

(2013) 11 DEL CK 0213

In the Delhi High Court

Case No : LPA 858 of 2013 and CM Application 18066 of 2013

Parvez Ahmed

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 19-11-2013

Acts Referred:

Citation : (2013) 11 DEL CK 0213

Hon'ble Judges : Nuthalapati Venkata Ramana, C.J; Manmohan, J

Bench : Division Bench

Advocate : Sanat Kumar, for the Appellant; A.D.N. Rao, Advocate, Mr. Sudipto Sircar, Annam Venkatesh and Mrs. Neelam Jain, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Manmohan, J.—Present letters patent appeal has been filed challenging the judgment and order dated 30th October, 2013 whereby appellant-petitioner's writ petition primarily seeking a direction to the respondent no. 2-oil company to grant dealership of petrol pump being run by the appellant-petitioner at Kasenda, District Kaushambi, Uttar Pradesh to appellant-petitioner or his nominee, was dismissed. Learned Single Judge while dismissing the appellant's writ petition observed as under:-

9. The thrust of the case of the petitioners is that the land owned by them was leased out by them to BPCL at a concessional rate, pursuant to a promise made by BPCL to grant regular dealership of the retail outlet, to be commissioned on the leased land, to them. This is also their case that BPCL had granted ad hoc dealership of the aforesaid outlet to them or their nominees, till the time regular dealerships in their favour was finalized. A similar plea came to be considered by the Hon'ble Supreme Court in SLP No. 5849/2013 titled Mohd. Zamal v. Union of India and other connected matters, decided on 08.07.2013....

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Rejecting the appeals, the Apex Court, inter alia, observed and held as under:-

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59. We are inclined to hold that the doctrine of promissory estoppel and legitimate expectation, as canvassed on behalf of the Appellants and the Petitioners, cannot be made applicable to these cases where the leases have been granted by the land owners on definite terms and conditions, without any indication that the same were being entered into on a mutual understanding between the parties that these would be temporary arrangements, till the earlier policy was restored and the claim of the land owners for grant of dealership could be considered afresh. On the other hand, although, the nominees of the lessors were almost in all cases appointed as the M&H Contractors, that in itself cannot, in our view, convert any claim of the land owner for grant of a permanent dealership. As has been indicated hereinbefore, even the M&H Contractor had to submit an affidavit to the effect that he did not have and would not have any claim to the dealership of the retail outlet and that he would not also obstruct the making over possession of the retail outlet to the Oil Company, as and when called upon to do so.

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13. The lease in this case was executed on 20.02.2003 and the lease rent was fixed at Rs. 2000/- PM, which was subject to enhancement by 25% after every five years. This lease deed also contains no obligation on the part of the lessee to award dealership of the outlet, to be commissioned on the lease land, only to the lessor or his nominee. It has come in the counter-affidavit of respondent-BPCL that the only reason for awarding the aforesaid outlet to M/s. Janta & Company in which the petitioner claims to be a partner, was the highest marks obtained by the said firm during the process of evaluation. Since there is no document, evidencing any promise or assurance by BPCL to the petitioner to award dealership of the lease land only to him or his nominee or that the lease rent was substantially lower than the lease rentals prevailing in the market at the relevant time, ad hoc dealership awarded to M/s. Janta & Company could in terms of the Allotment Letter could be terminated at any point of time, without assigning any reason, the respondent BPCL is entitled in law to terminate the aforesaid ad hoc dealership in view of the policy decision taken in the letter dated 06.09.2006.

2. Mr. Sanat Kumar, learned counsel for the appellant submitted that the learned Single Judge failed to appreciate that judgment of the Supreme Court in Mohd. Zamal v. Union of India (supra) was clearly inapplicable to the facts of the present case inasmuch as the Supreme Court in that case was dealing with cases of petitioners vis-à-vis a policy of the IBP Company which had been suspended prior to execution of lease agreements of land with the IBP Company. He stated that in the present case the appellant no. 1 had entered into a lease agreement when the land link policy of respondent no. 2 was in vogue.

3. Mr. Sanat Kumar submitted that the principles of promissory estoppel was

clearly applicable to the facts of the present case as the respondent no. 2 had made representation to the appellant no. 1 that he or his nominee will be granted a regular dealership for a retail outlet/petrol pump if the appellant were to lease out a piece of land for a long term at an abysmally low rent. Mr. Sanat Kumar stated that the appellant no. 1 acting upon the representation/promises made by respondent no. 2 had acted to its detriment by spending a large sum of money for procuring the land and leasing it out to a company for thirty years at just Rs. 2000/- which was much less than what was being offered in the market.

4. When questioned whether respondent no. 2 had made any written representation to the appellants that a dealership would be allotted to them, Mr. Sanat Kumar fairly stated that the case was based on circumstantial evidence.

5. In our view, present writ petition claiming dealership of a petrol pump on circumstantial evidence would not be maintainable as the averments in the writ petition are not supported by any contemporaneous written document including the lease deed executed between the appellants and respondent no. 2. Further, whether the market rent of the land leased out by appellant to respondent no. 2 was more than Rs. 2,000/- is not an admitted fact. We are of the view that lease rentals of Delhi cannot be "blindly" applied to the pieces of land situated in Kaushambi, Uttar Pradesh. Consequently, even if it is assumed that the judgment of Mohd. Zamal v. Union of India (supra) is inapplicable to the present case, then also the appellant would have to prove his circumstantial case by leading oral evidence. Accordingly, present writ petition and application are dismissed with liberty to the appellant to file legal proceedings seeking appropriate relief in an apposite forum.