



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.06.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.19585 of 2021

and

W.M.P. (MD)No.16285 of 2021

and

W.M.P. (MD)No.4972 of 2022

P.Aravindh

... Petitioner

Vs.

1.The Deputy General Manager,
Hindustan Petroleum Corporation Limited,
Regional Office,
Madurai Retail Outlet,
1st Floor, BSNL CMTS Bhavan,
70 Feet Road, Ellis Nagar,
Madurai 625 010.

2.P.Malathi

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, to forbear the 1st respondent from granting any permission or license in favour of the 2nd respondent herein to run the petroleum retail outlet in the property comprised in R.S.No.2163/3 A situated at Devadanapatti Town Panchayat, Periyakulam Taluk, Theni District by considering the petitioner's representation dated 17.09.2021.

For Petitioner : Mr.Sreecharan Rangarajan,
For Mr.P.Mahendran

For Respondents : Mr.M.Sridhar for R1
Mr.G.Prabhu Rajadurai,
For Mr.Mark J.Jackson for R2

ORDER

Heard the learned counsel on either side.

2.The second respondent is the petitioner's sister. The petitioner as well as the second respondent applied in response to the tender notification issued by the first respondent for awarding retail outlet dealership at Devadanapatti. The second respondent's bid was accepted by the first respondent. Before further process



could take place, the present writ petition came to be filed and an interim order was also obtained. To vacate the same, the second respondent had filed W.M.P.(MD)No.4972 of 2022. The first respondent has also filed a detailed counter affidavit.

3.The contention of the learned counsel for the writ petitioner is that he had already filed O.S.No.198 of 2021 on the file of the Principal District Court, Theni, seeking the relief of partition. The second respondent is figuring as one of the defendants therein. The land offered by the second respondent herein for setting up the retail outlet is one of the suit schedule items. In the affidavit filed in support of the writ petition, the petitioner had pleaded that the property in question is an ancestral property and that therefore, the same could not have been settled in favour of the second respondent by their father.

4.It is further contended that after filing of the writ petition, their father namely, Mr.A.Palaniappan had not only cancelled the gift deed executed in favour of the second respondent but proceeded to execute only a long term lease deed for a period of 20 years. The learned counsel would argue that thus the very foundation on which the second respondent anchored her case stood totally undermined. She went before the first respondent by claiming that the property in question is her own property by virtue of the gift deed executed by her father. Now her case is that she is a lessee holding the property for a period of 20 years. The learned counsel would state that an applicant cannot be permitted to adopt such a varying stand. He placed reliance on the decision of the Hon'ble Division Bench of the Patna High Court rendered in ***The Indian Oil Corporation Ltd., and Others Vs. Rupesh Kumar Verma. (L.P.A.No.1270 of 2018 in Civil Writ Jurisdiction Case No.14425 of 2018, dated 26.06.2019)***. The Hon'ble Division Bench held as follows:-

"We have considered the submissions raised and we find that the advertisement categorically prescribes that a candidate would be rendered ineligible if the information given amounts to withholding or concealing any fact or tendering of an incorrect information or a false information that would result in affecting the eligibility of the candidate. The three categories which have been specifically provided have, therefore, to be read as indicated therein and, in our considered opinion, any incorrect information would affect the eligibility of a candidate. In the instant case, it is admitted on record that the information given by the respondent- petitioner with regard to the plot of the land and khata number in the application form was an incorrect information and was, therefore, a wrong information. The plot number and the khata number was 123 and 356 respectively. This mistake was



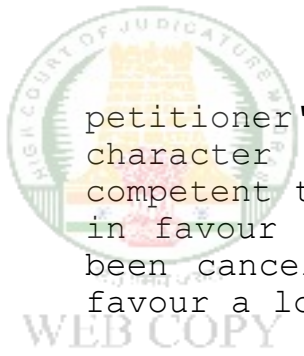
accepted by the respondent-petitioner himself when he tendered the rectification deed on 12th of June, 2018 long after the expiry of the last date of the application form. There is a substantial variation in the number of khata and the plot that was subsequently tendered as Khata No.300 with Plot No.122 and the same, in our opinion, is not such an error which can be termed as a typographical error at least in the application form of the respondent-petitioner. The error may have occurred in the deed for which the respondent-petitioner is clearly responsible and this stands admitted by him in view of the rectification deed tendered later on. Consequently, the information as contained in the application form and the deed which was filed along with the same palpably gave an incorrect information with regard to the khata and the plot number. This therefore disentitled the respondent-petitioner from being treated as an eligible candidate. The conclusion drawn by the learned Single Judge bereft of these facts therefore cannot stand the scrutiny of law. Shri K. D. Chatterji, learned Senior Counsel for the appellants is, therefore, correct in his submission that the Division Bench Judgement as relied upon by the appellants in the case of *M/s Indian Oil Corporation Ltd. & Anr. Vs. Raj Kumar Jha & Ors.* (supra) squarely applies on the facts of the present case."

5.The learned counsel submitted that when serious a civil dispute involving the property is pending before the jurisdictional Civil Court, it may not open to the first respondent to ignore the same and proceed with the allotment process in favour of the second respondent.

6.The contentions advanced by the learned counsel for the writ petitioner are controverted by the learned counsel for the second respondent as well as the learned standing counsel for the first respondent.

7.I carefully considered the rival contentions and went through the materials on record. I must observe at the very out set that any finding rendered herein is only for the purpose of giving a disposal to this writ petition and that it will not have any bearing on the outcome of O.S.No.198 of 2021 on the file of the Principal District Court, Theni.

8.Even according to the writ petitioner, the property in question belonged to his grandmother/Alagammal. Alagammal was blessed with three children. One of whom is Mr.A.Palaniappan (Junior), the father of the petitioner and the second respondent. Therefore, I am not in a position to accept the claim of the



petitioner's counsel that the property in question will bear the character of ancestral property. Mr.A.Palaniappan was very much competent to execute the gift deed settling the property in question in favour of the second respondent. Of course, the gift deed has been cancelled and instead the second respondent is having in her favour a long term lease deed.

9.As rightly pointed out by the learned standing counsel for the first respondent, at the time of field verification, the allottee must ensure that the land arranged by her is either registered in her name or leased in her favour for a minimum period of 19 years and 11 months. This condition has been amply fulfilled in this case.

10.On the date of application, she was very much the owner of the property in question. Whatever has been argued before me by the learned counsel are more in the nature of subsequent developments. I do not find any ground to restrain the first respondent from proceeding with the allotment process. I reiterate that the findings rendered herein will not be referred to or relied on by the jurisdictional Civil Court. The jurisdictional Civil Court is directed to dispose of O.S.No.198 of 2021 on merits and in accordance with law within a period of twelve months from the date of receipt of a copy of this order. The Registry is directed to mark a copy of this order to the learned Principal District Judge, Theni.

11.The writ petition is dismissed accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

/06/2022

Sub Assistant Registrar(CS)

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To:
The Principal District Judge,
Theni.

+1 CC to M/s.MARK.J.JACKSON, Advocate (SR-25941[F] dated 15/06/2022)

+1 CC to M/s.P. MAHENDRAN, Advocate (SR-26098[F] dated 16/06/2022)

W.P (MD) No.19585 of 2021

15.06.2022

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