

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.6119 OF 2021
(Arising out of SLP (C) No.36767 OF 2016)

ANAPURNA JAISWAL

APPELLANT (s)

VERSUS

INDIAN OIL CORPORATION LTD. AND ORS.

Respondent (s)

J U D G M E N T

K.M. JOSEPH, J.

1. Leave granted.
2. An advertisement was published on 12.10.2011 by the respondent inviting applications for grant of dealership of petrol pumps. The appellant made her application on 11.11.2011. On the basis of the evaluation done, the appellant was placed in the first position. While so it appears that on the basis of complaint, the matter was looked into and order dated 12.11.2014 came to be issued by which the respondent took the view that the lease dated 08.11.2011 which was the foundation for the offer made by the appellant would commence from the date of approval of the petrol outlet. This meant that the possession over the premises did not amount to a lease and on the date of the execution of the lease deed the lease had not come into force. The lease deed was more like a firm offer than

CIVIL APPEAL NO. 6119 OF 2021
(Arising out of SLP (C) No. 36767 of 2016.

owned proposition. Thereafter, on 12.12.2014 the appellant got a rectification/ clarificatory deed registered. Four representations were made by the appellant. The corporation rejected by order dated 25.02.2015 the request. This led to the Writ Petition, which stood dismissed by the impugned order.

3. We heard Ms. Kamini Jaiswal, learned counsel for the appellant and Ms. Priya Puri, learned counsel for the respondent-corporation.

4. Learned counsel for the appellant would take us to through the lease deed dated 08.11.2011 which was registered on the same day and point out that under the lease deed possession was handed over to the appellant by the lessor on 08.11.2011 itself. In this regard, she sought support from clause 7 of the said lease deed which reads as follow: -

"7. That, in case, the petrol pump is not approved, then, the second party shall have to hand over the land transferred on rent to the first party."

She would, therefore, point out that the lease deed had come into effect on 08.11.2011. Clause 1 reads as follow: -

"1. That, the period of this lease-deed will be 30 years, which shall take into account w.e.f. date of approval of petrol pump."

5. She pointed out that this cannot detract from the lease coming into being in law on 08.11.2011. The lease bearing life from

CIVIL APPEAL NO. 6119 OF 2021
(Arising out of SLP (C) No. 36767 of 2016.

08.11.2011 is consistent with and supported by the fact that the appellant derived possession on the said date under the said lease deed. In this regard, she also drew our attention to Section 47 of The Indian Registration Act, 1908 which reads as follows: -

"47. Time from which registered document operates. - A registered document shall operate from the time which it would have commenced to operate if no registration thereof had been required or made, and not from the time of registration."

6. She would further point out that the action of dislodging the appellant from the first position she has rightfully earned was based on an alleged complaint. She pointed out with reference to the document at page 117A produced along with the rejoinder affidavit, that it is a clear case where the complaint is sprung up which is not genuine which can be seen from the fact that after serial No. 333 in place of serial No.334, serial No.335 is over written.

7. Per contra, Ms. Priya Puri, learned counsel for the respondent-corporation supported the impugned judgment. She would point out that letter of intent has already been issued in terms of the decision which is upheld by the High Court in favour of another party. However, on the basis of the order of status quo passed by this Court, effect could not be given to the decision.

8. The appellant undoubtedly secured 85.93 marks. A part of the 85.93 marks is attributable to 35 marks which she derived on the

CIVIL APPEAL NO. 6119 OF 2021
(Arising out of SLP (C) No. 36767 of 2016.

basis of her being a lessee under lease deed dated 08.11.2011 which we have adverted to. The relevant provision under which marks were awarded in this regard to her reads as follow: -

| Parameter | Sub-heads | Description | Max Marks | Evaluation |
|--|---------------------------------|--|-----------|--|
| Capability to provide land and infrastructure/facilities (Max. 35 marks applicable to individual and non-individual) | Suitable land for retail outlet | "....." 'B' site Having clear title to land "own land"/Registered sales deed /having land on long lease (registered) for a minimum period of 19 years 11 months as on <u>date of application.</u> | 35 | Based on verifying the documents submitted and evaluation of committee as explained in Pt.14 and 15 below. |
| | | '... ' 'B' site Having "firm offer" of land for purpose/long lease | 25 | |

9. The learned counsel for the appellant would point out that the lease deed in fact was for the period of 30 years and, therefore, the lease deed was fully compliant with the requirement. In fact, it was much more as the required period was 19 years and 11 months whereas the lease in her favour was for a period of 30 years.

CIVIL APPEAL NO. 6119 OF 2021
(Arising out of SLP (C) No. 36767 of 2016.

10. However, this is not to be the end of the inquiry. The requirement under the clause is that to earn 35 marks the applicant must have inter alia a long lease (Registered for a minimum period of 19 years and 11 months as on the date of the application). What has weighed with the corporation in deciding to dislodge the appellant from the first position is that the lease dated 08.11.2011 was to become operative only from the date of the approval of the petrol pump. In other words, there was no lease deed in effect as on the date of the application which is admittedly 11.11.2011.

Section 5 of the Transfer of Property Act, 1882 read as follow: -

5. "Transfer of property" defined- In the following sections "transfer of property" means an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself, [or to himself] and one or more other living persons; and "to transfer property" is to perform such act.

11. This provision has been subject matter of discussion by this Court and we need only refer to Jugalkishore Saraf v. M/s. Raw Cotton Co. Ltd., AIR 1955 SC 376. Therein in his concurring opinion Justice Bhagwati held:

"The words "in present or in future" qualify the word "conveys" and not the word "property" in the section and it has been held that a transfer of property that is not in existence operates as a contract to be performed in the future which may be specifically enforced as soon as the property comes into existence.

As was observed by the Privy Council in 12 Moo Ind

CIVIL APPEAL NO. 6119 OF 2021
(Arising out of SLP (C) No. 36767 of 2016.

App 275 (PC) (E) :

"But how can there be any transfer, actual or constructive, upon a contract under which the vendor sells that of which he has not possession, and to which he may never establish a title? The bill of sale in such a case can only be evidence of a contract to be performed 'in future', and upon the happening of a contingency, of which the purchaser may claim a specific performance, if he comes into Court shewing that he has himself done all that he was bound to do."

It is only by the operation of the equitable principle that as soon as the property comes into existence and is capable of being identified, equity taking as done that which ought to be done fastens upon the property and the contract to assign thus becomes a complete equitable assignment. In the case of a decree to be passed in the future therefore there could be no assignment of the decree unless and until the decree was passed and the agreement to assign fastened on the decree and thus became a complete equitable assignment. The decree not being in existence at the date of the transfer cannot be said to have been transferred by the assignment in writing and the matter resting merely in a contract to be performed in the future which may be specifically enforced as soon as the decree was passed there would be no transfer automatically in favour of the "transferee" of the decree when passed.

It would require a further act on the part of the "transferor" to completely effectuate the transfer and if he did not do so the only remedy of the "transferee" would be to sue for specific performance of the contract to transfer."

12. Section 105 specifically deals with lease of immovable property, and it reads as follows: -

"105. Lease defined- A lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or

CIVIL APPEAL NO. 6119 OF 2021
(Arising out of SLP (C) No. 36767 of 2016.

promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms."

13. A lease of immovable property is a transfer of immovable property. The transfer consists of the transfer of a right to enjoy immovable property. It creates an interest in the property. One of the essential elements of the lease is the period of time for which the demise holds good. A lease may be for certain time which may be express or implied. It may also be in perpetuity. Therefore, when one thinks of a lease of an immovable property one of the essential terms would be the period for which the lease operates. In this case, the lease or the period of the lease is 30 years. The question would immediately arise as to when the lease bears life. The expression 'certain time' is premised on there being a beginning in point of time and the end again with reference to time. 'Certain time' would in other words be a period of time. The answer is given by the lease itself, namely that the period begins with effect from the date of approval of the petrol pump. In other words, here is a lease deed which contemplated the period of the lease commencing at a point of time in the future. What is more it would commence only with effect from the date of approval of the petrol pump. The parties in fact contemplated in clause 7 that in case the petrol pump was not approved then the second party (the 'appellant' herein) must handover the land transferred on rent to the first party.

14. Whatever doubts one may have is dispelled by clause 5 which reads as follows: -

"5. That after completion of leased period, viz., after expiry of 30 years, both parties shall have option renewal period by a lease deed in respect of land transferred on rent on the basis of mutual consent.

A perusal of clause 5 would reveal that lease period is explained as after 'the expiry of 30 years' and it speaks about the renewal of the lease period. The completion of the lease period which is after the expiry of the 30 years again would have to be reckoned only with effect from the date of approval of the petrol pump. Therefore, it is clear that the lease which the appellant laid store by contemplated the period of the lease commencing not on the date of the lease but at a point of time in the future. In fact, the point of time or the event upon which the period of lease was to begin with itself uncertain. Maybe it is true that it could come into effect upon future events taking shape on the principle that in equity on the future event happening relating to the subject matter of the lease, the lease could have affected the property in the future. But we need not explore the matter on those lines any further as it is clear that the lease did not take effect on the date of the lease namely 8.11.2011. If that be so there was also no lease in place as on the date of the application namely 11.11.2011.

CIVIL APPEAL NO. 6119 OF 2021
(Arising out of SLP (C) No. 36767 of 2016.

15. The appellant attempted to derive support from Section 47 of the Registration Act, 1908. Section 47 of the Registration Act, 1908 is only intended to give effect to the lease deed which is registered at a later point of time than when it is executed. It is intended to provide that the document which is registered will have efficacy on its own terms with effect from the time when it was supposed to have come into effect under the document. In other words, the fact that it is registered at a later point of time could not detract from the document commencing to operate when it would have commenced but for it not having been registered. In fact, if one applies Section 47 of the Registration Act, to the facts of this case it would not have the effect of preponing the period of the lease as commencing from the date of the execution of the lease. The lease would operate on its terms and the period of the lease would commence only upon approval being granted despite it being registered.

16. The result of this discussion is that the appellant cannot be possibly entitled to the benefit of 35 marks which is vouchsafed only for those applicants who inter alia had a long-term lease as on the date of the application.

17. There is another aspect we must bear in mind. We are dealing with a case where what is sought is judicial review of the decision to award largesse. A fairly large measure of free play in the joints is vouchsafed to a public authority when it comes to understanding the terms under which the offer is made. We cannot be

CIVIL APPEAL NO. 6119 OF 2021
(Arising out of SLP (C) No. 36767 of 2016.

oblivious to this aspect as well. The fact that in the rectification deed also which was executed much after the date of the advertisement and application an attempt is made to correct the original lease deed and to indicate that it was as a result of an error that clause 1 which we have referred to came to be inserted also would fortify us in our reasoning which we have employed in finding that appellant is not entitled to 35 marks.

18. In the light of above discussion, we see no reason to interfere with the impugned judgment passed by the High Court. The appeal is dismissed.

No order as to costs.

Pending application(s), if any, stand disposed of.

.....J.
[K.M. JOSEPH]

.....J.
[PAMIDIGHANTAM SRI NARASIMHA]

New Delhi
30th September, 2021.