

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 17.07.2018	Delivered on .08.2018
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CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.A.No.305 of 2018
and
C.M.P.No.2448 of 2018

- 1.The General Manager,
Indian Oil Corporation Ltd.,
G/9, Ali Yavar Jung Marg,
Bandra (East), Mumbai - 400 051.
- 2.The Manager,
Tamil Nadu State Office,
Indian Oil Corporation Ltd.,
Indian Oil Bhavan,
139, Nungambakkam High Road,
Nungambakkam, Chennai.
- 3.The Chief Divisional Retail Sales Manager,
Indian Oil Corporation Ltd.,
Salem Division Office,
No.234, I Floor, NH-7,
Salem - Bangalore Bypass Road,
Kondalampatti, Salem.

... Appellants

versus

T.Valli

... Respondents

PRAYER: Appeal filed against the order passed by this Court dated 17.11.2017 passed in W.P.No.11067 of 2017.

W.P.No.11067 of 2017

Writ Petition filed under Article 226 of the constitution of India to issue a writ of certiorari Mandamus to Call for the records of the third respondent relating to the Notification

bearing Reference No.SLMDO/ KSK/67/2 dated 6.4.2017 quash the same and consequently direct the respondents 1 to 3 to consider the Written representation of the petitioner dated 12.4.2017 2017 and grant achance to rectify thepetitioner fault in the Lease Deed dated 31.10.2014 under Document No.4719/ 2014 on the file of the Sub Registrar at Harur

For Appellants : Mr.Abdul Saleem
for M/s.AAV Partners

For Respondent : Mr.G.Prabakar

J U D G M E N T

R.SUBRAMANIAN, J.

1. The appellant Corporation challenges the order of the learned Single Judge dated 17.11.2017 made in W.P.No.11067 of 2017, in and by which, the said Writ Petition filed by the respondent was allowed quashing the proceedings dated 06.04.2017 cancelling the selection of the respondent for appointment as a dealer of petroleum products as per the advertisement dated 15.10.2014. A further direction was issued directing the appellant Corporation to appoint the respondent as a dealer taking into account the fact that she was declared as selected by the Corporation on 02.11.2016.

The Writ Petition came to be filed in the following factual background :-

2. The Indian Oil Corporation called for applications from the eligible candidates for sale of petroleum products at Mambadi Village between Harur and Theerthamalai in Dharmapuri District. Pursuant to the said advertisement the respondent applied under Category-I claiming that she has a lease deed in her favour for the rquired land for a period of 30 years with effect from 31.10.2014. The appellant Corporation processed the said application and the Land Evaluation Committee also inspected the land on 07.09.2016. Thereafter, the appellant Corporation informed the respondent by its letter dated 11.10.2016 that she had qualified for drawl of lots for the selection and informing her that the draw of lots will be conducted at 2.00 p.m on 02.11.2016 at the Office of the Corporation in Kondalampatti, Salem. After the drawl of lots the Corporation had informed the respondent that she has been selected for award of the dealership. However on 06.04.2017 i.e., after about five months, by the impugned communication, the Corporation chose to cancel the selection on the ground that the Filed Verification Committee had reported that there was no sublease clause in the lease deed submitted by the respondent.

Aggrieved, the respondent approached this Court in W.P.No.11067 of 2017.

3. It is the claim of the respondent before the Writ Court that the original lease deed was registered on 31.10.2014 and the purpose of the lease as set out in the lease deed itself is for running a petrol bunk and the lease deed in fact permits the officers of the Corporation to enter upon the land and enables the lessee to make improvements on the land for the purposes of the conduct of the business of retail trade in petroleum products.

4. According to the respondent, the lease deed also specifically recites that it will be open to the lessee to dig the land to put up underground tanks for the purpose of storage of petrol and diesel. Since the lease deed did not contain a clause which permits the lessee to sublease the land to the Oil Corporation and this defect came to light only at the time when the application was filed for grant of dealership, the respondent had obtained a notarized affidavit from the land owners who had agreed to execute a lease deed in favour of the Corporation as and when the Corporation demands.

5. According to the respondent, the lease deed along with the notarized affidavit was submitted at the time of submitting the original application itself. It is only after being satisfied with the lease deed as well as notarized affidavit, the Corporation processed the application of the respondent and eventually the respondent was selected in the draw of lots held on 02.11.2016, the results were also declared on the same day. However, after about six months that is in April 2017, the Corporation chose to send the impugned communication citing the non availability of the clause permitting sublease in the original lease deed submitted by the respondent.

6. The Writ Petition was resisted by the Corporation contending that as per the terms and conditions of allotment, the lease deed must contain a clause enabling the Oil Corporation to sublet the land particularly in case of candidates applying under Group-I. Since the lease deed did not contain a clause enabling sublease and the same was pointed out at the time when the Field Verification Committee inspected the land and after taking opinion of the legal department the Corporation was forced to cancel the selection of the respondent.

7. The learned Single Judge who heard the Writ Petition rejected the contentions of the Corporation and as of fact, found that the lease deed contained an implied authorization to sublet. The learned Single Judge after referring to the various

clauses of the lease deed which enables the lessee to dig the land in order to place underground storage tanks and also enabling the officials of the Indian Oil Corporation to make inspection as and when required and the fact that the owners of the land had agreed to lease out the property to the Corporation directly in the event the respondent is appointed as a dealer by way of an affidavit which also accompanied the original application itself, the learned Single Judge found that the stand of the Corporation is wholly unreasonable. After going through the process of selection for over two years and the respondent having emerged as the successful candidate the Corporation, according to the learned single Judge, was not justified in cancelling the selection. On the above findings, the learned Single Judge allowed the Writ Petition directing the Corporation to appoint the respondent as a dealer. Aggrieved, the Corporation is before us by way of an appeal.

8. We have heard Mr.Abdul Saleem, learned counsel appearing for M/s.AAV Partners for the appellants and Mr.G.Prabakar, learned counsel appearing for the respondent.

9. Mr.Abdul Saleem, learned counsel appearing for the appellants would contend that in case of group - I applicants who claim that they are having suitable piece of land in the advertised location or area either by way of ownership or a long term lease, the lease deed shall contain a provision which enables the lessee to sublease the land to the Corporation in the event of the lessee being appointed as a dealer. In the absence of such clause, according to the learned counsel for the Corporation, there is a possibility of the land owner seeking recovery on the ground of subletting.

10. It is the further contention of the learned counsel that inasmuch as the conditions prescribed that there should be a clause enabling sublease in the lease deed, the officials of the Corporation have no discretion to over look or to consider any substitute as compliance with the mandatory requirements. Claiming that the notarized affidavit cannot be treated as a substitute for a clause in the registered sale deed, the learned counsel would contend that the Corporation has no other option to cancel the allotment of the retail outlet to the respondent.

11. Per contra Mr.G.Prabakar, learned counsel appearing for the lessee/ respondent would contend that the notarized affidavit was submitted even along with the application and the officials of the Corporation were right through aware that the registered lease deed did not contain an express provision enabling the lessee to sublet, he would however contend that a wholesome reading of the lease deed would show that the land owners were aware of the purpose of the lease and there was an

implied permission for sublease in favour of the Corporation atleast. Even otherwise, according to the learned counsel, the notarized affidavit, in and by which, the land owners had specifically consented for executing a lease deed in favour of the Corporation itself, in the event the respondent is appointed as a dealer, should have been taken as a permission to sublet.

12. The learned Single Judge who heard the Writ Petition on analysis of the contents of the lease deed concluded that the lease deed in fact contains implied permission for subletting. The learned Single Judge had taken note of the fact that the lease deed enables the lessee to dig the land for the purpose of erecting the underground storage tanks for storing petroleum products like petrol and diesel. It also enables the officers of the Indian Oil Corporation to enter upon the land as and when necessary and it puts an embargo on the lessee to sublet the land to others, meaning thereby a sublease in favour of the Corporation is permitted.

13. The learned Single Judge also concluded that the notarized affidavit itself is sufficient to comply with the requirements of the terms and conditions for appointment as a dealer in petroleum products. On the above said conclusions, the learned Single Judge while quashing the impugned cancellation dated 06.04.2017, directed the appellant Corporation to appoint the respondent as a dealer, pursuant to the selection process that was already completed.

14. The fact that the respondent applied for dealership under Group - I claiming that she holds the land required on the long term lease. The said lease was also evidenced by a registered lease deed. It is the contention of the appellant, Oil Corporation, that the registered lease deed does not expressly authorize the lessee to sublease the property. Therefore, the Officials of the Corporation have no discretion but to reject the candidature of the respondent since the lease deed in her favour did not contain a clause expressly authorizing the respondent to sublease the land to the Corporation.

15. Under law, except cases that are covered by specific Local Tenancy Protection Laws there is no prohibition against a lessee from subleasing the land in favour of the 3rd party. Insofar as Tamil Nadu is concerned, it is only the Tamil Nadu Buildings (Lease and Rent Control) Act, 1961 which contains a prohibition against a tenant from subleasing the property let out to him or her. The said Act would apply only for tenancies of building and not for tenancies of vacant land. Therefore, a lessee, particularly a long term lessee cannot be legally prevented by the owner of the land from subletting the property.

We will have to examine the situation in the case on hand on the touch stone of the law viz., the Transfer of Property Act.

16. While it is true that the guidelines on selection of dealers for regular and rural retail outlets contain a requirement that the lease agreement should have a provision to sublease the land wherever locations are advertised under Corpus Fund Scheme, other than Corporation owned sites and company leased sites, the respondent has along with her application produced a notarized affidavit containing the declaration by the owners that they are willing to execute a direct lease in favour of the Corporation in the event of the respondent being appointed as a dealer. We had directed the Corporation to produce the original file relating to the allotment. From the file we find that the Field Verification Committee had after inspection noted that the sublease clause was not available. However, a clarification was sought for and the selection Committee opined that the notarized affidavit may be taken as permission to sublet however the said opinion was not accepted by the legal department of the Corporation which recommended cancellation.

17. The fact that the respondent had filed a notarized affidavit was also considered by the Committee. We find that the Committee had gone by the recommendations of the law department, which claimed that there was no permission to sublet in the lease deed. Mr.G.Prabakar, learned counsel appearing for the respondent would take us through the contents of the lease deed. Pointing out that the lease deed contains a reference to the lessees application for dealership and enables the lessee to dig pits in order to accommodate the underground storage tanks as well as permits the Officials of the Indian Oil Corporation to inspect the property as and when they deem fit. The learned counsel would contend that the very object of the lease itself was for staking a claim for dealership, it would not be correct to say that the owners were not aware that the lessee would sublet the property to the Corporation.

18. Mr.Abdul Saleem, learned counsel appearing for the appellant Corporation would invite our attention to the judgment of the Division Bench of this Court to which one of us [Hon'ble Mr.Justice K.K.Sasidharan] was a party in Indian Oil Corporation Ltd., Vs. J.Ranjith reported in 2012 (5) CTC 577 contend that in respect of Government contracts when the conditions have not been fully complied with, the Oil Corporation is bound to reject the applications and Courts cannot direct the State instrumentalities to flout their own notification.

19. We should however point out that was a case which involved a change of site for godown for liquefied petroleum. On the facts of the said case, the Division Bench concluded that after having obtained a dealership by showing a place for the purpose of godown, the applicant cannot be allowed to change the location of the godown which would amount to rewriting the contract between the parties. We are of the considered opinion that the said judgment cannot be applied to the facts of the case on hand.

20. In the case on hand all that the Corporation is concerned is the power and ability of the lessee to sublease the property to the corporation. As already pointed out, even in the absence of a clause enabling sublease, a lessee cannot be legally prevented by the landowners from subletting the property and there is no legal prohibition to that effect. Apart from the above, the lease deed itself recognizes the purpose of the lease as one for establishing a petrol bunk or a retail outlet in petroleum products. The lease deed also empowers the lessee to dig the land and do other development works in order to establish a petroleum retail outlet and further enables the Officials of the Corporation to have periodical inspection of the demised property. Apart from the above, the notarized affidavit filed by the respondent along with the application itself very clearly states that the land owners are ready to execute a lease deed as and when necessary.

21. In fact the order impugned in the Writ Petition itself states that in case the respondent has any grievance against the cancellation of the candidature, she can make a representation within 10 days from the date of receipt of letter. Accordingly, the respondent has made representation to the Corporation, wherein, she had also clearly stated that the land owners have no objection for subleasing or leasing the land directly to the Corporation. It is also stated that the land owner is willing to sell the property in favour of the respondent. In these circumstances, we are of the considered opinion that the cancellation of the selection of the respondent by the appellant Corporation is not just and proper. We are in agreement with the learned Single Judge, on the interpretation of the clauses of the lease deed and the finding that there is no prohibition and there is in fact an implied authorization for sublease in the lease deed itself and the notarized affidavit filed by the respondent even along with the application makes the position very clear and therefore the appellant corporation was not justified in cancelling the selection of the respondent as a dealer. We are convinced that the cancellation of the selection of the respondent as a dealer on the sole ground that the lease deed does not contain a clause authorizing subletting cannot be

sustained and hence the learned Single Judge was perfectly justified in setting aside the order.

22. For the foregoing reasons the appeal fails and the same is dismissed. However, in the circumstances there will be no orders as to costs. Consequently, the connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

To Sub Assistant Registrar

- 1.The General Manager,
Indian Oil Corporation Ltd.,
G/9, Ali Yavar Jung Marg,
Bandra (East), Mumbai - 400 051.
- 2.The Manager,
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Kondalampatti, Salem.

+1cc to Mr.Abdul saleem, Advocate, S.R.No.52593

+1cc to Mr.G.Prabhakar, Advocate, S.R.No.52595

W.A.No.305 of 2018

SPD(CO)
GSP(27/08/2018)

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