

(2013) 11 DEL CK 0214

In the Delhi High Court

Case No : LPA. 848 of 2013 and CM. Application 17859 of 2013

R.C. Gupta and Another

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 19-11-2013

Acts Referred:

Citation : (2013) 11 DEL CK 0214

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

Bench : Division Bench

Advocate : Sandeep Sethi and Mr. Gaurav Khanna, for the Appellant; Jatan Singh, CGSC for R-1, Mr. A.D.N. Rao, A. Venkatesh, Mrs. Neelam Jain and Ms. Vaishali Ramesh, Advocates for R-2, 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 petitioners' writ petition seeking a direction to the respondent no. 2-oil company to grant dealership of petrol pump being run by the petitioners at Sukhpal Nagar, District Pratapgarh, Uttar Pradesh to petitioner no. 1 or his nominee, was dismissed. Learned Single Judge while dismissing the appellants' 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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W.P. (C) 8785/2007

11. The lease in this case was executed on 09.07.2003 and the lease rent was fixed at Rs. 5000/- per month which was to be revised by 10% after every five years. The lease deed contains no assurance that the dealership of the outlet, which was to be commissioned on the leased land, would be only given to the lessor or his nominee. There is no material before the Court to find out what was the prevailing rental value at the time the aforesaid lease deed was executed.

In fact, a Writ Court cannot go into a question of this nature unless the respondent admits that the lease rental prevailing in the market at the time the aforesaid lease rent was higher than the lease rent fixed by way of the said lease deed.

The M/s. Partapgarh Auto Stores was appointed as ad hoc dealer to run the retail outlet on the aforesaid land for a period of one year commencing on 28.03.2003. There is no material on record to show that M/s. Partapgarh Auto Stores was a nominee of the petitioner before this Court. In fact, even the petitioners do not claim that M/s. Partapgarh Auto Stores was his nominee for the purpose of award of ad hoc dealership. After expiry of the ad hoc dealership between M/s. Partapgarh Auto Stores and the respondent BPCL, the ad hoc dealership in respect of the aforesaid outlet was awarded to Speed Motors in which son of the petitioner No. 1 was a partner. Though the case of the petitioners is that allotment of ad hoc dealership to Speed Motor was on account of Speed Motors being his nominee, there is no material on record to substantiate this claim of the petitioners. The case of the respondents, on the other hand, is that in the course of evaluation, for grant of ad hoc dealership, Speed Motors had obtained highest marks, which resulted in awarding of the ad hoc dealership to it. A

perusal of the Allotment Letter dated 31.07.2004, issued to Speed Motors, would show that it was appointed as ad hoc dealer till finalization of regular dealership on the aforesaid outlet. This Allotment Letter also contained terms and conditions similar to the terms and conditions contained in W.P. (C) No. 4963/2007 and, therefore, the aforesaid ad hoc dealership could be terminated at any time, in exercise of the powers preserved by BPCL under clause 21 of the Allotment Letter. In any case, Speed Motors has not come to this Court expressing apprehension of cancellation of its ad hoc dealership and the petitioners, neither of whom is even a partner in the said firm has any locus standi to seek an order against cancellation of ad hoc dealership awarded to Speed Motors. I, therefore, find no merit in the aforesaid writ petition.

2. Mr. Sandeep Sethi, learned senior 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-?-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. Sandeep Sethi 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. Sethi 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. 5000/- 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. Sethi 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. 5,000/- 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 Pratapgarh, 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.