

Court No. - 40

Case :- WRIT - C No. - 10619 of 2025

Petitioner :- Ishan Chaudhary And Another

Respondent :- Union Of India And 4 Others

Counsel for Petitioner :- Akhileshwar Pratap Singh, Atul Kumar

Counsel for Respondent :- A.S.G.I., Komal Mehrotra

Hon'ble Shekhar B. Saraf, J.

Hon'ble Dr. Yogendra Kumar Srivastava, J.

(Per: Dr Yogendra Kumar Srivastava, J)

1. Heard learned counsel for the petitioners and learned counsel appearing for the respondents.
2. Present writ petition has been filed, seeking to assail the order dated 4.3.2025 passed by respondent no.4/Territory Manager (Retail) Mathura in terms of which, the petitioners have been found to be ineligible for allotment of Retail-outlet (Petrol Pump) dealership.
3. As per the pleadings in the writ petition, the petitioners applied for allotment of dealership of a Retail-outlet (Petrol Pump), location at Village Nagla Santhal, Tehsil Kheragarh, on Kheragarh to Saipu Road, District Agra, in response to a notification dated 28.6.2023 issued by respondent no.2-Bharat Petroleum Corporation Ltd.¹.
4. The land which had been offered for the purpose of establishing the retail-outlet was stated to have been obtained by the petitioners on lease executed by one Vijay Singh, being part of Khasra No.177, measuring an area of 1332 sq. meters, situated at Village Nagla, Santhal, Tehsil-Kheragarh, District Agra.
5. The documents uploaded by the petitioners and the information provided by them in the application were evaluated by the Scrutiny

1 BPCL

Committee of respondent no.2-BPCL and it was found that the application did not meet 'Dealer Selection Guidelines 2023' and, therefore, the application was rejected by means of an e-mail dated 16.8.2024, wherein the reason for rejection was mentioned as 'there are multiple co-owners of offered khasra no.177 as per uploaded copy of khatauni, whereas lease deed is done from only one co-owner'.

6. The petitioners, at this stage, filed a writ petition, being Writ-C No.40696 of 2024, which was disposed of by means of an order dated 16.1.2025, directing respondent no.2-BPCL to decide the representation dated 23.8.2024 submitted by the petitioners with regard to their claim.

7. Pursuant to the aforesaid order passed in Writ-C No.40696 of 2024, the representation of the petitioners was examined and in terms of an order dated 4.3.2025, the petitioners have been held to be ineligible for allotment of retail-outlet dealership. Aggrieved by the said order dated 4.3.2025, the present writ petition has been filed.

8. It has been argued on behalf of the petitioners that the selection of the petitioners has been cancelled only on the ground that the lease deed ought to have been executed by all the co-tenure holders, whereas the land in question, which was offered by them, had already been partitioned by an order dated 20.12.2019, declaring the share of Vijay Singh, the person who had executed the lease deed in favour of the petitioners. It is urged that as per terms of sub-section (4) of Section 80 of the Uttar Pradesh Revenue Code, 2006², once the declaration has been made under Section 80, that would presuppose that the land in question had already been divided/partitioned in accordance with the provisions of law.

9. Learned counsel appearing on behalf of respondent nos.2 to 4 has controverted the aforesaid argument by submitting that the order dated 20.12.2019 has been passed under Section 80 (1) of the Code, 2006, which is only with regard to the declaration of the non-agricultural use of

² Code, 2006

the land, and cannot be construed to be an order by which, the land in question could be said to have been partitioned.

10. It has been pointed out that as per clause no.4 (vi) of the 'Selection Brochure' for Selection of Dealers, if the offered land is on long term lease and there are multiple co-owners, then such lease deed should have been executed by all the co-owners of the offered plot. In the instant case, the lease deed, having not been executed by all the co-owners, the same is to be treated as invalid for the purpose of selection of dealers.

11. We have heard learned counsel for the parties and perused the records.

12. The Selection Brochure for selection of dealers contains a clear stipulation under Clause No.4 (vi) that where the offered land is on long term lease and there are multiple owners, the lease should be executed by all the co-owners, and in the absence of the lease deed having been executed in such a manner, it would be treated to be invalid.

13. It is an undisputed fact that the lease deed had been executed in favour of the petitioners by only one of the co-owners of the plot whereas, as per the revenue record, i.e. Khatauni extract, there are four other co-owners of the plot in question.

14. Contention, which has been put forth on behalf of the petitioners that the land in question had been partitioned by means of the order dated 20.12.2019 has not been accepted by the respondent no.4 for the reason that the said order passed under Section 80 (1) of the Code, 2006 had the effect of declaring non-agricultural use of the land and could not be construed to be an order which would have the effect of creating a partition between the co-owners of the land in question. The order impugned dated 4.3.2025 passed by respondent no.2 clearly takes note of this factual position in paragraphs VIII and IX, which are extracted below:

"VIII. Further we like to draw your kind attention to the information mentioned in your application form regarding

land details in which you have mentioned that location Khasra/Gat/Survey No.177 is owned solely by Aditya Chandra and Ishan Chaudhary. You have taken lease from only one co-owner of the plot. **However as per Khatauni there are four other co-owners in same gata number.** This is in violation of clause no.22 False Information of Dealer Selection Guidelines 2023 pointed out in this letter under II (b).

IX. Based on documents provided by you and details filled in application, it can be concluded that certain portion of offered plot is converted from agriculture to non-agriculture under section 80 of U.P. Revenue Act, 2006 but not partitioned. Also land conversion under section 80 of U.P. Revenue can't be construed as partition as it is conditional and subjected to adherence to compliance of condition mentioned in conversion order. **Hence your lease deed is not valid as per Brochure for Dealer Selection Guidelines 2023."**

15. In order to examine the contention put forth on behalf of the petitioners that as per the terms of sub-section (4) of Section 80 of the Code, 2006, once a declaration had been made under sub-section (1), that would create a presumption that the land in question had already been partitioned, we may be required to refer to the relevant statutory provisions.

16. The Uttar Pradesh Revenue Code, 2006 is an Act to consolidate and amend the law relating to land tenure and land revenue in the State of Uttar Pradesh and to provide for matters connected therewith and incidental thereto. The declaration as to non-agricultural use of land is to be made as per terms of Section 80 of the Code, 2006, which is extracted below:

"80. Use of holding for Industrial, Commercial or Residential purposes. – (1) Where a bhumidhar with transferable rights uses his holding or part thereof, for industrial, commercial or residential purposes, the Sub-Divisional Officer may, *suo motu* or on an application moved by such bhumidhar, after making such enquiry as may be prescribed, either make a declaration that the land is being used for the purpose not connected with agriculture or reject the application. The Sub-Divisional Officer shall take a

decision on the application within forty five working days from the date of receipt of the application. In case the application is rejected, the Sub-Divisional Officer shall state the reasons in writing for such rejection and inform the applicant of his decision.

Provided that if the application for declaration is accompanied with the prescribed fee and in case of joint holding, no objection of co-tenure holders is attached in case of co-tenure holder and if the declaration is not made by the Sub-Divisional Officer within forty five days as aforesaid, then the declaration shall be deemed to have been made. Tehsildar will make a record of it in the revenue records, with the comment "subject to the order of the Sub-Divisional Officer".

If any affected party wants to file an objection in relation to the said declaration, it may file an objection in the competent court.

(2) Where a bhumidhar with transferable rights proposes to use in future his holding or part thereof, for industrial, commercial or residential purposes, the Sub-Divisional Officer may on an application moved by such bhumidhar, after making such enquiry as may be prescribed, either make a declaration that the land may be used for the purpose not connected with agriculture or reject the application, within forty five working days from the date of receipt of the application. In case the application is rejected, the Sub-Divisional Officer shall state the reasons in writing of such rejection and inform the applicant of his decision:

Provided further that if the bhumidhar fails to start the proposed non-agricultural activity within a period of five years from the date of declaration under this sub-section, then the declaration under sub-section (2) for the holding or part thereof shall lapse:

Provided also that a declaration under this sub-section (2) shall not amount to change of land use and the land shall continue to be treated as agricultural land only. However, the bhumidhar shall be entitled to obtain loan and other necessary permissions, clearances, etc. for the activity or project, proposed on the holding or part thereof, for which declaration under this sub-section has been obtained.

(3) A bhumidhar possessing declaration under sub-section (2) for his holding or part thereof, may apply to Sub-Divisional Officer for converting declaration under sub-section (2) to a declaration under sub-section (1), after

completion of construction activity or start of the proposed non-agricultural activity, within a period of five years from declaration under sub-section (2). On receipt of such an application, the Sub-Divisional Officer, after making such enquiry as necessary, shall approve or reject the application within a period of 15 days from the receipt of the application. In case of rejection, he shall record in writing the reasons for such rejection:

Provided that for conversion of declaration under sub-section (2) to a declaration under sub-section (1), the bhumidhar shall be liable to pay only the balance amount of fee payable, calculated at prevailing circle rate, after adjusting the amount already paid by him for declaration under sub-section (2) earlier.

(4) No application for a declaration under sub-section (1) or sub-section (2), moved by any co-bhumidhar having undivided interest in bhumidhari land shall be maintainable, unless application is moved by all the co-bhumidhars of such bhumidhari land. In case only one of the co-bhumidhar wants to get a declaration for his share in the land with joint interest, then such an application shall be entertained only after the respective shares of the co-bhumidhars in the land have been divided in accordance with the provisions of law.

(5) The application for declaration [under sub-section (1) or sub-section (2)] shall contain such particulars and shall be made in such manner as may be prescribed.

(6) Where the application under sub-section (1) or sub-section (2) is made in respect of a part of the holding, the Sub-Divisional Officer may, in the manner prescribed, demarcate such part for purposes of such declaration.

(7) No declaration under this section shall be made by the Sub-Divisional Officer, if he is satisfied that the land or part thereof is being used or is proposed to be used for a purpose which is likely to cause a public nuisance or to affect adversely public order, public health, safety or convenience or which is against the uses proposed in the master plan.

(8) In case the land or part thereof for which a declaration under this section is being sought falls within the area notified under any Urban or Industrial Development Authority, then prior permission of the concerned Development Authority shall be mandatory.

(9) The State Government may fix the scale of fees for declaration under this section and different fees may be fixed for different purposes:

Provided that if the applicant uses the holding or part thereof, for his own residential purpose, no fee shall be charged for the declaration under this section."

17. It would be pertinent to take note of the provision, as it originally stood prior to being substituted by Section 8 of the U P Revenue Code (Amendment) Act, 2019 (Act No.7 of 2019), which reads as under:

“80. Use of holding for Industrial, Commercial or Residential purposes. – (1) Where a Bhumidhar with transferable rights uses his holding or part thereof, for industrial, commercial or residential purposes, the Sub-Divisional Officer may, *suo motu* or on an application moved by such Bhumidhar, after making such inquiry as may be prescribed, either make a declaration that the land is being used for the purpose not connected with agriculture or reject the application. The Sub-Divisional Officer shall state the reasons in writing of such declaration or rejection and inform the applicant of his decision within forty five working days from the date of receipt of the application:

Provided that no such declaration under this section shall be made merely on the ground that the holding or part thereof is surrounded by boundary wall or is “*Parti*” on the spot:

Provided further that no application for the declaration under this sub-section moved by any co-bhumidhar having undivided interest in Bhumidhari land shall be maintainable, unless application is moved by all the co-bhumidhars of such bhumidhari land or their interests therein are divided in accordance with provisions of law.

(2) The application for declaration under sub-section (1) shall contain such particulars and shall be made in such manner as may be prescribed.

(3) Where the application under sub-section (1) is made in respect of a part of the holding, the Sub-Divisional Officer may, in the manner prescribed, demarcate such part for purposes of such declaration.

(4) No declaration under this section shall be issued by the Sub-Divisional Officer, if he is satisfied that the land is to be used for a purpose which is likely to cause a public nuisance or to affect adversely public order, public health, safety or convenience or against uses purposes in the Master Plan.

(5) The State Government may fix the scale of fees for declaration under this section and different fees may be fixed for different purposes:

Provided that if the applicant uses the holding or part thereof for his own residential purpose, no fee shall be charged for the declaration under this section.”

18. The relevant rules related to Section 80 of the Code, 2006, under the U P Revenue Code Rules, 2016³ are also reproduced below:

“85. Application for declaration (Section 80). (1) A bhumidhar with transferable rights using his holding or any part thereof for a purpose not connected with agriculture may apply to the Sub-Divisional Officer for a declaration under section 80(1) in R.C. Form-25.

(2) The applicant shall pay the required amount of declaration fee which shall be one percent of the amount calculated as per the circle rate for agricultural purpose fixed by Collector of the district concerned or as per the rate fixed by State Government from time to time.

(3) On receipt of the application under sub-rule (1), the Sub-Divisional Officer may cause an inquiry to be made through a revenue officer not below the rank of a Revenue Inspector for the purpose of satisfying himself that the holding or part thereof is really being used for a non-agricultural purpose. The concerned officer shall, after spot verification submit his report to the Sub-Divisional Officer indicating the purpose for which the holding or part thereof is being actually used.

86. Notice to the bhumidhar (Section 80). – Where the proceedings under section 80(1) has been initiated by the Sub-Divisional Officer on his own motion, he shall issue notice to the bhumidhar concerned, and the inquiry referred to in rule 85(3) shall be held after the reply, if any, of the bhumidhar is submitted.

87. Grant of declaration (Section 80). – If after scrutinizing the report of the revenue officer, the Sub-Divisional Officer is satisfied:

(a) that the entire holding is being used for a purpose not connected with agriculture; and

³ Rules, 2016

(b) that the conditions specified in section 80(4) are complied with, he may make a declaration under section 80(1), in respect of such holding.

88. Apportionment of Land Revenue (Section 80). – (1) If only a part of the holding is being used by a bhumidhar with transferable rights for a non-agricultural purpose, and the Sub-Divisional Officer is satisfied that the provisions of the second proviso to section 80(1) have not been contravened, he may make a declaration only with respect of such part, provided that the cost of demarcation as per sub-rule (2) of the rule 22 is deposited by the bhumidhar before such declaration.

(2) Where the proceeding for declaration in respect of a part of the holding is initiated by the Sub-Divisional Officer suo motu, the cost of such demarcation shall be recovered by the Sub-Divisional Officer as arrears of land revenue.

(3) In every case of declaration under sub-rule (1) or sub-rule (2), the demarcation shall be made on the basis of the existing survey map, and the Sub-Divisional Officer shall apportion the land revenue payable by such bhumidhar.

(4) The Sub-Divisional Officer shall make an endeavor to conclude the proceeding for declaration under sub-section (1) of section 80 within the period of 45 days from the date of registration of the application and if the proceeding is not concluded within such period the reasons for the same shall be recorded.”

19. The second proviso to sub-section (1) of Section 80 of the Code, 2006, as it originally stood, provided, in clear terms, that no application for declaration under sub-section (1) moved by any co-bhumidhar having undivided interest in bhumidhari land shall be maintainable, unless the application is moved by all co-bhumidhars of such bhumidhari land or their interests therein are divided in accordance with the provisions of law.

20. Rule 88 of the Rules, 2016, which related to apportionment of land revenue consequent to the declaration made under Section 80 of the Code, 2006 provides for a demarcation in case declaration had been sought only for a part of the holding which was being used for non-agricultural purpose. The demarcation in the said case is to be made as per the

procedure prescribed under Rule 22 of the Rules, 2016, which relates to settlement of boundary disputes envisaged under Section 24 of the Code, 2006.

21. In terms of Section 8 of the U P Revenue Code (Amendment) 2019 (Act No.7 of 2019), Section 80 of the Code, 2006, as it originally stood, has been substituted in its entirety. Sub-section (4) of Section 80 of the Code, 2006, as it presently stands, provides, in clear terms, that no application for declaration under sub-section (1) or sub-section (2) moved by any co-bhumidhar, having undivided interest in a bhumidhari land shall be maintainable, unless the application is moved by all the co-bhumidhars of such bhumidhari land. It further provides that in case only one of the co-bhumidhars wants to get a declaration for his share in the land with joint interest, then such an application shall be entertained only after the respective shares of the co-bhumidhars in the land have been divided in accordance with the provisions of law. The division of holding consequent to which shares of co-bhumidhars in a land can be divided, is to be as per the terms of Section 116 of the Code, 2006.

22. As a consequence of division of holding under Section 116 of the Code, 2006, it is enjoined upon the court concerned, as a duty under sub-section (1) (b) of Section 117, to apportion the land revenue payable in respect of each such division. The procedure pertaining to division of holdings is provided under Rules 107, 108 and 109 of the Rules, 2016 and in terms of Rule 109 (8) (c), it is provided that at the stage of the final decree, the Court concerned shall apportion the land revenue payable by the parties.

23. Sub-section (4) of Section 80 of the Code, 2006 contains a clear interdict against any application, being moved by any co-bhumidhar having undivided interest in the bhumidhari land, for a declaration under sub-section (1) or sub-section (2), unless the application is moved by all co-bhumidhars of such bhumidhari land. It further provides that in case only one of the co-bhumidhars is desirous of getting a declaration for his

share in the land with joint interest, then such an application shall be entertained only after the respective shares of the co-bhumidhars in the land are divided in accordance with the provisions of law.

24. A plain reading of the aforesaid provisions would make it clear that the application, at the instance of a co-bhumidhar having his share in the land with joint interest, would have to be preceded by the determination of shares of the co-bhumidhars in the land in question in accordance with the provisions of law. This would mean that an application for declaration under sub-section (1) or sub-section (2) at the behest of any co-bhumidhar, having undivided interest in the bhumidhari land, would be maintainable only upon fulfilment of the necessary pre-condition that the land in question had been divided in accordance with the provisions of law, i.e. as per the provisions contained under Section 116 of the Code, 2006 and the relevant Rules.

25. The argument which has been raised on behalf of the petitioners that the declaration under Section 80 (1) of the Code, 2006 would necessarily mean that the land in question had already been divided, cannot be accepted for the reason that as per the provisions contained in sub-section (4) of Section 80 of the Code, 2006, the division of holding and the determination of shares of the co-bhumidhars in a joint holding, is a pre-condition for seeking declaration under sub-section (1) or sub-section (2) of Section 80 of the Code, 2006; however the reverse implication cannot be inferred.

26. In the instant case, no document has been placed on record to demonstrate that the division of property in question had been made between all the co-owners as per the provisions contained in Section 116 of the Code, 2006.

27. Having regard to the aforesaid position, we do not find any material error or illegality in the order impugned, so as to interfere with the same

in the extraordinary jurisdiction of this Court under Article 226 of the Constitution.

28. The writ petition lacks merit and is, accordingly, **dismissed**.

Order Date :- 10.4.2025

RKK/-

(Dr Y K Srivastava, J)

(Shekhar B Saraf, J)