

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.10089 of 2012**

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Kamta Ojha, son of Late Ram Naresh Ojha, Resident of Village-Nawadih, P.S. Bihiya, District-Bhojpur, Bihar

.... .... Petitioner/s

Versus

1. The Bharat Petroleum Corporation Ltd., through its Chairman Cum Managing Director, Head Office Mumbai
2. The Area Marketing Manager, Bharat Petroleum Corporation Ltd., Patna
3. The Territory Manager, Retail, Patna
4. The District Magistrate, Bhojpur At Arrah, Bihar
5. The Sub Divisional Officer, Jagdishpur, District Bhojpur, Bihar
6. The Circle Officer, Bihiya, P.S. Bihiya, District Bhojpur, Bihar
7. Smt. Prerna Sao, wife of Pawan Kumar Jaiswal, Resident of Raja Bazar, P.S. Bihiya, District Bhojpur, Bihar

.... .... Respondent/s

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**Appearance :**

|                     |   |                                                             |
|---------------------|---|-------------------------------------------------------------|
| For the Petitioner  | : | Mr. Prabhat Ranjan, Advocate<br>Mr. Chandan Kumar, Advocate |
| For the S t a t e   | : | Mr. Anwar Karim, A.C. to G.P.-10                            |
| For BPCL            | : | Mr. Sanjay Singh, Advocate                                  |
| For Respondent No.7 | : | Mr. Sanjeev Kumar Singh, Advocate                           |

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**CORAM: HONOURABLE JUSTICE SMT. ANJANA MISHRA**

**CAV JUDGMENT**

**Date: 13-04-2018**

In the present writ application, the petitioner seeks

(i) a writ of *certiorari* for quashing the letter dated 14.03.2011, whereby the Territory Manager (Retail), Patna has written to the District Magistrate, Bhojpur under Rule 144 of Chapter VII of the Indian Petroleum Rules for obtaining 'No Objection Certificate' in connection with the proposed retail outlet at Bihiya in the district of Bhojpur.

(ii) A prayer has been made for quashing the letter



dated 11.02.2011, issued by the Area Marketing Manager, by which the complaint of the petitioner alleging illegality in the lease deed of Respondent No.7 has been dismissed as being devoid of merit.

(iii) A prayer has also been made by the petitioner for quashing the allotment of retail outlet made in favour of Respondent No.7 and the 'No Objection Certificate', which has been issued by the Office of the District Magistrate and also the letter of intent issued in its pursuance in favour of the private respondent, for establishing the proposed retail outlet at Bihiya.

2. The brief facts, inter alia, which led rise to the present writ application, are detailed below:-

(i) The controversy relates to the ownership of the land in Mauza Chaughada, P.S.-Shahpur, Thana No.144, Tauzi No.846, Khata No.16, Plot No.23, Area 1 Acre, corresponding to New Khata No.5, Plot No.30 and subsequently the corresponding Chak Khata No.19, Plot No.37.

(ii) The petitioner came to know that Respondent No.7 has been able to get a retail outlet of Bharat Petroleum Corporation Ltd. (hereinafter referred to as 'the BPCL') awarded in her favour, wherein the land, which has been offered, belonged to the petitioner.



(iii) After enquiry, the petitioner came to know that Smt. Perna Sao (Respondent No.7) for the purposes of obtaining the retail outlet has offered the land of the petitioner and the basis for the right and title was a lease deed, which was executed by one Dilip Rai claiming himself to be the legal owner of the land and having purchased the same by a registered sale deed through one Indramuni Pandey.

(iv) No sooner the petitioner got the information, he immediately made an objection against the aforesaid allotment over the plot in question to the Area Marketing Manager, B P C L, Patna raising, *inter alia*, all the points and mentioning as to how the lessee of Respondent No.7 did not have any right, title or interest over the property coupled with the mention of the orders passed by the Civil Court of competent jurisdiction in favour of the petitioner.

(v) In the aforesaid representation, the petitioner also mentioned about various title suits filed between the parties *in extenso* with all the details of the outcome and it was further mentioned that the gift deed by virtue of which the petitioner was claiming the right, title and interest has been judicially scrutinized and found to be fit as per the judgment and decree passed in T.S. No.433 of 1995.



(vi) It was, therefore, submitted that in view of the fact that the vendor of the lessor having lost the title suit and the judgment and decree having attained finality, he did not have any right to execute any sale deed in favour of the lessor of Respondent No.7 and thereby the lessor of Respondent No.7 did not have any right to execute a lease deed in favour of Respondent No.7.

(vii) Immediately thereafter, the petitioner got served the Pleader's notice to the respondents on 06.05.2010, stating therein all the facts and further mentioning as to how the lessor of the land in question does not have any right, title and interest and, therefore, the Company should not proceed on the basis of such lease deeds which are against the law.

(viii) Again, when the petitioner learnt that the officers of the B P C L were regularly visiting the land in question and are proposing to start construction thereon, he filed a representation before the District Magistrate along with the previous application and all the copies of the judgment and decree in favour of the petitioner, vide letter dated 02.02.2011.

(ix) Along with the said representation, as contained in Annexure 3, the petitioner submitted a copy of the judgment and decree passed by learned Sub Judge 4<sup>th</sup> Ara, whereby and



whereunder the right, title and interest of the petitioner was perfected and the same of the vendor/lessee of the respondent was declared to be null and void.

(x) Surprisingly enough, without disposing of the objections and complaint of the petitioner, the Territory Manager (Retail), Patna, vide his impugned communication to the District Magistrate, Bhojpur, made an application for issuance of 'No Objection Certificate' for the purposes of applying to the Chief Controller, Explosive.

(xi) When the respondent-BPCL came to know that an objection filed by the petitioner is pending and without disposing of the objection, application for no objection from the District Magistrate has been made, then, vide letter dated 11.04.2011, i.e, one month after the application for NOC, the objection of the petitioner and the complaint was dismissed as being devoid of any merit.

(xii) The objection of the petitioner has been dismissed in a most mechanical manner without appreciating the facts and circumstances of the same, which would be apparent from the fact that the application for N O C has been made on 14.03.2011, whereas the objection has been dismissed one month thereafter.



(xiii) It is further relevant to mention here that the Area Marketing Manager applied for issuance of N O C on 14.03.2011 itself without even waiting for the report of the Circle Officer, which as per his own statement, was received on 04.04.2011.

(xiv) When the objections of the petitioner did not bear any fruit, and even the judgment and decree in his favour did not persuade the respondent-officials, then finally the petitioner filed Title Suit No.27 of 2011 on 09.05.2011 in the court of Munsif 3<sup>rd</sup>, Ara at Bhojpur impleading Respondent No.7, his lessor and the vendor of the lessor-defendants therein.

(xv) In the aforesaid title suit, notices were issued and vide order dated 13.10.2011, the *status quo* over the land in question was directed to be maintained by the court below.

(xvi) It is relevant to mention here that in spite of the *status quo* order and the notices having been issued to Respondent No.7, she deliberately evaded from appearing in the learned court below, whereafter steps for substituted service has been taken and paper publication was to be made.

(xvii) Thereafter, the petitioner came to know that in pursuance of the application of the respondents, the District Magistrate had been pleased to issue the 'No Objection



Certificate' over the land in question and furthermore, the Letter of Intent was also going to be issued very shortly. Hence, he preferred the present writ application.

3. Learned counsel for the petitioner submitted that though the petitioner filed a detailed complaint stating clearly regarding the dispute over the land on 15<sup>th</sup> February, 2010 itself, which was followed by another representation dated 03.03.2010 and a legal notice dated 06.05.2010, to the Area Marketing Manager, BPCL, the authorities kept the petitioner's representation pending. The representation dated 03.03.2010 was also filed before the District Magistrate, Bhojpur on 02.02.2011 (Annexure 3), along with copy of the detailed representation to the authorities dated 03.03.2010 and with special reference to Probate Case No.45 of 2010 and also the orders of the competent court. However, learned counsel for the petitioner submitted that such representations were kept pending by the Corporation as well as the District Magistrate for more than a year.

4. It was submitted by the learned counsel for the petitioner that ignoring the case of the petitioner regarding the dispute of the land, the Corporation made an application on 14<sup>th</sup> March, 2011, under Rule 144 of the Petroleum Rules for grant of 'No Objection Certificate' and soon thereafter on 11.04.2011, the



representation of the petitioner dated 15.02.2010 was disposed of, negating his case altogether. Since the District Magistrate, Bhojpur had failed to appreciate and deal with the case of the petitioner, the petitioner also filed Title Suit No.27 of 2011 on 09.05.2011, for setting aside the lease deed and other ancillary reliefs. In the said case on 13.10.2011, an order of *status quo* was issued by the learned 3<sup>rd</sup> Munsif, Ara (Annexure 7). Learned counsel for the petitioner has further pointed out that vide Annexure 8 dated 28.06.2011, the Circle Officer, Bihiya submitted a report, in pursuance of the complaint filed by the petitioner, that in view of the pending litigations between the parties, 'No Objection Certificate' should not be given.

5. Learned counsel for the petitioner thus contended that in view of the given facts and circumstances, this Court under its extraordinary jurisdiction should interfere as the decision and the decision making process are both fallible, in terms of the established procedure of fair play and the action of the Corporation, in ignoring the complaint of the petitioner for 14 months and deciding the same only after the Corporation had made an application to the District Magistrate for grant of 'No Objection Certificate,' smacks of arbitrary and illegal executive action. It, thus, appears that since the earlier application for grant



of “No Objection” had already been made, the rejection of the complaint was but a *fait accompli* and an empty formality because the Corporation had already made an application for grant of NOC in favour of the respondent-applicant. Thus, the said decision dated 11.04.2011 (Annexure 5) could not be said to be an independent exercise of mind on the complaint of the petitioner.

6. Learned counsel for the petitioner further submitted that the action of the District Magistrate, who was statutory authority, is also assailable as the complaint of the petitioner was never dealt with, by him. It was submitted that though he did cause an enquiry to be conducted through the Sub-Divisional Officer and the Circle Officer, the District Magistrate did not dispose of the complaint on the enquiry report as submitted by the Circle Officer and instead, it appears from Annexure B to the counter affidavit, that the District Magistrate issued ‘No Objection Certificate’ in favour of Respondent No.7, vide his Letter No.2 dated 03.01.2012.

7. Learned counsel for the petitioner submitted that the very application for grant of ‘No Objection Certificate’ was misconceived, as the same could not have been applied for, as there was a subsisting objection to the title/lease of the applicant



for receiving the licence in terms of Rule 144(1) of the Petroleum Rules, 2002. Rule 144(1) and (5) of the Petroleum Rules, 2002 reads as hereunder:

*“144. No-objection certificate.—*

*(1) Where the licensing authority is the Chief Controller or the Controller, as the case may be, an applicant for a new licence other than a licence in Forms III, XI, XVII, XVIII or XIX shall apply to the District Authority with two copies of the site-plan showing the location of the premises proposed to be licensed for a certificate to the effect that there is no objection, to the applicant receiving a licence for the site proposed and the District Authority shall, if he sees no objection, grant such certificate to the applicant who shall forward it to the licensing authority with his application Form IX.”*

*(2).....*

*(3).....*

*(4).....*

*(5) The District Authority shall complete his inquiry for issuing no objection certificate (NOC) under sub-rule (1) and shall complete the action for issue or refusal of the NOC, as the case may be, as expeditiously as possible but not later than three months from the date of receipt of application by him.”*

8. It was thus submitted that the District Magistrate, who was the competent authority to have issued the ‘No Objection Certificate’, was required to complete the action for issue or refusal of NOC, as expeditiously as possible but not later than three months from the date of receipt of the application by



him. However, the 'No Objection Certificate' issued by the District Magistrate was after a lapse of about nine months as the same was issued on 03.01.2012, which was much beyond the prescribed period of three months, which rendered the 'No Objection Certificate' invalid and *non est* in view of the mandatory provision of law.

9. Learned counsel for the petitioner further submitted that in such a case, it was the allottee who had to prove his right over the land in question in the light of the objection filed by the objector. The lessor of respondent No.7 had purchased the land from one Indramuni Pandey whose right and title to hold the land had already been rejected by a decree of competent Civil Court and affirmed in title appeal. It was further averred by the learned counsel for the petitioner that the private respondent could not have pursued his application for allotment of dealership and establishing the petrol pump in view of the *status quo* order dated 13.10.2011 passed in the Probate case. Thus, the entire action of the respondent authorities to settle the dealership in favour of respondent No.7 is against the principle of fair play, reasonableness and warrants interference by this Court under Article 226 of the Constitution and makes the petitioner eligible for grant of an appropriate relief in the matter.



10. Responding to the submissions made by the petitioner in the writ application, learned counsel for the BPCL has strongly resisted the writ application and submitted that the claim of the writ petitioner is wholly misconceived as the petitioner has failed to establish the conclusive rights over the land in question and, therefore, the writ petition is fit to be dismissed.

11. It was submitted on behalf of the Corporation that merely because there is no formal disposal of the complaint by the Corporation and the District Magistrate, the 'No Objection Certificate' could not be invalidated. It was further contended that under the provisions of Rule 144(1) of the Petroleum Rules, 2002, the authority can well file an application for 'No Objection Certificate' even when there is an objection pending. Furthermore, the delay of nine months in grant of 'No Objection Certificate' is of no consequence and the requirement of issue of 'No Objection Certificate' within three months from the date of receipt of the application under Rule 144 (5) of the Rules stands substantially complied with, in view of the fact that the District Magistrate had caused an enquiry to be conducted by the Circle Officer on 26.03.2011 itself and since the Circle Officer has submitted a report on 26.03.2011, confirming the name of the



private respondent in the Register II of the record of rights, the entire claim of the petitioner stands discredited.

12. It was further submitted that the provisions of Rule 144 (5) is directory and not mandatory and as such 'No Objection Certificate' having been issued after a lapse of nine months could not be invalidated. It was further contended by the respondent-Corporation that even on facts, the plot in question on which the petitioner is claiming his right, is not mentioned in the decree and, therefore, the claim of the petitioner is wholly misconceived. The report of the Circle Officer dated 26.03.2011 (Annexure R-1/C) is sufficient for grant of dealership.

13. In reply to the submission advanced by the Corporation, learned counsel for the petitioner submitted that the objection raised are wholly in violation of the statutory provisions, as the District Magistrate could not have entertained the application for grant of 'No Objection Certificate', leave alone grant the same, pending any objection. It was asserted that Rule 144(1) of the Petroleum Rules envisages that 'No Objection Certificate' should not be applied for during the pendency of a complaint objecting to the grant of NOC. It was submitted that the Corporation made an application on 14.03.2011 for grant of NOC but on that date, the petitioner's objection was pending before the



Corporation and also with the District Magistrate. Only because the Circle Officer had issued a certificate in favour of the private respondent, certifying the entry of his name in Register II of the record of rights, the private respondent does not get the right/title over the land to set up a dealership/retail outlet, especially in view of the subsisting objection filed by the petitioner. Moreover, in course of verification of the complaint filed by the petitioner before the District Magistrate, the very Circle Officer, vide his Letter No.505 dated 28.06.2011, while submitting a report, had categorically opined that the 'No Objection Certificate' should not be granted over the said piece of land on account of pending title suit between the parties. This report (Annexure 8) is specific and was in pursuance of the disposal of statutory complaint and since the same is of a later date, will have precedence over the earlier letter.

14. Learned counsel appearing on behalf of the petitioner further strongly asserted that the authorities have misconstrued the provisions of Rule 144(1) and 144(5) of the Petroleum Rules, in which the language used is mandatory in nature and in view of the prohibitory and negative command of the words used in the statute, the authorities could neither entertain the application nor have issued the same after a lapse of



nine months. In this regard, reference can be made to a decision of the Supreme Court in the case of ***Rangku Dutta alias Ranjan Kumar Dutta v. State of Assam***, reported in (2011) 6 SCC 358, in which at paragraph 18 it has been held as follows:

*“18. It is obvious that Section 20-A(1) is a mandatory requirement of law. First, it starts with an overriding clause and, thereafter, to emphasise its mandatory nature, it uses the expression “No” after the overriding clause. Whenever the intent of a statute is mandatory, it is clothed with a negative command. Reference in this connection can be made to G.P. Singh’s Principles of Statutory Interpretation, 12th Edn., at pp. 404-05, the learned author has stated:*

*“... As stated by CRAWFORD: ‘Prohibitive or negative words can rarely, if ever, be directory. And this is so even though the statute provides no penalty for disobedience.’ As observed by SUBBARAO, J.: ‘Negative words are clearly prohibitory and are ordinarily used as a legislative device to make a statute imperative.’ Section 80 and Section 87-B of the Code of Civil Procedure, 1908; Section 77 of the Railways Act, 1890; Section 15 of the Bombay Rent Act, 1947; Section 213 of the Succession Act, 1925; Section 5-A of the Prevention of Corruption Act, 1947; Section 7 of the Stamp Act, 1899; Section 108 of the Companies Act, 1956; Section 20(1) of the Prevention of Food Adulteration Act, 1954; Section 55 of the Wild Life (Protection) Act, 1972; the proviso to Section 33(2)(b)*



*of the Industrial Disputes Act, 1947 (as amended in 1956); Section 10-A of the Medical Council Act, 1956 (as amended in 1993), and similar other provisions have therefore, been construed as mandatory. A provision requiring 'not less than three months' notice' is also for the same reason mandatory."*

15. Referring to a judgment of the Supreme Court in the case of *Haridwar Singh v. Bagun Sumbrui*, reported in *(1973) 3 SCC 889*, it has been held as follows :

**"13.** Several tests have been propounded in decided cases for determining the question whether a provision in a statute, or a rule is mandatory or directory. No universal rule can be laid down on this matter. In each case one must look to the subject-matter and consider the importance of the provision disregarded and the relation of that provision to the general object intended to be secured. Prohibitive or negative words can rarely be directory and are indicative of the intent that the provision is to be mandatory (see Earl T. Crawford, *The Construction of Statutes*, pp. 523-4).

**14.** Where a prescription relates to performance of a public duty and to invalidate acts done in neglect of them would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty, such prescription is generally understood as mere instruction for the guidance



of those upon whom the duty is imposed (see *Dattatreya Moreshwar Pangarkar v. State of Bombay*<sup>4</sup>).

**15.** Where, however, a power or authority is conferred with a direction that certain regulation or formality shall be complied with, it seems neither unjust nor incorrect to exact a rigorous observance of it as essential to the acquisition of the right or authority (see Maxwell, *Interpretation of Statutes*, 6th Edn., pp. 649-650)."

16. Learned counsel for the petitioner further submitted that the authorities ought to have considered as to whether the allottee had any right to hold the property and in view of the serious cloud on the right/title of the private respondent and in view of the objection raised by the petitioner, the 'No Objection' ought not to have been granted in favour of the private respondent as the lessor of the private respondent Shri Dilip Rai had purchased the land from Indramuni Pandey. It was submitted that Indramuni Pandey had lost title suit, bearing Title Suit No.433 of 1995, and it was held that the instrument of gift which is being relied by Indramuni Pandey to claim title over the properties is void and as such, he could not have conferred any better title upon Dilip Rai from whom the private respondent had taken the land on lease.



17. *Per contra*, the applicant for the retail outlet dealership, respondent No.7, Prerna Sao, has opposed the writ application as being wholly misconceived and has submitted that the writ petitioner has only created a dispute with respect to the land involved in the retail outlet so as to prevent the retail outlet from being made operational.

18. It has been averred by the learned counsel for Respondent No.7 that prior to said dispute having been raised by the writ petitioner, the selection of respondent No.7 for the retail outlet in question was challenged by one Indu Devi, who is also one of the applicants to the bid, in CWJC No.5200 of 2010, which was disposed of on 26.03.2010. It was only after disposal of the previous writ application, that the writ petitioner has created the present dispute and filed the writ petition so as to put a spanner in the contract awarded to this respondent.

19. Further, a probate case, bearing Probate Case No.45 of 2010, was filed on 09.06.2010 for issuance of Letters of Administration on the basis of the Will dated 12.03.1999. Thus, the petitioner filed the probate case after more than ten years from the date of Will and also from the date of death of the person, who had executed the unregistered Will. The aforementioned probate case was filed taking into account the fact that the land in



question was not part of Title Suit No.433 of 1995. It was further submitted that had this piece of land been the subject-matter of the gift, there would not have been any need for a separate Will. The delay on the part of the petitioner in filing probate case also assumes importance in view of the fact that admittedly, the petitioner was not in possession of the lands, which is evident from his prayer in Title Suit No.27 of 2011. In this regard, counsel for the respondent has drawn the attention of this Court to the prayer made by the petitioner in the aforementioned suit where the plaintiff has demanded and made a prayer for grant of possession of the lands in question.

20. Learned counsel appearing on behalf of Respondent No.7 also submitted that it is also evident from the fact that when the objection before the BPCL failed, the petitioner again sought to create a fresh dispute by challenging the lease deed in Title Suit No.27 of 2011. Learned counsel for Respondent No.7 pointed out that the writ petitioner filed an objection on 15.02.2010 before the BPCL on the sole ground that the leased land belongs to him on the basis of a decree dated 23.05.1998 passed in Title Suit No.433 of 1995. This objection was filed after the disposal of the claim of a rival applicant, namely, Indu Devi, whose writ application was disposed of by this Court on



26.03.2010 (Annexure R-7/IV). Another Pleader's notice was also given by the petitioner to the BPCL again on the sole ground of title over the leased land on account of decree passed in Title Suit No.433 of 1995. However, the said plot of land does not find place in the decree of Title Suit No.433 of 1995.

21. It was submitted on behalf of respondent No.7 that the land in question had been leased in her favour by one Dilip Rai whose name stood recorded in Register II and the land possession certificate was issued by the Circle Officer, Bihiya and Sub-Divisional Officer, Jagdishpur, vide their letters dated 28.01.2010, revenue receipt dated 01.12.2010 and report dated 26.03.2011 (Annexure R-7/I series).

22. According to the respondent No.7, said lands had been purchased by Dilip Rai on 28.07.1984 and described as Mouza Chaughra, Thana No.144, Survey Khata No.05 (Chak Khata No.19), Survey Khesra No.10 (Chak Khesra No.37) having an area of 60 decimals. The land offered by Respondent No.7 was on the basis of the registered lease deed dated 11.08.2009. Learned counsel for respondent No.7 urged that though the petitioner had contended that by virtue of the judgment and decree passed in Title Suit No.433 of 1995, the vendor of Dilip Rai had no title to the land, he could not have sold the land to



Dilip Rai as the transferee cannot have a better title than the transferor, the petitioner himself could not prove his own right/title with respect to the lands under reference and till the date of hearing, his title still remains under a cloud.

23. So far as the right of transferor was concerned, the petitioner had urged that he had lost in title suit, bearing Title Suit No.433 of 1995. In this regard, respondent No.7 stated that the title suit which was decreed, the land, which is the subject-matter of the present dispute, was not part of the decree and related to other lands. Thus, the contention of the petitioner that respondent No.7 was not having a valid lease was wholly misconceived and his whole contention crumbles in view of the fact that the land in question was not part of the earlier decree.

24. So far as the *status quo* order passed in Title Suit No.27 of 2011 is concerned, learned counsel for Respondent No.7 submitted that the same was filed by the petitioner on 05.05.2011 in which a challenge has been placed to lease deed executed by said Dilip Rai, lessor of respondent No.7. In the said Title Suit on 13.10.2011, a *status quo* order was passed in Title Suit No. 27 of 2011 without hearing respondent No.7, defendant therein.

25. Learned counsel for respondent No.7



significantly pointed out that one of the prayers in the Title Suit No.27 of 2011, which was filed challenging the lease deed executed in favour of respondent No.7, a prayer had been made for granting possession of the land, which in itself was indicative of the fact that the petitioner was not holding the land on that date. A perusal of Annexure 6 filed by the petitioner itself is expository of the said contention of respondent No.7.

26. So far as the report of the Circle Officer dated 28.06.2011 is concerned, learned counsel for respondent No.7 submitted that on 13.06.2011, the letter of Intent was issued in his favour, whereas the Circle Officer submitted the report regarding dispute over the land in question, only thereafter, as the title suit was filed on 05.05.2011. The *status quo* order in the case was passed much later on 13.10.2011 and that too, the same was an *ex parte* order without hearing the defendant.

27. Learned counsel for respondent no.7 submitted that though the NOC was issued on 03.01.2012 by the District Magistrate in favour of respondent No.7, the same was never challenged by the writ petitioner, as evidently the writ petitioner seeks to challenge the letters dated 14.03.2011 and 11.04.2011, issued by the BPCL, though the same came to be a part of the record on the filing of the counter affidavit by the State.



28. Summing up his arguments, learned counsel for respondent No.7 submitted that over and above, the writ petitioner had no *locus* to contest the matter, as evidently he was not an applicant for retail outlet dealership. His whole contention is based on the premise that he had title over the land in dispute as per the judgment in Title Suit No.433 of 1995, which cannot also be sustained as the subject-matter of the dispute being Thana No.144, Tauzi No.846, Khata No.16, Plot No.23, upon which the retail outlet had been sanctioned, does not find place in the judgment in the aforementioned title suit or part of the plaint of title suit or a part of the decree dated 23.05.1998. It was only much later that the petitioner came to claim title on the basis of deed of gift and has challenged the lease deed executed in favour of the petitioner in Title Suit No.27 of 2011. It was also submitted that, on the other hand, there are many documents to show the right and possession of the lessor of respondent No.7, like the record of rights, land possession certificate in favour of Dilip Rai, mutation of the land in favour of the lessor and creation of *Jamabandi* etc.

29. As regards the possession of the lessor, the same has been admitted by the writ petitioner himself as in Title Suit No.27 of 2011, he has also demanded possession of the said



land.

30. So far as the issue with regard to non-compliance of Rule 144 of the Petroleum Rules, 2002 is concerned, learned counsel for Respondent No.7 submitted that the rule prescribes that the District Magistrate shall complete the enquiry and take action for issue or refusal of NOC as expeditiously as possible, but not later than three months from the date of receiving the application. It is pointed out that the aforesaid Rules provides the pre-requisites for issuance of NOC and for the same, the enquiry has to be conducted as expeditiously as possible. The time period prescribed is directory and not mandatory as the words 'as expeditiously as possible' have been used. Moreover, no consequence has been provided, if such enquiry or action of issue or refusal of NOC is not made within three months' time. Further, any delay in conducting enquiry or taking action for issue or refusal of NOC would prejudice the right of respondent No.7 and not the writ petitioner, who was not even an applicant for retail outlet in question. It is also pointed out that there is no such provision that the objection of the petitioner must be disposed of before issuance of NOC.

31. It was further pointed out that though there is provision for cancellation of NOC in Rule 150 stipulating therein



that the moment the right to use the site extinguishes, NOC is also liable to be cancelled. It is specifically and categorically stated that till date, the petitioner has failed to establish his right and title over the said land or to show that the right of respondent No.7 to use the site has extinguished. The only supportive document, which rests with the petitioner, is that he has filed one Probate case and one Title Suit in relation to land in question and both are pending for adjudication till date. Hence, there is no question of cancellation of NOC issued in favour of retail outlet of respondent No.7.

32. Further, the petitioner has remedy to approach the District Magistrate under Rules 150 and 151 of the Petroleum Rules for cancellation of NOC on the ground that the right to use the site by respondent No.7 has extinguished. And, if no action is taken, the petitioner has also remedy of appeal before higher authority under Rule 154, which provides that if the District Magistrate refuses to grant or cancel the NOC, appeal shall lie to the authority immediately superior to District Authority. Thus, the petitioner has not availed an efficacious remedy before the District Authority as provided under Petroleum Rules for cancellation of NOC and, therefore, on this score also, the present writ petition is premature and liable to be dismissed.



33. I have heard learned counsel appearing on behalf of the parties and given a deep thought to their rival submissions.

34. The first thing which is to be answered by this Court is whether the petitioner, who was not an applicant to the bid, could have assailed the action of the respondent-Corporation and also prevented them from making an application for grant of 'No Objection Certificate' from the district authorities. Thus, the *locus* of this petitioner is under serious challenge in this writ application.

35. The bone of contention between the parties is that a land, which was sought to be used for the purposes of the bid, could not have been utilized by Respondent No.7, who had turned out to be the successful bidder. The reason being that the bidder was preferring his right for allotment on the basis of a lease deed from a person whose title itself was under dispute and the petitioner having a serious contention and right over the land in question had raised the issue of determination of the right of the lease holder to apply with the said lease-hold for grant of licence for opening a retail outlet. The contention of the petitioner is that since the lessor of Respondent No.7 did not have any valid title over the land, he could not have transferred any better title on



the lease-holder and, therefore, his entire case is fit to be rejected. Thus, it was contended by the petitioner that the authorities of the Corporation had made an application to the District Collector for grant of 'No Objection Certificate' during the pendency of the objection filed by the petitioner with regard to the lands of the lease-holder. This, in itself, was illegal and arbitrary and smacked of arbitrary exercise of power. This contention, however, cannot be accepted for the following reasons :-

(a) It has been conclusively established by respondent No.7 that the petitioner himself had no valid title over the land in question and had raised his own claim only on the basis of a Will which remained to be probated. Until and unless such Will is probated, the petitioner has no *locus* to question the title over the land of the lease-holder of respondent No.7 and I fully endorse the submissions of Respondent No.7. The law stands settled in this matter as Section 213 of the Succession Act stipulates that any property claimed as belong to the legatee under the Will cannot be claimed by him unless he obtained a probate or letters of administration of the Will. This principle stands decided in the case of *Mrs. Hem Nolini Judah v. Mrs. Isolyne Sarojibashini Bose and others*, reported in *AIR 1962 S.C. 1471*, wherein at para 7 of the judgment, their Lordships have held as



follows :-

“7. Re. (i).....

*Section 213(1) which governs this matter is in these terms:*

*“(1) No right as executor or legatee can be established in any Court of Justice, unless a Court of competent jurisdiction in India has granted probate of the will under which the right is claimed, or has granted letters of administration with the will or with a copy of an authenticated copy of the will annexed.”*

*This Section clearly creates a bar to the establishment of any right under will by an executor or a legatee unless Probate or letters of administration of the will have been obtained. It is now well-settled that it is immaterial whether the right under the will is claimed as a plaintiff or as a defendant; in either case Section 213 will be a bar to any right being claimed by a person under a will whether as a plaintiff or as a defendant unless Probate or letters of administration of the will have been obtained: (see Ganshamdoss Narayandoss v. Gulab Bi Bai ILR 50 Mad 917(AIR 1927 Mad 1054)(FB)).....*

*The words of Section 213 are not restricted only to those cases where the claim is made by a person directly claiming as a legatee. The Section does not say that no person can claim as a legatee or as an executor unless he obtains Probate or letters of administration of the will under which he claims. What it says is that no right as an executor or legatee can be established in*



any Court of Justice, unless Probate or letters of administration have been obtained of the will under which the right is claimed, and therefore it is immaterial who wishes to establish the right as a legatee or an executor. Whosoever wishes to establish that right, whether it be a legatee or an executor himself or somebody else who might find it necessary in order to establish his right to establish the right of some legatee or executor from whom he might have derived title, he cannot do so unless the will under which the right as a legatee or executor is claimed has resulted in the grant of a Probate or letters of administration.” (emphasis added)

36. Thus, it is evident that since till date it appears that the probate case filed by the petitioner is still pending and the property has not vested in him as no probate or letters of administration has been obtained with regard to that Will, he is debarred from establishing his right over the land, which is the subject-matter of the present dispute. Thus, I hold that the petitioner has no *locus* to contest this matter.

37. Having already held that the petitioner has no *locus* to contest this matter, the second question which this Court finds fit necessary to be answered is that the Court need not go into the unnecessary efforts in dealing with the Rules as the entire



application seems to be a bundle of contradictory facts. While, on the one hand, the petitioner has asserted his title and stated that the land in question is part of the title suit, Respondent No.7 has also demonstrated that the land in question was not a part of Title Suit No.433 of 1995, which can well be demonstrated by the decree of the said judgment dated 23.05.1998. Thus, in view of the disputed questions of facts, which have arisen in this writ application, Article 226 of the Constitution of India, being an extraordinary jurisdiction, would not step into play in favour of the petitioner who has given a totally different version to establish his case. Even on facts, as stated by the petitioner himself, the *status quo* order passed in favour of the petitioner was granted on 13.10.2011 whereas the land possession certificate in favour of Respondent No.7 was issued well on 01.02.2010.

38. The contention of the petitioner that the *status quo* order passed in title suit was also not noticed, cannot be accepted as it was passed on 13.10.2011 whereas the application by the BPCL to the D.M. for grant of NOC in favour of Respondent No.7 had been filed on 14.03.2011. It is needful to mention that, at that stage, when the petitioner's objection was pending, the only reference that had been made is to Title Suit No.433 of 1995, but since the land in question was not part of the



said decree, the objection of the petitioner was not a valid objection and by deemed implication can be said to have been rejected. As such, in this matter also, the Court is reluctant to issue writ in favour of the present writ petitioner and his contentions with regard to the objections raised by him subsequently are hereby rejected.

39. It has also been pointed out by the learned counsel for the BPCL that the objection raised by the petitioner to the actions of the respondents was that the land belonged to him and, therefore, Respondent No.7 would not have taken on lease the said property from his lessor, was the sole contention from the date of filing of the objection by the petitioner before the D.M. as well as the controlling authority of the BPCL. The said objections have subsequently been developed and, therefore, should not be entertained.

40. So far as the misapplication of Section 144 of the Petroleum Rules, 2002 is concerned, the law, as it stands settled, cannot be re-agitated in the present writ application, more so by the petitioner as his Title is under a cloud and thus, his *locus* has also not been established. Therefore, if at all, at any point of time, he establishes his title during the subsistence of the lease, he has his remedy available under the said Rules and can be



availed by him, if at all found tenable under law. Thus, such an objection also stands rejected by this Court and, consequently, the right will accrue in favour of Respondent No.7, who has been granted the 'No Objection Certificate' and has in his favour a concluded contract.

41. This Court has also been informed that at present, the dealership has been finalized in favour of respondent No.7 and the contract between the parties stands concluded. Thus, for the said reason also, this Court is not inclined to entertain the present writ application and the prayer of the writ petitioner must accordingly be rejected.

42. Accordingly, in the given facts and circumstances of the case and for the aforesaid reasons, I am not inclined to allow the prayer of the writ petitioner, which appears to be wholly misconceived and against the settled principle of law.

43. The writ application is dismissed. No costs.

**(Anjana Mishra, J)**

PNM

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