

CWP No.20710 of 2013 (O&M)

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No.20710 of 2013 (O&M)
Date of decision:17.08.2015**

Kulwant Singh

...Petitioner

Versus

District Magistrate, Fazilka and others

...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. C.M.Munjal, Advocate,
for the petitioner.

Mr. Yatinder Sharma, Addl. A.G., Punjab.

Mr. Ashish Kapoor, Advocate,
for respondent No.3.

Mr. APS Guliani, Advocate,
for respondent No.4.

Rakesh Kumar Jain, J.

The petitioner applied to respondent No.3 for award of Kissan Sewa Kendra dealership. Respondent No.3 issued a letter of intent on 27.05.2011 in favour of the petitioner for proposal-B site Kisan Sewa Kendra dealership at Chak Ghulam Rasulwala on Jalalabad Lakhewali Link Road under open category. Respondent No.3 further applied to respondent No.1 for grant of No Objection Certificate (NOC) along with 12 sets of the layout plan and all other necessary documents. The office of respondent No.1 sent a letter to (i) SSP, Ferozepur, (ii) SDM, Jalalabad, (iii) District Town Planner, Ferozepur, (iv) XEN, PWD (B&R), Ferozepur, (v) DDPO,

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Ferozepur, (vi) Chief Agriculture Officer, Ferozepur, (vii) District Forest Officer, Ferozepur, for sending their respective NOCs within 15 days, which were to be sent further to the District Food and Supply Controller, Ferozepur. The Chief Agriculture Officer, Ferozepur submitted his NOC vide letter dated 05.07.2011 and the SSP, Ferozepur sent his NOC on the basis of the report of the SHO and DSP concerned on 29.07.2011. Similarly, the DDPO, Ferozepur, after getting the report from the Block Development and Panchayat Officer and also from the Gram Panchayat, sent the NOC vide letter dated 16.08.2011.

During these proceedings, one Sukhpreet Singh S/o Jasbir Singh filed a suit for permanent injunction, impleading all the official respondents along with the Indian Oil Corporation, to restrain them from issuing any NOC for allotment of the retail outlet on the ground that the proposed outlet will come within the radius of 5 Kms. of his petrol pump. He also prayed for temporary injunction. In the said suit, the said Sukhpreet Singh did not implead the petitioner as a party. In the meantime, the SDM, Jalalabad, also submitted his NOC on 02.09.2011. The XEN, Construction Division No.1, Ferozepur, also issued the NOC on 13.12.2011, but respondent No.2, only because of the pendency of the Civil Suit, ordered to withdraw the NOC earlier issued and further ordered that the NOC be kept pending till the decision of the Civil Suit.

It is alleged that the Civil Court had not issued any injunction against any of the defendants arrayed in the suit not to issue NOC, rather respondent No.3 requested respondent No.1 for issuance of the NOC on the

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ground that the authorities have already issued NOC and the petitioner had already deposited the necessary fee with the different departments to the extent of ₹2,02,507/-. It was also undertaken by respondent No.3 to immediately stop sales and supplies to the outlet of the petitioner if any adverse order is passed by the Civil Court and the similar undertaking has been made by the petitioner that if any adverse order is passed by the Civil Court, then he shall remove the malba of the building and other material at his own risk and responsibility.

It is, thus, submitted by the petitioner that there was no occasion for respondent No.2 to withdraw the NOC already issued, only on the ground of pendency of the Civil Suit.

After notice, reply has been filed by the respondents and an application has also been filed bearing CM No.3676-CWP of 2015 under Order 1 Rule 10 of the Code of Civil Procedure, 1908, for impleading the said Sukhpreet Singh as respondent No.4.

Counsel for Sukhpreet Singh has argued that since his Civil Suit for permanent injunction is pending, therefore, respondent No.2 has rightly withdrawn the NOC issued earlier.

After hearing learned counsel for the parties and examining the available record, I am of the considered opinion that the impugned orders dated 22.12.2012 and 13.03.2013 are patently erroneous and illegal because mere pendency of the Civil Suit at the instance of Sukhpreet Singh, to whom no injunction has been granted by the Civil Court, NOC issued earlier should not have been withdrawn especially when an undertaking has

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been given by respondent No.3 that they would stop supply to the outlet of the petitioner in case any adverse order is passed by the Civil Court and the petitioner has also undertaken that he would stop working and remove the malba of the building at his own risk and costs.

Thus, in view of the aforesaid facts and circumstances, the present writ petition is allowed and the impugned orders are quashed. Further, respondent Nos.1 and 2 are directed to issue NOCs to the petitioner immediately, which shall be subject to the undertakings made by respondent No.3 and the petitioner, as referred to above.

No costs.

August 17, 2015
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(Rakesh Kumar Jain)
Judge