

**(2022) 05 J&K CK 0021**

**In the Jammu And Kashmir High Court**

**Case No : Writ Petition (C) No. 1035 Of 2020 (O&M)**

Rahil Aslam

APPELLANT

Vs

Indian Oil Corporation And Others

RESPONDENT

**Date of Decision : 09-05-2022**

**Acts Referred:**

Constitution Of India, 1950 — Article 226

**Citation : (2022) 05 J&K CK 0021**

**Hon'ble Judges : Rajnesh Oswal, J**

**Bench : Single Bench**

**Advocate : Rakesh Khajuria, Anuj Dewan Raina, S. S. Nanda**

**Final Decision : Disposed Of**

## **Judgement**

Rajnesh Oswal, J

1. The present writ petition has been filed by the petitioner for quashing communication dated 02.06.2020 and for directing the respondents to install retail outlet (Petrol Pump).

2. The petitioner in pursuance to an advertisement in the newspaper dated 25.11.2018 for the allotment of the retail outlet dealership at various places in the Open category applied for the allotment of retail outlet dealership for location Manwal, District Jammu. The petitioner claims to be the owner of the land situated at Manwal, District Jammu measuring 02 kanals falling in khewat No. 120, khata No. 517 min and khasra No. 1278 situated at village Kothar by virtue of registered sale deed. The petitioner was declared qualified and the respondents fixed the date for visit of the committee for land evaluation on 07.03.2019 and subsequently via email, dated 27.02.2019, the petitioner was informed that the committee has cancelled its visit. Thereafter, the petitioner claims to have deposited a sum of Rs. 40,000/- as expenses for visit of the committee. It is further stated that the petitioner received another e-mail on 03.03.2019 from the respondents whereby the petitioner was informed that the

officers of the respondents will visit for field verification on 13.03.2019. The respondents visited the spot and conducted the verification on that day. The Patwari concerned was also examined by the said committee. It is further stated that after conducting the verification, the respondents pointed out a query/objection that the land falls in village Kothar and the site was notified for Manwal. It was due to the fact that in the sale deed which the petitioner had submitted with the respondents, the name Manwal was missing. The petitioner got it rectified and submitted again to the respondents and added the village Manwal to the same. It is further submitted that there is no place in the revenue record called as 'Manwal' and the people of the area locally call the revenue village Kothar as Manwal. The petitioner in order to satisfy the query of the respondents obtained certificate from different government offices. The Tehsildar Dansal who is the best competent person to explain the things also issued a certificate dated 19.01.2019 whereby the Tehsildar has submitted that as per SRO 441 dated 21.10.2014 issued by the Revenue Department, Government of Jammu and Kashmir, village Kothar falls under the jurisdiction of Tehsil Dansal, District Jammu and further Manwal is not a village in revenue record but it is a habitation locally known as Manwal and is a part of the revenue village Kothar. Another certificate was obtained by the petitioner from the Government Higher Secondary School that the Manwal is a part of Kothar only. Thereafter, the respondents wrote a communication dated 04.09.2019 to the Tehsildar, Dansal for verification of the above facts and the Tehsildar Dansal replied to the respondent No. 2 that the Kothar village is within the location of Manwal and the land documents submitted by the petitioner are within Manwal. It is further submitted that the petitioner satisfied the respondents to all the extents and submitted all the requisite documents with regard to the objections raised by the respondents but the respondents instead of issuing the letter of intent, issued a communication dated 06.02.2020 and cancelled the allotment.

3. The petitioner has impugned the communication dated 06.02.2020 on the ground that the impugned communication is silent to the fact that the Manwal does not fall under Kothar and further that the petitioner based upon the assurance and promise made by the respondents have made huge investment in the procurement of permissions and other infrastructure investments but the respondents are deliberately delaying the case of the petitioner and do not want to install the retail outlet (Petrol Pump) on the land of the petitioner. It is also stated that the application made by the petitioner is for the same place and the Kothar and Manwal are the one and the same place.

4. The petitioner has placed on record the sale deed, impugned communication, rectification deed and emails as well as other communications.

5. Response stands filed by the respondents 1 and 2 in which it has been stated that the writ petition is not maintainable and also that the candidature of the petitioner was subject to verification and scrutiny of the documents. Therefore, upon verification of the same, it was found that the land so offered by the

petitioner does not fall in location Manwal and accordingly his candidature has been rejected vide communication dated 02.06.2020.

6. It is further stated that the answering respondents taking into consideration the feasibility of location Manwal and its strategic importance as well as the commercial viability had invited application for setting of retail outlet for location Manwal. Moreover, location Manwal is a place of importance, having Railway Station in the name of 'Manwal Railway Station'. It is also stated that the answering respondents have written a communication dated 16.07.2020 to the Deputy Commissioner seeking information on the aspect qua location Manwal, but till date no information was received. As per the record of answering respondents, location Manwal is an independent location having commercial importance, but since the land so offered by the petitioner falls in village Kothar and not exclusively Manwal, therefore, the claim of the petitioner cannot be accepted. It is also stated that a sum of Rs. 40,000/- as stated to have been deposited as expenses for visit of the committee is denied, as the said amount has been deposited as initial security deposit as per the guidelines. It has also been stated by the respondents that the revenue authorities vide communication dated 19.06.2019 has stated that the Manwal is not a revenue village but only a habitation locally known as Manwal but upon field verification of the land to the documents so submitted by the petitioner it is submitted that the land of the petitioner is not situated within the location of Manwal therefore, for this reason the candidature of the petitioner came to be rejected upon group 1 and was held entitled for consideration under group

3. It is also stated that at the time of intimating the petitioner of being successful, it was pointed out that his selection was subject to verification and production of documents. The respondents have placed on record certain photographs as also various communications including the communication dated 16.07.2020 addressed to the Deputy Commissioner Jammu.

7. Respondent No. 3 has also filed the objections in which it has been stated that as per the report of Patwari and Naib Tehsildar, it is found that the location Manwal falls within the jurisdiction village Kothar, Tehsil Dansal and also stated that the Manwal is a Band as per revenue record that falls in revenue village Kothar which is evident from letter dated 28.01.2020 addressed to Mr. S. S. Nanda, learned Sr. AAG. The communication dated 28.01.2020 has been placed on record.

8. Mr. Rakesh Khajuria, learned counsel for the petitioner has vehemently argued that the land offered by the petitioner falls within the Manwal, which is a part of village Kothar. He further drew the attention of this Court towards various communications issued by the revenue authorities in which it has been stated that there is no revenue village in the name of Manwal but the Manwal is a hamlet of revenue village and khasra No. 1278 is situated in revenue village Kothar i.e. revenue village under khata No. 517 min and khewat No. 120. He vehemently argued that the respondents have arbitrarily rejected the

candidature of the petitioner.

9. Mr. Anuj Dewan Raina, learned counsel for respondent Nos. 1 and 2 has vehemently argued that the present writ petition is not maintainable as disputed questions of facts are involved. Further that the claim of the petitioner has rightly been rejected as he does not have any land in village Manwal.

10. Heard and perused the record.

11. The dispute in the present petition pertains to the location of the Manwal for which the respondent Nos. 1 and 2 had issued advertisement for establishment of their retail outlet and so far as sale deed of the petitioner is concerned, the land has been shown as measuring two kanals comprising under khasra No. 1278, khewat No. 120 and khata No. 517 min situated at village Kothar, Tehsil Dansal, District Jammu. The petitioner has also placed on record the rectification deed in which certain rectifications have been made. From the communication dated 12.09.2019 in response to letter dated 04.09.2019, issued by the respondent Nos. 1 and 2, the Tehsildar Dansal has stated that the location Manwal falls within revenue village Kothar, Tehsil Dansal, District Jammu and khasra No. 1278, khewat No. 120 and khata No. 517 min is within Manwal revenue village Kothar, Tehsil Dansal.

12. Further the communication dated 12.09.2019 addressed by the Naib Tehsildar Jindrah to Tehsildar Dansal, it is evident that there is no revenue village in the name of Manwal and Manwal is hamlet of revenue village Kothar. The reply filed by the respondent No. 3 is also to the extent that there is revenue village Kothar and location Manwal falls within the jurisdiction of revenue village Kothar.

13. In fact there appears to be no dispute in view of the communications addressed by the revenue authorities that the Manwal is a hamlet and is a part of village Kothar and further that the land of the petitioner is situated at Manwal which is the part of village Kothar. The respondent Nos. 1 and 2 have stated that upon field verification of the land of the documents submitted by the petitioner, the land of the petitioner was not found to be situated within location Manwal therefore, his candidature was rejected under group 1 and was held entitled for consideration under group 3. Nothing has been placed on record by the respondent Nos. 1 and 2 that the land of the petitioner is not situated in village Manwal which is a part of village Kothar. It seems that the respondent Nos. 1 and 2 are themselves in doldrums with regard to the location of Manwal as they have written to the Deputy Commissioner, Jammu for getting information with regard to the location Manwal.

14. In *Municipal Council Gondia v. Divi Works and Suppliers*, 2022 SCC OnLine SC 247, the Hon'ble Supreme Court has held as under:

"8. At the outset, it is required to be noted that by the impugned judgment and order the High Court has issued a writ of mandamus virtually granting the relief of specific performance of the contract/work order. From the impugned judgment

and order passed by the High Court it appears that the High Court was made to believe that the original writ petitioners had already manufactured the goods which are customized and as per the specifications and the work order. However, it is now found that there are no manufactured goods readily available which can be supplied to the appellant - Council. There are disputed questions of fact such as whether in fact the goods were manufactured as per the specifications or not. Nothing was on record before the High Court that goods were in fact and actually manufactured by the original writ petitioner No. 1, as per the specifications and the requirements of the Council and as per the work order. In absence of any evidence and material on record and there being disputed questions of facts the High Court ought not to have passed the impugned judgment and order directing the Council to continue the work order and accept the goods from the original writ petitioner No. 1 and to make the payments as per the work order. Even otherwise, no writ of mandamus could have been issued virtually granting the writ for specific performance of the contract/work order in a writ petition under Article 226 of the Constitution of India. The original writ petitioners ought to have been relegated to file a civil suit for appropriate relief of losses/damages, if any, sustained.”

15. Be that as it may, though it is evident that the land of the petitioner is situated at Manwal which is the part of village Kothar as is evident from the various communications issued by the revenue authorities and also taking into consideration the stand of the respondent No. 3 that the Manwal is a part of village Kothar but it is for the respondent Nos. 1 and 2 to select the location for their retail outlet on the basis of their feasibility/suitability of the location and this Court does not deem it appropriate to issue any direction to the respondents to establish the retail outlet (Petrol Pump) at the land offered by the petitioner, as the petitioner has no vested right for establishment of retail outlet at the land offered by the petitioner. However, this court leaves it open for the respondent Nos. 1 and 2 to take appropriate decision as they deem fit and proper in the facts and circumstances of the case.

16. Disposed of.