

(2015) 01 AHC CK 0130

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 3185 of 2015

Shweta Jaiswal

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 23-01-2015

Acts Referred:

Citation : (2015) 3 ADJ 649 : (2015) 4 ALJ 166 : (2015) 109 ALR 578 : (2015) 3 AWC 2807 : (2015) 127 RD 503

Hon'ble Judges : Arun Tandon, J; Harsh Kumar, J

Bench : Division Bench

Advocate : Udayan Nandan and Shashi Nandan, for the Appellant

Final Decision : Dismissed

Judgement

Arun Tandon and Harsh Kumar, JJ.—Heard learned Counsel for the parties.

Petitioner before this Court made an application in response to an advertisement dated 29.9.2013 published by the Bharat Petroleum Corporation Ltd. for grant of regular L.P.G. Distributorship at Pratapur, District Deoria under Open Category. One of the essential conditions for making of such an application was that the applicant must own a suitable shop of minimum size 3 meters by 4.5 meters in dimension or a plot of land for construction of showroom of the same size as on the last date of submission of application as specified in the advertisement or corrigendum (if any) at the advertised location or locality mentioned in the advertisement.

The Advertisement further clarifies that Own means having ownership title of the property or registered lease agreement for minimum 15 years in the name of the applicant/family member as defined in multiple distributorship norm of eligibility criteria. Certain other conditions were also specified. The Advertisement further contemplates that if on verification information given in the application by the applicant and the documents if found to be false then his candidature shall be rejected and the security money deposited shall be remitted after making

deductions of 10% which amount shall be forfeited.

2. It is not in dispute that the petitioner had disclosed in his application that he proposes to construct a shop for showroom at Khasra No. 543 and in respect thereof she had filed a lease deed executed by one Lakshman in favour of the petitioner of Khasra No. 543 for a period of 20 years dated 26.10.2013.

3. The petitioner's application was processed, she was selected for the award of the dealership on the basis of the document so filed. During field verification of credentials, it was found that in respect of Khasra No. 543, Original Suit No. 657 of 2008 had been filed by the son of Lakshman (the person who had executed the lease deed) in the District Court, Deoria and on 16.12.2008 an injunction was granted by the Civil Court to the effect that the defendant to the suit namely Lakshman shall not alienate the property in any manner during the pendency of the suit. The oil company authorities, therefore, found that the petitioner did not possess clear marketable or any clear title over the land for showroom. Therefore, his candidate has been rejected under the order impugned dated 15.1.2015.

4. Counsel for the petitioner Shri Udayan Naridan with reference to the judgment of the Apex Court in the case of Thomson Press (India) Ltd. Vs. Nanak Builders and Investors P. Ltd. and Others, (2013) 10 AD 57 : AIR 2013 SC 2389 : (2013) 2 CTC 104 : (2013) 3 JT 289 : (2013) 171 PLR 26 : (2013) 2 RCR(Civil) 875 : (2013) 3 SCALE 26 : (2013) 5 SCC 397 : (2013) AIRSCW 1617 , submits that merely because a transfer deed is executed in violation of an injunction order granted by a competent Civil Court, it will not make the transfer deed ineffective/ void and between the parties to the transfer deed the transaction would be binding subject only to the directions which the competent Court may issue in the suit against the vendor. He, therefore, submits that, in the facts of the case, mere pendency of the suit the lease executed by Lakshman in favour of the petitioner, would not adversely reflect upon the right of the petitioner to be considered for allotment of dealership.

5. We have heard learned Counsel for the parties and have gone through the records of the present writ petition.

6. It is no doubt true that the lease executed by Lakshman in favour of the petitioner may not be treated as void in view of the law laid down by the Apex Court in the case of Thomson Press (India) Ltd. (supra) but that is not the end of the matter in the facts of the case. The purpose of asking for suitable land with clear title in the Advertisement published by Oil Companies is that as and when the dealership is allotted, a plot of land for construction of showroom for running the dealership is actually available. Therefore, clear title over the property with a right to raise constructions is an implied condition of the advertisement for being considered for the dealership.

7. We are of the considered opinion that in the facts of the case since there was an injunction order operating in a suit filed by the son of Lakshman himself to

which Lakshman is a party, there was little or no justification of Lakshman to have mentioned in the lease deed that she had a clear title over the property and there was no dispute in respect of the land which is being transferred on lease.

8. We find that the Oil Company is legally justified in insisting upon clear title over the plot which are offered in the application by a candidate to be eligible for award of the dealership Inasmuch as the very purpose of allotment of dealership may be put in jeopardy, if there is a dispute of title over the offered land as it may take years for the same to be resolved finally. In the totality of the circumstances, we see no good reason to entertain the present writ petition.

Writ petition is dismissed.