IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

2024:PHHC:092834-DB

(130) **LPA-448-2024(O&M)**
Date of Decision: 23.07.2024

Jagwant Kaur --Appellant

Versus

Union of India & others --Respondents

CORAM:- HON'BLE MR. JUSTICE G.S. SANDHAWALIA.
HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA.

Present:- Mr. Arun Takhi, Advocate for petitioner.

Mr. Ashish Kapoor, Advocate for respondents no.2 & 3.

Mr. Amit Jhanji, Sr. Advocate with
Ms. Eliza Gupta, Advocate for respondent no.4-Caveator.

***

G.S. SANDHAWALIA.J (Oral)

1. The present appeal is directed against the judgement of the learned Single Judge dated 20.01.2024, whereby petition filed i.e. CWP-24497-2019 was dismissed as the challenge raised to the setting aside of candidature of respondent no.4 for the allotment of the L.P.G Distributorship for the location of Balachaur, District SBS Nagar, was rejected.

2. Learned Single Judge went into detailed consideration and came to the conclusion that the guidelines of 2013, which prescribed the term 'Ownership' would not be inclusive, as such, to registered lease deeds of 15 years and noticed that the private respondent was a lessee in the lease deed and therefore non furnishing of N.O.C, as such and to be in possession of the affidavit before the cut of date i.e. 25.11.2013 was not a

requisite requirement to hold her ineligible.

3. Learned Single Judge, thus, came to the conclusion that there was distinction of N.O.C from the co-owners of the joint land which is under joint ownership, whereas in the case of the lease deed the requirement of N.O.C could not be incorporated, as has been argued by learned counsel for the appellant. It was noticed that the lease deed must be registered and its validity period should be 15 years on the last date for filing application. The respondents having the registered lease deed had fully complied with the requirement as well as conditions contemplated by brochure of August, 2013. It was further noticed that lessor had more than 8 kanals and he had executed lease deed qua 1 kanal 17 marlas land and therefore there was no weight in the arguments raised in the writ petition. The contention that the land owner, as such, had mortgaged the property without the consent of the bank and could not execute the lease deed as it was held to be not a valid defect for the private respondent. It was accepted that as the respondent no.4 had offered alternate land and as per the guidelines dated 15.4./15.07.2015 the IOC had also accepted the said piece of land. In such circumstances, it was held that it was not appropriate to hold that lease deed dated 11.11.2013 (Annexure P-2) itself was invalid and IOC could not accept the said land.

4. It is in such circumstances, learned counsel for the appellant has vehemently argued that lessor had executed two lease deeds of even date dated 11.11.2013 in favour of respondent no.4 Neha Chadha and also another lease deed in favour of Shireesh Mangan and in such circumstances the doubt has arisen that respondent no.4 was ineligible, as such, for consideration and for being declared as successful for the allotment of the

distributorship. It is further argued that the subsequent guidelines as such would not govern and the alternate land which is being now offered by virtue of sale deed in favour of respondent no.4 dated 03.03.2017 has been wrongly applied by learned Single Judge as the cut of date was 25.11.2013 and therefore the subsequent policy, as such, could not be applied.

5. Learned counsel for the Corporation and for the successful respondent has pointed out that Avtar Singh was owner of a larger chunk of land to the extent of 8 kanals 1 marla 53 sarsai out of joint land measuring 52 kanal 4 marlas. He executed two lease deeds of even date and separate mutation had also been entered on 12.02.2015 and 27.02.2015 and therefore it was not in excess of his share. The report of the Patwari, as such, had verified the factum of physical possession on 25.01.2018 and the subsequent alternate site had been accepted which was larger in area and therefore the judgement passed by learned Single Judge would pass muster. Mr. Kapoor has also relied upon the judgement of the Apex Court in **Mrinmoy Maity Vs. Chhanda Koley and others (Civil Appeal Nos.5027 of 2024 Special Leave Petition (Civil) No.30152 of 2018** decided on 18.04.2024 to point out that the order of the Division Bench which had set aside the allotment, as such, while interfering in the appeal had been reversed by the Hon'ble Apex Court by holding that the modification in the guidelines had been brought on 15.04.2015 whereby the applicants were permitted to offer alternate land where the land initially offered by them was found deficient or not suitable. The said policy was to be applied as such and therefore on that basis they had allotted the distributorship and the construction had already been raised by respondent no.4 and therefore there is no fault in the well considered judgement of the learned Single Judge.

6. We have perused the record and noticed that vide lease deed dated 11.11.2013 (Annexure P-2) the land measuring 1 kanal 17 marlas i.e. 100x100 feet out of the land measuring 52 kanals 4 marla comprising in various khasra numbers situated in Fatehgarh, Tehsil Balachaur, District SBS Nagar had been leased out to the private respondent by Avtar Singh son of Jodh Singh. The possession had been delivered and it was mentioned that the land was co-owned as such and the possession which had been given was in mutual partition. Similarly, the lessor had also entered into a similar lease deed with one Shirish Mangan who was also an applicant in terms of the advertisement. The respondent-Corporation had got verification done and the Patwari had found that Avtar Singh was the owner of the land measuring 8 kanals 1 marlas 3 sarsai out of 52 kanals 4 marlas and he had executed the two lease deeds. It was noticed by the revenue officials that the said portions were separated and given on lease and there was a revenue entry also. A perusal of the mutation proceedings i.e. Jamabandi for the year 2008-2009 would also go on to show the entries were made of both the lease deeds vide Rapat No.270 in favour of private respondent and Rapat No.287 regarding Shirish Mangan, whereby it was noticed that there was lease deed for 20 years w.e.f. 11.11.2013 to 10.11.2033.

7. In such circumstances, the argument which is now being raised that there should have been a consent from the other co-owners is an argument of despair. The learned Single Judge has gone through the brochure and applied the conditions that it would be in the cases of land jointly owned. Once the land had been leased out by a registered document in favour of respondent no.4 and the exclusive rights of possession were there, there was no question of seeking NOC when he had exclusive

possession from a co-sharer of the land in question. Therefore, learned Single Judge has rightly distinguished the said requirement for joint ownership. It is also not disputed that by virtue of the new policy the Corporation has accepted the sale deed which has now been given by respondent no.4 whereby the land measuring 42 M x 34 M for construction of a L.P.G godown has been done. The communication dated 05.02.2018 (Annexure R-4/8) would go on to show that the site had been physically verified and was found suitable for construction of LPG godown and therefore the crux of the objections, as such, which are now being raised, stand watered down in view of the guidelines as accepted by the Apex Court also, as such.

8. In ***Mrinmoy Maity vs. Chhanda Koley and others (supra)*** the issue before the Apex Court was that land which had originally been offered turned out to be *barga* land (common land) and, thus, not liable to be considered though the letter of intent had already been issued and approval had been granted for starting the LPG distributorship. The learned Single Judge had dismissed the writ petition on the ground of writ petitioner having participated in the selection process. The Division Bench had reversed the said order and set aside the allotment on the ground that the amendment of the said guidelines brought about subsequently could not be applied retrospectively. The said decision of the Division Bench was reversed by holding out that there was delay and laches and also once the guidelines of 15.04.2015 had been brought out by the oil marketing companies, a more flexible approach was permissible. The relevant part of the judgment reads thus:-

> *"14. Having regard to the afore-stated principles of law enunciated herein above, when we turn our attention to*

facts on hand, it would not detain us for too long for accepting the plea of the appellant in affirming the order of the Learned Single Judge and dismissing the writ petition on the ground of delay and laches. We say so for reasons more than one, firstly, it requires to be noticed that the writ petitioner was a rival applicant along with the appellant herein for grant of LPG distributorship and she along with the appellant herein, were found to be eligible and the appellant herein was held to be successful by virtue of draw of lots. This factual aspect would reflect that the writ petitioner was aware of all the developments including that of the allotment of distributorship having been made in favour of the appellant herein way back in 2014, yet did not challenge and only on acceptance of the alternate land offered by the appellant in March, 2017 and permitting him to construct the godown and the showroom. Same was challenged in the year 2017 and thereby the writ petitioner had allowed his right if at all if any to be drifted away or in other words acquiesced in the acts of the Corporation and as such on this short ground itself the appellant has to succeed. Secondly, another fact which has swayed in our mind to accept the plea of the appellant herein is that, undisputedly the appropriate government had felt the need of permitting the Oil Marketing Companies to be more flexible and as such modification to the guidelines had been brought about on 15.04.2015 whereby the applicants were permitted to offer alternate land where the land initially offered by them was found deficient or not suitable or change of the land, subject to specifications as laid down in the advertisement being met. There being no stiff opposition or strong resistance to the alternate land offered by the appellant herein not being as per the specifications indicated in the advertisement, we see no reason to substitute the court's view to that of the experts namely, the Corporation which has in its wisdom has exercised its discretion as is evident from the report filed in the form of affidavit by the territory manager

(LPG)/ BPCL whereunder it has been stated:"

9. The site has been shifted to another location and the alleged controversy which has arisen on the basis of earlier lease deed dated 11.11.2013 and a report had been called for by the handwriting experts by the Coordinate Bench has found that both the lease deeds had been executed by the owner of the land Avtar Singh.

10. In such circumstances, we feel that the judgment passed by the learned Single Judge requires no interference in the peculiar facts and circumstances of the case and thus, there is no merit in the present appeal and the same is, accordingly, dismissed. The original lease deeds be returned to the Corporation under proper receipt(s) by the Registrar (Judicial) of this Court.

11. Appeal is dismissed.

(G.S. SANDHAWALIA)
JUDGE

23.07.2024 **(MEENAKSHI I. MEHTA)**
lucky **JUDGE**

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No