

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 7370 OF 2020

Keshav s/o Baburao Awchar
Age-21 years, Occu. Business,
R/o Pratap Nagar, Parbhani,
Tq. & District - Parbhani

.. Petitioner

Versus

Hindustan Petroleum Corporation Ltd.,
Through its Head of Regional Office,
Solapur Retail Regional Office,
HPCL, Pakni IRD, Near Railway Station,
Pakni, Solapur.

.. Respondent

Mr. V. D. Sapkal, Senior Advocate i/by Mr. Manish P. Tripathi, Advocate
for the Petitioner.

Ms. Anjali Bajpai-Dube, Advocate for Sole Respondent.

**CORAM : S. V. GANGAPURWALA &
SHRIKANT D. KULKARNI, JJ.**

Date on which reserved for order : 26th February, 2021.

Date on which order pronounced : 08th March, 2021.

PER COURT:-

. Pursuant to the advertisement issued by respondent the petitioner applied for the Retail Outlet (R.O.) dealership for the location at N.H. 61 from Stone No. 445 to 447, Parbhani-Manwat Road reserved for candidate of Scheduled Caste.

2. The petitioner applied from Group-I category. The petitioner was

selected in the draw. The petitioner was directed to submit documents for verification. The respondent upon verification of the documents cancelled the candidature of the petitioner from Group-I category and placed him under Group-III category. The same is assailed in the present writ petition.

3. Mr. Sapkal, the learned senior counsel strenuously contends that the respondent failed to consider the agreement to lease in its correct perspective. The entire document of lease has to be read for arriving at the conclusion. The petitioner is holding the offered land on lease for 19 years and 11 months under registered agreement dated 24.12.2018. It is only after registration of document the petitioner filled in the application for Retail Outlet dealership.

4. The respondent cannot just rely on isolated sentence in the agreement to arrive at the conclusion. If entire agreement is perused, the intention of the parties is clear that the offered land is leased to the petitioner for 19 years and 11 months. The purpose of lease is also mentioned. Further under the lease deed right is given to the petitioner to sublease and erect the retail outlet. The lease rent is also fixed at Rs. 500/- per month. Reading the entire document, it is clear that the intention of the parties is to create lease and valid lease has come into existence. The petitioner possesses the leasehold right for 19 years and

11 months of the offered land under the registered instrument of lease. No other interpretation is possible. The learned senior counsel relies on the judgment in the case of *Balram Raoji Nasare Defendant 1 – Appellant Vs. Mahadeo Panduji Plaintiff and Anr., Defendant 2- Respondents* reported in *AIR 1949 Nagpur 389*. The Nomenclature of the document is not decisive, but the contents of the lease deed.

5. The learned senior counsel also relies on the judgment of the Apex Court in case of *Trivenibai and another Appellants Vs. Smt. Lilabai Respondent* reported in *AIR 1959 SC 620* and submits that though the agreement is styled as agreement to lease it creates a present demise. A document executed by laymen must be liberally construed.

6. The learned senior counsel further contends that subsequently correction deed to the agreement to lease is executed on 28.12.2020 and the intention of the parties is clarified in the registered correction deed.

7. Smt. Dube, the learned counsel for respondent submits that the petitioner was considered from Group-I on the basis of the representation made by the petitioner that he had leasehold rights of the offered land pursuant to the registered instrument for period of

19 years and 11 months. However, during the verification it was observed that the petitioner does not have leasehold right of the offered land in the present lease as per the agreement. It is mentioned that if the petitioner is selected for Retail Outlet dealership, then the lessor would transfer / lease the piece of land mentioned in the agreement lease. The leasehold rights were never created in favour of the petitioner. In view of that the petitioner is not considered from Group-I. The petitioner belong to Group-III. The learned counsel further submits that the Corporation has rightly rejected candidature of the petitioner under Group-I.

8. We have considered the submissions canvassed by the learned counsel for the respective parties.

9. There cannot be any doubt with the proposition that the entire agreement will have to be read to conclude the intention of the parties.

10. The applicants applying pursuant to the advertisement for grant of Retail Outlet dealership are classified into different groups based upon the nature of land holding. The same is as under :

“Group 1 : Applicants having suitable piece of land in the advertised location / area either by way of ownership / long term lease for a period of minimum 19 yrs 11 mths or as advertised by the OMC.

Group 2 : Applicants having Firm Offer for a suitable piece of land for purchase or long term lease for a period of minimum 19 yrs 11 mths or as advertised by the OMC.

Group 3 : Applicants who have not offered land in the application.”

11. For a person to be placed in Group-I he should have suitable piece of land in the advertised location either by way of ownership / long term lease for a period of minimum 19 years and 11 months or as advertised.

12. The petitioner relied upon the agreement to lease dated 24.12.2018. Clause 3 of the agreement to lease would be relevant. The same reads as under :

“3. That in case he Keshav Baburao Awchar is selected for RO dealership will either sell/transfer/lease the above mentioned piece of land to Oil Company or to Shri Keshav Baburao Awchar for setting of Retail Outlet facilities at the above mentioned location as per the site plan duly signed by me/all co-owners. In case of lease, I further confirm that I have no objection if the subject piece of land leased to Shri Keshav Baburao Awchar is further leased/sub-leased to the Oil Company by him/her as per terms of the Oil Company.

That I have no objection if the above mentioned land is used for setting up of Retail Outlet facilities by Shri Keshav Baburao Awchar at the above mentioned location, as per the site plan duly signed by me/all co-owners.”

13. Perusal of clause 3 of the agreement to lease, it is manifest that the said agreement was contingent. In case, the petitioner is selected for Retail Outlet dealership, then the owner would either sell, transfer or lease the offered land to the oil company or to the petitioner for setting up of Retail outlet. It further states that in case of lease, the owner confirms that he will have no objection if the subject piece of land leased to the petitioner is further subleased to oil company as per the terms of the oil company.

14. Paragraph no. 3 of the said agreement to lease is unambiguous and does not permit any other interpretation.

15. It appears that, the petitioner realized that the owner has not executed lease deed in his favour, but has only agreed to lease the land that is, in case the petitioner is awarded the Retail Outlet, as such got correction deed to the agreement to lease deed executed on 18.12.2020 viz. after filing of the present writ petition before this Court. In the correction deed, it is mentioned that in the context of lease by inadvertent mistake necessary portion is described. Clauses 1 and 3 in the agreement to lease dated 24.12.2018 were deleted by the corrigendum and replaced the following clauses.

“(1) That, the lessor has leased the land Gat No. 163 adm.
40M (frontage) × 50m (depth), having 2000 sqm as per Lease

Agreement executed registered vide Sr. No. 2392, dated 24.12.2018.

(2) That, the lessor and lessee state that, para No. 1 & 3 in the agreement lease registered vide Sr. No. 2392 dated 24.12.2018 stands deleted and replaced as follows :

That, lessor Sarswati Ganesh Tare is owner and possessor of land Gat No. 163 adm. 50R out of which, lessor has lease out the land Gat No. 163 to the extent of 40m (frontage) × 50m (depth) at rate of Rs. 500/- per month.

(3) That, the lessor-Sarswatibai Ganeshrao Tare has no objection in case of lessee Keshav B. Avchar – lessee is selected for RO Dealership and developed the leased portion of land for same purpose. Lessor-Sarswati Ganeshrao Tare has further no objection in case lessee Keshav B. Awchar sublease the said portion of land to Oil Company as per terms of oil company.”

16. Thus, it is abundantly clear upon reading the agreement to lease dated 24.12.2018 and the corrigendum dated 28.12.2020 that the agreement to lease was a contingent contract. The agreement to lease was agreeing to lease the property to the petitioner only upon the petitioner selected for Retail Outlet dealership as per the lease deed dated 24.12.2018. It was the agreement to lease dated 24.12.2018 filed with the application and submitted for verification of the respondent.

17. The judgment of the Division Bench of this Court at Nagpur High Court in case of *Balram Raoji Nasare* (supra) would not be of any

assistance to the petitioner. In the said case the dispute was whether the document is a sale or lease. The Court interpreting the various clauses in the agreement concluded that the said document would be a lease. The judgment of the Apex Court in case of *Trivenibai and another* (supra) would also not inure to the benefit of the petitioner. The Apex Court observed that the document executed by laymen must be liberally construed. In that case, the agreement specifically recited terms under :

“I have this day given to you the land described below which is owned by me. Now you have become occupancy tenant of the same. You may enjoy the same in any way you like from generation to generation. My estate and heirs or myself shall have absolutely no right thereto. You shall become the owner of the said land from date 1-6-1944. I will have absolutely no right thereto after the said date.”

After mentioning the properties and describing them in detail, the document proceeded :

“All the above fields are situate at Mouza Mohammadpur, mouza No. 312, tahsil Arvi, district Wardha. The estate described above has been given to you in lieu of your Rs. 8,700 due to you, subject to the condition that in case your amount has not been paid to you on date 1-6-1944, you may fully enjoy the estate described above in any way you like from generation to generation.”

18. It is also worth to note that under the agreement to lease the

possession was never handed over to the petitioner. The document never recites that, the petitioner is put in possession. These aspects also go to show that the agreement entered between the owner and the petitioner pursuant to the agreement to lease dated 24.12.2018 was a contingent agreement, wherein the owner agreed to lease the offered land only if the petitioner is selected for Retail Outlet dealership.

19. In the light of the above, the respondent has not committed any error in rejecting the candidature of the petitioner from Group-I.

20. Writ petition, as such, is dismissed. No costs.

(SHRIKANT D. KULKARNI)
JUDGE

(S. V. GANGAPURWALA)
JUDGE

PS.B.