

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

930 WRIT PETITION NO.895 OF 2020

KALPANA VINOD CHATE

VERSUS

BHARAT PETROLEUM CORPORATION LTD
AND ANOTHER

...

Advocate for Petitioner : Mr Satyajit S.Bora
Advocate for Respondent Nos. 1 and 2 : Mr A.P. Bhandari

**CORAM : NITIN W. SAMBRE AND
S.G. CHAPALGAONKAR, JJ.**

DATE : 10-03-2023

PER COURT :

1. The challenge in the petition to the communication dated January 08, 2020, wherein the application for award of Retail Outlet dealership from Kingaon to Ambajogai Road preferred by the petitioner came to be rejected for the following reasons :-

- (a) That the petitioner has changed the land with respect to the one offered in the application and,
- (b) The land documents for qualifying under Group 1 category as per guidelines not submitted within a stipulated time period.

2. The counsel for the petitioner, Mr Bora would urge that the brochure which governs the processing of the application for selection of dealer itself provides for a mechanism so as to correct the typographical/clerical mistakes and as such, according to him, the typographical/clerical mistake was with mentioning the survey No. 203 to

that Gut No. 25/6 ought to have been permitted. It is his further contention that even if the documents of the ownership is registered subsequent to the date of publication, still same would not act as embargo on the right of the petitioner to claim selection as a retail outlet dealer having regard to the section 47 of the Registration Act. So as to substantiate his aforesaid contentions, Mr Bora would draw support from the Judgment of the Apex Court in the matter of ***Thakur Kishan Singh (Dead) Vs. Arvind Kumar reported in 1994 (6) SCC 591***, particularly paragraph No. 3 which reads thus -

3. The findings recorded by the High Court and the trial court have been assailed by Shri Sen, the learned senior counsel appearing for the appellant, and it is claimed that the lease deed having been registered after the material date, it could not confer any title on the respondent as the right title-in-interest of the respondent's predecessor already stood vested in the State prior to registration of the lease deed. The argument does not appear to be sound. Section 47 of the Registration Act provides that a registered document shall operate from the time it would have commenced to operate if no registration thereof had been required or made and not from the time of its registration. It is well established that a document so long it is not registered is not valid yet once it is registered it takes effect from the date of its execution. (See Ram Saran Lall and Ors. v. Mst Domini Kuer and Ors. AIR (1961) SC 1749 and Nanda Ballabh Gururani v. Smt. Maqbool Begum, MANU/SC/0481/1980. Since, admittedly, the lease deed was executed on 5th December, 1949, the plaintiff after registration of it on 3rd April, 1950 became owner by operation of law on the date when the deed was executed. Therefore, the land did not

vest in the State. And the courts below did not commit any error in negating the claim of appellant.

3. According to him, the Apex Court has already held that section 47 of the Registration Act provides that the registered document shall operate from the time it would have commenced to operate if no registration thereof had been required or made and not from the time of its registration. He would further urge that similar view is already expressed by the Madras High Court in a reported Judgment between the respondent ***Bharat Petroleum Corporation Ltd. Vs. Abinaya Kaviarasu reported in MANU/TN/3092/2019***. In the aforesaid background, his contentions are that the respondent public sector company has committed an error in rejecting the selection of the petitioner.

4. While commenting on the aforesaid submissions, Mr Bhandari, the counsel appearing for the respondent would urge that the pertinently on the date of application, the petitioner was not holding a registered lease deed in relation to the land in question.

5. Apart from above, his contentions are even if the typographical/ clerical errors are permitted to be corrected, the fact remains that the petitioner has mentioned incorrect details of the property viz survey number which is sought to be corrected to Gut number. He would further urge that the claim of the petitioner is rightly rejected.

6. While support from the Division Bench Judgment of this Court in the matter of ***writ petition No. 2618/2020 Jayant S/o Shahuraj Sonawane Vs. Indian Oil Corporation Ltd. and Anr. decided on 27th***

August, 2021 which is decided based on the Judgment of the Apex Court in the matter of ***Bharat Petroleum Corporation Ltd. and others Vs. Swapnil Singh reported in MANU/SC/1572/2015***, he would urge that the issue canvassed is no more *res integra*. According to him, it is mandatory that the document must be registered on the date of the application. He has drawn support from para No. 17 of the Division Bench Judgment of this Court.

7. We have appreciated the rival claim.

8. The fact about the non-existence of a registered document on the date of the application in favour of the petitioner is not in dispute. It appears that the petitioner has got these documents registered subsequent to the date of application and as such, has drawn support from the provisions of section 47 of the Registration Act, 1908. This Court had an occasion to consider the very effect of such registration subsequent to the date of the application for grant of dealership in the Judgment of ***Jayant S/o Shahuraj Sonawane*** referred supra. The Division Bench of this Court has held as under :-

“17. Section 47 of the 1908 Act is primarily intended to affirm the title of a person created by a registered document executed earlier, should there be a dispute as to title on the face of two or more registered instruments in respect of the same property. The legislative intent is that if there be a delay in registration in respect of a document executed earlier, such delay should not be allowed to defeat the right of the person in whose favour execution was made at an earlier point of time. However, the fiction

created by section 47 of the 1908 Act does not come into play before the actual registration of the document takes place. Here, we are not concerned with multiple registered instruments though which title is being claimed by different parties. Notably, section 47 uses the expression “no registration thereof had been required or made”. In terms of section 17(1)(d) of the 1908 Act, lease of immovable property from year to year or for any term exceeding one year has to be compulsorily registered. The work “required” assumes significance in the present context, not only because of the terms of section 17 but particularly in the light of the advertisement dated 25th November, 2018 issued by IOCL. By such advertisement, a representation was made to the public that as on the last date for receiving applications, i.e. 24th December, 2018, an applicant must “own” the land on which the retail outlet is proposed, “own” taking colour from clause (a) under Note 1 extracted supra. It was, therefore, the specific requirement of the terms of the advertisement that the petitioner should have had the lease deed registered on the date he offered his candidature for the retail outlet dealership. There being no registered instrument as on the last date of submitting application, the petitioner is precluded from contending that the notarized lease agreement would amount to sufficient compliance of the terms of the advertisement bearing in mind section 47.”

9. As such, this Court has already held that the fiction created by the section 47 of the Registration Act, 1908 do not come into play before the actual registration of the documents takes place. In the case in hand, since it is an admitted position that on the date of the application, the document was not registered, the fact remains that the issue is squarely

covered against the claim of the petitioner in the aforesaid Judgment of the **Jayant S/o Shahuraj Sonawane**, which is based on the Apex Court Judgment in the matter of **Swapnil Singh**.

10. Apart from above, the fact remains that the change of the Gut number to survey number eventually has prompted the respondent/authority to form an opinion that the petitioner is trying to change the property which initially was offered for making the retail outlet operational at the site which is to be provided by the petitioner.

11. Once the evaluation of the petitioner is based on the property offered, the respondents, in our opinion, were justified in forming an opinion that the petitioner has sought to be changed the very survey number of the property thereby offering other land.

12. In view of the above, we do not see any reason which warrants interference in the order impugned. The writ petition as such stands dismissed.

[**S.G. CHAPALGAONKAR, J.**]

[**NITIN W. SAMBRE , J.**]

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