

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

MISC. CIVIL APPLICATION (REVIEW) NO.658/2018

IN
WRIT PETITION NO.328/2017 (D)

The Kalmeshwar Taluka Sahakari Shetki Kharedi Vikri Samiti, through its
President Mr. Nilkanth Vitthal Kodhe

...Versus...

Sau. Radha Milind Chimurkar and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri Firdos Mirza, Counsel for applicant
Shri M.V. Samarth, Counsel for non-applicant no.1
Shri Abhay Sambre, Counsel for non-applicant no.3

CORAM : SUNIL B. SHUKRE AND
MRS. SWAPNA JOSHI, JJ.

DATE : 20/11/2019

1. Heard.
2. We find that the main issue involved in this case is regarding the situation of the land offered for show-room by the stakeholders. Needless to say that the main stakeholders, apart from Bharat Petroleum Corporation Limited (for short, "BPCL") in the present case, are the review applicant (original respondent no.3) and the non-applicant no.1 (original petitioner).
3. The advertisement that was issued way back in the year 2013 required location of the land for show-room to be at

Kalmeshwar. The distributorship is for marketing the product in rural areas. The petition has been decided on the plank that when the respective lands offered by the aforestated main stakeholders were located at Mouza Bramhni and not at Kalmeshwar, the decision taken by the BPCL in allotting the distributorship to the original respondent no.3 was discriminatory in nature and it violated the fundamental right to equality of the original petitioner and thus the decision went in favour of the petitioner. In deciding so, as we see from the averments of the original respondent no.3, this Court did not consider an important aspect regarding the location of the land offered for show-room by the respondent no.3 in the present case, even before the application of the respondent no.3 was considered. Originally as per the sale-deed executed way back in the year 1966, this land offered by the respondent no.3 was situated at Mouza Bramhni, but due to subsequent notifications, it came to be included within the limits of Nagar Parishad Kalmeshwar. Later on, by another notification issued on 13/07/2017 the whole village Bramhni came to be included within the local limits of Nagar Parishad, Kalmeshwar and this date was well before the date of consideration of the application of the respondent no.3. The application of the respondent no.3 was granted on 08/11/2017. The application of the original petitioner was rejected on 10/11/2016, which was before the issuance of notification on 13/07/2017. These facts are relevant and although they were present on record

insofar as they relate to the averments regarding the notification of the State Government dated 13/07/2017, have not been considered by this Court in any manner. There is also an incidental issue involved in the matter regarding the actual date of consideration of the respective applications filed by the main stakeholders, which consideration though important, has not been accorded by this Court.

4. Had they been considered by this Court, perhaps, the result of the petition may have been different. As such, we find that there is an error apparent on the face of the record and as such, this misc. civil application deserves to be allowed.

5. The Misc. Civil Application is allowed. The order dated 23/03/2018 is hereby recalled. Let the writ petition be listed on board for admission and hearing before the appropriate Bench.

It is made clear that the observations made in this order are only for the purpose of considering the worth of this review application and as such they would not be in any manner relevant for deciding the issue involved in the substantive writ petition.

No order as to costs.

(Mrs. Swapna Joshi, J.)

(Sunil B. Shukre, J.)