

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CR No.2248 of 2019(O&M)
Date of Decision: 18.09.2019**

M/s Telu Ram Hans Raj Thapar and othersPetitioners

Versus

**Bharat Petroleum Corporation Limited and another
.....Respondents**

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. Ramnish Puri, Advocate
for the petitioners.

Mr. Raman Sharma, Advocate
for the respondents.

RAJ MOHAN SINGH, J.

[1]. Petitioners have challenged the order dated 04.12.2015 passed by Civil Judge (Junior Division), Moga, vide which application under Order 39 Rules 1 and 2 CPC was dismissed, order dated 15.05.2017 passed by Additional District Judge, Moga, vide which appeal was partly accepted but relief regarding remaining part of the application was declined and order dated 01.03.2019 passed by Civil Judge (Junior Division), Moga, whereby application under Section 151 CPC for

preservation of the suit property till decision of the suit was dismissed.

[2]. Earlier CR No.1828 of 2019 was filed which was dismissed as withdrawn vide order dated 28.03.2019 with a liberty to file fresh revision petition. Order dated 01.03.2019 could not be assailed in the said revision petition, vide which application under Section 151 CPC was dismissed.

[3]. Petitioners/plaintiffs filed a suit for declaration and permanent injunction on the ground that plaintiff Firm is an authorized dealer of defendants. Plaintiffs were allotted a retail outlet at railway road, Moga on the site mark by letters 'ABCD' in the site plan attached with the plaint. The said land is owned by Municipal Corporation, Moga. The land shown by letters 'AEFD' with blue colour is in possession of the plaintiffs prior to the year 1929. Remaining land as shown in green colour with letters 'EFCB' was leased out by the Municipal Corporation, Moga to the defendants for running fuel filling station. Due to insufficiency of land for running a fuel filling station, plaintiff No.1 agreed to pool his land in blue colour with the land taken on lease by the defendants for running a fuel filling station. Plaintiffs further alleged that it was agreed between the parties that the dealership of defendants for running the petrol pump will remain with plaintiff No.1 throughout and defendants had

obtained NOC and explosive licence No.PB-1239 from the competent authority for running a fuel filling station over the land in question for MS, HSD and lubricants. Plaintiffs further pleaded that in the year 1995, defendants took an industrial approval for resitement of its outlets in full or in part. The outlet of the plaintiff was approved for partial resitement. As a result of that, plaintiffs were allowed to sell MS and lubricants at the site of railway road, Moga and HSD with lubricants at the site situated at village Bughipura, NH-95, G.T. Road, Moga by way of partial resitement. Defendants had purchased a new site at village Bughipura and also obtained NOC and explosive licence No.PB-2134 to sell HSD with lubricants. On licence No.PB-1239, HSD was deleted. In this manner, plaintiffs started running two fuel filling stations. In the year 2003, defendants added two products to the existing products at both the sites. HSD was added at railway road, Moga and MS was added at village Bughipura. In this manner, both the sites started selling MS, HSD and lubricants w.e.f the year 2003.

[4]. Some dispute arose regarding land in green colour with the Municipal Corporation, Moga. The supply remained suspended and the plaintiffs had to file civil suit for permanent injunction against Municipal Corporation, Moga. Injunction was granted in favour of the plaintiffs by Additional District Judge,

Moga. The supply remained disrupted for a considerable period. Ultimately, the supply was restored by the defendants. Plaintiff Firm received a letter dated 19.09.2013 from the defendants, wherein it was mentioned that plaintiff Firm is *ad hoc* dealer and its dealership was terminated vide letter dated 03.07.2013. Plaintiffs further pleaded that explosive licence No.PB-1239 was not surrendered by the defendants at the time of full resitement to the new site at village Bughipura. They did not obtain any fresh licence regarding full resitement at village Bughipura and kept on selling HSD without validation at railway road, Moga from 2003 onwards. Plaintiffs claimed themselves to be permanent dealer of the defendants and no agreement was executed between the parties in respect of appointment of the plaintiffs as *ad hoc* dealer. The *ad hoc* dealership could be valid only for a period of four months, but keeping in view the period from 2003 to 2013, the plaintiffs cannot be considered to be *ad hoc* dealer at the site of railway road, Moga and further termination of dealership is claimed to be illegal.

[5]. An application under Order 39 Rules 1 and 2 was filed along with suit for grant of *ad interim* injunction, restraining the defendants from disrupting the fuel supply to the filling station and also restraining the defendants from taking forcible possession of the site in question.

[6]. Defendants contested the claim of the plaintiffs. Defendants claimed that plaintiffs continued with the dealership of defendant No.1 regarding the site in question till 2003. In the year 2003, dealership of the plaintiffs was resited at village Bughipura and the site at railway road, Moga was converted into *ad hoc* dealership. Temporary operation was given to the plaintiffs as per policy of the Corporation with an intention to set up a regular dealership after following regular procedure. After the full resitement, the defendant Company had made *ad hoc* arrangement to continue to sell the products from retail outlet at railway road, Moga through plaintiffs w.e.f. 03.07.2003. The dealership was described as *ad hoc* retail outlet with new customer code regarding *ad hoc* dealership. The old customer code was mentioned for resited location at village Bughipura. As per instructions issued by Government of India vide letter dated 10.07.2002, the oil companies were authorized to take independent decision regarding running/operating COCO (Company Owned Company Operated) retail outlets by their own officers (without job contractors or *ad hoc* dealers). They were authorized to phase out existing temporary COCO (Company Owned Company Operated) retail outlets within a year and also to stop *ad hoc*/job contractorship.

[7]. In the aforesaid instructions, practice of *ad hoc*

dealership was desired to be stopped forthwith. *Ad hoc* arrangements were to be terminated and the outlets were to be operated by oil companies themselves till appointment of a regular dealer.

[8]. Vide Government circular dated 19.08.2003, it was decided that multiple dealerships be avoided and one dealership be given to one family. According to the stand taken by the defendants, dealership of the plaintiffs was resited at village Bughipura and existing site at railway road, Moga was converted into *ad hoc* dealership as per policy of the company with an intention to set up a regular dealership by following prescribed procedure and after full resitement at the site.

[9]. Vide letter of Ministry dated 06.09.2006 which was issued on the same subject matter i.e. Ministry letter dated 10.07.2002, wherein it was decided that OMCs would formulate their own policy and procedure for operating those retail outlets, where sites had been procured and facilities created, or which had been de-commissioned because of termination of dealerships, on Company-Owned-Company-Operated (COCO)/ *ad hoc* basis till regular dealers were appointed. It was also observed that this could not be formulated by OMCs uniformly on industrial basis so far. The matter was considered and it was decided that temporary COCO ROs may first be offered and

handed over, subject to suitability, to the pending Letter of Intent (LOI)-holders under the following categories:-

(a) Special Scheme (Operation Vijay-Kargil), the Kargil allottees

(b) Discretionary quota scheme.

(c) Corpus Fund Scheme (SC/ST category of dealerships, widows and women above 40 years of age without earning parents).

(d) Other categories as prescribed in the marketing plans.

(e) The industry may pool their available temporary COCO ROs for offering to the categories under (a) & (b) above. In case no LOI-holder under these categories are available, then these dealerships should be advertised for selection of dealers under normal process.

[10]. During course of arguments, it was pointed out by learned counsel for the respondents that out of 150 LOI's holders, 120 sites have been allotted so far.

[11]. Petitioners along with others laid challenge to the aforesaid policy notification dated 06.09.2006 issued by Government of India in the Delhi High Court. Delhi High Court vide judgment dated 08.02.2008 decided the Bunch matters,

however, it was observed that some of the cases including the case of the plaintiffs i.e. Writ Petition No.1915 of 2007 was required to be heard separately. Writ petition was accordingly heard separately and was dismissed by the Delhi High Court vide order dated 18.03.2010. The claim of the plaintiffs regarding restraint from cancelling the retail outlet at railway road, Moga on the basis of notification dated 06.09.2006 was declined. It was held that the site in question is an *ad hoc* dealership as the original retail outlet has already been resited at a new place i.e. village Bughipura. Relevant observations made by the Delhi High Court are quoted hereasunder:-

“As the facts which have now emerged during the course of hearing, it transpires that the case of the petitioner is really not one of the resitement. The petitioner has been running the retail outlet/petrol pump at Railway Road, Moga City, District Moga, Punjab through a partnership firm, namely, Teluram Hansraj Thappar in 2001-02, HSD was resited to Bhugipura at Moga-Ludhiana Road, NH-95 from Railway Road, Moga City, District Moga, Punjab. Thereafter, at the request of petitioner, there was resitement of motor spirit also at Bhugipura. As a result of the full resitement of M/s Teluram Hansraj Thapar from Moga City to Bhugipura, the land in Moga City became available to be allotted to another outlet. It is also stated in the counter affidavit of respondent No.2 that petitioner is neither the owner of the land at Moga nor

has facilitated respondent in obtaining the lease of land there for setting up a retail outlet. It has also come on record that site at Moga belongs to Municipal Council, Moga which was given on lease to respondent No.2 as far back in 1958. On the request of M/s Teluram Hansraj Thapar, resitement was done from the site at Moga as a result of which site at Moga became available to the respondent No.2 for running another outlet which was given to M/s Teluram Hansraj Thapar, a partnership firm being run by petitioner as ad-hoc dealer pending finalization of "Regular Dealer". Thus, the case of the petitioner is identical to the cases dismissed on 08.02.2008.

In our considered view, it was the duty of the petitioner to point out in clear terms that the petitioner was not being disturbed from the resited location but really seeks to run two petrol pumps-one at the resited location is a new arrangement and appointment as an ad-hoc dealer. Had these facts been brought to the notice of the Division Bench during the course of hearing along-with the bunch matters, the petitioner would have suffered the same fate as the other petitions on the date.

We are, thus, of the considered view that the case of the petitioner is squarely covered by the order dated 08.02.2008 and the present case is not one of resitement.

The petition is dismissed with costs of Rs.10,000/-."

[12]. Trial Court dismissed the application under Order 39 Rules 1 and 2 CPC. Lower Appellate Court partly allowed the

appeal and defendants were restrained from dispossessing the plaintiffs from the land mark as letters 'AEFD' in blue colour till disposal of the suit. However, it was made clear that the order will not come in the way of Municipal Corporation, Moga in getting possession of the property in accordance with law. The prayer for preservation of the property till decision of the suit was also dismissed by the trial Court vide order dated 01.03.2009.

[13]. During course of arguments, both the parties have tried to rely upon different instructions issued by Government of India, Ministry of Petroleum & Natural Gas. Discussion on all these instructions may prejudice the case of either of the parties, therefore, I refrained myself from observing anything on the basis of such instructions/notifications of the Government at this stage. Government is in the process of issuing instructions from time to time. Earlier policies have been revised irrespective of RO dealership, operation of the temporary COCO and *ad hoc* dealership. In case of operation of temporary COCO and *ad hoc* dealership, the industry has evolved working guidelines and the procedure to be followed in respect of temporary COCO and *ad hoc* dealership. All new appointments of *ad hoc* dealer at temporary COCOs are decided to be made for a period of one years instead of period of four months as earlier decided.

Existing running of *ad hoc* dealerships will continue to be governed by appointment conditions i.e. 4 months.

[14]. Any observation on merits made at this stage in my considered opinion, would definitely prejudice the case of either of the parties. For grant of *ad interim* injunction, existence of *prima facie* case, balance of convenience and suffering of irreparable loss in the event of non-grant of temporary injunction are the considerations to be followed. Petitioners have lost the litigation in Delhi High Court, where they had challenged the policy of Government of India/notification dated 06.09.2006 on *ad hoc* dealership. At present, the plaintiffs cannot deny their status as that of *ad hoc* dealer in view of letter dated 03.07.2003/08.07.2003 issued by the Authority in respect of appointment of *ad hoc* dealership at Moga city. According to the recital of this letter, petitioners are running dealership at railway road, Moga since 1928. In February 2002, HSD of the station was partially resited to village Bughipura at Moga-Ludhiana Road from existing site and sale of HSD was suspended from city site. Since then, HSD was being sold from village Bughipura site and MS was being sold from city site. The proposal was to the aforesaid effect, wherein it was shown that the petitioners had requested for resitement of MS from city site to village Bughipura, thereby effecting total resitement of the petitioners

from Moga. The proposal was accepted for full resitement as per proforma attached with the letter. It was also observed that after full resitement of the petitioners from Moga city to village Bughipura, site in Moga city will be available to the Company for running another retail outlet and the Company proposed to retain the same under OMP category and award running of dealership on *ad hoc* dealership basis in favour of the petitioners. Reference to the *ad hoc* dealership policy dated 17.01.2003 was made.

[15]. *Prima facie*, it can be seen that approval was made for full resitement of MS for Moga city to village Bughipura. Running of RO under OMP category i.e. Open Market Policy at Moga city site after full resitement of MS to village Bughipura site was observed. Appointment of the petitioners as *ad hoc* dealer for Moga city was approved.

[16]. At this stage, all these notifications/Government letters are subject to proving their execution, but *prima facie* consideration of the case coupled with decision of the Delhi High Court would give rise to an observation that the petitioners have no *prima facie* case. Respondents have already allotted 120 sites in favour of LOI holders. Even in respect of site in question, letter dated 21.07.2009 has been issued to M/s Jai Kisan Filling Station on the subject of appointment of *ad hoc*

dealers for present retail outlet at railway road, Moga with a recital that the aforesaid M/s Jai Kisan Filling Station has been appointed purely on *ad hoc* basis to run the said outlet and the same has been authorized to run the same purely on temporary basis subject to outcome of Civil Suit No.403 of 2014 and present revision i.e, CR No.2248 of 2019. Terms and conditions have also been mentioned in the said letter.

[17]. In view of aforesaid, I find that the plaintiffs have no *prima facie* case. No balance of convenience is found in favour of the plaintiffs and in the event of non-grant of any *ad interim* injunction, no irreparable loss would be caused to the plaintiffs as they have already lost the litigation before the Delhi High Court.

[18]. At this stage without meaning anything on the ultimate merits of the case, I do not find any error of jurisdiction in the impugned orders passed by the Courts below. This revision petition is found to be totally devoid of merits and is accordingly dismissed.

18.09.2019

*Prince***(RAJ MOHAN SINGH)
JUDGE****Whether reasoned/speaking Yes/No****Whether reportable Yes/No**