



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.03.2022

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI, CHIEF JUSTICE
AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.NO.11906 OF 2020

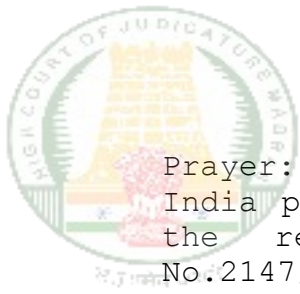
V.Gopinath

.. Petitioner

Vs

1. The Principal Secretary,
Highways and Minor Ports Department,
Fort St. George, Secretariat,
Chennai - 600 009.
2. The District Revenue Officer,
Tiruppur District,
Collectorate Building,
Palladam Road, Tiruppur - 641 604.
3. The Joint Chief Controller of Explosives,
A and D Wing, Block 1 - 8,
Shastri Bhavan,
No.26, Haddows Road, Nungambakkam,
Chennai - 600 006.
4. The Divisional Engineer,
(Construction and Maintenance)
Highways Department,
Collectorate Building,
Tiruppur - 641 604.
5. The Executive Engineer,
Public Works Department (WRO),
Avinashi Road, Behind Camp Office,
Tiruppur - 641 601.
6. M/s.Shell India Markets Private Limited,
Plot No.7, Bangalore Hardware Park,
Shell Technology Centre,
Devanahalli Industrial Park,
Mahadeva Kodigehalli, Bengaluru - 562 149.

.. Respondents



Prayer: Petition filed under Article 226 of the Constitution of India praying for a writ of certiorarified mandamus calling for the records of the No objection certificate No.R.Dis No.2147/2019/c2 dated 25.02.2020 issued by the second respondent in favour of the sixth respondent and quash the same and consequently to restrain the sixth respondent from erection, commissioning and operation of the New Road-side Petroleum Retail Outlet on State Highways No.196 (SH-196) at SF.No.283-A, Thottipalayam Village, Tirupur North Taluk, Tirupur District-641 668 in gross violation to the IRC Circular No.12-2009 G.O.(Ms) 79 dated 04.05.2017 and the Tamilnadu Combined Development and Building Rules, 2019. (Prayer amended vide order dated 06.07.2021 made in W.M.P.No.1529 of 2021 in W.P.No.11906 of 2020)

For the Petitioner : Mr.B.Harikrishnan

For the Respondents : Mr.P.Muthukumar
State Government Pleader
asstd. by Mrs.E.Renganayaki,
AGP for respondent Nos.1, 2,
4 & 5

: Mr.B.Sudhir Kumar
SPC
for respondent No.3

: Mr.P.S.Raman
Senior Counsel
with
M/s.Jose John; M.Narendran
E.Joshua and Willy Francis
for M/s.King & Partridge
for respondent No.6

ORDER

(Order of the Court was made by the Hon'ble Chief Justice)

By this writ petition, a challenge is made to the no objection certificate dated 25.02.2020 issued by the second respondent in favour of the sixth respondent thereby permitting the sixth respondent to open a new road-side petroleum retail outlet on State Highways No.196 (SH-196) at S.F.No.283-A, Thottipalayam Village, Tirupur North Taluk, Tirupur District. It is alleged that the said permission is in violation of IRC Circular No.12-2009, G.O.(Ms) No.79, dated 04.05.2017 and the Tamil Nadu Combined Development and Building Rules, 2019.



2. On 01.09.2020, this Court, after taking note of the arguments that the Topo plan occurring at Page No.83 of the typed set of papers shows that the proposed site is surrounded by open land, whereas the Google map filed at Page No.82 of the typed set of papers shows that the site is surrounded by a mobile tower, Tamil Nadu Electricity Board transformer, a temple and a burial ground etc., was of the view that by suppression of material facts approval was sought by the sixth respondent and therefore, an interim order was passed restraining the sixth respondent from continuing the site works to open and operate a new road-side Petroleum retail outlet on SH-196 at SF No.283A, Thottipalayam Village, Tirupur District.

3. Learned counsel for the petitioner submitted that the approval of the site for opening a retail outlet is not permissible, in view of G.O.(Ms) No.79, Housing and Urban Development [UD4(d)] Department, dated 04.05.2017, because the site is near to the burial ground as well as a river and, therefore, the grant of permission would offend the aforesaid Government Order dated 04.05.2017. Thus, the writ petition was originally filed seeking a restraint order on the respondents 1 to 5 from permitting the sixth respondent to open and operate the retail outlet. Since no objection certificate was issued on 25.02.2020 by the second respondent to the sixth respondent, the prayer of the writ petition was amended to challenge the aforesaid no objection certificate dated 25.02.2020 and consequently to restrain the sixth respondent from erecting, commissioning and operating the retail outlet in question.

4. He further submitted that apart from the aforesaid even the land use could not have been changed for establishing the retail outlet, if it is not more than 90 meters away from the boundary of the burial ground. In the instant case, the burial ground is at the distance of less than 90 meters and, therefore, the petitioner has rightly taken the cause for challenge to the action of the respondent authorities for grant of the no objection certificate to the sixth respondent for opening of the retail outlet.

5. It is further submitted that permission was sought without disclosure of true facts i.e. description of the burial ground or the river close to the area, thus, the petitioner has rightly raised the issue regarding suppression of relevant facts by the sixth respondent and the Court considering the Google image, appropriately passed the interim order and the same needs to be confirmed. To buttress the said argument regarding location of the outlet, he placed reliance on the Government Order dated 04.05.2017. He, therefore, pleaded that the writ petition may be allowed for the reasons aforesaid.



6. The writ petition has been contested by learned counsel for the respondents.

7. Learned Senior Counsel for the sixth respondent has raised an argument in reference to the provisions which were repealed by the Tamil Nadu Combined Development and Building Rules, 2019 (for short, "the Rules of 2019") and submitted that the Rules of 2019 are in operation. As per the Rules in vogue, the distance from the burial ground is reduced to 30 meters, while it was 90 meters earlier. The effort of the petitioner was to mislead the Court and, therefore, at the time of filing the writ petition, the Rules of 2019 were not produced and it is to impress upon the Court that the burial ground is located at the distance of 60 meters, whereas the minimum distance to be maintained for construction of the building is 90 meters though it was only 30 meters at that time.

8. The further allegation of the petitioner that certain facts were suppressed by the sixth respondent while making application to seek no objection certificate was refuted by learned Senior Counsel for the sixth respondent. The sixth respondent had given all the required details for seeking permission which were required and also disclosed the fact that the burial ground is located beyond the distance of 30 meters of the site.

9. Insofar as the location of the river is concerned, learned Senior Counsel submitted that the sixth respondent has disclosed the same in the application. In view of the above and since no objection certificate was issued as per the provisions of law and also the Government Order dated 04.05.2017, the writ petition deserves to be rejected with heavy costs for misleading the Court.

10. We have considered the rival submissions and also scanned the matter carefully.

11. The facts relevant for consideration are as follows: The writ petition was filed by the petitioner challenging the no objection certificate issued to the sixth respondent and to restrain them from opening the retail outlet at the site referred in the writ petition. The writ petition was filed at the stage when the sixth respondent started the construction. The challenge to the permission granted by the second respondent was precisely in reference to the Government Order dated 04.05.2017 and during the course of argument, learned counsel for the petitioner has referred to it and paragraph 6 of the Government Order was referred in specific terms to show that there was violation in issuing the no objection certificate.



For ready reference, paragraph 6 of the Government Order dated 04.05.2017 is quoted hereunder:

"6. Guidelines to be followed by the Collector for giving his prior concurrence.- (1) The Collector shall satisfy himself that the land in which development is proposed does not fall in any of the following categories, namely:-

(a) Public water body like channel, canal, tank, lake, river, etc.

(b) Government Poromboke land, temple lands, wakf properties and other lands belonging to religious/charitable institutions.

(c) Vacant lands with any encroachment on a public road or street or on any other land over which the applicant does not possess ownership right.

(d) Lands below the alignment of high tension and extra high voltage electric line including tower lines.

(e) Land which is fit for continuing the cultivation.

(2) The Collector shall inspect the site with Deputy Director of Town and Country Planning and other officials of the relevant departments as he deems necessary and satisfy himself to the following, namely:-

(i) The status of land as in revenue records;

(ii) The existing development around the proposed site is compatible with the proposed development;

(iii) Details of assured irrigation source/ayacut;

(iv) Present status of cultivation and how long the cultivation was not carried out and the reasons therefor;

(v) Impact on the overall agricultural productivity and the necessity to continue agricultural production;



(vi) Problems of sanitation and waste water disposal and the possibility to realign the canals/ channels/ drains.

WEB COPY

(3) The Collector shall ensure that due to the proposed development, the irrigation canals and distribution channels or the natural storm water drains or channels are not obstructed or affected and shall not lead to depletion of ground water level of the area or inundation of nearby areas."

12. Learned counsel for the petitioner has submitted that the Collector before granting permission was required to satisfy himself that the land in which development is proposed does not fall in any of the following categories, namely, public waterbody like channel, canal, tank, lake, river etc. In the instant case, the site on which the retail outlet is to be established by the sixth respondent is close to the river and, therefore, there would be violation of paragraph 6(1)(a) of the Government Order dated 04.05.2017.

13. He further submitted that the Collector has failed to take cognizance of the existence of the burial ground also while granting permission. The burial ground exists at the distance of less than 90 meters, though the permission to raise the construction can be given only if the burial ground existed at a distance of more than 90 meters, thus, the aforesaid was also a ground to challenge the permission for raising the construction to establish the retail outlet. He added that the fact about the existence of the burial ground was otherwise suppressed by the sixth respondent and was visualized only through the Google image to note the distance and the Co-ordinate Bench had rightly taken cognizance of the said fact to pass the interim order.

14. Learned counsel for the petitioner has further made a reference to the Office Memorandum dated 16.08.2021 issued by the Central Pollution Control Board, though the same is not part of the documents filed by the petitioner, to impress upon the Court that now as per the aforesaid Office Memorandum, a retail outlet cannot be located within a distance of 50 meters from the river/waterbody and, therefore, for the aforesaid reason also, the writ petition deserves to be allowed.

15. To analyse the aforesaid argument, we have already quoted paragraph 6 of the Government Order dated 04.05.2017, which does not provide that a retail outlet cannot be located close to the river or a waterbody, rather, it provides that it cannot be located on the land of waterbody. Thus, it is evident



that the petitioner has tried to misinterpret the aforesaid paragraph 6 to mislead the Court, whereas paragraph 6 of the Government Order dated 04.05.2017 is unambiguous.

16. The distance from the burial ground referred in the provision has already been repealed and new Rules were brought in by way of the Rules of 2019, which were in existence at the time the matter was considered and permission granted. It contemplates that the construction cannot be commenced at the distance less than 30 meters from the cremation or burial grounds wherever piped water supply system not available. The relevant provisions now applicable are prescribed under Annexure-XVII to the Rules of 2019, clauses 4 and 5 thereof are quoted hereunder for ready reference:

"(4) Construction of buildings in other restricted or prohibited areas:

Where the site on which the building proposed to be constructed is located in the restricted or prohibited areas such as monument zone, heritage town or any other zone or area specified by the Central or State Government for any restriction or prohibition, in addition to these rules, the regulations/rules/guidelines issued by the Central or State Government from time to time for construction of buildings in those areas shall also be followed and necessary clearance/permission from them shall be obtained by the applicant.

(5) Others

Sl. No.	Description	Minimum Requirement
1	*Low tension power lines.- (a) From the portion of building accessible to Persons (b) From the portion of building inaccessible to persons	Min. Horizontal clearance - 1.50 m Min. Vertical clearance - 4.50 m Min. Horizontal clearance - 1.25 m Min. Vertical clearance - 2.50 m



WEB COPY

Sl. No.	Description	Minimum Requirement
2	*High tension power lines.- (a) From the portion of building accessible to persons (b) From the portion of building inaccessible to persons	Min. Horizontal clearance - 1.75 m Min. Vertical clearance - 4.50 m Min. Horizontal clearance - 1.25 m Min. Vertical clearance - 2.50 m
3	Cremation and burial Grounds	30m, from the cremation or burial grounds wherever piped water supply system not available.
4	Electric/Gasified crematorium	For constructions around the crematoria site, no clearance is required; however the crematorium structure shall be constructed with a setback of minimum 10m, all around within its site.
5	Railway tracks	30m from the railway boundary; however with clearance obtained by the applicant from the Railway authority concerned, constructions can be permitted.

*In sites which abut or affected by the alignments of the LT/HT electric over head power lines or such underground cables, constructions can be permitted only with the no objection certificate obtained by the applicant from the TNGEDCO for such constructions."
(emphasis supplied)

17. As against the aforesaid, the petitioner has referred to the provision which is not operating now and was not in effect at the time of filing of the writ petition. A perusal of the provision quoted above shows the required distance for construction of buildings in the restricted or prohibited areas



is 30 meters from the cremation or burial ground wherever piped water supply system is not available. In the instant case, it is not the allegation that the construction raised by the sixth respondent is within the distance of 30 meters from the burial ground. Rather, according to the petitioner, the construction is at the distance of 60 meters or so. Thus, we do not find any violation of the Rules of 2019, which are applicable to the case.

18. The Office Memorandum was not available at the time of filing the writ petition and it is dated 16.8.2021 and we are taking note of the aforesaid also. The Office Memorandum was issued by the Central Pollution Control Board in reference to the order passed by the National Green Tribunal on 23.07.2020 and 09.10.2020 in the case of Suresh Mandaloi v. State of M.P. and others [O.A.No.61 of 2019 (CZ)]. The aforesaid order was passed after seeking a report from the expert constituted by the Central Pollution Control Board. A direction was given not to permit construction within the distance of 50 meters from waterbodies, which may include streams and rivers and the distance shall be considered from floodway and if the floodway is not defined, from the firm banks/edge of the river. The criterion was however ordered to be implemented for all new petrol pumps where construction by the OMCs are not started or to be started post issuance of the guidelines.

19. In view of the above, it could not be clarified that how the Office Memorandum dated 16.08.2021 would be applicable to the case on hand when the construction of the outlet was commenced by the sixth respondent much prior to the issuance of the Office Memorandum. The Office Memorandum is made operational prospective and not retrospective in the manner stated by the petitioner. It is otherwise a fact that there are no guidelines prior to the issuance of the no objection certificate to establish the retail outlet at the distance of more than 50 meters from the river or waterbody and, therefore, we cannot hold that the permission granted to the sixth respondent to construct a building for retail outlet is illegal.

20. The issue was analysed by us even in reference to the allegation made by the petitioner to pursue the Court for grant of the interim order. It was alleged that the application was made with suppression of fact. We do not find the allegation to be true, as the distance required to be maintained from the burial ground is now 30 meters. As the distance of the outlet is beyond 30 meters, it cannot be alleged that the sixth respondent had suppressed material facts. On the other hand, we do not find any reference of existence of the mobile tower, electricity transformer or temple, because in that regard no



averment has been made in the affidavit filed in support of the petition, yet taken into consideration for interim order.

21. In view of the aforesaid discussions, we do not find any merit in the writ petition and accordingly, the writ petition is dismissed. There will be no order as to costs. Consequently, W.M.P.Nos.14628 of 2020 and 16 of 2021 are closed.

Sd/-
Deputy Registrar (CS)

//True Copy//

Sub Assistant Registrar

bbr

To

1. The Principal Secretary,
Highways and Minor Ports Department,
Fort St. George, Secretariat,
Chennai - 600 009.
2. The District Revenue Officer,
Tiruppur District,
Collectorate Building,
Palladam Road, Tiruppur - 641 604.
3. The Joint Chief Controller of Explosives,
A and D Wing, Block 1 - 8,
Shastri Bhavan,
No.26, Haddows Road, Nungambakkam,
Chennai - 600 006.
4. The Divisional Engineer,
(Construction and Maintenance)
Highways Department,
Collectorate Building, Tiruppur - 641 604.
5. The Executive Engineer,
Public Works Department (WRO),
Avinashi Road, Behind Camp Office,
Tiruppur - 641 601.

+1cc to Mr.B.Sudhir Kumar, Advocate, S.R.No.20100
+4ccs to M/s.King & Partridge, Advocate, S.R.No.20234(04/04/2022)
+1cc to the Government Pleader, S.R.No.20413

W.P.No.11906 of 2020

SSD(CO)
RLP(01/04/2022)