

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22367 of 2012

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Aishwarya Madhupuri, son of Sri Chandra Shekhar Prasad Singh, resident of Village + P.O.- Bathnaha, Ward No. 7, District- Sitamarhi

.... Petitioner

Versus

1. Indian Oil Corporation Ltd. having its registered office at G-9, Ali Yawar Jang Marg, Bandra (East), Mumbai- 400051 through its Managing Director
2. The General Manager, Indian Oil Corporation Limited, Lok Nayak Jai Prakash Bhawan, 5th Floor, Dak Bunglow Chowk, Patna- 800001
3. The Deputy General Manager (LPG), Indian Oil Corporation, Marketing Division, Bihar State Office, Lok Nayak Jai Prakash Bhawan, 5th Floor, Dak Bunglow Chowk, Patna- 800001
4. The Chief Area Maanger, Indian Oil Corporation Ltd., Marketing Division, Shahi Bhawan, Exhibition Road, Patna 800001
5. Deputy Manager, L.P.G., Indian Oil Corporation Ltd., Mithanpura, Town + District- Muzaffarpur
6. Madan Kumar, son of Sri Harishchandra Singh, resident of village Bathnaha, P.S. Bathnaha, Dist. Sitamarhi
7. Mithilesh Chandra Suri, son of Narendra Prasad, resident of village Bathanaha, Tola Jankinagar, Ward No. 8, P.O. & P.S. Bathnaha, Dist. Sitamarhi

.... Respondents

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with

Civil Writ Jurisdiction Case No.21427 of 2013

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Madan Kumar S/O Sri Harishchandra Singh, Resident of Village - Bathnaha, P.S. - Bathnaha, Distt - Sitamarhi

.... Petitioner

Versus

1. The Indian Oil Corporation Ltd. through its M.D. having Registered Office at G-9 Ali Yavar Jung Marg, Bandra (East) Mumbai - 400051
2. C.M. IOCL, Bihar State Office, 5th Floor, Lok Nayak Jai Prakash Bhawan, Dak Bunglow Chowk, Patna - 800001
3. Chief Area Manager IOCL (MD), Patna A.O., 1st Floor, Shahi Bhawan, Exhibition Road, Patna - 800001
4. Area Manager IOCL, Indane Area Office, Begusarai, 5th Floor Lok Nayak Jai Prakash Bhawan, Dak Bunglow Chowk, Patna - 800001
5. Sr. Area Manager, Indane Area Office, Patna
6. Sr. Manager (LPG-OPS), 5th Floor Lok Nayak Jai Prakash Bhawan, Dak Bunglow Chowk, Patna - 800001
7. Mithilesh Chandra Suri, son of Narendra Prasad, resident of village Bathanaha, Tola Jankinagar, Ward No. 8, P.O. & P.S. Bathnaha, Dist. Sitamarhi

.... Respondents



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Appearance :

(In CWJC No.22367 of 2012)

For the Petitioner/s : Mr. Pushkar Narain Shahi, Sr.Advocate with
Mr. Ritesh Kumar No.1 and Mr.Sanjeet
Kumar Singh, Advocates

For the IOC : Mr. Kali Das Chatterjee, Sr.Advocate with
Mr. Amlesh Kumar Verma, Advocate

For respondent No.6 : Mr. Shailendra Kumar Singh, Advocate

For respondent No.7 : Mr. Najmul Hoda with Mr. Pravin Kumar
Gupta, Advocate

(In CWJC No.21427 of 2013)

For the Petitioner/s : Mr. Shailendra Kumar Singh, Advocate with
Mr. Ajay Kumar Tiwari, Advocate

For the IOC : Mr. Anil Kumar Jha, Sr.Advocate with
Mr. Sanat Kumar Mishra, Advocate

For respondent No.7 : Mr. Najmul Hoda with Mr. Pravin Kumar
Gupta, Advocates

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA

CAV JUDGMENT

15 -12-2016

Heard learned counsels for the petitioners in both the
cases as also learned counsels for the respondents.

Both the writ applications have been filed with respect to
the selection of candidates for award of Rajiv Gandhi LPG Vitrak
(RGGLV) of Indian Oil Corporation Ltd. at Bathnaha-Bathnaha
Jhujharpatti, District Sitamarhi under open category pursuant to an
advertisement dated 28.2.2011 and they have been accordingly
heard together and are being disposed of by this common order.

CWJC No. 22367 of 2012 has been filed by Aishwarya
Madhupuri who was the candidate selected on the first draw of
lots held on 26.11.2011. His candidature was subsequently
cancelled by the impugned letter dated 13.8.2012 holding that his
candidature has not been found to be suitable for award of the



subject distributorship as discrepancy was found at the time of field verification, namely, the land offered by him was neither in his name nor in the name of any member of family unit as on date of application as also the policy of the Corporation. Thereafter his appeal/representation against the said order was rejected by the impugned order dated 30.10.2012 of the Deputy General Manager (LPG), Patna, AO of the Indian Oil Corporation.

The writ petitioner, Madan Kumar, of CWJC No. 21427 of 2013 was selected by the second draw of lots held on 13.10.2012 after the cancellation of the previous draw of lots. By the impugned letter dated 29.3.2013 of the Chief Area Manager, IOC his candidature was cancelled since he was not found to be suitable for award of the subject distributorship as the discrepancy was found that the land offered by him was not in the advertised location on the date of application. The petitioner's appeal/representation against the said order of cancellation was rejected as devoid of any merit by the impugned order dated 22.8.2013 passed by the Chief Area Manager, Patna, AO of the Corporation. Aggrieved by the aforesaid orders both the petitioners are before this Court.

The short facts of the case are that both the petitioners as also respondent No.7 of CWJC No. 22367 of 2012, namely,



Mithilesh Chandra Suri, had applied against the aforesaid advertisement dated 28.2.2011 under open category for award of RGGLV by the Indian Oil Corporation. At the first draw of lots the first writ petitioner, Aishwarya Madhupuri, was successful. The petitioner, who is an unmarried person, had stated in his application the details of land as required as Khesra Nos. 15327 and 8239 showing the same as khatiyani land belonging to Kumari Kamini, mother of the petitioner. Under the advertisement the land in question was to be owned by the applicant as on the date of application for construction of LPG godown. It has clearly been mentioned in the Brochure containing Guidelines for Selection of RGGLV that ownership means having clear ownership of title of the property in the name of the applicant/family member of the family unit. The petitioner being unmarried his mother would form part of the family unit. However, after the draw of lots field verification of credential was made and it was found that the land offered by the petitioner was as per the revenue record in the name of Sri Ram Sewak Thakur and not in the name of his mother Smt. Kamini Kumari. In the application also a column was provided for the date of registration of sale deed/gift deed/ date of mutation, which was not filled up by the Ist writ petitioner. The petitioner along with his application had only submitted land possession



certificate dated 7.3.2011 in favour of his mother issued by the Circle Officer. The explanation of the petitioner is that the land stood in the name of his maternal grandfather, Sri Ram Sewak Thakur in the record of rights who had died on 14.4.2006 leaving behind his widow and two daughters, Smt. Kumari Kamini, the mother of the petitioner and one Smt. Sandhya Kumari. The maternal grandmother also died in 2008 and thereafter his mother and her sister became the exclusive owners of the property as Class-1 heirs of their father. The same was followed by partition between the two sisters which was recorded in the memorandum of partition dated 28.12.2010 and accordingly the mother of the petitioner became entitled to 5.56 acres of land in her own separate capacity. Subsequently on the basis of Partition Case No. 3389 of 2012 filed before the Circle Officer, Jamabandi was created in favour of the mother of the petitioner on the offered land for which certificate dated 9.2.2012 was produced.

On the basis of the aforesaid facts it is submitted by learned counsel for the petitioner, Aishwarya Madhupuri, that the respondents of Indian Oil Corporation have gravely erred in rejecting the claim of the petitioner. It is submitted that insistence upon mutation is completely uncalled for as mutation does not confer any right or title to the property, rather it is merely an



evidence of possession with respect to which the land possession certificate dated 7.3.2011 was already submitted with the application and thus it was futile on the part of the respondents to have insisted upon mutation certificate, as the purpose was served by the land possession certificate itself which has been issued by the Circle Officer and had been confirmed upon verification by the Circle Officer as a genuine document.

It is further submitted that the title over the land in question stood immediately vested after the death of the maternal grandfather in the year 2006 and further after the death of maternal grandmother in the year 2008, and individual separate rights of the two sisters, his mother and aunt, crystallized with the partition which was evidenced by memorandum of partition dated 22.11.2010 and therefore the finding recorded by the respondents is totally incorrect. There was no claim against the right, title and possession of the mother of the petitioner over the land in question.

In support of the aforesaid stand, learned counsel for the petitioner relies upon a decision of the Supreme Court in the case of Suman Verma vs. Union of India and others : (2004) 12 SCC 58, in paragraphs 15 and 16 of which, it has been held as follows :-



“15. Learned counsel for the appellant submitted that respondent 6 got her name mutated in revenue records on 22.11.1996 and that is the relevant date. Last date of submission of application was 12.11.1996. The ratio laid down in Rekha Chaturvedi thus applies to the case on hand and as Respondent 6 was not eligible, her case could not be considered.

16. In our considered opinion, however, the learned counsel for Respondent 6 is right in submitting that Respondent 6 had become owner of agricultural land in October 1996. The relevant date for consideration was 12.11.1996 and before that date she possessed such property. Rekha Chaturvedi in our view, supports Respondent 6 rather than the appellant. When Respondent 6 became the owner of the property in October 1996 before the last date of submission of application, she could be said to be possessing agricultural land and, hence, she was eligible. In our opinion, owning of agricultural property and getting the name entered in revenue record are two different and distinct things. Mutation entry does not confer right or title to the property. Though the law is very well settled, in our opinion, CAT was right in relying upon the decision of this Court in Sawarni vs. Inder Kaur wherein this Court held that mutation entry neither creates nor extinguishes title or ownership.”

On the other hand, learned counsel for the respondent Indian Oil Corporation submits that the requirement under the advertisement is the ownership of the land by the applicant or member of family unit as on the date of application. In this context learned counsel refers to Column 9 of the application as also paragraph-9 of the advertisement, both of which provide for



evidence of ownership in the form of registration of sale deed, gift deed or date of mutation. It is submitted that in a case of succession not by a single heir but by two or more of them, none can claim right to a particular portion of the land/property until the same has been divided and mutated. In the said circumstances, the production of mere land possession certificate would not suffice nor a partition by mutual understanding followed by a memorandum of partition would be sufficient to satisfy the norms of the respondent Corporation, which is a commercial organization and can define norms as required under Article 14 of the Constitution of India. It is thus submitted that three clear evidences have been mentioned in the advertisement as also in the application form with regard to the ownership, that is, the sale deed or gift deed or by showing the order of mutation. In the case of multiple heirs and successors it is only an order of mutation which can finally show the rights of the specific heirs over the property which does not crystallize before that date as a legal document and for the said purpose a mere memorandum of family arrangement could not be relied upon as it may create litigation and legal complications for the respondent Corporation. It is thus submitted that the mutation being subsequent to the date of application, a mere possession sought to be shown on the basis of



the land possession certificate cannot be the fulfillment of the requirement. It is also submitted that the reliance upon the decision of the Apex Court in the case of Suman Verma (supra) can be of no avail since in the said case it was held that mutation was not real determinant of right and title in view of the fact that the respondent No.6 in the said case had acquired right and title to the land through a gift deed prior to the relevant date.

Learned counsel for the private respondent adopts the submissions of learned counsel for the Indian Oil Corporation.

I have considered the submissions of learned counsels for the parties and find sufficient force in the submission of learned counsel for the respondent Oil Company. It is evident from the provisions of the advertisement as also the Brochure containing Guidelines for Selection of RGGLV that a person must have clear title to the land which is offered for the construction of godown, apart from other conditions mentioned therein. The clear title should be such that after granting the LPG distributorship the respondent Corporation must be reasonably satisfied that the functioning of the same would not be bogged down by unnecessary litigation. Clear title would normally be evidenced by a sale deed or deed of gift. It is true that mutation by itself does not confer any right or title to the property but at the same time



where the property has not been acquired through purchase by sale deed or by registered gift deed and successor of the land owner is not one but several, then in such case it is not open to the heirs to claim right to any specific portion of the property unless the property itself is partitioned among them either by mutual consent or through order of the court. If the partition is by mutual consent then a mere memorandum of partition may not be considered sufficient by the Corporation for grant of RGGLV unless it is also evidenced by an order of mutation for entry of the name of the concerned heir in the Jamabandi Register.

In this regard reliance upon the decision of the Apex Court in the Suman Verma's case (supra) can be of no avail as it appears from the facts of the said case that the respondent No.6 therein had become owner of property through a gift deed prior to the relevant date as also the question involved therein was with regard to the possession of the qualification for extra departmental Post Master in which the requirements are not in pari materia to what is required in the case of RGGLV. No issue with regard to the specific possession of the land had arisen in that case and thus the Apex Court held that the gift deed itself would confer legal right to the property. Such is not the position in the present matter, where apart from the mother of the petitioner, sister of the mother



was also an heir and admittedly there was no mutation in the Jamabandi register of the names of the two persons with regard to their specific share in the land on the basis of the partition before the Circle Officer. In fact, the reliance on the gift deed as evidence of title supports the stand of the respondents as per the advertisement and Guidelines. In the aforesaid circumstances, this Court does not find any error in the impugned orders passed by the original authority and the appellate authority in the case of the petitioner Aishwarya Madhupuri.

Coming to the case of Madan Kumar of CWJC No. 21427 of 2013, he had shown in his application land for godown bearing Khata No. 3176 Khesra No. 13900 owned by his mother under a registered sale deed dated 4.6.1981 along with a Land Possession Certificate dated 18.3.2011 issued by the Circle Officer, Bathnaha. An affidavit dated 24.3.2011 of his mother was also submitted showing that she was the owner of the land and was prepared to give the land for the purpose of LPG godown to her only son. The petitioner being a married person his mother did not come within the definition of 'family unit' and thus the land offered by him was, prima facie, not under the ownership of the petitioner or his family unit. This was reiterated by the petitioner in his two representations dated 11.10.2011 and 14.10.2011.



However, by another representation dated 17.10.2011 the petitioner submitted that he has also his own land of 14 decimals in the same Khesra No.13900 which was purchased by him by another sale deed of the same date 4.6.1981. After his selection in the second draw of lots held on 13.10.2012 the petitioner produced another land possession certificate dated 12.12.2012 issued by the Circle Officer showing two plots of land having the same Khesra number of 14 decimals each along with the Jamabandi. The petitioner however failed to produce the original sale deed dated 4.6.1981 before the respondent authorities but alleged photo copy of it has been annexed to the supplementary affidavit to the writ application. The petitioner also produced a copy of Register-II showing entry dated 28.3.2011 but issued on 2.1.2013 mentioning a mutation case No. 2687 of 2010 but on inspection it was found that Register-II shows only one entry with regard to 14 decimals of land and not any other land of the same Khesra number as claimed by him by representation dated 17.10.2011. The petitioner produced Land Possession Certificate deed dated 12.12.2012 showing Khesra No. 13900 of Khata No. 3176 in the name of the petitioner and his mother Smt Meera Devi but it was found that the LPC did not fulfil the requirement and accordingly it was not accepted by Field Verification Committee. Further, the copy of



Register-II showing that his name was registered in the Register on 22.11.2011, which fact was also confirmed by the Circle Officer on 12.1.2013, on investigation of the Register-II and the proceedings it was found that the application for mutation was made only on 25.3.2012 and the Circle Officer had sent the same on 25.3.2012 but the same was corrected on 5.1.2012 without any initial or signature. When the Field Verification Committee asked for the copy of the mutation proceedings, the Circle Officer, Bathnaha refused to handover the same. Accordingly the report was submitted that the land was in the name of the mother as on the date of the application and the candidature of the petitioner was cancelled. The appeal/representation of the petitioner also met the same fate for the same reasons.

Learned counsel for the petitioner has sought to rely upon various documents that the petitioner had submitted including the photo copy of the original sale deed filed in Supplementary Affidavit in support of his stand. Learned counsel for the respondent IOC, on the other hand, submits that the field verification clearly belied the claim of the petitioner with regard to the ownership of the land and the various interpolations found in the Register-II was sufficient to reject the case of the petitioner.

This Court is also of the view that the petitioner having



applied showing the land as belonging to his mother without any such statement in the application itself that she had transferred the same to him prior to the date of the application that, itself could be sufficient to disqualify the petitioner. The petitioner being a married person could not have shown the land belonging to his mother, who did not form part of his family unit as defined in the Brochure for Selection of RGGLV. In the said circumstances, as a matter of fact, the petitioner ought to have been declared ineligible at the inception itself. Even subsequently the petitioner failed to show at the stage of field verification that he was the owner of the land in question. The facts found during the field verification with regard to interpolations made in the Register-II and the dates mentioned therein would be sufficient to throw out the case of the petitioner without anything further and it is evident that the manipulation had been resorted to with the collusion of the Circle Office so as to make the petitioner eligible for the distributorship. Such action of the petitioner as also of the concerned revenue officials are to be deprecated. Thus, this Court does not find any reason to interfere with the rejection of the case of the petitioner.

Another issue has been raised with regard to the selection of respondent No.7 Mithilesh Chandra Suri that he was not a resident of Bathnaha which is evident from his application as he



had purchased the land by registered sale deed dated 23.3.2011 and had shown his residence on the basis of the said sale deed at Bathnaha whereas he is resident of Anand Nagar, P.S. Mohanpur, District Sitamarhi and not of Bathnaha and his right of ownership to the land of Bathnaha is on the basis of the said sale deed. It is further submitted that the residence certificate dated 15.6.2013 as also the residence certificate dated 26.3.2011 show that Mithilesh Chandra Suri is a temporary resident of Bathnaha and even in his application he had shown himself as a resident Care Of his vendor.

It is also the stand that there was no mutation in the case of respondent No.7 and thus if the case of the petitioner Aishwarya Madhupuri could have been rejected on the lack of mutation there was no occasion to accept the case of the respondent No.7 since there was no mutation.

The stand of the respondent Corporation, on the other hand, is that the respondent No.7 had submitted a valid residence certificate dated 26.3.2011 which was prior to the date of the application and in the standard format issued by the Circle Officer, Bathnaha. Thereafter during the course of field verification respondent No.7 had again submitted a residence certificate dated 15.6.2013 issued by the Circle Officer, Bathnaha.

With regard to the land in question it is submitted that his



ownership of the land was evidenced by the registered sale deed which is as per the norms of the Corporation as stated in the advertisement and also in the Brochure containing the Guidelines for Selection of RGGLV as sufficient proof of residence. It is also stated that the case of respondent No.7 is not on the same footing as that of the petitioner Aishwarya Madhupuri as the sale deed is by itself a document of title without any further requirement of a mutation whereas in the case of succession by multiple heirs the right and title to a particular piece of land can only be determined on the basis of mutation of that piece of land in his/her specific name.

On a consideration of the rival submissions this Court is in agreement with the submission of learned counsel for the respondent Corporation that the issue of mutation could be of no relevance in the case of respondent No.7 in view of the policy guidelines in this regard as it is the normal rule of law that a registered deed of sale itself would be a valid evidence of title and so also a gift deed as held by the Apex Court in Suman Verma's case (supra) relied upon by learned counsel for the petitioner himself. The question of mutation would only arise when there is something more to be done to acquire a concrete title over the piece of land as an heir and successor. That not being the



position, the claim of respondent No.7 could not be rejected on that count.

So far as the issue of residence is concerned, as per the Brochure for Selection of RGGLV as also the Advertisement the term residence means the residence of advertised location and the issue does arise as to whether a person who was not residing earlier in the area can be called a resident on merely purchase of land and, that too, within a week of the last date for submission of application. It is difficult to accept the submission of learned counsel for the respondent IOC that mere issuance of a temporary resident certificate by the Circle Officer would make a person resident of a particular town or village. Residence requires living in an area for a sufficient period of time with an intention showing that the person intends to reside in the area and not merely acquiring a piece of land for constructing godown just a week before the last date of application. Reference may be made in this connection to a decision of the Supreme Court in the case of Bhagwan Dass & Anr. v. Kamal Abrol & Ors. : 2005 (3) PLJR 122 (SC).

A question can seriously be asked as to what would have happened if the respondent No.7 had not succeeded in the draw of lots. It can normally be presumed that he would not have



continued to reside at Bathnaha. In fact, the respondent Corporation itself by its letter dated 8.10.2013 issued to respondent No.7 as stated in paragraph 3.4 thereof for shifting his residence to Bathnaha Jhujharpatti (if presently staying away from the location) in order to personally operate the RGGLV as stated in para 3.3 above and give them a written undertaking to that effect. The same clearly shows that despite the temporary residence certificate issued by the Circle Officer on two occasions it would be difficult to call the respondent No.7 as a resident of that area and the fact that upon selection he may choose to reside in the area is not sufficient to say that he is a resident of that area. The requirements and conditions of the Guidelines are certainly meant for the purpose of giving benefit of distributorship to the local residents of the area and not merely a person who may purchase a piece of land for the purpose of construction of godown in the advertised location just one week before the last date of submission of the application, apart from the fact that the local resident would personally look after the affairs of the RGGLV.

In view of the law laid down in this regard it does not appear that the respondent No.7 can be granted benefit of RGGLV distributorship merely on account of the fact that he had one week before the last date of submission of application had purchased the



land. For the said reason, he cannot also be called a resident of that area.

For the aforesaid reasons, the challenge to the impugned orders of cancellation of candidature in both the writ applications is rejected. CWJC No. 21427 of 2013 is, accordingly, dismissed. CWJC No. 22367 of 2012 is, however, partly allowed to the extent that the letter of intent dated 8.10.2013 issued in favour of respondent No.7 is quashed.

(Ramesh Kumar Datta, J)

spal/-

AFR/NAFR	NAFR
CAV DATE	20.10.2016
Uploading Date	16.12.2016
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