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(2025) 12 AHC CK 1717

In the Allahabad High Court

Case No : WRIT C No. 23888 Of 2024

Ashish Kumar Agarwal APPELLANT

Vs

Indian Oil Corporation Limited And 2 Others RESPONDENT

Date of Decision : 01-12-2025

Acts Referred:

Drugs and Cosmetics Act, 1940 — Section 17, 19, 23, 25, 27
Code of Criminal Procedure, 1973 — Section 313

Citation : (2025) 12 AHC CK 1717

Hon'ble Judges : Anish Kumar Gupta, J

Bench : Division Bench

Advocate : Hari Keshav, Sandeep Kumar Singh, Vagish Kumar Misra

Final Decision : Allowed

Judgement

Neeraj Tiwari, J

1. Heard Shri Nitin Sharma, learned counsel for the petitioner and Shri Anand Tiwari, learned counsel for the respondents.

2. Present petition has been filed seeking following relief:-

"(i) Issue a writ, order or direction in the nature of certiorari quashing the Order dated 28.06.2024 (Annexure No. 1 of the writ petition), passed by respondent no 2 & Order dated 15.04.2024 (Annexure No. 2 of the writ petition) passed by Respondent No. 2, rejecting the candidature of the Petitioner for selection of dealership of retail outlet in pursuance of advertisement dated 28.06.2023.

(ii) Issue a writ, order or direction in the nature of mandamus commanding the respondents to accept the piece of land/plot situated at Village Mubarakpur Hardas, Tehsil Najibabad, District Bijnor (duly enumerated in the lease deed dated 25.07.2023) offered by the petitioner for establishment of retail outlet.

(iii) Issue a writ, order or direction in the nature of mandamus commanding the respondents to issue letter of Intent and letter of agreement in favour of the petitioner, in pursuance of the provisional selection letter dated 08.12.2023 within the stipulated time period as fixed by the Hon'ble Court. "

3. Submission of the learned counsel for the petitioner is that the respondent no.1-Indian Oil Corporation Limited (hereinafter referred to as the "Oil Corporation") has issued an advertisement dated 28.06.2023 inviting application for setting up a retail outlet dealership at location, namely, village Mubarkhpur, Hardas Tehsil Najibabad, District Bijnor. Pursuant to said advertisement, petitioner submitted an application fulfilling all the requisite qualifications on 16.10.2023. After considering the application of the petitioner, it was rejected on 15.04.2024 on the ground that alongwith the application, petitioner has not annexed the lease deed of all the co-sharers of the land, so offered. Against the same, petitioner has also preferred representation, which was also rejected by the respondent no.2 vide order dated 28.06.2024 on the same ground. Learned counsel for the petitioner submitted that the site in question is situated in the part of land of Bhism Singh and as such, the petitioner had got the lease deed executed in its favour by Bhism Singh only. Thereafter, Bhism Singh has filed partition suit No. 3786 of 2023 under Section 116 of U.P. Revenue Code, 2006 (hereinafter referred to as Code, 2006) and a preliminary decree dated 23.09.2023 was prepared. He further submitted that petitioner has submitted the application for allotment of retail outlet dealership in the State of Uttar Pradesh on 16.10.2023 along with preliminary decree dated 23.09.2023, that decree was confirmed vide order dated 15.02.2024 passed by Sub Divisional Magistrate(Tehsil level) Judicial, Mandal Moradabad, Najibabad in Case No. 3786 of 2023(Bhism Singh Vs. Hemraj and Others). Final decree was put in force with effect from 23.09.2023 and defect has now been cured prior to date of application , therefore, rejection of the petitioner's application is bad and is not sustainable in the eye of law.

4. Per contra, Shri Anand Tiwari, learned counsel for the respondents submitted that Clause 4(vi) (a) of the Brochure of selection of retail outlet dealership is very clear, which provides that on the date of filing of the application, lease deed of every co-sharer is required and in the present case, undisputedly only one co-sharer, namely, Bhism Singh has executed the lease deed, therefore, the condition of clause 4(vi)(a) has not been fulfilled. He has also submitted that based on preliminary decree no retail outlet can be granted to the petitioner as this is not the final decree and also subsequent position of land may be altered or changed at the time of preparation of final decree, therefore, petitioner has not fulfilled the condition so required in the Brochure. Hence, the respondents have rightly rejected the application of the petitioner.

5. In support of his contention, learned counsel for the respondents has relied upon judgments of this Court given in Writ C No. 7354 of 2024 (Rahul Singh Vs. Indian Oil Corporation Ltd. And 3 Others), decided on 06.03.2024 and Writ C No. 11586 of 2024 (Amarjeet Vs. Union of India And 3 Others), decided on 06.05.2024.

6. We have considered the submission advanced by learned counsel for the parties, perused the records and the judgments relied upon.

7. The issue before the Court is as to whether, in terms of Clause 4(vi)(a) of of the Brochure for selection, petitioner is fulfilling the requirement of land or not.

8. For the ready reference, Clause 4(vi) of of the Brochure is being quoted hereinbelow:

"(vi) Land (Applicable to all categories):

The applicants would be classified into three groups as mentioned below based on the land offered or land not offered by them in the application form: -

Group - 1: Applicants having suitable piece of land in the advertised location/ area either by way of ownership / long term lease for a period of minimum 19 years 11 months or as advertised by the OMC.

Group - 2: Applicants having Firm Offer for a suitable piece of land for purchase or long- term lease for a period of minimum 19 years 11 months or as advertised by the OMC.

Group-3: Applicants who have not offered land in the application. Only applicable for locations advertised under SC/ST category.

Applications under Group - 3 would be processed/advised to offer land (Annexure - D) only in case no eligible applicant is found or no applicant get selected under Group-1& Group-2. In case land offered by all the applicants under Group 1 & Group 2 is found not suitable/not meeting requirements, then these applicant/s under Group - 1 & Group - 2 along with applicants under Group - 3 (who did not offer land along with application) would be advised by the OMCs to provide suitable land in the advertised location / stretch, within a period of 90 days from the date of issuance of intimation letter to them through SMS/e-mail. In case the applicant fails to provide suitable land within the prescribed period, or the land provided is found not meeting the laid down criteria, the application would be rejected. The other conditions with respect to offering of land are as under: -

(a) The land should be available with the applicant as on the date of application and should have minimum lease of 19 years and 11 months (as advertised by respective oil company) from the date or after the date of advertisement but not later than the date of application. If the offered land is on Long-term lease and there are multiple owners, then lease deed should be executed by all co-owners of the offered plot. Incase lease deed is not executed by all co-owners; such lease deed shall be treated as invalid."

9. From the perusal of the aforesaid clause, it is apparently clear that if the land, lease deed of which has been annexed along with application form is not covered under the Category of Group-I of Clause 4(vi) of the Brochure, then it is required on the part of the applicant to submit the consent of other co-sharers in terms of Clause 4(vi)a, which undisputedly has not been filed along with application and

the defence of the petitioner is that, he had filed preliminary decree dated 23.09.2023, which was later on confirmed vide order dated 15.02.2025 w.e.f. 23.09.2023.

10. To adjudicate the controversy, now coming to the provision of Section 116 of Code, 2006, under which the partition suit was filed. Section 116 of the Code, 2006 provides for filing of partition suit and further, Section 117 of the Code, 2006 provides for procedure so adopted for the partition suit. Sections 116 and 117 are being quoted hereinbelow:

"116 Suit for division of holding-(1) A bhumidhar may sue for the division of the holding of which he is a co-sharer.

(2) In every such suit, the Court may also divide the trees, wells and other improvements existing on such holding but where such division is not possible, the trees, wells and other improvements aforesaid and valuation thereof shall be divided and adjusted in the manner prescribed.

(3) One suit may be instituted for the division of more holdings than one where all the parties to the suit other than the Gram Panchayat are, jointly interested in each of the holdings.

(4) to every suit under this section, the Gram Panchayat concerned shall be made a party."

117 Durty of Court in suits for division of holding-(1) In every suit for division of holding under section 116 the Court of Assistant Collector shall-

(a) follow such procedure as may be prescribed;

(b) apportion the land revenue payable in respect of each such division.

(2) A division of holding referred to in section 116 shall not affect the joint liability of the tenure-holders thereof in respect of the land revenue payable before the date of the final decree."

11. Rule 108 and 109 of U.P. Revenue Code Rules, 2016(hereinafter, referred to as, 'Rules, 2016') are also relevant under which, the procedure is given to decide the suit filed under Sections 116 and 117 of Code, 2006. Rules 108 and 109 of Rules, 2016 are being quoted hereinbelow:

"108. Suit for division for several holdings[Section 116]-Where the suit relates to the division of more than one holding, the particulars specified in rule 107 shall be mentioned in the plaint in respect of all such holdings.

109. Preliminary and Final decrees[Section 117]-(1) If the plaint referred to in rule 107 or rule 108 is in order, it shall be registered as a suit and the defendants shall be called upon to file their written statements. The suit shall then be decided according to the provisions of the Code of Civil Procedure, 1908.

(2) Before making a division the court shall- (a) determine separately the share

of the plaintiff and each of the other co-tenure holders ;

(b) record which, if any, of the co-tenure holders wish to remain joint ; and

(c) make valuation of the holding (or holdings) in accordance with the circle rate fixed by the Collector applicable to each plot in the holding.

(3) If the suit is decreed, the Court shall pass a preliminary decree declaring the share of the plaintiff.

(4) After the preparation of preliminary decree the Sub Divisional Officer shall get the Kurra prepared through the Lekhpal.

(5) The Lekhpal shall submit the Kurra report within a period of one month from the date of receiving the order in this regard and at the time of preparation of Kurra he shall observe the following principles-

(a) the plot or plots shall be allotted to each party in proportionate to his share in the holding;

(b) the portion allotted to each party shall be as compact as possible;

(c) as far as possible no party shall be given all the inferior or all the superior classes of land;

(d) as far as possible existing fields shall not be split up;

(e) Plots which are in the separate possession of a tenure holder shall, as far as possible, be allotted to such tenure holder if they are not in access of his share;

(f) If the plot or any part thereof is of commercial value or is adjacent to road, abadi or any other land of commercial value, the same shall be allotted to each tenure holder proportionately and in the case of second condition the same shall be allotted proportionately adjacent to road, abadi or other land of commercial value; and

(g) If the co-tenure holders are in separate possession on the basis of mutual consent or family settlement, the Kurra shall, as far as possible, be fixed accordingly.

(6) When the report regarding Kurra is submitted by the Lekhpal, the objection shall be invited thereon and thereafter the appropriate order shall be passed by the Sub Divisional Officer after affording opportunity of hearing to the parties and considering the objection, if any, filed against the report submitted by the Lekhpal.

(7) If the report and Kurra is confirmed by the Sub Divisional Officer, the final decree shall follow it.

(8) At the stage of the final decree, the Court shall-

(a) Separate the share of the plaintiff from that of the defendant by metes and bounds.

(b) Place on record a map showing in different colours the properties given to plaintiff as distinct from those given to the defendant.

(c) Apportion the land revenue payable by the parties.

(d) Direct the record of rights and map to be corrected accordingly. "

(9) If, for adjusting the equities between the parties, payment of compensation regarding trees, wells or other 73 improvements becomes necessary, the revenue Court concerned may also pass necessary orders at the stage of final decree.

(10) The Sub-Divisional Officer shall make an endeavour to decide the suit within the period of six months and if the suit

is not decided within such period, the reason shall be recorded."

12.. From the perusal of the aforesaid provisions, it is apparently clear that if the suit is decreed and preliminary decree is prepared, at the stage of final decree, the court shall separate the share of plaintiffs from the defendants by metes and bounds, place on record a map showing in different colours the properties given to plaintiff as distinct from those given to the defendant, apportion of the land revenue payable by the parties and direct the record of rights and map to be corrected accordingly.

13. Now, coming to the present case. It is undisputed that at the time of submission of application i.e. 16.10.2023, preliminary decree dated 23.9.2023 was prepared, which was not final in terms of Sections 116 & 117 of the Code, 2006 read with Rule 108 & 109 of Rules 2016 and at the stage of preparation of final decree, location of the land may be changed. Preliminary decree was confirmed as final decree vide order dated 15.2.2024 passed by the Sub Divisional Magistrate. Therefore, on the date of filing of submission of application, petitioner is having no final document with regard to land so offered for establishment of retial outlet.

14. "Oil Corporation" after granting the allotment letter invest a huge amount in installation of retail outlet and in case of change of location of land after installation, may suffer huge financial loss, therefore, the provision has been made to present the land absolutely undisputed having the consent of all share holders. Therefore, in light of such facts, once the final decree is not prepared in terms of Rule 109 of Rules, 2016, land cannot said to be fulfilling the norms so required under Clause 4(iv)(a) of the Brochure.

15. Similar issue came up before this Court in Rahul Singh(Supra). Relevant paragraphs of the said judgment are being quoted hereinbelow;

"9. In view of the above, we find that the Brochure stipulates amongst others two contingencies (discussed here namely), one where the land may be owned by a person other than the applicant or his family members, second, where the land may be owned by the applicant alongwith others or others alongwith his family members or both. Considering the present facts land is owned by third parties to the exclusion of the applicant and his family members. That situation is dealt with in terms of Clause 4 (vi) (a).

10. The situation were the land may be owned by the applicant either in his own name or alongwith his family members and/or other persons has been dealt with in Clause

4 (vi) (m) under situations 1, 2 and 3 dealt with in the tabular chart under the heading "GROUP 1" appearing in that Clause.

11. Then, without reference to Clause (a), (m) or any Sub-Clause of Clause 4 (vi) of the Brochure, Note-3 thereto only provides- whereever consent letter is required, it may be submitted on form Appendix III.

12. As noted above, in the present facts, the land offered in the allotment is not owned by the petitioner/applicant or the petitioner/applicant alongwith his family members or by the petitioner/applicant alongwith other owners and his family members. Therefore, Clause 4 (vi) (m) would not apply to the present facts.

13. On the contrary, the only Clause applicable to such facts would be Clause 4 (vi) (a). That Clause clearly stipulates that the land offered for allotment should be available to the applicant on the date of submission of his application against a long term lease executed by "all co-owners". The consequence of non execution of such lease deed is also provided in the said Clause. Thus it has been stipulated, in case such lease deed is not executed by all co-owners, the same shall be invalid. Once invalid that ineligibility attaches to the application submitted by the petitioner on the date of submission of his application.

14. For the purpose of application of the said Clause the requirement remains- execution of lease deed by all co-owners, therefore, consent letters cannot fulfil that stipulation. In face of the consequences of invalidity of the

lease deed having been specified, there survives no occasion to consider if the defect in such application could ever been cured, after its submission.

15. Consequentially, the method of curing the defect considered under Note-3 (noted above) would remain confined to the cases falling under Clause 4 (vi) (m), only.

16. For the reasons noted above, we conclude, the petitioner's case would remain covered by Clause 4 (vi) (a) of the Brochure. It is admitted that the lease deed relied by the petitioner was not executed by all co-owners before the date of submission of the application. Therefore, thereis no error on the part of the respondent in rejecting the application submitted by the petitioner. "

16. In this case referred hereinabove, consent of co-sharers was not available, therefore, Court has held that land documents alongwith application cannot

treated to be fulfilling the norms as required Clause 4(vi)(a) of of the Brochure for selection.

17. Almost with the similar facts to present case, this issue again came up before the this Court in Amarjeet (Supra) and the Court has taken the similar view. Relevant paragraphs of the said judgment are being quoted hereinbelow:

" 13. Insofar as the present facts are concerned, it is not the case of the petitioner that the plot no. 965 (entire) was in the exclusive ownership of the Mahendra Singh. The petitioner admits that there were co-sharers in that plot along with Mahendra Singh. At the same time, the Brochure required lease deed to be executed by all co-sharers of the plot being offered for allotment. Also, there can be no dispute to the fact that the above eligibility condition was to be met on the date of application i.e. 25.9.2023. Therefore, the rights of Mahendra Singh in plot no. 965, are to be seen on the date of filing of the application dated 25.9.2023, only. Subsequent developments or change of circumstances would have no bearing on the rights being claimed by the petitioner. In any case, they may not alter the eligibility requirement that has been enforced under the Brochure.

14. Tested on that principle, while the petitioner claims existence of a compromise reached prior to the eligibility date 25.9.2023 as acknowledged in the order dated 11.2.2023 passed by Assistant Consolidation Officer, at the same time, it is the own case of the petitioner that the said order was erroneous to the extent it failed to fully recognize the compromise in entirety and it failed to recognize the partition by metes and bounds that had taken place between the parties to that dispute. Therefore, the petitioner appealed against that order before Settlement Officer, Consolidation and was successful in that appeal to the extent the Settlement Officer, Consolidation vide his order dated 20.12.2023 clearly provided for preparation of the 'Kurra' in terms of settlement/compromise reached between the parties, both as to the shares as also to the exact allocation of the apportioned shares.

15. Though the said order dated 20.12.2023 may relate back inter parties (to the dispute before the Consolidation authorities), and no other right may be claimed by the co-sharers, yet, IOCL was a stranger to that dispute. It may not have acted upon it. It could only recognize the rights of the parties as were seen to exist i.e. were adjudicated on the date of the application i.e. 25.9.2023. What transpired thereafter may not alter the status of eligibility conditions. The exact allocation of the apportioned shares not enforced on that date - by metes and bounds, no benefit may be drawn against the I.O.C.L., by the subsequent events arising from the appeal filed by Mahendra Singh being allowed. To that extent, Clause 4(vi)(a) of the Brochure is specific and consequence of its non-compliance is also unequivocally clear. It was for the petitioner to act accordingly, and offer non-litigious land, as stipulated, in the Brochure.

16. To the extent the order of the Settlement Officer, Consolidation dated

20.12.2023 did not exist on the date of eligibility claimed and there was no 'Kurra' prepared, the

partition by metes and bounds was not visible to I.O.C.L. Merely because there may not survive any dispute between Mahendra Singh and his co-sharers on the strength of some private partition held, in absence of public recognition granted in law, either through the order of the Settlement Officer, Consolidation, and/or through appropriate revenue entries, the IOCL may have remained within its rights not to recognize and/or act on such developments as may have involved alteration of its own position viz-a-viz the proposed Retail Outlet.

17. In matters of contract, the Writ Court may leave it open to the contracting parties to act in the manner they may deem fit. Insofar as the action of the IOCL is not seen to be plainly arbitrary and/or unreasoned, we are not inclined to offer any interference under Article 226 of the Constitution of India to reverse the commercial decision of the IOCL - to not enter into the contract with the petitioner.

18. In view of that reason arising, we are not inclined to act on the otherwise sustainable ground of challenge that the order impugned is non-speaking. Intervention if made, on that count would only result in an academic exercise.

19. In view of the above, writ petition lacks merit and is accordingly dismissed. No order as to costs.”

18. This matter is more identical to the present dispute in which date of filing of application is 25.9.2023 whereas an order was passed by the Assistant Consolidation Officer on 11.2.2023, the basis of fulfilling the land norms. Ultimately, the status of said land was finalized vide order dated 20.12.2023 for preparation of Kurra in terms of settlement and compromise earlier agreed between the parties on 11.2.2023, but Court has held that it was finalized only after date of application on 25.9.2023, therefore, same cannot be taken into account for allotment of retail outlet and accordingly dismissed the petition.

19. The controversy involved hereinabove is identical controversy to the present case, therefore, ratio of law of this judgment referred hereinabove shall also be applicable in the present case.

20. Therefore, in light of facts of the case, provisions of law and judgment of this Court, Court is of the firm view that in case of joint ownership of land, consents of all co-sharers are required and further to establish the partition preliminary decree is not sufficient and a final decree is required along with application in terms of Sections 116 & 117 of the Code, 2006 read with Rule 108 & 109 of Rules 2016. The Court finds no infirmity or illegality in the impugned order and is liable to be dismissed.

21. Writ Petition lacks merit and is hereby dismissed. No order as to costs.

