

HON'BLE SRI JUSTICE S.V.BHATT

W.P.No.6192 OF 2015

ORDER:

Heard Mr.O.Manohar Reddy for petitioner and the learned Assistant Government Pleader (Revenue) for respondents.

The petitioner challenges Lr.No.C2/4542/2012 dated 07.11.2014 of 2nd respondent as illegal and arbitrary. The petitioner further prays for a consequential direction to 2nd respondent to issue No Objection Certificate (NOC) for establishment of a retail outlet in Sy.No.759 of Kodad Village and Mandal, Nalgonda District.

The circumstances leading to filing of the writ petition are not in dispute. Hence, they are briefly referred to the extent required for disposing of the writ petition.

The Indian Oil Corporation Limited (IOCL)/5th respondent issued letter of intent dated 20.07.2011 in favour of petitioner for establishing a retail outlet for selling the products of 5th respondent. One of the essential conditions for establishing petroleum outlet is obtaining NOC under Rule 144 of the Petroleum Rules from the District Collector/2nd respondent. On the application made by the petitioner, notice of enquiry in letter No.C2/9645/2011 dated 05.09.2011 was issued and also displayed at all prominent places. The notice refers to the request of petitioner for grant of NOC for establishing a retail outlet in Sy.No.759 of Kodad Village and Mandal. The 6th respondent and one Paturi Rajasekhar filed objections. The Tahsildar/4th respondent after taking note of the objections, forwarded report dated 19.12.2011 to the Revenue

Divisional Officer/3rd respondent for onward transmission to the 2nd respondent. The report makes favourable recommendation for granting NOC. The 3rd respondent forwarded the report of Tahsildar to 2nd respondent and the same resulted in issuing NOC vide proceedings No.C2/9645/2011 dated 27.02.2012. The 6th respondent filed W.P.No.4017 of 2012 challenging the grant of NOC dated 27.02.2012. It is matter of record that the 6th respondent is a dealer of Hindustan Petroleum Corporation Limited. The petitioner, it is averred, could not establish the outlet in view of pendency of writ petition filed challenging the grant of very NOC and that the Corporation/5th respondent was insisting upon establishment of outlet in Sy.No.759 without a shadow of doubt. The writ petition filed by 6th respondent was dismissed, and later on the 5th respondent for the reasons best known to it applied for what is stated as revalidation of NOC issued vide proceedings dated 27.02.2012. The 2nd respondent once again followed the same procedure and rejected the request of 5th respondent for revalidation of NOC through the impugned letter dated 07.11.2014. The petitioner points out a few errors apparent on the face of the record and objects to 2nd respondent relying on extraneous circumstances and refusing the request for revalidation. The order rejecting revalidation is brief. Hence, this Court for understanding the grounds raised by the petitioner excerpts the letter impugned:

“In the reference cited, Manager – E & P Vijayawada, **Hindustan Petroleum Corporation Ltd** has requested for grant of Revalidation No Objection Certificate for proposed Retail Outlet at Sy.No.759 of Kodad village & Mandal, Nalgonda of Nalgonda District. In this regard it is hereby informed the Revenue Divisional

Officer, Suryapet has got enquired and reported that a notice have been issued to the Writ Petitioner (W.P.No.4017/2012) Sri Shaik Dastagiri S/o John Mahamed while giving a opportunity to file his objection in the matter and he filed his objection and stated that there are (2) cases pending on the proposed Sy.No.759 i.e., 1.A.S.No.2548/2004 pending before the Hon'ble High Court, 2) O.S.No.42/2009 pending in Hon'ble Civil Judge Court, Kodad.

Further submitted that as seen from the records, the case A.S.No.2548/2004 is related to family dispute for partition of properties including the proposed Sy.No.759 and the case still pending before the Hon'ble High Court. Another one is boundary dispute.

Therefore, unless until the above cases are decided, his application for revalidation of NOC to proposed retail outlet is not considerable, hence may be rejected.

Hence, this is submitted for kind favour of information".

(Emphasis added)

The petitioner without prejudice to the legal grounds available against the letter impugned in the writ petition, referring to the Rule submits that the procedure for revalidation is completely unknown and on such a request for revalidation, the 2nd respondent cannot and could not have nullified the NOC granted through proceedings dated 27.02.2012.

Mr.Manohar Reddy further contends that the site proposed by petitioner is suitable for establishment of an outlet. The respondents accepted the suitability of proposed site and granted NOC. The petitioner could not establish the outlet due to pendency of litigation. After the litigation was over and when the petitioner applied to 5th respondent for issuing further proceedings, the 5th respondent moved the 2nd respondent for revalidation of NOC.

On the request for revalidation made under Rule 144 of the Petroleum Rules, the communication impugned in the writ petition could not have been passed. In other words, revalidation is not required, for the NOC was not granted like a building permission by stipulating the period within which the construction is required to be completed. According to petitioner, the 2nd respondent referred to extraneous circumstances and the pendency of either suit or appeal between co-sharers of proposed site is not a ground for refusing revalidation of NOC. According to Mr. Manohar Reddy, the objection, if any, for establishment of petroleum outlet by petitioner can be raised by the co-sharers who are parties either to the suit or pending A.S.No.2548 of 2004. Excepting the co-owner, no other person can raise the objection of change of physical features for granting NOC. Therefore, he prays for setting aside the letter impugned in the writ petition and further directing the 2nd respondent to revalidate as a request is already made by 5th respondent.

The 2nd respondent filed counter affidavit and the gist of stand taken by 2nd respondent is stated thus:

“That on receipt of letter from IOCL for NOC, the District Collector/2nd respondent vide letter No.C2/9645/2011 dated 05.09.2011 referred the matter to the departments concerned for enquiry and objections in respect of title and possession of the site, use of land, antecedents of the petitioner, pollution and traffic problems, precautionary measures for public safety and opinion of the public under Rule 144 of the Petroleum Act, 1934; that the departments concerned submitted reports considering no

objection for grant of NOC for installation of proposed petrol/diesel retail outlet in Sy.No.759 at Kodad (V & M) of Nalgonda District and recommended for issuing NOC to IOCL; that the Joint Collector, Nalgonda vide proceedings No.C2/9645/2011 dated 27.02.2012, issued NOC for proposed petrol/diesel retail outlet; that the IOCL on 24.06.2014 again requested the Joint Collector to revalidate the NOC issued earlier; that the 2nd respondent vide letter No.C2/4548/2012 dated 18.07.2014 referred the request of IOCL to the RDO/3rd respondent, Suryapet for enquiry and report; that the 3rd respondent vide Lr.No.E/4505/2011 dated 26.09.2014 reported that a notice was issued to Sri Shaik Dastagiri, s/o John Mohmmmed/6th respondent (writ petitioner in W.P.No.4017/2012) to file objections in the matter; that Shaik Dastagiri filed objections stating that A.S.No.2548 of 2014 relating to family partition of properties, which includes Sy.No.759, is pending before this Court and O.S.No.42 of 2009 relating boundary dispute is pending before the Civil Judge's Court, Kodad; and that the 3rd respondent requested the 2nd respondent that revalidation of NOC may not be considered unless and until the cases are decided by the Courts.

The learned Assistant Government Pleader contends that the pendency of A.S.No.2548 of 2004 is not disputed and that one of the items for partition in A.S.No.2548 of 2004 is Sy.No.759. According to 2nd respondent, it is contended that the 2nd respondent declined to grant revalidation of the NOC already granted, as litigation is pending between the co-owners of Sy.No.759.

I have perused the record and taken note of the rival submissions.

Now, the point for consideration firstly is - whether the petitioner is required to obtain revalidation of NOC already granted and secondly whether the letter impugned in the writ petition refusing to revalidate the NOC is tenable?

The circumstances are already adverted to and there is no dispute between the parties on the crucial dates and the reports referred to above. For brevity, this Court refers to the report of Tahsildar dated 19.12.2011 wherein the Tahsildar has taken note of pendency of civil litigation of boundary dispute and also states that, as matter of fact, the total area in Sy.No.759 is already converted into house plots and there is no objection for granting NOC for establishing an outlet by the petitioner. It is one thing, if on the challenge made by the 6th respondent, the NOC granted on 27.02.2012 was set aside and the matter was again remitted to 2nd respondent for consideration afresh. In the case on hand, it is asserted that the writ filed by 6th respondent was, in fact, dismissed. The 5th respondent to ensure that the NOC was granted in favour of petitioner made a request for revalidation of NOC already granted. On such a request made by 5th respondent, as is evident and admitted, without hearing the petitioner or finding out the circumstances under which the pendency of A.S.No.2548 of 2004 comes in the way of considering revalidation or not, the communication impugned in the writ petition is issued. The 2nd respondent firstly has not stipulated the time limit for NOC

dated 27.02.2012. The NOC already granted is not interfered with or set aside by an authority or Court. Therefore, the NOC already issued stares at 2nd respondent while considering the request of 5th respondent for revalidation. The revalidation of NOC itself is not traceable to procedure under Rule 144. Apart from the above, the 2nd respondent takes note of pendency of A.S.No.2548 of 2004 for communicating the letter impugned in the writ petition. In the considered view of this Court, the pendency of A.S.No.2548 of 2004 is not a ground available to third party for refusing to grant NOC or revalidate the NOC already granted, because the parties to the suit if have grievance against change of physical features of suit schedule, they ought to have objected to such change of physical features in Sy.No.759 and expressed apprehensions on the share the successful party in the appeal may get. Persons who have nothing to do with the property or shares in such property even if raise such an objection, the objection ought not to have entertained by 2nd respondent. The points are, accordingly, answered in favour of petitioner.

For the above reasons, this Court is of the view that the communication impugned in the writ petition is unsustainable and hence set aside.

The petitioner submits that the letter of intent granted to the petitioner is still subsisting and the 5th respondent since has made a request for revalidation of NOC dated 27.02.2012, the 2nd respondent may be directed to re-examine the issue from the

record and pass orders within six weeks from the date of receipt of a copy of the order. The submission is accepted.

The writ petition is allowed with the above directions. There shall be no order as to costs.

Pending miscellaneous petitions, if any, stand closed.

26th July, 2018

Lrkm

S.V.BHATT, J

