

sbw

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.8949 OF 2013

Santosh S. Gimhavanekar	... Petitioner
vs.	
Bharat Petroleum Corporation Ltd. & Ors.	...Respondents

Mr. Rajesh Behere a/w Rahul Singh for the petitioner.
Mr. S. R. Page for the respondent no.1.
Mr. M. M. Chunawala for the respondent no.2.
Mr. Manish M. Pabale, AGP, for the State.

**CORAM : A.S.OKA, &
A. K. MENON, JJ.**

DATE : 24th APRIL, 2017

PC.

1. Heard the learned counsel for the petitioner. The petitioner applied for grant of a Retail Outlet Dealership of the first respondent at Dapoli, District Ratnagiri on the basis of the advertisement published in the year 2004. The first respondent addressed a letter dated 28th October, 2005 to the petitioner by which the first respondent offered a Rural Retail Outlet Dealership at the location of Dapoli, District Ratnagiri, on the terms and conditions incorporated in the said letter. Clause 8 of the said letter provided that the said letter was merely a letter of intent and should not be construed as a 'firm offer' of dealership. It appears that the first respondent was unable to provide a developed plot as provided under clause 1(a) of the letter of

intent dated 28th October, 2005. Therefore, by the letter dated 4th September, 2008 the first respondent called upon the petitioner to select any of the three locations set out in Annexure-2 to the said letter. The Annexure-2 contained 12 locations in the Districts of Solapur, Kolhapur, Osmanabad, Buldhana, Amravati, Thane, Beed and Raigad. However, the petitioner by letter dated 17th September, 2008 informed the Area Marketing Manager of the first respondent that the land owner of the land situated at Dapoli Harnai road was ready to offer the land at the old rates to the first respondent.

2. The challenge in this petition under Article 226 of the Constitution of India is to the letter dated 3rd June, 2013 addressed to the petitioner by the first respondent. In the said letter, it is stated that by sending a letter on 28th September, 2012, the petitioner was given option to select a suitable site anywhere in the country at the place of its choice for setting up a Retail Outlet. However, the petitioner has not provided his choice. It is further stated that if the choice is not provided within the stipulated time, the letter of intent issued to the petitioner will be cancelled.

3. Today, the learned counsel appearing for the first respondent has tendered across the bar a letter dated 9th February, 2017 addressed to the petitioner. The same is taken on record and marked “Y1” for identification. By the said letter, the period of the letter of intent has been extended till 31st March, 2018. The learned counsel for the first respondent has also placed on record another letter dated 22nd February, 2017 addressed to the petitioner which is taken on record and marked “Y2” for identification. By the said letter, the petitioner was called upon to give choice of three places on or before 15th March, 2017.
4. The learned counsel appearing for the petitioner, on instructions of the petitioner, states that the petitioner is interested taking the Retail Outlet only at Dapoli, District Ratnagiri and the petitioner is not interested in accepting the offer of providing the dealership at any other place. In fact, in the letter dated 17th September, 2008 addressed by the petitioner to the first respondent, he has stated that he is not willing to have dealership at any place outside the District Ratnagiri.
5. If the petitioner is of the view that the letter of intent creates a binding contract of grant of dealership at Dapoli, the remedy of

the petitioner is to seek enforcement of the alleged contract by approaching the Civil Court.

6. The first respondent has extended the letter of intent which is issued on 28th October, 2005 upto 31st March, 2018.
7. The learned counsel for the petitioner, on instruction of the petitioner, states that there are suitable plots available at or near Dapoli, District Ratnagiri on which a Retail Outlet can be set up. If that be so, it is open for the petitioner to suggest the said plots by addressing a communication in writing to the first respondent. It is for the first respondent to consider the said suggestion and decide whether setting up of Retail Outlet on the plots suggested by the petitioner would be commercially viable.
8. In view of the letter dated 9th February, 2017 (Exhibit Y1 for identification) it is obvious that the first respondent has not acted upon the impugned notice dated 3rd June, 2013 by which a threat was given to cancel the letter of intent. Therefore, it is not necessary to entertain a challenge to the said communication. Needless to add that if the first respondent wants to cancel the letter of intent, sufficient advance notice will have to be given to the petitioner.

9. Hence, we dispose of the petition by passing the following order:-

- (i) As far as the prayers (a) and (b) are concerned, if according to the case of the petitioner, there is a binding contract between him and the first respondent to allot the dealership of Retail Outlet at Dapoli, District Ratnagiri, it is for the petitioner to seek enforcement of the alleged contract in accordance with law;
- (ii) We accept the statement made by the learned counsel for the first respondent that the letter of intent granted to the petitioner has been extended till 31st March, 2018;
- (iii) As the letter of intent has been extended till 31st March, 2018 obviously the notice dated 3rd June, 2013 cannot be acted upon now. Hence, no relief may be granted in respect of this notice;
- (iv) Subject to what is observed above, there is no need to entertain this petition and the same is disposed of.
- (v) Notwithstanding the disposal of this petition, it will be open for the petitioner to make a representation to the first respondent suggesting suitable sites in District Ratnagiri;
- (vi) It is for the first respondent to consider the said suggestion which was made by the petitioner.

(A. K. MENON, J.)

(A. S. OKA, J.)