

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.04.2021

CORAM

THE HONOURABLE **Mrs. JUSTICE PUSHPA SATHYANARAYANA**

W.P.No.19950 of 2020 and
W.M.P. No.24632 of 2020

Mrs.R.Glory Lilly Christy

.. Petitioner

Vs.

1.The District Collector
Ponneri, Tiruvallur District

2.The District Revenue Officer
Ponneri Taluk, Ponneri

3.The Tahsildar
Taluk Office, Ponneri

.. Respondents

PRAYER: Writ Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Mandamus direct the 1st respondent to issue No Objection Certificate for establishment of retail outlet of the Indian Oil Corporation Limited at Survey No.112/7, Chekkencherry Village, Ponneri Taluk, Thiruvallur District expeditiously in favour of the petitioner in accordance with the letter of allotment of Indian Oil Corporation Limited dated 12.2.2016 followed by a detailed enquiry and representation dated 02.03.2020 participated by the petitioner before the 3rd respondent.

For Petitioner : Mr.S.Babu

For Respondents : Mr.B.Anand, Govt. Advocate

ORDER

This petition is filed for a writ of mandamus to direct the 1st respondent to issue a No Objection Certificate for establishment of retail outlet of the Indian Oil Corporation Limited at Survey No.112/7, Chekkencherry Village, Ponneri Taluk, Thiruvallur District expeditiously in favour of the petitioner in accordance with the letter of allotment of Indian Oil Corporation Limited dated 12.2.2016 followed by a detailed enquiry and representation dated 02.03.2020 participated by the petitioner before the 3rd respondent.

2. The case of the petitioner is that she was granted permission to run a petrol retail outlet by Indian Oil Corporation Limited on 31.12.2015. On 12.02.2016, IOCL sought for a No Objection Certificate from the District Collector, Tiruvallur for commencement of retail outlet in petitioner's property at Survey No.112/7, Chekkencherry Village, Ponneri Taluk, Tiruvallur District. According to the petitioner, the 1st respondent - District Collector is the competent authority to issue a No Objection Certificate. The third respondent - Tahsildar and the 2nd respondent District Revenue Officer have conducted enquiry, inspected the premises and scrutinized the records for obtaining NOC from fire service, police and the revenue inspector. They have submitted a detailed report after enquiry of the petitioner.

3. It is the further contention of the petitioner that she clarified to the respondents that grama natham property is a private property over which patta can be granted to private persons. She further submitted that patta stands in her name with reference to the proposed land over which the Indian Oil Corporation Petrol pump is proposed to be commenced. As the petitioner has patta in her name, there is no impediment for the respondents to grant No Objection Certificate for commencement of a petrol retail outlet.

4. It is the further contention of the petitioner that utilisation of grama natham property for commercial purposes has also been recognised by this High Court in several decisions. Hence she has filed the instant writ petition for a No Objection Certificate.

5. Per contra, it is the contention of the respondents that as per the village records, the land in S. No.112/7, Checkancherry Village, Ponneri Taluk, Tiruvallur District is in the name of the petitioner. The Respondents have quoted a judgment of the Hon'ble First Bench of this court in W.P. No.29264 of 2016 dated 26.09.2016, as follows:

".... The pathetic situation prevailing in this part of the globe, as we observed is that, ignoring the fact that Gramanatham land is a common village land, the greedy persons like the writ petitioner in this case are

indulging in activities, which are purely commercial in nature. When the appellants themselves have accepted in all fairness that patta has been issued erroneously and that they have initiated necessary proceedings to cancel the same, we are unable to find fault with the impugned action initiated by the appellants herein. This rampant practice of misusing the Gramanatham lands in this part of the globe has to be curtailed immediately, so as to protect the common village lands for the welfare of the public in general. Therefore, the Government of Tamil Nadu and its revenue officials are directed to strictly protect the Gramanatham lands from being misused, particularly for commercial purpose.

2. The aforesaid aspect will be kept in mind by the respondent/authorities while examining the utilisation of the Gramanatham lands...."

6. In the rejoinder, the petitioner has reiterated her stand and stated that once patta has been issued in favour of an individual in the light of the petition, the gramanatham is a site/land cannot be termed as government property. It is the further contention of the petitioner that the decision of the Hon'ble First Bench of this court dated 26.09.2016 following the decision in 2012 (4) MLJ 646, is not applicable to the facts of the case. The decision relied on by the respondents was passed in a case where the classification of the property was illegal and

patta has been obtained erroneously. But, the case of the petitioner is different from the same, as the property in which the proposed retail outlet is going to be set up, is a private property, classified as Grama natham and hence the respondents have no hesitation to issue an NOC.

7. Heard both sides and perused the materials available on record.

8. It is an admitted fact that Indian Oil Corporation Ltd has granted permission to the petitioner to run a petrol pump retail outlet on 31.12.2015 and that for setting up the same, they have sought for a No Objection Certificate from the District Collector, Tiruvallur for commencement of retail outlet in petitioner's property at Survey No.112/7, Chekkencherry Village, Ponneri Taluk, Tiruvallur District.

9. From the materials available in the form of typed set of papers, it is seen that the third respondent - Tahsildar and the 2nd respondent District Revenue Officer have conducted an enquiry, inspected the premises and scrutinized the records for obtaining NOC from fire service, police and the revenue inspector and they have submitted a detailed report, after enquiry with the petitioner and after hearing the legal incidents, and have recommended for a NOC and it is the first respondent/District Collector, Ponneri District, has to issue the same.

10. In ***State of Tamil Nadu vs. Madasami*** reported in **2012 (2) CTC 315**, a learned single Judge of this court has held that once a property has been classified as gramathanam house sites with or without buildings cannot be claimed by Government as a property belonging to Government. Person occupying a grama natham land when puts up a construction, vacant site becomes house site of that person and character of property changes and person, who has been vested with the right of said site or property entitled to transfer the same to anybody, the Government has no right to interfere with his accrued right, who occupied a grama natham land.

11. In the case on hand, the property over which, the proposed retail outlet is going to be set up, is a private property classified as Gramathanam and patta has been issued in favour of the petitioner to the said land, the first respondent has no impediment for issuing a No Objection Certificate.

12. In similar matters, it has already been held by this court that IRC Guidelines are only recommendatory and not mandatory. A Division Bench of this court, in a recent judgment in W.A. (MD) No.1054 of 2020 dated 26.02.2021, has held as follows:

" 7. Admittedly, in the present case, no objection

was sought not for a State Highway. Thus, in the absence of any contrary material to hold that the findings are not factually correct, we are not inclined to allow this Writ Appeal. Accordingly, the Writ Appeal stands dismissed.

8. We also take note of the subsequent communication of the Joint Secretary, Government of India, Ministry of Petroleum and Natural Gas, New Delhi to the Principal Secretary, Highways and Minor Ports Department, stating that IRC norms are meant to be used only on Highways alone and that too, based upon traffic, which is also not the case before us. No costs. Consequently, connected miscellaneous petitions are closed."

13. Time and again, the Hon'ble Apex Court and this court, in a catena of cases, have held that IRC guidelines are only recommendatory. Hence, the respondent cannot blindly reject NOC, without considering the case on merits.

14. In view of the above, the first respondent is directed to issue a No Objection Certificate to the petitioner for establishment of a retail outlet of Indian Oil Corporation Ltd. in Survey No.112/7, Chekkencherry Village, Ponneri Taluk, Thiruvallur District, within a period of four weeks from the date of receipt of a copy of this order.

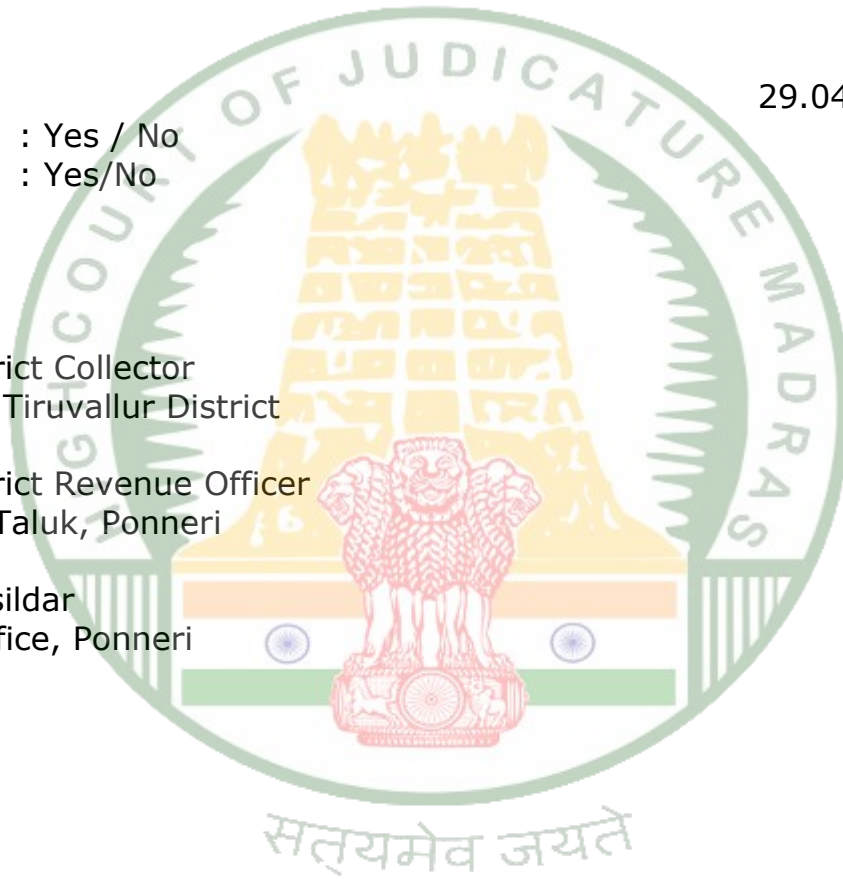
15. With the above direction, the writ petition is disposed of. However, there is no order as to costs. Consequently, the connected writ miscellaneous petition is closed.

29.04.2021

Index : Yes / No
Internet : Yes/No
Asr

To

- 1.The District Collector
Ponneri, Tiruvallur District
- 2.The District Revenue Officer
Ponneri Taluk, Ponneri
- 3.The Tahsildar
Taluk Office, Ponneri



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PUSHPA SATHYANARAYANA, J.

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