

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 28.01.2019

CORAM

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE P.RAJAMANICKAM

WA.No.1768 of 2018
& C.M.P.No.14206 of 2018

Mrs.K.Malarkanni

...Appellant

Vs

1.Chief General Manager,
M/s.Indian Oil Corporation Ltd.,
House of Four Frames
No.6/13, Wheatcrofts Road,
Nungambakkam,
Chennai-600 034.

2.Deputy General Manager,
M/s.Indian Oil Corporation Limited,
NO.2, Race Course Road,
Chokkikulam,
Madurai-625 002.

...Respondents

PRAYER:- Writ Appeal filed under Clause 15 of the Letter Patents to set aside the order dated 25.07.2018 made in W.P.No.8374 of 2018.

Prayer in WP.NO.8374/2018:

Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus 2nd respondent in File No.MAO/ Muppaiyur/2018 dated 16.3.2018 direct the respondents to consider the lands in Survey Nos.381/4 and 130/2C1 offered by the petitioner to be used for running the Godown and Showroom of the LPG Distributorship of Indian Oil Corporation (IOC) at Muppaiyur Sivagangai District or if the respondents still insist for alternate land then the petitioner may produce the conversion deed converting the said Mortgage deed with possession i.e. Othi as Lease deed and or of permitted produce document of alternative land meeting the

guidelines suitable for Godown and Showroom however the date of document is subsequent to the date of advertisement.

For Appellant : Mr.S.Subbiah, Senior Counsel
for Mrs.M.Malar

For Respondents :Mr.Mohamed Fayaz Ali

JUDGMENT

[Judgment of the Court was delivered by M.SATHYANARAYANAN, J.,]

The appellant is the writ petitioner. The appellant / writ petitioner filed W.P.No.8374 of 2018, praying for issuance of a Writ of Certiorarified Mandamus to quash the order / proceedings of the 2nd respondent dated 16.03.2018, with a further direction to direct the respondents to consider the land in Survey Nos.381/4 and 130/2C1, Thenkottai Taluk for the purpose of putting up a showroom and godown for distribution of Liquid Petroleum Gas, on the basis of license granted by the official respondents.

2. The Manager (LPG-S) has sent a impugned communication dated 16.03.2018 to the appellant / writ petitioner stating that the offering of the said lands does not confirm the unified guideline of the Corporation for selection of LPG Distributorship, for Gramin Vitrak and having extracted the said guideline has informed the appellant / writ petitioner, that as per the said guideline, the land should be taken either on ownership basis or registered lease for the period of 15 years and however, the petitioner is offering the land on the basis of equitable mortgage created in her favour and therefore, requested her to give alternative land for godown or showroom as per the said guideline. The appellant had responded to the said communication in the form of reply dated 21.03.2018 indicating to produce the Conversion Deed converting the said Mortgage Deed with possession and seeks leave to produce the documents of alternative land in terms of the above said guideline and therefore, filed the Writ Petition challenging the above cited communication dated 16.03.2018. The writ petition was entertained and after contest, came to be dismissed, vide impugned order dated 25.07.2019 holding that in the light of the fact that the appellant / writ petitioner did not produce any such documents as per the required guidelines would not entitle to any relief and therefore dismissed the writ petition as devoid of merits, vide impugned order dated 25.07.2018 and challenging the same, came forward to file this writ appeal.

3. Mr.S.Subbiah, learned Senior Counsel assisted by Mrs.M.Malar, learned counsel appearing for the appellant would submit that the Equitable Mortgage created in the favour of the appellant / writ petitioner is a better document than a Usufructutory Mortgage Deed and in the light of the facts and circumstances pleaded by the appellant / writ petitioner in her representation dated 21.03.2018 submitted in respect of the impugned communication dated 16.03.2018, and other circumstances projected in the writ petition, there may be a positive direction directing the respondents to consider the said prayer and permit them to produce either of the documents after the cut off date.

4. Per contra, the learned counsel appearing for the respondents has drawn the attention of this Court to the counter affidavit in the writ petition and would submit that the petitioner, having submitted the application in terms of the guidelines, cannot turn around and seek regularisation / exemption and would further submit that the learned Judge has taken note of the factual aspects and rightly reached the conclusion to dismiss the writ petition and therefore, prays for dismissal of this writ petition.

5. It is relevant to extract the relevant guidelines as to the offering of the land for godown and showroom for Gramin Vitrak type of distributorship as stated in the impugned communication dated 16.03.2018:

As per guidelines, Ownership or 'Own' land for godown / showroom for Gramin Vitrak Type of Distributorship means having:

a. Ownership title of the property

OR

B. Registered lease deed having minimum 15 yrs of valid lease period commencing on any day from the date of advertisement up to the last date of submission of application as specified either in the advertisement or Corrigendum (if any).

6. Admittedly, the lands offered by the appellant / writ petitioner for godown and showroom comprised in S.No.381/4, Kakkachchiyentahl Village, Muppaiyur, Devakottai Taluk for Godown and S.No.130/2C1, Muppaiyur Village, Devakottai Taluk for Showroom had been taken by way of Usufructuory mortgage Deed. In the considered opinion of this Court, the same is not in tune with the guideline. A perusal of the impugned communication dated 16.03.2018 would also indicate that the petitioner was also accepted to submit alternative land for godown and showroom as per the above said guideline and in responding to the same, the appellant / writ petitioner submitted a representation dated 23.03.2018 praying for relief to produce the Conversion Deed

converting the said Mortgage Deed with possession and to produce alternative land interms of the specification and it appears that she was unable to do so, prior to the cut off date as stipulated in the said guidelines.

7. Though, the learned Senior Counsel appearing for the appellant prays for positive direction to the respondent to consider the said documents in the event of the submission by the appellant / writ petitioner, after the cut off date, this Court, in exercise of it's jurisdiction under Article 226 of the Constitution of India, cannot do so for the reason that it amounts to altering the terms of the guidelines and that apart, the petitioner even before submission of the application of LPG Distributorship, was very well aware of the said stipulation and therefore, it is not open to her to deviate or recile from the said stand. In the considered opinion of this Court, the learned Judge has rightly appreciated the factual aspects and rightly reached the conclusion to dismiss the writ petition.

8. This Court, on an independent application of mind to the entire materials, is of the considered view that there is no error apparent or infirmity in the reasons assigned by the learend Judge in dismissing the writ petition and finds no merit in this writ appeal.

9. In the result, the writ appeal is dismissed, confirming the order dated 25.07.2018 made in W.P.No.8374 of 2018. No costs. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

To

1.Chief General Manager,
M/s.Indian Oil Corporation Ltd.,
House of Four Frames
No.6/13, Wheatcrofts Road,
Nungambakkam,
Chennai-600 034.

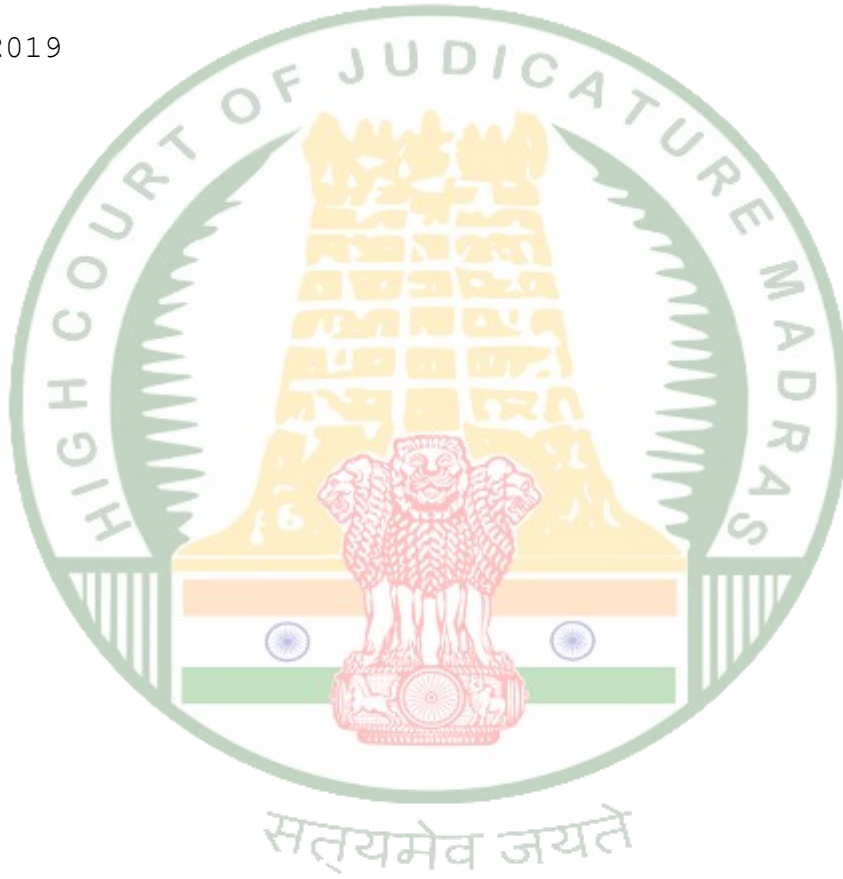
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2.Deputy General Manager,
M/s.Indian Oil Corporation Limited,
NO.2, Race Course Road,
Chokkikulam,
Madurai-625 002.

+1cc to Mrs.M.Malar, Advocate sr.no.6553
+1cc to Mr.Mohamed Fayaz Ali, Advocate sr.6411

WA.No.1768 of 2018

ssv(co)
nr 07/03/2019



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