

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 09.08.2018

CORAM

THE HON'BLE Mr. JUSTICE M.VENUGOPAL
and
THE HON'BLE Mrs. JUSTICE S.RAMATHILAGAM

W.P.No.15935 of 2013 and
M.P.No.1 of 2013

M.Selvaganapathi

Vs

.. Petitioner

1.The District Collector,
Cuddalore District, Cuddalore.

2.The District Revenue Officer,
Cuddalore District, Cuddalore.

3.The Revenue Divisional Officer,
Cuddalore District, Cuddalore.

4.The Superintendent of Police,
Cuddalore District, Cuddalore.

5.The Divisional Engineer,
Highways Department,
Cuddalore District, Cuddalore.

6.The District Fire Officer,
Department of Fire and Rescue,
Cuddalore District, Cuddalore.

7.The Senior Divisional Manager,
Indian Oil Corporation Limited,
B 35, Triveni 3rd Floor,
Shasthiri Road, Thillai Nagar,
Trichy - 620 018.

8.The Executive Engineer,
TANGEDCO (TNEB),
Cuddalore, Cuddalore District.

9.The President,
Thondamanatham Village Panchayat,
Kuriniyipettai Block,
Cuddalore District.

10.S.Kayal Vizhi, W/o.Thiru.Sankar,
IOC Petrol Bunk,
Main Road, Subramaniyapuram PO,
Thondamanatham Panchayat,
Cuddalore Taluk and District 607 301.

.. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF MANDAMUS directing the Respondents 1 to 9 to take proper legal action against the unauthorised construction of petrol bunk made by the 10th Respondent at the main road, Subramaniyapuram, Thondamanatham Village, Cuddalore Taluk and District, within the time frame to be fixed by this Court.

For Petitioner : Mr.G.Sankaran
For RR 1to 6 : Mr.J.Pothiraj
Special Government Pleader
For 7th Respondent : Mr.Mohammed Fiyaz Ali
For 8th Respondent : Mr.M.Varunkumar
For 9th Respondent : Mr.P.Sanjai Gandhi
For 10th Respondent : Mr.V.Balamurugan

O R D E R

[Order of the Court was made by M.VENUGOPAL, J.]

Heard the Learned Counsel for the Petitioner; Mr.J.Pothiraj, Learned Special Government Pleader for the Respondents 1 to 6; Mr.Mohammed Fiyaz Ali, Learned Counsel for the 7th Respondent; Mr.M.Varunkumar, Learned Counsel for the 8th Respondent; Mr.P.Sanjai Gandhi, Learned Counsel for the 9th Respondent and Mr.V.Balamurugane, Learned Counsel for the 10th Respondent.

2.Counter of Respondents 6 & 7 is filed. No counter is filed on behalf of the Respondents 8 to 10.

3.According to the Petitioner, he has filed the present Writ Petition under the caption 'Public Interest Litigation' praying for passing of an order by this Court in directing the Respondents 1 to 9 to take proper legal action against the unauthorised construction of petrol bunk put up by the 10th Respondent at the Main Road, Subramaniyapuram, Thondamanatham

Village, Cuddalore Taluk and District, within the time frame to be determined by this Court.

4. In the Writ Affidavit, the Petitioner has averred that in terms of the ingredients of Tamil Nadu Panchayat Building Rules, 1997, there cannot be any construction of building without obtaining plan approval and building permission from the Executive Authority of the Village Panchayat. Further, in the event of any unauthorised construction carried out within the Village Panchayat, Rule 34 of the Tamil Nadu Panchayat Building Rules enjoins the Executive Authority of the Panchayat to take appropriate legal action against such unauthorised construction, by issuing the Provisional Order for demolition or alteration of unauthorised construction and to issue an official confirmation order under Sub Clause (iii), if the owner fails to comply with the show cause notice.

5. At this stage, the Learned Counsel for the Petitioner submits that the 10th Respondent is granted with retail sale of petrol dealership by the 7th Respondent/Indian Oil Corporation, based on which, the 10th Respondent has proceeded to construct petrol bunk on the western side of Cuddalore to Virudhachalam Main Road, at Subramaniyapuram within the limits of Thondamanatham Village Panchayat, amidst the cluster of residential huts. As a matter of fact, the residential houses are actually thatched sheds, located within 60 feet from the petrol bunk. Moreover, it is thickly populated area wherein the villagers, who are working as daily wage earners, are residing in the huts. Also, there is a Church and Kali Temple located nearby.

6. The prime plea taken on behalf of the Petitioner is that the 10th Respondent has proceeded to construct a petrol bunk by deepening the earth for tank purpose by constructing building on the surface without obtaining any approval or permission from the Executive Authority of the Village Panchayat/9th Respondent. In reality, the construction of petrol bunk is carried out only after availing building permission and approval from the Executive Authority in conformity with the Approved Plan without any deviation. However, in the present case, the construction has been made in utter violation of the provisions of the Act and Building Rules without obtaining any permission or Plan approval from the Executive Authority of the Village Panchayat.

7. It is the stand of the Petitioner that it is incumbent on the authorities concerned to take appropriate legal action against the unauthorised petrol bunk put up by the 10th Respondent. Since the 9th Respondent/President, Thondamanatham Village Panchayat, Kurinjipettai Block, Cuddalore District has failed to take any further action against the 10th Respondent for the unauthorised construction of the petrol bunk, the Petitioner is perforced to project the present Writ Petition.

8. In response, the Learned Special Government Pleader for the 6th Respondent contends that the 10th Respondent had applied for an installation of petrol bunk through the Indian Oil Corporation for the grant of license for storing and selling of Petroleum Products in the name and style of Indian Oil Corporation Limited on the direction of the District Collector, Cuddalore District. The site was inspected physically by the 6th Respondent on 02.07.2012 itself. When the site was inspected on the said date, there was no building, public place, public road or any adjoining of the property within 15 meters from the site proposed to set up petroleum products by the 10th Respondent. Further, it is clearly stated that for storing Petroleum Class - A 10 KL Petroleum Class - B 20 KL in underground storage tanks, there should be minimum of 7 meters distance vacant from Road. Since there was sufficient setback found in all directions, according to the 6th Respondent that the 10th Respondent was issued with the license in Reference No.4820/B2/2012 dated 02.07.2012 as per the ingredients of Section 13 of the Tamil Nadu Fire Service Rules, 1990.

9. In short, the crystalline stand of the 6th Respondent is that all formalities, rules and regulations were complied with and thereafter only the 10th Respondent was issued with the license. As such, it is represented that the present Writ Petition filed by the Petitioner is a vexatious and frivolous one.

10. Per contra, it is the submission of the Learned Counsel for the 7th Respondent/Indian Oil Corporation that the 10th Respondent is an Authorised Dealer of Indian Oil Corporation, operating a retail outlet (Petrol Bunk) at Main Road, Subramaniapuram, Thondamanathan Village, Cuddalore Taluk and District. The said retail outlet has been established only after obtaining necessary license as provided under the Petroleum Act, 1934 and the Petroleum Rules, 2002.

11. The Learned Counsel for the 7th Respondent contends that the license is issued by the Chief Controller of Explosives

under Form 14 as provided under 1st Schedule of the Petroleum Rules, 2002 and that the license granted under Form 14 covers all the construction put up in the premises which are approved by the Chief Controller of explosives containing an 'Approved Plan'. Also that, a No Objection Certificate was obtained from the 1st Respondent/ District Collector, Cuddalore District, as per Rule 144 of the Petroleum Rules, 2002.

12.It transpires that in the instant case, the 1st Respondent/ District Collector, Cuddalore District had issued a No Objection Certificate to the 7th Respondent/Indian Oil Corporation, Trichy dated 30.08.2012. Indeed, the license issued under Form 14 dated 07.04.2016 by the Chief Controller of Explosives Office, is valid till 31.12.2018. The said license has approved the construction of underground gas tight tanks of capacity of 10 kiloliters and 20 kiloliters, a sales room, change room, electrical room, DP switch, Toilet etc. as per attached plan. In short, the retail outlet has been established with prior statutory approvals and the same is an authorised one.

13.The Learned Counsel for the 9th Respondent brings it to the notice of this Court that NOC dated 30.08.2012 was issued by the 1st Respondent/District Collector, Cuddalore District imposing as many as 16 conditions and in the NOC itself, it is specifically made mention of that 'If any violation noticed on the conditions, the NOC is liable to be cancelled and the deposit amount should be seized'.

14.The Learned Counsel for the 10th Respondent adverts to Rule 2 definition (x) 'District Authority' meaning - "(a) In towns having a Commissioner of Police, the Commissioner or a Deputy Commissioner of Police; (b) nothing other place, the District Magistrate."

15.On a careful consideration of respective contentions and considering the fact that the 1st Respondent/District Collector, Cuddalore District had issued a NOC to the 7th Respondent on 30.08.2012 specifying certain conditions and also this Court keeping in mind that the license obtained under Form 14 dated 07.04.2016 is valid till 31.12.2018 and also that the retail outlet has been established with prior statutory approvals and the same is authorised one, this Court comes to an irresistible and inescapable conclusion that the present Writ Petition styled under the caption 'Public Interest Litigation' is not a bona fide one. Per contra, the same has been filed in a vexatious and frivolous manner. Viewed in that perspective, the Writ Petition is devoid of merits.

16.In fine, the Writ Petition is dismissed.

Sd/-

Assistant Registrar(Audit)

//True Copy//

Sub Assistant Registrar

Sgl

To

- 1.The District Collector,
Cuddalore District, Cuddalore.
- 2.The District Revenue Officer,
Cuddalore District, Cuddalore.
- 3.The Revenue Divisional Officer,
Cuddalore District, Cuddalore.
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Highways Department,
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8.The Executive Engineer,
TANGEDCO (TNEB),
Cuddalore, Cuddalore District.

+1cc to Mr.M.Varunkumar, Advocate sr.no.54783
+1cc to Mr.Mohammed Fiyaz Ali, Advocate sr.no.54700
+1cc to Mr.V.Balamurugan, Advocate sr.no.54625
+1cc to Government Pleader sr.no.55016

W.P.No.15935 of 2013

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