Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4909 OF 2015
(@ SLP(C) NO. 14256 OF 2014)

Rahul Yadav & Anr. ... Appellants

Versus

M/s. Indian Oil Corporation Ltd.
and Others ... Respondents

SUPREME COURT OF INDIA

J U D G M E N T

Dipak Misra, J.

Leave granted.

JUDGMENT

2. The appellant is the owner in possession of the premises being land measuring 2571 sq. yards on Rewari-Palwal-Delhi Road, Rewari and Khewat No. 1139/941, Khatauni no. 1380, Rectangle No. 117, Kila No. 2412/2 (2-0), Khewat No. 1125/930 mm, Khautani No. 136 mm, Rectangle No. 117, Kila No. 24/211 (1-9), Rectangle N. 150, 6/80 share Le. 6 maria out of Kila No. 411 (4-0) total measuring Kanal 5 marla in 3 kittas thereabouts. The

respondent no.1, namely, Indian Oil Corporation (for short, the 'Corporation') issued an advertisement in the newspaper on 6.10.2000 for retail outlet dealership in the state of Delhi and Haryana for which the appellant applied and was selected. Letter of intent was issued in his favour on 6.7.2001. It was stipulated in the said letter of intent that the appellant was required to own a suitable plot of land and entered into a long-term lease with the Corporation at the rate acceptable to the respondent. To meet the mandate of the letter of intent, the appellant bought the land in question for the purpose of getting dealership agreement. On 23.10.2001, the appellant executed a long-term lease of 30 years in accordance with the terms of the advertisement and the letter of intent in favour of the Corporation at the monthly rent of Rs.10,000/-. After completion of formalities, a dealership agreement was entered into between the appellant and the Corporation on 14.5.2002. Be it noted, as per the letter of intent, the Corporation was to provide certain facilities and develop the land as an outlet with an office building, storage tank and pump, etc. for

operating the dealership and it was to charge the appellant a licence fee for the said facilities.

3. The allotment of such petrol pumps by the competent authorities became a front page news item in Indian Express mentioning that there had been grant of retail outlets of petrol pumps to the near and dear ones of the political functionaries on account of political consideration. Number of cases were filed in various courts and all of them were transferred to this Court and a two-Judge Bench in ***Onkar Lal Bajaj v. Union of India***[1], after referring to such earlier event that was the subject matter of ***Common Cause, a Registered Society v. Union of India***[2], wherein it had been observed that for these kind of allotments, a transparent and objective criteria/procedure has to be evolved based on reason, fair play and non-arbitrariness, adverted to many a facet, namely, the criteria evolved for grant of dealership, the concept of probity in governance and the concept of public interest, the role of the executive and the right of the public to know the circumstance under

[1] (2003) 2 SCC 673
[2] (1996) 6 SCC 530

which their elected representatives get the outlets and/or dealerships/distributorships, and directed as follows:-

> "In view of the aforesaid:
>
> *I.* We appoint a committee comprising Mr Justice S.C. Agrawal, a retired Judge of this Court and Mr Justice P.K. Bahri, a retired Judge of the Delhi High Court, to examine the aforesaid 413 cases. We request the Committee to submit the report to this Court within a period of three months.
>
> *II.* The Committee would devise its own procedure for undertaking the examination of these cases. If considered necessary, the Committee may appoint any person to assist it.
>
> *III.* We direct the Ministry of Petroleum and Natural Gas, Government of India and the four oil companies to render full, complete and meaningful assistance and cooperation to the Committee. The relevant records are directed to be produced before the Committee within five days.
>
> *IV.* We direct the Ministry to appoint a nodal officer not below the rank of a Joint Secretary for effective working of the Committee.
>
> *V.* The Central Government, State Government/Union Territories and all others are directed to render such assistance to the Committee as may be directed by it.
>
> *VI.* The oil companies are directed to provide as per the Committee's directions, the requisite infrastructure, staff, transport and make necessary arrangements, whenever so directed, for travel, stay, payments and other facilities etc.
>
> *VII.* In respect of any case if the Committee, on preliminary examination of the facts and records, forms an opinion that the allotment was made on merits and not as a result of political connections or patronage or other extraneous considerations,

> it would be open to the Committee not to proceed with the probe in detail."

4. It is necessary to state here that certain transferred cases were finally disposed of and certain transferred cases were directed to be listed after receipt of the report. After reports were received, certain interim applications were filed by the persons who were aggrieved by the report of the committee appointed by this Court. In ***Mukund Swarup Mishra v. Union of India***[3], the Court referred to ***Onkar Lal Bajaj*** (supra) and while dealing with the plea of promissory estoppel opined thus:-

> "We are also not impressed by the argument of the petitioners that the doctrine of promissory or equitable estoppel would apply. May be that the petitioners have spent some amount. But once the allotment itself was found to be vitiated, obviously they cannot claim any benefit as allotment was contrary to law. Moreover, such allotment has been made in remote past and even though an order of cancellation had been passed by the Central Government as early as in August 2002, the allottees have been protected by interim order passed by this Court. Even after the decision in *Onkar Lal Bajaj*[1], interim order was continued. In the circumstances, for more than four years interim order is in favour of allottees even though the allotment was found to be illegal or contrary to law. In our opinion, therefore, it is not open to the allottees whose

[3] (2007) 2 SCC 536

> allotments have been found to be vitiated to plead equity."

After so stating, the Court proceeded to delve into the justifiability of the report and in that regard observed that:-

> "In our opinion, the learned amicus curiae is right that the Committee had considered in detail individual cases and submitted the report. This Court, therefore, would consider a complaint of an allottee who can successfully put forward his complaint and may satisfy this Court that in the facts and circumstances of the case, the finding of the Committee that the allotment was not on merits was not correct. But only in those individual cases, the Court would consider and may grant relief to such applicants. It, however, cannot be said that the report of the Committee was without power, authority or jurisdiction or was uncalled for and liable to be ignored."

5. It is apt to note here that the Court proceeded to scrutinize the report State-wise where grants were made and as far as the States of Punjab and Haryana are concerned, it has been held thus:-

> "State of Punjab
>
> 36. In respect of the State of Punjab, the Committee considered thirty-seven cases referred to it. It found that seven allotments were on merit and twenty-nine allotments were not in consonance with the guidelines. Out of them, twenty-six have filed applications. We have been taken through the reasoning recorded by the Committee. So far as cases of Shri Surinder Singh, Chander Kant Bhatia, Gurpreet Singh,

SUPREME COURT OF INDIA
JUDGMENT

> Smt Kavita Rani, Smt Suman Lata, Ms Ruby Sekhri, Mr Manmohan Singh, Mr Rajesh Madan and Mr Tejinder Singh are concerned, they appear to be borderline cases. In our view, it may not be appropriate to cancel the allotment in favour of these nine persons. Their applications are allowed. Rest of the cases do not call for interference and the applications are rejected. There are six applications by non-allottees. They are also rejected as we are not concerned with non-allottees.
>
> State of Haryana
> 37. In regard to the State of Haryana, the Committee considered twenty-one cases referred to it. It found no irregularity in allotment in seven cases. It disapproved allotments in fourteen cases. Out of them, twelve have filed applications. We find no infirmity in the conclusions arrived at or reasons recorded by the Committee and no interference is called for. The other applications are rejected."

6. There is no cavil over the fact that the grant of dealership in favour of the appellant was cancelled by the Committee and that received the stamp of approval of this Court. After the decision of this Court, the Corporation terminated the dealership and intended to take back the possession from the dealer with a view to appoint another dealer as specifically permitted in the lease deed as well as in the dealership agreement. The appellant built a wall to stop the functioning of the retail outlet and refused to hand

SUPREME COURT OF INDIA
JUDGMENT

over the possession which constrained the Corporation to initiate a proceeding for eviction under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (for short, "the 1971 Act") as a valid lease deed existed between the appellant and the respondent, a public sector undertaking. The appellant participated in the proceeding and after hearing commenced, he sought to go for arbitration, but the said prayer was not accepted by the Estate Officer on the ground that the same was not permissible under the provisions of the 1971 Act. After six years of participation in the said proceeding, he initiated a civil suit alleging illegality in termination of the lease and prayed that the proceedings under the 1971 Act to be kept in abeyance which was not accepted. The competent authority, that is, the Estate Officer passed an order of eviction in exercise of powers conferred on him under sub-section 1 of Section 5 of the 1971 Act, after rejecting all the contentions raised by the appellant.

7. Being aggrieved by the aforesaid order, the appellant preferred Civil Appeal No. 92 of 2013 before the learned District Judge, Rewari under Section 9 of the 1971 Act. It

was contended before the learned District Judge by the appellant that the order passed by the Estate Officer was passed on surmises and conjectures; that the Estate Officer had failed to appreciate that the lease deed and the dealership agreement were interlinked and hence, the lease deed could not survive after the cancellation of dealership agreement; that the 1971 Act was not applicable to him as he was not in unauthorized occupation, but is the owner of the premises; that the competent authority had directed order of eviction to circumvent the eventual result of the pending suit; and that there had been violation of the principles of natural justice.

8. The learned appellate Judge, on the basis of the material brought on record, came to hold that the respondent is a government company and the premises were taken on lease by it and hence, the premises fell within the meaning and ambit of "public premises", as defined under Section 2(e) of the 1971 Act; that the submission that the lease was contingent upon the appointment of the appellant as a dealer and upon his ceasing to be such the lease agreement became extinct was sans substance, for the

document granting dealership and the lease agreement were different documents and they were neither interlinked nor interdependent; that the fact that the dealership agreement and the lease agreement had been executed separately would leave no room for doubt that they were independent and it could not be inferred from any one of the covenants agreed to between the parties that one agreement was to come to an end on the termination of the other; that it could not be construed that once the dealership stood terminated pursuant to the order passed by this Court, the lease agreement also stood terminated; that the submission to the effect that the proceeding under the 1971 Act had been initiated to circumvent the suit instituted by the appellant was too spacious to be accepted. Being of this view, the learned appellate Judge recorded the conclusion thus:-

> "As an upshot of the discussion foregoing, it can be safely concluded that the appellant was running a retail outlet only on a leave and licence basis and the moment his dealership licence was terminated, he was bound to vacate the premises which, for all intents and purposes, are public premises. Needless to say that by virtue of lease agreement the respondent is at liberty to run the outlet/petrol pump even through third and outside party without any restriction and objection from the appellant. So long as the lease agreement is intact and the civil court does not

> order eviction, the respondent has right not only to remain in possession but to oust any licencee/trespasser. The appellant may be the owner of the premises, but by virtue of the lease deed, it is the respondent who has the right to occupy premises."

9. Being aggrieved by the aforesaid order passed by the appellate court, the appellant preferred CWP No. 26287 of 2013 in the High Court of Punjab and Haryana and the learned Single Judge, after referring to the authority in ***Mukund Swarup Mishra*** (supra), came to hold that the Committee had considered 21 cases and it had disapproved allotments in 14 cases and the dealership of the writ petitioner was one of them and, therefore, proceeding under the 1971 Act was a sequitur of the conclusions arrived at by the judgment of this Court, and hence, the orders passed by the forums below did not warrant any interference. Being of this view, the writ petition was dismissed by the learned Single Judge.

10. The non-success in the writ petition compelled the appellant to prefer LPA No. 665 of 2014 and the Division Bench concurred with the view expressed by the learned Single Judge and declined to interfere in intra-court appeal.

11. We have heard Mr. Kapil Sibal, learned senior counsel for the appellant and Ms. Meenakshi Arora, learned senior counsel for the Corporation, the first respondent herein.

12. The controversy, as we perceive, raises two issues though an attempt had been made by the appellant to create an imbroglio before the appellate court wherein the order of the Estate Officer was in assail. The thrust of the matter is whether the interpretation of the clauses of the agreement would anyway suggest any kind of inextricable connection to place a construction on them to the effect that once the dealership is cancelled, the land owner who had parted with the land by way of a long-term lease for a period of thirty years, can be allowed to retain possession over the land; and only the super structure which had been affixed on the land by the Corporation, can only be removed.

SUPREME COURT OF INDIA
JUDGMENT

13. Mr. Sibal, learned senior counsel for the appellant has taken us through the advertisement issued on 6.10.2000. It is urged by him that the appellant was compelled to purchase the land as it was the basic requirement to meet the eligibility criteria to get the allotment of dealership. It is his proponement that there has to be a conjoint reading of

the advertisement issued by the respondent, the letter of intent and the lease deed and that would clearly establish that the appellant was to make available a suitable plot of land and transfer the land on a long-term lease to the Corporation for the sole and exclusive purpose of running a retail outlet dealership of respondent-Corporation and hence, the said lease deed cannot be looked at as a singular or solitary document, more so, when the appellant had agreed to give such highly valuable land to the Corporation on a nominal monthly rent of Rs.10,000/-. Emphasis is laid on the intention of creating the documents. To appreciate the said submission, we have carefully perused the advertisement and other documents. Relevant part of the advertisement reads as follows:

> "For locations for Retail Outlet Dealership and LPG Distributorship. The applicant should furnish, along with the application, details of land/land for godown which he/she may make available for the dealership/distributorship considering the location of the land from the point of view of commercial and applicants willing to transfer the land on ownership/long lease to the Oil Company at the rates acceptable to the Oil Company would be given preference if an applicant, after selection, is unable to provide the land indicated by him/her earlier, within a period of 2 months the allotment of the

> dealership/distributorship made to him/her would be cancelled."

14. In this context, we have to scrutinize the letter of intent dated 6.7.2001. The relevant paragraphs of letter of intent read as follows:-

> 1.1 For enabling you to operate the dealership said above, we will develop the Retail Outlet at Rewari, and provide the same to you with certain facilities such as suitable plot of land duly developed as an outlet with an office building, storage tank and pump etc. for operating your dealership.
>
> xxx xxx xxx
>
> 1.7 This letter is merely a letter of intent and is not to be constructed as a firm offer of dealership to you. The dealership to you will, on your complying with the condition spelt out herein above, be confirmed/formalised by an Appointment Letter followed by the signing of our standard dealership Agreement.
>
> xxx xxx xxx
>
> 2. You have stated in your application form/during the interview that you are willing to transfer the land on ownership/long lease to the Indian Oil corporation Ltd. at the rates acceptable to Indian Oil Corporation Ltd. Accordingly, you will make available a suitable plot of land as indicated by you within a period of TWO months from the date of this letter, after getting suitable clearance from us in writing for the particular plot of land. You are required to transfer the land on ownership/long lease for a minimum period of 15 years with one renewal

> option for next 5 years under such term and conditions as may be agreed upon between you and Indian Oil Corporation Ltd. In case you fail to make available the suitable land within 2 months, this offer is liable to be withdrawn. However, there is no commitment from India Oil Corporation Ltd. for taking the said land from you."

15. Keeping in view the aforesaid documents, it is necessary to look at the lease agreement dated 23.10.2001. The relevant clauses of the lease deed are extracted below:-

> "..the Lessor/s do and each of them doth hereby demise unto the Lessee All that the said land and premises situated at Rewari, Tehsil & District Rewari in the Registration Sub District of Rewari District and more particularly described in the Schedule hereunder written TOGETHER WITH structure that may hereafter be erected thereon by the Lessee to hold the premises hereby demised hereafter for brevity's sake referred to as "the demised premises" unto the lessee for a term of 30 years commencing from the date of lease signed, renewable and determinable as hereinafter provided yielding and paying therefore during the said term the monthly and the proportionately for any part of the month the rent of Rs.10,000/- per month (Rupees Ten Thousand only) to be paid on or before the 5th day of each and every calendar month, the first of such monthly rent to be paid from the date of commencement of lease deed proportionately and the subsequent rent to be paid on or before the 5th day of every succeeding month regularly (with increase in rent by 10% after every three year).

xxxxx xxxxx xxxxx

(d) The Lessee shall be free to use and the Lessor shall permit the use of demised premises by the Lessee for itself and for all its associated concerns. The Lessee shall also be entitled to use the demised premises by their agents, sales representatives, distributors, local dealers, other licensees or representatives, customers and all other authorised persons.
(e) The Lessee shall be entitled to assign, transfer, sublet, under let, or part with possession of the demised premises or any part thereof to any person abovenamed whomsoever it chooses without the consent of the Lessor.

(f) The Lessee shall be entitled to appoint remove, re-appoint change and substitute any dealers, agents, licensees and other authorised representatives on and in respect of the demised premises without the consent of the Lessor.

xxx xxx xxx

(i) The Lessee shall be entitled to excavate, dig or break open the surface of any part of the demised premises at any time, during or after the expiration of the term hereby granted and to remove any stone, sand, gravel, clay, earth or other material therefrom for the purpose of erecting, laying, maintaining and/or removing storage tanks, containers, receptacles and other erections or installations for the purpose of the business of the Lessee or any other person.

(j) The Lessee for the purpose of the construction and erection mentioned in any of the preceding sub-clause shall be entitled to allow any, sub lessee, dealer, sub dealer, agent, person or other authorised representative or person to enter upon the demised premises and to build and erect according to the Lessee's specifications requisite items herein mentioned without any let hindrance or obstruction from the

> Lessor/s or any other person claiming by, through or under him/her/them."

16. We have referred to the clauses in extenso to highlight that the lessee had entered into an agreement of lease with the appellant with immense liberty and the lease deed does lay down that the lessee has the freedom to sublet and appoint another dealer. The lease would remain in force till the dealership of the appellant continued and the licence remained in vogue. At this juncture, it is pertinent to reproduce certain clauses of the dealership agreement which would clearly spell out the purpose. They read as follows:-

> "2. The Corporation do hereby grant to the Dealer leave and licence and permission for the duration of this Agreement to enter on the said premises and to use the premises and outfit for the sole and exclusive purpose of storing, selling and handling the products purchased by the Dealer from the Corporation, Save as aforesaid, the Dealer shall have no right, title or interest in the said premises or outfit and shall not be entitled to claim the right of lessee, sub-lessee, tenant or any other interest in the premises or outfit, is being specifically agreed and declared in particular that the Dealer shall not be deemed to be in exclusive possession of the premises.
>
> 3. This Agreement shall remain in force for five years from 14th day of May, 2002 and continue thereafter for successive periods of one year each

> until determined by either party by giving three months notice in writing to the other of its intention to terminate this Agreement, and upon the expiration of any such notice this Agreement and the Licence granted as aforesaid shall stand cancelled and revoked but without prejudice to the rights of either party against the other in respect of any matter or thing antecedent to such termination provided that nothing contained in this clause shall prejudice the rights of the corporation to terminate this Agreement earlier on the happening of the events mentioned in clause 56 of this Agreement.
>
> xxx xxx xxx
>
> 7. Nothing contained in this Agreement shall be construed to prohibit the Corporation from making direct and/or indirect sales to any person whomsoever or from appointing other dealers for the purpose of direct or indirect sales at such places as the Corporation may think fit. The dealer shall not be entitled to any claim or allowance for such direct or indirect sales."

SUPREME COURT OF INDIA
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JUDGMENT

17. It is appropriate to mention here that clause 56 of the said agreement stipulates that notwithstanding anything to the contrary containing before the said clause, the Corporation would be at liberty to terminate the agreement forthwith upon any time after happening of certain events. The conditions are manifold. We may, for the sake of completeness, reproduce two conditions:-

> "(h) If the Dealer does not adhere to the instructions issued from time to time by the

> Corporation in connection with safe practices to be followed by him in the supply/storage of the Corporation's products or otherwise.
>
> (i) If the Dealer shall deliberately contaminate of temper with the quality of any of the Corporation's products."

18. On a plain reading of the aforesaid agreement, it is clear as noon day that it has no connection whatsoever with the lease agreement. Both the agreements are independent of each other. The appellant was a dealer under the lessee, that is, the Corporation. The dealership is liable to be cancelled on many a ground. In case there is a termination, dealership is bound to be cancelled and at that juncture, if the lease deed is treated to have been terminated along with the dealership, it will lead to a situation which does not flow from the interpretation of the instruments. The dealership agreement has been terminated because of the decision rendered by this Court in ***Mukund Swarup Mishra*** (supra). The consequence of cancellation of the dealership is a sequitur of the judgment. The inevitable consequence of that is the appellant has to vacate the premises and the Corporation has the liberty to operate either independently or through another dealer. The appellant cannot be allowed

to cause obstruction or create an impediment. The submission that the appellant entered into the lease agreement at a monthly rent of Rs.10,000/- as it was given the dealership is a mercurial plea, only to be noted to be rejected. The dealership was availed of as has been held by this Court in an inapposite manner. In such a situation, consequences are to be faced by the appellant.

19. The second issue which has been feebly raised by the learned senior counsel for the appellant that the 1971 Act would not be applicable has really no force. Admittedly, the respondent is a public sector undertaking. The appellant whose dealership has been cancelled, cannot claim possession to retain possession on the basis of ownership of the land as the lease is in continuance. Therefore, he is a trespasser. Thus, the provisions of the 1971 Act apply on all fours and accordingly we repel the said submission.

20. We will be failing in our duty if we do not take note of another submission which has been alternatively and assiduously canvassed by Mr. Sibal, learned senior counsel for the appellant. It is urged by him as the termination was directed by the Corporation by virtue of the judgment of this

Court and not because of any wrong committed by the appellant and hence, his case should be reconsidered for grant of dealership under the new policy. Ms. Meenakshi Arora, learned senior counsel for the Corporation has filed the prevalent policy. We do not intend to allude to the same and issue any direction. Once there is a policy and any candidate fits in, needless to say, when there is an advertisement; he is at liberty to apply. We are not disposed to advert to the policy at this juncture. If the policy permits, as we have said, the appellant is at liberty to apply. However, we must clarify that our grant of liberty does not mean that the appellant shall create an impediment for the Corporation to enter into and take possession and run the petrol pump on its own or appoint a dealer.

21. In view of the aforesaid analysis, it is directed that the appellant shall hand over the peaceful possession of the land and the structure and other fixtures standing thereon to the Corporation after demolishing the wall on his own within four weeks hence, failing which he shall be liable for contempt of this Court.

22. In view of the aforesaid premises, the appeal, being sans substratum, stands dismissed with the directions recorded in the preceding paragraph. Ordinarily, we would have thought of imposing costs but we have refrained from doing so as we have directed the appellant to vacate the premises within four weeks so the first respondent-Corporation can operate either on its own or through any agent or dealer.

SUPREME COURT OF INDIA

..............................J.
[Dipak Misra]

.........................., J.
[Uday Umesh Lalit]

New Delhi
July 1, 2015

JUDGMENT