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14.06.2022
Ct. No. 8

M.A.T. 804 of 2018
CAN 1 of 2022

Suprabhat Ghosh
Vs.
Bharat Petroleum Corporation Ltd. & Ors.

Mr. Debabrata Saha Roy
Mr. Pingal Bhattacharyya
Mr. Subhankar Das
Mr. Neil Basu

.... For the Appellant

Mr. S. N. Mitra, Sr. Adv.
Mr. S. K. Mal
Mr. Bimalendu Das
Ms. S. Das

.... For the Respondents

The appeal is directed against an order passed by the learned Single Judge in a writ petition challenging the communications dated 23.8.2014 and 03.3.2015 with regard to allotment of LPG distributorship. On 23.8.2014 the Territory Manager (LPG), Bharat Petroleum Corporation Ltd., Durgapur was noticing discrepancy during field verification credentials (FVC) in respect of land offered by the petitioner refused to finalize the allotment.

The observation reads as follows:

“During FVC, the following observations were

The proposed land for showroom (as mentioned in the application form) is situated in Begunia Mouza in Bijur-II Grampanchayat which is not in advertised location Satgachia. For a candidate to be eligible, the land for showroom must in the advertised location. Hence, you are requested to provide an alternate land for showroom in the advertised location. You are

also advised to provide land, documents (Original Registered Deed / Mutation Document / Government Record / etc.) Please note that the alternate land should be registered in your name or member of family unit (as defined in the guidelines) as on last date for submission of application (17.10.2013) as specified in the advertisement.

We therefore, request you to kindly submit copy of the land documents against the above observation at the Durgapur LPG Territory Office at Rajbandh Chatty within 7 days of issue of this letter to enable us to proceed with the FVC. In case you did not comply with the above, your candidature will be cancelled.”

This communication was challenged in a writ petition being W.P. No. 2589(W) of 2014. At the time of hearing of the writ petition the learned counsel for the writ petitioner submitted that though the document was submitted in support of the contention of the writ petitioner that the site proposed for the showroom is in the advertised location, however, in view of the allegation made, the writ petitioner is ready to submit the writ petition before the authorities. A prayer was made for granting an opportunity to submit a proposal for setting up of a showroom on an alternative land. The writ petition was disposed of on the basis of the aforesaid submission writ petition by permitting the writ petitioner for filing a representation proposing an alternative site annexing all relevant documents within certain time to the Territory Manager who upon receiving the said representation was directed to dispose of such representation in accordance with law within a specified period. This time the said representation was rejected on the ground that the lease deed of the land offered for construction of the godown was registered

on 28.01.2015 that is after last date of submission of application (17.10.2013) and the same cannot be considered as an alternative land. Both the orders dated 23.8.2014 and 03.3.2015 were challenged in the writ petition. The writ petition was dismissed on the ground of *res judicata* as the learned Single Judge was of the view that the petitioner by making representation pursuant to the order dated 23.8.2014 had an intention the caused or permitted the oil company to believe that the plot originally offered was not in advertised location. Any omission of the oil company in is describing in the advertised location cannot assume significance for the purpose of determining the controversy. Although, we may not agree with the learned Single Judge that the writ application is barred by *res judicata* having regard to the observation made in the earlier writ proceeding that the learned Single Judge in the earlier writ petition has not gone into the merits of the matter and all point are left open to the Territory Manager. However, surprisingly, in the second representation the writ petitioner did not rely upon the certificates alleged to have been issued of the Block Land and Land Reforms Officer dated 01.9.2014 and did not urge that on the basis of the said document the finding of the Territory Manager on 23.8.2014 denying distributorship at Satgachia is erroneous and require to be revisited. The said representation is confined to an alternative land offered in lieu of its first offer. The second impugned order i.e. on 03.3.2015 in our view does not call for any interference as the Territory Manager was justified in not accepting the said alternative land as it was registered much after the last date of submission of the application for LPG distributorship. However, we agree with the learned Single

Judge, estoppel by conduct operates in so far as the second writ petition is concerned in not making any representation with regard to the finding of the Territory Manager upon field verification and calling for further information disclosing relevant documents which are now sought to be relied upon by way of a supplementary affidavit the writ petitioner has given go by to its claim for allotment of LPG distributorship on the basis of the land which had offered earlier.

Mr. S.N. Mitra, learned senior counsel appearing on behalf of the respondents draws our attention to paragraph 9 of the replies / rejoinder of the oil company to the supplementary affidavit filed on behalf of the writ petitioner wherefrom it appears that respondent no. 1 on 28.01.2017 sought a clarification from the Block Land and Land Reforms Officer, Office of Block Land and Land Reforms Officer, Memari – II, District - Burdwan with regard to the location of the plot / land and confirmed whether the original plot offered by the petitioner is located in the village – Satgachia, District – Burdwan or not. The communication received from the Block Land and Land Reforms dated 06.02.2017 along with the mouza information clearly established that the plot offered is not located in the village of Satgachia. This is completely, belied the claim made by the writ petitioner in the earlier writ petition and also in the present writ petition. The Block Land and Land Reforms Officer, Memari-II, District-Burdwan is a competent authority to give clarification on the location to the plot of land. This was accepted by the oil company.

In view thereof, we do not find any reason to interfere with the order passed by the learned Single Judge.

The appeal fails and is accordingly dismissed.

However, there shall be no order as to costs.

(Siddhartha Roy Chowdhury, J.)

(Soumen Sen, J.)