessor having recommended the case of the appellant for resitement, the respondent no.1 is obliged to also arrange for the land at its own cost. In the absence thereof, the mandamus as claimed cannot be issued.

11. Thus for the reasons recorded by the Learned Single Judge, as also for the reasons added by us, the appellant is not entitled to any relief; the appeal is dismissed. No order as to costs.

RAJIV SAHAI ENDLAW, J

ACTING CHIEF JUSTICE

MARCH 6, 2012

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