(2014) 08 GUJ CK 0119

In the Gujarat High Court

Case No : Letters Patent Appeal No. 712 of 2011

Agarwal Automobiles APPELLANT

Vs

Indian Oil Corporation Ltd. and Others RESPONDENT

Date of Decision : 11-08-2014

Acts Referred:

Citation : AIR 2015 Guj 61

Hon'ble Judges : Akil Abdul Hamid Kureshi, J;Mohinder Pal, J.

Bench : Division Bench

Advocate : Salil M. Thakore, for the Appellant; Akshay A. Vakil, Anshin H. Desai and Dhaval D. Vyas, for the Respondent

Final Decision : Dismissed

Judgement

Akil Abdul Hamid Kureshi, J.?The appeal is directed against the judgment of learned single Judge dated 18.4.2011 in Special Civil Application No. 1158/2011. The appellant-petitioner was a dealer of petroleum products appointed by respondent No. 1 Indian Oil Corporation Ltd. ("IOCL" for short). It was operating the petrol pump of IOCL situated at Kharirohar on the land of ownership of Kandla Port Trust ("KPT" for short) respondent No. 2 granted to IOCL by KPT on lease. Such lease was granted way back in the year 1976 and was extended from time to time and was valid upto year 2006. Since no further extension was granted and in fact, at one stage, IOCL also desired that the petrol pump at the said site be shut down, the petitioner filed abovementioned writ petition and prayed for direction to KPT to relocate the petrol pump of IOCL for the purpose of retail outlet to some other land of KPT. The petitioner also prayed for declaration that IOCL had no right to stop supply of petrol and petroleum products at such retail outlet. By way of amendment, the prayer was also added for a declaration that the action of IOCL in agreeing to handover the possession of the land in question was illegal.

2. The writ petition came to be dismissed by the impugned judgment. The learned single Judge observed that prayers of the petitioner were in two parts.

First part was against IOCL for enforcement of dealership agreement and second part was against KPT for restraining the Port Trust from taking the possession of the land in question. It was observed that the lessee i.e. IOCL had already surrendered the land and was not interested in renewal of lease. If therefore, prayer of the petitioner was granted, it would amount to directing the lessor and the lessee to continue the lease which they were not ready to do. It was further observed that IOCL had taken the decision not to continue the said retail outlet as it was not economically viable. With respect to the termination of the dealership, in view of decision of IOCL to close down the petrol pump, for the reason of reduced sales, the learned Judge was of the opinion that no direction under writ petition can be issued. It is this judgment of the learned single Judge which is challenged in this Letters Patent Appeal.

3. In order to appreciate the rival contentions, some facts in detail need to be noted:

3.1 On or around 27.2.1976, KPT granted the said land in question on lease to IOCL for a period of 10 years. One of the conditions of lease was that at the end of period of 10 years, the lessee would have an option for renewal for 10 years at a time for a maximum period of 60 years. IOCL would however, not sublease the plot or create a third party right by transfer or assignment of lease.

3.2 On 1.7.1977, IOCL entered into a dealership agreement with the petitioner for running a retail outlet at the said site for a period of 10 years which could be terminated by either side by giving three months'' notice in writing. It was clarified that upon completion of the said period, the dealership would be terminated.

3.3 In March 1986, the lease of the land in favour of IOCL came to an end. This period was extended by 20 years by a resolution dated 18.3.1998. The renewed lease would thus terminate in the year 2006. Simultaneously, IOCL also renewed the dealership agreement with the petitioner. However, after year 2006, there was no further extension of the lease by KPT to IOCL. KPT did write to IOCL for renewal of lease for a further period of 20 years somewhere in May 2006. At one stage KPT was also inclined to extend the lease. This would be apparent from the resolution of KPT in its General Board meeting dated 6.10.2006 where under resolution No. 252, it was resolved to accept the proposal to renew the lease for a further period of 20 years commencing from 25.3.2006 subject to certain conditions. Such proposal was forwarded to the Government of India for its approval. Government of India under its communication dated 6.3.2007 raised certain queries particularly, with respect to payment of lease rent. Thereupon the Deputy Chairman of KPT put a note dated 18.6.2007 which reads as under:

"2. Thus, the lease period of 30 years, which the Board could have granted on its own is already over. Any further renewal on nomination basis is not considered appropriate although the same has been recommended to the Government for the following specified reasons:

(a) The land allotted for retail outlet does not add to the volume of traffic handled at Kandla.

(b) The land is now needed by the Port for the proposed four laning of the existing road from National Highway upto Oil Jetty complex.

(c) It is also noticed from the notings since the year 2006 that the Govt.. of India, Deptt. of Shipping have been informed that the land is required for the use of Port while seeking approval of the Govt. for extension of lease yet again on nomination basis.

(d) Since the land in question is required for Port''s own use, KPT forwarding and reiterating its position that the land lease needs to be renewed its not just and proper.

The matter was also discussed with the Estate Manager and Secretary who informed that the strategy is to seek renewal of the lease from the Govt. in favour of M/s. IOCL and thereafter reallocate them on some other plot or by changing the dimension of existing plot.

We need to be transparent and truthful in our dealings with the Department. When the land is needed for Port''s own use, the need to seek extension of lease without informing that the land is now required for expansion of roads, does not meet the criteria of fairness.

Chairman may like to overrule the position taken by the Estate Deptt. And not mandate extension of lease period."

3.4 Chairman KPT however, put his noting on 8.7.2007 and approved the extension of lease subject to sanction being granted by the Government of India.

3.5. On 26.5.2010, IOCL wrote to Government of India and conveyed as under:

"Our comments along with the details in the matter are as under:

A land opposite to IOCL Main Terminal at Kharirohar (Kandla) admeasuring 855.3 sq. mtrs was allotted to Indian Oil Corporation Limited on 17.02.1976 by Kandla Port Trust for development of a Retail Outlet.

The Retail Outlet dealership was commissioned in the year 1976. Due to upcoming NH8A and shifting of Traffic, the approval for resitement was obtained in the year 1994 from Competent Authority for partial resitement of HSD facility at Ramdev on NH8A, Dist. Kutch. The MS facility remained at the old site at Kharirohar, Dist. Kutch. The MS sales at Kharirohar site of M/s. Agrawal Automobiles showed a declining trend, as would be evident from the following sales figures from last six years.

From the above, it is clear that the MS facility available at the above site at Kharirohar was not fully utilized. The lease of the above site with Kandla Port Trust had expired in 2006 and Kandla Port Trust did not renew the lease after March 2006 for the same plot of land. Due to very low/nil sales, it was decided to decommission the MS facility at location Kharirohar and shift the same to the resited HSD location at Ramdev on NH8A.

Subject: Renewal of lease for land measuring 856 mtrs. Allotted to M/s. IOC Ltd. By Kandla Port Trust for Retail Outlet at Khari Rohar.

Recently, a letter has been received from Kandla Port Trust(KPT) Authorities advising IOCL to vacate the site for widening of the road from Oil Jetty complex to Khari road. It is further informed vide above said letter by KPT that due to non-surrender of the site by IOCL, assignment of the road is getting affected and there is risk to the residential colony and Oil remain on that stretch of road due to the same.

The necessary approval from Competent Authority for de-leasing the site is under progress."

3.6 On 21.9.2010, the Government of India wrote to KPT that the alleged irregularities by the officers of KPT in allotment of land in question for the retail outlet was inquired into by the CBI who have recommended the lease be cancelled. The Union of India therefore, directed KPT to do so.

3.7 On 6.1.2011, KPT wrote to IOCL and conveyed that the lease of the land has expired on 22.3.2006. It has however, been reported that IOCL has given the land to the petitioner who are running a retail outlet which was in breach of letter of allotment of land which specified that IOCL shall not sublet the plot or create any third party right by way of transfer or assignment of the lease. IOCL having sublet the land without prior approval of the KPT, the lease was liable to be cancelled. IOCL was therefore, put to notice why action should not be initiated by KPT. It was further conveyed that due to expansion of port activities the work of four laning of road from Oil Jetty, Kandla to Kharirohar has been completed only keeping aside the portion of land allotted to IOCL as it comes within the alignment. If the road is diverted, it may be dangerous to traffic.

3.8 On 25.1.2011, IOCL wrote to the petitioner for its approval and advised to remove corporation''s assets from such land.

3.9 On 5.1.2011, IOCL also wrote to KPT that IOCL has no objection for handing over of possession of the land in question.

3.10 Few developments took place during the pendency of the proceedings which have been brought on record through further affidavit. Such developments are that the petitioner on 24.12.2012 wrote to IOCL and represented for reallocation of petrol pump as per the policy of KPT. IOC on 7.12.2013, wrote to KPT conveying that:

"1. A Retial Outlet dealership was commissioned in 1976 on a land allotted by Kandla Port Trust to IOC. In 2011, KPT cancelled the lease of land due to road widening works.

2. Further, we now intend to establish Retail Outlet between Gandhidham-Adipur

after IFFCO Colony on Gandhidham-Adipur State Highway to cater the demand of fueling of vehicles plying on both sides i.e. Gandhidham as well as Adipur.

3. For establishment of Retail Outlet, we need approximately 2000 sq. mtr. (two thousand square meters) land on State highway between Gandhidham and Adipur. The standard Terms and Conditions of Kandla Port Trust for allotment of land are acceptable to us."

3.11 On 24.4.2014, IOCL once again wrote to KPT and reiterated its request for allotment of 2000 sq mtrs. of land for its retail outlet.

3.12 In the affidavit dated 21.7.2014, filed by the appellant-petitioner, it is stated to the effect that such proposal is approved by the Land Allotment Committee and is pending decision of the Board of KPT. These aspects have not been disputed by any of the respondents.

4. From the materials on record, it emerges that the appellant-petitioner effectively seeks renewal of lease of land by KPT in favour of IOCL and further requests for a direction for renewal of the dealership agreement between the petitioner and the IOCL.

5. Insofar as the land in question is concerned, it is not possible for the petitioner to run the retail outlet from such place. The lease was granted by KPT to IOCL which expired in the year 2006. Thereafter, for variety of reasons, even IOCL has not insisted for renewal of the lease at the same site. As we have noted, at one stage, Government of India advised KPT to cancel the lease on the ground of CBI inquiry. However, non renewal of lease is not based on this factor or at any rate on this factor alone. Even IOCL realised that its retail outlet at the said site is simply not viable. In its communication dated 26.5.2010 to the Ministry, IOCL brought out the figures of sale of Motor Spirit ("MS" for short) for financial years from 2004-2005 to 2009-2010. From the peak of 48 Kilo litres in the year 2004-2005 it had come down to 8 to 12 Kilo litres in subsequent years 2005-2006, 2006-2007, 2007-2008 and 2008-2009. In the year 2009-2010, such figure was zero sale. Thus over a period of time, due to reasons, we are not interested in the sale of MS for the said retail outlet had dwindled to such an extent that virtually no commercial activity took place in the year 2009-2010. If IOCL therefore, in its wisdom decided that such retail outlet was simply economically not viable, there could be no substitution of our judgment for that of IOCL. It has also come on record that the land in question came within the road widening. KPT had been conveying to IOCL that due to increase in cargo, the existing road was converted into four lane road and part of the petrol pump land came within the road alignment. Diverting the road would be hazardous to traffic. Land was thus required for road widening as well. Thus on one hand IOCL found it commercially not viable to run its retail outlet at the site in question and on the other hand, in any case, KPT required the land for its road widening purpose. Under the circumstances, if the KPT did not renew the lease after its termination in March 2006, we find no reason to interfere. The agreement to

grant the land on lease was between KPT and IOCL. We simply fail to see how the petitioner as a dealer of IOCL can raise any dispute in the relations between IOCL and KPT. If KPT were to terminate the lease or not grant renewal, for reasons which are not germane, it would be for IOCL to pursue its remedies in law. As a dealer of IOCL, the petitioner had no privity of contract with KPT. Its dealership depended on availability of land granted by KPT to IOCL. If there was no lease of land and resultantly no land to operate petrol pump from, the petitioner could not insist that KPT must renew the lease in favour of IOCL so that the petitioner''s dealership is not put in jeopardy.

6. However, much of this discussion has become at-least at this stage some what unimportant. This is so because of the subsequent developments. As already noted, IOCL has shown renewed interest in reallocation of the land for its retail outlet. KPT is also actively considering such request. As noted, the proposal of IOCL is under active consideration by KPT, is approved by the Land Allotment Committee and the final decision from the Board of KPT is awaited.

7. Two things thus emerge. The petitioner cannot claim any vested right to continue its dealership at the site in question. The period of lease for such site granted by KPT to IOCL is over without any extension and without any proposal or decision to extend the same. Even IOCL does not wish to continue its retail outlet at the said site for the reasons of economic non-viability. The petitioner can press his further demand only if KPT decides to accede to the request of IOCL for reallocation. Second aspect is in relation to petitioner''s request for relocation of the petrol pump.

8. We are informed that in view of sale at the retail outlet at Kharirohar going down, the IOCL had offered the petitioner to shift its sale of MS also at Ramdev, a location where the petitioner operated its retail outlet for sale of High Spirit Diesel ("HSD" for short). Such area however, is outside of KPT. Question of reallocation, upon termination of lease of land being required by KPT therefore, still survives. Here also in our opinion the petitioner has not made out any case against KPT. Firstly, as is recorded, the lease agreement is between KPT and IOCL without any privity of contract by the petitioner. Otherwise also, the land is not being resumed solely on the ground of requirement of KPT. The IOCL itself found that the retail outlet at the site is simply not workable. In essence, therefore, the IOCL surrendered the lease of land for its economic reasons. That being the position, IOCL can restart the petrol pump in the area of KPT only if KPT grants fresh lease at any other site. Whether KPT requires petrol pump within its area of operation has to be its decision to be taken bona fide and fairly by its Board of directors. The petitioner or even IOCL cannot compel KPT to grant lease of land for the petrol pump, if for its internal reasons on a decision taken bona fide, KPT does not need it.

9. Under the circumstances, Letters Patent Appeal is dismissed, however, without effecting the pending consideration of request of IOCL to KPT for reallocation of the land and without prejudice to the petitioner''s contention that if such land is

so reallocated by KPT, the petitioner may have a claim against IOCL for continuation of its dealership by IOCL to be operated from the said site.

10. Learned counsel Shri Thakore for the petitioner relied on the following decisions of Supreme Court to urge that on principles of legitimate expectations, the petitioner can seek a direction against KPT to renew the lease in favour of IOCL and against IOCL for non-continuation of dealership of the petitioner:

1) Navjyoti Coo-Group Housing Society etc. Vs. Union of India and Others, .

2) Food Corporation of India Vs. M/s. Kamdhenu Cattle Feed Industries, .

3) M.P. Oil Extraction and Another Vs. State of M.P. and Others, .

4) Dr. (Mrs.) Chanchal Goyal Vs. State of Rajasthan, .

11. In our opinion, situation is rather simple. As of now, IOCL has no land in the area of KPT from where the petrol pump can be run. Existing land cannot be used for petrol station for the reasons noted above. We have also held that IOCL cannot insist on KPT allocating another land in lieu of the present site. Therefore, unless and until, KPT allocates another piece of land, the petitioner cannot enforce his dealership agreement against IOCL.

12. Subject to observations made in para 10 above, Letters Patent Appeal is dismissed. Interim relief earlier granted stands vacated. At the request of learned counsel for the appellant, it is directed that status quo as on today will be maintained by the parties till 22.9.2014.