

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

% **Date of decision: 20th November, 2015.**

+ **W.P.(C) No. 7239/2013**

BHARAT PETROLEUM CORP. LTD. Petitioner

Through: Mr. Anil K. Batra and Mr. Prins
Kumar, Advs.

Versus

UNION OF INDIA & ORS Respondents

Through: Ms. Anjana Gosain and Mr. V.
Agrawal, Advs. for R-1&2.
Mr. Rajesh Tyagi, Adv. for R-3.
Mr. B.L. Wali, Adv. for DMRC along
with Mr. Sanjay Kumar, SSO (Legal).

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The petition was filed impleading Union of India (UOI), Land & Development Officer (L&DO) and M/s New United Service Station as respondents no.1,2&3 respectively thereto and seeking the reliefs of (i) directing the respondents No.1&2 UOI/L&DO to allot alternative site to re-site the Petrol Filling-cum-Service Station operating under the name and style of M/s New United Service Station at Ring Road, opposite Bhikaji Cama Place near R.K. Puram, New Delhi to any other site and not to dispossess the petitioner from the said site till alternate site is allotted; and, (ii) impugning the demand raised by the respondent no.2 L&DO vide

Notices dated 11th October, 2013 and 23rd July, 2013 with respect to the said site towards ground rent, damages for unauthorised construction, misuse charges and interest thereon, for the period from 1977 to 2012.

2. It was *inter alia* the case in the petition that:-

- A. the predecessor-in-title of the petitioner, a Public Sector Undertaking (PSU), was allotted the land under the aforesaid Petrol Pump site at Bhikaji Cama Place vide letter dated 5th November, 1966 and the petitioner since then had been operating Petrol Filling-cum-Service Station from the said site through its dealer respondent no.3 M/s New United Service Station;
- B. a Temporary Lease Deed dated 10th January, 1967 was also executed by the President of India in favour of the petitioner with respect to the said plot of land;
- C. the respondent no.2 L&DO vide letter dated 28th November, 1977 complained to the petitioner that an unauthorised tin shed (*Khokha*) had been constructed on the subject site; the petitioner vide its letter dated 9th December, 1977 informed the respondent no.2 L&DO that the said *Khokha* had been put up by its dealer

i.e. respondent no. 3 M/s New United Service Station without its permission and the same, after receipt of letter dated 28th November, 1977, had been demolished;

D. the petitioner learnt that Delhi Metro Rail Corporation (DMRC), on 8th September, 2011 had written to the respondent no.2 L&DO to take over the land underneath the said Petrol Pump Station and the petitioner accordingly requested the respondent no.2 L&DO to allot alternate site to the petitioner;

E. though meetings between the petitioner and the respondent no.2 L&DO for allotment of alternate site had taken place but the respondent no.2 L&DO in the said meetings insisted upon payment by the petitioner of Rs.5,45,76,218/- allegedly due from the petitioner for the land at Bhikaji Cam Place including towards misuse charges and charges for unauthorised construction and which the petitioner was controverting; and,

F. that the petitioner was being threatened with dispossession.

3. The petition came up first before this Court on 20th November, 2013 when while issuing notice thereof, dispossession of the petitioner from the site in question without following the due process of law was stayed. On the

next date i.e. 30th January, 2014 the counsel for the DMRC appeared and on his oral request DMRC was impleaded as respondent no.4 to the petition. During the hearing on the application for interim relief on that date the following order was passed:-

“CM Appl. 15569/2013.

The present application has been filed seeking stay of vacation of the site in question as well as the demand to pay a sum of Rs.5,45,76,218/- as demanded by respondent No. 1 vide letter dated 28th September, 2012.

Admittedly, a petrol pump is being run by the petitioner's dealer (respondent No. 3) at the site in question. A perusal of the paper book reveals that the site in question is required by DMRC for construction of Mukundpur-Yamuna Vihar Corridor (Line-7) of Delhi MRTS Phase III.

Undoubtedly, closure of a petrol pump being run by respondent No.3 would cause inconvenience to respondent No. 3 as well as its employees, but this Court is of the opinion that their interests would have to give way to the larger public interest of construction of an infrastructural project.

Consequently, preserving the petitioner as well as the respondent No. 3's right to file a claim for damages, the petitioner and respondent No. 3 are directed to hand over possession of the site in question to DMRC within a period of four weeks.

At this stage, learned counsel for respondent No. 3 fairly states that respondent No. 3 shall hand over physical vacant possession of the existing petrol pump to DMRC within a period of six weeks. The said statement is accepted by this Court and respondent No. 3 is held bound by the same.

Since the decision to re-enter the premises in question has been passed only on account of

compoundable breaches and a demand of Rs.5,45,76,218/- has already been raised, this Court directs that in the event, the petitioner or respondent No. 3 is willing to furnish a bank guarantee to the satisfaction of the Registrar General of this Court for the aforesaid amount within a period of eight weeks, then respondent No.1 is directed to consider the petitioner's request for relocation as expeditiously as possible.

The issue whether any amount is payable on account of alleged breaches or not is left open to be decided in the present proceedings.

The interim order dated 20th November, 2013 stands modified in the above terms.

With the aforesaid observations, the present application stands disposed of."

4. The petitioner preferred LPA No.233/2014 against the aforesaid order and in which the following order was passed on 12th March, 2014:-

"The appellant is aggrieved by an order made by the learned Single Judge directing it to hand over possession of a petrol pump opposite Bhikaji Cama Place, New Delhi. The site is need by the Delhi Metro Rail Corporation (DMRC) for construction of the Mukundpur Yamuna Vihar corridor, line-7. The third respondent is a dealer who has been licensed to operate the petrol pump of the appellant. The grievance in this appeal is as to the direction to the appellant to furnish a bank guarantee for Rs.5,45,76,218/- within eight weeks as a condition for its request for relocation. The appellant urges that the amount is a disputed one and is unjustifiably sought to be recovered as "misuse charges" even though no such misuse was alleged for a period of over 30 years.

Learned counsel for the respondent/UOI submits that the claim for misuse is justified and that the condition imposed is only an interim one. Learned

counsel states that the relocation or allotment of an alternative site can be linked to the direction to deposit the amount.

During the course of submissions, Union of India was asked if the prevailing policy requires pre-deposit of any amount for the alleged misuse for consideration of any similar application for allotment of an alternative plot, counsel submitted fairly, upon instructions, that no such policy requiring pre-deposit subsists. In these circumstances, this Court is of the opinion that the direction to deposit Rs.5,45,76,218/- by way of bank guarantee is not warranted especially so since the appellant itself is a Central PSU. The balance of convenience would clearly in the circumstances lie in not issuing such a direction because the said amount would be unavailable for public use by the appellant corporation and also the resultant interest loss. Additionally, the appellant would have to pay commission for the bank guarantee. In these circumstances, the impugned order to the extent it requires the appellant to furnish bank guarantee for the sum of Rs.5,45,76,218/- is set aside. The rest of the impugned order is left undisturbed.

The appeal is partly allowed in the above terms.”

5. The respondent no.3 being the dealer of the petitioner with respect to the Petrol Pump on the aforesaid site at Bhikaji Cama Place filed CM No.8447/2014 alleging violation by the respondents No.1&2 UOI/L&DO of the order dated 30th January, 2014 supra. The said application came up before this Court on 11th July, 2014 when the counsel for the respondents No.1&2 UOI/L&DO stated that the representation made for allotment of

alternate site would be disposed of within two weeks and recording the same, the said application was disposed of.

6. It appears that the respondents No.1&2 UOI/L&DO vide communication dated 23rd July, 2014 informed the respondent no.3 of the rejection of the representation. The respondent no.3 filed CM No.1061/2015 again alleging violation by the respondents No.1&2 UOI/L&DO of orders dated 30th January, 2014 and 11th July, 2014 supra. The said application was disposed of vide order dated 21st January, 2015 holding that no case for proceedings in contempt was made out and observing that the question whether the reasons given by the respondents No.1&2 UOI/L&DO for rejection of the representation were correct or not was to be adjudicated in the main writ petition.

7. The respondents no.1&2 UOI and L&DO and respondent no.4 DMRC have filed their counter affidavits. The respondent no.3 being the dealer of the petitioner and whose interest is the same as the petitioner has also filed a counter affidavit. No rejoinder to any of the counter affidavits have been filed by the petitioner. The counsels have been heard.

8. The counsel for the respondent no.3, after the hearing has commenced states that the matter be adjourned because one of the partners of the

respondent no.3 has died and his *Uthala* is today. He states that owing thereto, he could not obtain instructions. It is further stated that the said partner was suffering from illness for the last three or four months and thus no instructions could be received.

9. Such adjournments cannot be allowed to derail the proceedings. It cannot be lost sight of that the petitioner as well as the respondent no.3 who are seeking relocation ought to be interested in early disposal of the petition. However they do not appear to be interested in doing so; moreover, when the pleadings have been completed and the case is ripe for hearing, the question of grant of any adjournment on the ground of non-availability of the client of the counsel for the respondent no.3 does not arise. The arguments are to be addressed by the counsel and not by his client. The counsel has of course stated that he wanted his client to prepare tabulation. In my opinion, no new tabulation or documents are permitted at this stage and the arguments with respect to the tabulation if any to be prepared on the basis of records available in the file of the Court, can be made without such tabulation also.

10. The counsel for the petitioner has argued that since the petitioner has been removed from the land at Bhikaji Cama Place owing to the same being required for the works of respondent no.4 DMRC, the petitioner is entitled to

be relocated.

11. The right if any of the petitioner to such relocation has been enquired. It has been enquired from the counsel for the petitioner whether in the Letter of Allotment of land or in the Temporary Lease Deed stated to have been executed in favour of the petitioner / its predecessor, there is any clause providing that in the event of the petitioner being required to leave the said land for any purpose, alternate land would be allotted to it.

12. The counsel for the petitioner cannot show any such right.

13. From the documents on record it appears that the temporary lease was for a period of one year only renewable from year to year and does not appear to be registered lest stamped. Even if it were to be believed that the same having been granted by the President of India did not require payment of any Stamp Duty, it would still be required to be registered to create any rights in the land leased thereunder. Else, it remains a lease from month to month or from year to year terminable by a notice.

14. The counsel for the respondents No.1&2 UOI/L&DO has also drawn attention to Clause 10 of the Temporary Lease Deed which provides that if the land at any time were to be required by the respondents No.1&2 UOI/L&DO for the implementation of any plans or for any public purpose,

the lease can be determined and the petitioner had undertaken to peacefully give up possession of the land. The only consequence of such determination provided is of refund of the lease rent paid for the balance period and not of relocation. It thus follows that under the documents under which the petitioner occupied the said land, the petitioner had no right to relocation which is now sought.

15. The counsel for the petitioner then, on the basis of the orders aforesaid states that since the respondents No.1&2 UOI/L&DO had agreed to consider the relocation, there must be some Policy of relocation though he is not aware of any such Policy.

16. Without the petitioner basing its case on any Policy and without even citing the same, all that can be observed is that no legal foundation has been laid for such a claim.

17. The counsel for the petitioner has then contended that the respondent no.4 DMRC has a Policy of relocation. The counsel for the respondent no.3 also has supported the counsel for the petitioner in the same.

18. However on enquiry as to what is the source of the land bank of the respondent no.4 DMRC, except for stating that the respondent no.4 DMRC has carved out shops at some of the Metro Stations in Delhi, the counsels are

unable to give any instance. As far as I am aware only that land was vested in the respondent no.4 DMRC which was required for development by the respondent no.4 DMRC of the Mass Rapid Transit System for the city of Delhi and the respondent no.4 DMRC otherwise does not have any land bank. The respondent no.4 DMRC to my knowledge was left only with one unutilised plot of such land near University of Delhi and with respect to which also litigation is pending in the Courts and otherwise the respondent no.4 is not a land owning agency.

19. Be that at it may, it has come to the notice of the undersigned in connection with other cases which have come up before the Courts that the respondent No.1&2 UOI/L&DO has been allotting alternate sites for the Petrol Pump sites which were required for the Delhi Metro Rail Project. The counsel for the respondents No.1&2 UOI/L&DO also does not controvert the same but contends that under such category, only those have been considered who have cleared all up-to-date dues and not a single case where dues were outstanding has been considered for allotment of alternate site which also is subject to availability. Minutes of the meeting of Land Allotment Screening Committee of the respondents No.1&2 UOI/L&DO held on 22nd October, 2014 in this regard are handed over in the Court and are taken on record.

20. It may also be mentioned that the petitioner/respondent no.3 are not entitled to make any claim for relocation against the respondent no.4 DMRC. It cannot be lost sight of that the petitioner which alone has approached the Court (respondent no.3 has not) did not even opt to make the respondent no.4 DMRC as a party thereto. The counsel for the respondent no.4 DMRC states that notwithstanding the same, the respondent no.4 DMRC was compelled to seek impleadment since owing to the *ad interim* order earlier granted in this petition, the public work of construction/laying of Delhi Metro Rail was held up. Else, it is contended that there are no reliefs claimed in the petition against the respondent no.4 DMRC.

21. That brings me to the question of the challenge by the petitioner to the claim of the respondent no.2 L&DO for damages, misuse etc. Both, the counsels for the petitioner and the counsel for the respondent no.3 have vehemently contested the same.

22. At this stage, the objection of the respondents No.1&2 UOI/L&DO to the locus of the respondent no.3 who was the dealer of the petitioner with respect to the subject Petrol Pump may be noted. It is argued that the respondent no.3 was at best an agent of the petitioner and has no locus to address independent arguments, especially when the respondent no.3 has not

even chosen to approach the Court.

23. I have enquired from the counsel for the petitioner as to under what Policy the petitioner, even if were to be granted an alternate site by the respondents No.1&2 UOI/L&DO, is obliged to make the respondent no.3 its dealer with respect to the said alternate site also. It is enquired whether there is any term in the Dealership Agreement to the said effect.

24. The counsel for the petitioner states that there is no such obligation. (I may however observe that *Sethi Auto Service Station Vs. DDA* (2009) 1 SCC 180 refers to a Policy).

25. If there is no such obligation, in my view the petitioner should consider the basis on which a new site even if it be by way of relocation, is allotted to the dealers of the old sites. The subject of allocation of dealership by Public Sector Oil Companies has been the subject matter of various petitions before the Supreme Court. Reference in this regard can be made to *Common Cause Vs. Union of India* (1996) 6 SCC 530 and to *Centre for Public Interest Litigation Vs. Union of India* 1995 Supp. (3) SCC 382. Supreme Court, otherwise also in *Natural Resources Allocation, In Re. Special Reference No.1 of 2012* (2012) 10 SCC 1 has held that the State, its instrumentalities while exercising executive power in matters of trade or

business, including making of contracts, should be mindful of public interest, public purpose and public good and should give a fair opportunity to compete and follow a rational method. Tender, tender cum auction and auction, it was held, could assure maximisation of revenues. It *prima facie* appears that unless the petitioner, under its dealership agreement or its policy, is so obliged to, a dealer at a site which is to be abandoned would have no preferential right to another site, even if allocated in lieu of abandoned site. However the same being not subject of this petition, I refrain to give any final opinion thereon but it is for the petitioner and other Oil Companies to consider and which I am sure they will.

26. That brings to the aspect of the challenge to the damages claimed.

27. It is argued by the counsel for the petitioner and the counsel for the respondent no.3 that though the respondent no.2 L&DO has pleaded having re-entered the premises vide Letter dated 7th November, 2001, upon the petitioner/respondent no.3 not removing the breaches qua which earlier notices were given and not paying charges claimed but no action was taken to take possession of the land or to recover any amount. It is contended that thus the claim is bad and the respondents No.1&2 UOI/L&DO is not entitled to impose a condition of payment of the said amounts for allotment of

alternate site. It is contended that the petitioner/respondent no.3 lost possession of the site only because of the land underneath the same being required by the respondent no.4 DMRC and not for the reason of alleged re-entry. The counsel for the respondent no.3 has gone to the extent of arguing that the respondent No.3 during the hearing on 30th January, 2014 agreed to vacate the site at Bhikaji Cama Place only upon the respondents No.1&2 UOI/L&DO agreeing to allot alternate site. It is argued that the respondent No.3 would not have otherwise vacated the Bhikaji Cama Place site. It is contended that what was meant by “consideration” was, allotment of alternative site and the respondents No.1&2 UOI/L&DO are now reneging from their commitment as contained in the order dated 30th January, 2014. It is further argued that the respondents No.1&2 UOI/L&DO even after the alleged date of re-entry continued to accept ground rent and other charges from the petitioner till 2013 and for this reason also are not entitled to insist upon payment of the said charges as a condition for relocation. The counsel for the petitioner has also argued that the respondent no.1 UOI is charging certain amounts for alleged misuse but which are condonable and for which no misuse charges are payable. It is contended that the respondents No.1&2 UOI/L&DO have been enhancing ground rent retrospectively and which also

they are not entitled to. It is further stated that even interest is charged from a retrospective date when the new rate of rent is arrived at on a subsequent date. It is yet further contended that the other misuses alleged by the respondents No.1&2 UOI/L&DO are disputed/controverted. The counsel for the respondent no.3 has also contended that the claim for damages is time barred.

28. I have enquired from the counsels for the petitioner and the respondent no.3 as to how the challenge to the misuse charges on merits i.e. whether there was misuse or not can be adjudicated in writ jurisdiction since the same would entail disputed questions of facts and which cannot be adjudicated without examination and cross examination of witnesses.

29. During the hearing it has transpired that the respondents No.1&2 UOI/L&DO immediately after the institution of this petition had instituted proceedings under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (PP Act) only for eviction of the petitioner but have subsequently also initiated proceedings for recovery of the aforesaid damages/misuse charges. Rather the counsel for the respondent no.2 L&DO states that the petitioner has been seeking adjournments before the Estate Officer (under the PP Act) on the ground of pendency of the present petition.

It is thus the contention of the counsel for the respondents No.1&2 UOI/L&DO that the claim for the amount is subject matter of adjudication before the Estate Officer.

30. The counsel for the petitioner controverts that the petitioner is delaying the proceedings before the Estate Officer.

31. The counsel for the respondent no.3 contends that the proceedings before the Estate Officer would take long and thus the claim for damages be adjudicated in the present petition only.

32. I am of the view that the challenge by the petitioner and/or the respondent no.3 to the claim of the respondent no.2 L&DO for damages/misuse charges cannot be adjudicated in writ jurisdiction and is best left to be adjudicated by the Estate Officer under the PP Act proceedings where if need be, witnesses can be examined/cross examined. Similarly the dispute with respect to ground rent and interest thereon can also be adjudicated in the said proceedings. Suffice it is to state that in the absence of there being any right in the petitioner and/or the respondent no.3 to any alternative site, the decision of allotment of alternative site lies in the sole discretion of the respondent no.2 L&DO. The respondent no.2 L&DO is certainly entitled to refuse consideration of a party who is in arrears of what

according to the respondents No.1&2 UOI/L&DO is due. The respondents No.1&2 UOI/L&DO cannot be directed to monetarily expose themselves further to a party which according to them already owes money to them.

33. In this regard it may also be noted that the scope of interference under Article 226 in the matter of entering into of a contract by the State or instrumentality of State is limited to the extent to see the action of the State/its instrumentality is fair and not arbitrary. No arbitrariness is found in the decision of the respondents No.1&2 UOI/L&DO to refuse to consider the case of allotment of alternative site to the petitioner for the reason of the petitioner being in arrears of the amounts due according to the respondent No.1&2 UOI/L&DO towards the land which was earlier allotted/leased to the petitioner.

34. No merit is thus found in the petition.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

NOVEMBER 20, 2015

‘pp’

(corrected & released on 24th December, 2015)