IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO. 2096 OF 2014

Mrs. Geeta W/o Sukhdeo Gawit,
Age : 35 Years, Occ. Nil
R/o. 16, Parampeeta, Gandhiknagar,
Dhule Road, behind Johara Complex
Nandurbar, District Nandurbar. ..PETITIONER

VERSUS

1. Indian Oil Corporation Ltd
(Marketing Division) through
it's Chief Manager,
Maharashtra State Office,
354-C, Dr. Anibent Road, Warli,
Mumbai.

2. Senior Divisional Retail Sales Manager,
Indian Oil Corporation Ltd.
Aurangabad Divisional Office,
Plot No. 99, Jyoti Nagar, Aurangabad.

3. Smt. Yogita Laxmikant Shaha,
Age : 39 Years, Occup. Business,
R/o. Nijampur, Tq. Sakri,
District Dhule. ..RESPONDENTS

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Mr. V. D. Sapkal, Advocate for the Petitioner.
Mr. A. P. Bhandari, Advocate for Respondent No.1
Mr. P. N. Kutti, A.G.P for the State

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CORAM :T.V. NALAWADE AND SUNIL K. KOTWAL ,JJ.
ORDER : 20.02.2019

ORDER :-

The petition is filed for challenging the allotment of the retail dealership in respect of Petrol and Diesel in favour of respondent No.3.

2. Both the sides are heard.

3. The submissions made and record shows that, present petitioner

and respondent No.3 had applied for getting the dealership. Petitioner secured 78.01 marks and she stood second in the merit list. Respondent No.3 secured 79.97 marks and she stood first in the merit list. As the respondent No.3 stood first in the merit list, she was to get the dealership. The petitioner filed objection on 10.01.2013, and petitioner contended that the land shown by respondent No.3 is belonging to a tribal and in view of the provision of Section 36(A) of the Maharashtra Land Revenue Code, the land could not have become available to respondent No.3. Respondent No.3 has produced consent letter of the owner in respect of the land and it was a notarized document. It was consent to give the required portion of his land for running petrol pump on monthly rent basis. On the basis of this document, the respondent No.1-company has held that it was ' firm offer' and 25 marks provided for such condition are given in favour of respondent No.3.

4. The provision of Section 36(A) of the Maharashtra Land Revenue Code runs as under :-

> "[36A: Restrictions on transfers of occupancies by Tribals:- (1) Notwithstanding anything contained in sub-section (1) of Section 36, no occupancy of a tribal shall, after the commencement of the Maharashtra Land Revenue Code and Tenancy Laws (Amendment) Act, 1974, be transferred in favour of any non-tribal by way of sale (including sales in execution of a decree of a Civil Court or an award or order of any Tribunal or Authority), gift, exchange, mortgage, lease or

otherwise, except on the application of such non-tribal and except with the previous sanction.

(a) in the case of a lease, or mortgage for a period not exceeding 5 years, of the Collector; and (b) in all other cases, of the Collector with the previous approval of the State Government: Provided that, no such sanction shall be accorded by the Collector unless he is satisfied that no tribal residing in the village in which the occupancy is situate or within five kilometres thereof is prepared to take the occupancy from the owner on lease, mortgage or by sale or otherwise.

(2) The previous sanction of the Collector may be given in such circumstances and subject to such conditions as may be prescribed.

(3) On the expiry of the period of the lease or, as the case may be, of the mortgage, the Collector may, notwithstanding anything contained in any law for the time being in force, or any decree or order of any court or award or order of any Tribunal or Authority, either suo motu or on application made by the tribal in that behalf restore possession of the occupancy to the tribal.

(4) Where, on or after the commencement of the Maharashtra Land Revenue Code and Tenancy Laws (Amendment) Act, 1974, it is noticed that any occupancy has been transferred in contravention of sub-section (1), 1[the Collector shall, notwithstanding anything contained in any law for the time being in force, either suo motu or on an application made by any person interested in such occupancy, within thirty years] from the date of the transfer of occupancy hold an inquiry in

the prescribed manner and decide the matter.
(5) Where the Collector decides that any transfer of occupancy has been made in contravention of sub-section (1), he shall declare the transfer to be invalid, and thereupon, the occupancy together with the standing crops thereon, if any, shall vest in the State Government free of all encumbrances and shall be disposed of in such, manner as the State Government may, from time to time direct.
(6) Where an occupancy vested in the State Government under sub-section (5) is to be disposed of, the Collector shall give notice in writing to the tribal transferor requiring him to state within 90 days from the date of receipt of such notice whether or not he is willing to purchase the land. If such tribal transferor agrees to purchase the occupancy, then the occupancy may be granted to him if he pays the prescribed purchase price and undertakes to cultivate the land personally; so however that the total land held by such tribal transferor, whether as owner or tenant, does not as far as possible exceed an economic holding.

Explanation :- For the purpose of this section, the expression "economic holding" means 6.48 hectares (16 acres) of jirayat land or 3.24 hectares (8 acres) of seasonally irrigated land, or paddy or rice land, or 1.62 hectares (4 acres) of perennially irrigated land, and where the laud held by any person consists of two or more kinds of land, the economic holding shall be determined on the basis of one hectare of perennially irrigated land being equal to 2 hectares of seasonally irrigated land or paddy or rice land or 4 hectares of jiray at land."

5. The learned counsel for the petitioner submitted that the aforesaid provision shows that in ordinary course, the transfer of the land of tribal to non-tribal is not possible and this circumstance is sufficient to hold that it was not 'firm offer'. The aforesaid provision shows that conveyance/transfer is prohibited under certain circumstances and if the lease would be of the period extending five years, the approval of the State Government will be required for it. The provision itself shows that after following some procedure, the State Government can give approval for such lease. In view of this possibility, it cannot be said that respondent no.3 could not have made available the required land for running the petrol pump. The consent can be treated as agreement to give land on lease and it is not prohibited by Section 36-A.

6. After rejection of the objection dated 03.09.2013 the petitioner rushed to the Court and filed the proceeding on 31.10.2013. This Court granted interim relief on 12.03.2014 and parties were directed to maintain *status-quo*. The learned counsel for the respondent No.1-company submitted that due to order of *status-quo* made by this Court, further procedure could not be followed and the Company could not issue letter of intent. He drew the attention of this Court to the conditions mentioning ' firm offer' of land and other ancillary conditions and they are as under :-

(b) " **Firm Offer" of Land**

In addition to land covered under para (a) above, applicants also have the option to offer land with firm offer of land from land owners. Such offer from land owners should be in the form of notarized affidavit giving details of land, khasra/khatauni number, name of village/location, ownership details etc.

NOTE :

(i) However, if an applicant, after selection on the above basis, is unable to provide the land indicated in the application within a period of TWO months from the date of letter of Intent (LOI), IOC will have the right to cancel the allotment of dealership made to the applicant. The suitability of the Land will be decided by IOC. In this case IOC will provide all fixed facilities at its cost at the site so taken from the applicant on purchase/long term lease basis. However, there is no commitment from IOC for taking the offered Land from the applicant.

(ii) Wherever IOCL has advertised that it also expects the applicant to provide suitable land at the advertised location to IOCL on sale/long lease, their willingness to transfer such land to the oil company should be clearly indicated in the application format under para 12(d). Considering the location of the land from the point of view of suitability from technical and commercial angle and rates applicable to IOCL, applicants willing to transfer the land on ownership/long term lease to IOCL would be considered. However, there is no commitment from IOCL for taking the offered land from the applicant.

(iii) Documents For Offered Land

The applicant should furnish at least one of the following document (in support of ownership) which should have been issued/revalidated on or after date of advertisement: (i) Khasra/Khatuni or any equivalent revenue document or Certificate from revenue offical confirming the status of ownership of the land. Or (ii) Registered sale deed/ Registered lease deed or any other type of ownership transfer deed/document in favour of applicant.

(iv) Copy of the lease agreement or allotment letter issued by Government/Semi-Government/Autonomous bodies like DDA, NOIDA, HUDA etc will be considered for ownership of land offered.

(v) In addition to documents in para (iii) and (iv) above, following additional documents are also required, as applicable.

Sr. No.	Situation of Ownership	Share of applicant in Land	Documents required (In addition to land ownership/Revenue	Evaluation as

			record)	
1	Self	Full	Nil	Owned land
2	Exclusively by the " Family" members	Nil	Notarized affidavit by all owners in favour of applicant	Owned land
3	Self exclusively with " Family" members	Part	Notarized affidavit by all other Co-owners in favour of applicant	Owned land
4	Self with Others	Share of applicant more than IOC requirement	Notarized affidavit with demarcation of land (portion of land to be given for dealership by the applicant)	Owned land
5	Self with Others	Share of applicant more than IOC requirement	Notarized affidavit without demarcation of land (portion of land to be given for dealership by the applicant)	Firm Offer
6	Self with Others	Share of applicant less than IOC requirement	Notarized affidavit	Firm Offer
7	Others	Nil	Notarized affidavit	Firm Offer
8	Where the land falling in Owned land category as described in above category at Sr. No. from 1 to 4 is not sufficient for development of retail outlet and land in category 5 to 7 is also offered to meet IOC's requirement	Nil or Part	Document as applicable for category at Sr. No. 1 to 4 and Document as applicable for category at Sr. No. 5 to 7	Firm Offer

(vi) Land document will be sent to District Magistrate/District Collector for verification of title for ownership of land before considering land for evaluation."

7. The aforesaid provisions also show that time of two months needs to be given to selected candidate to provide the land indicated in the application. Considering the possibility of giving approval by the State

Government, as mentioned in Section 36(A) of the Maharashtra Land Revenue Code, this Court holds that it was necessary for the Company to issue letter of intent first and give time of two months to the selected candidate. Unless that step is taken, it cannot be said in a such case that it was not a ' firm offer'. Only that kind of interpretation is possible in view of the aforesaid provision of the Maharashtra Land Revenue Code and the provision of conditions made in the brochure.

8. Due to all these circumstances, this Court holds that no direction as sought can be given in favour of the petitioner. It will be open to the company to follow the procedure and only after following the procedure, further steps can be taken by the company. Petition is disposed of as dismissed in aforesaid terms.

(**SUNIL K. KOTWAL**)
JUDGE

(**T.V. NALAWADE**)
JUDGE

YSK/