



W.P.No.14113 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.10.2022

DELIVERED ON : 28.10.2022

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.No.14113 of 2014
and W.M.P.No.6038 of 2018 & M.P.No.2 of 2014

M/s.Karaikal Port Private Limited,
Represented by its Director,
Mrs.V.P.Rajini Reddy,
Keezhavanjoor Village,
T.R.Pattinam, Karaikal - 609606.

.. Petitioner

Vs.

1. The Deputy Collector (Revenue)
cum Sub-Divisional Magistrate,
Government of Puducherry,
District Collectorate,
Karaikal - 609602.
2. The Member Secretary,
Karaikal Planning Authority,
Karaikal.
3. The Joint Chief Controller of Explosives,
Shastri Bhavan, Haddows Road,
Chennai - 600034.
4. Hindustan Petroleum Corporation Ltd.,
No.90, 2nd Floor, MDSR Enclave,
Barathidasan Road, Contonment,
Tiruchirapalli.



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5. S.Rajasekaran

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6. The Director of Ports,
Port Department,
Government of Puducherry,
Puducherry.
(R6 impleaded as per order dt.24.02.2017
in WMP No.35274/2016)

.. Respondents

Prayer: Writ Petition has been filed under Article 226 of the Constitution of India seeking a Writ of Certiorarified Mandamus calling for the records of the first respondent relating to the order granting No Objection Certificate to the Fourth Respondent in Ref.No.10358/SDM/B4/2012, dated 13.05.2014 for setting up of a Petrol/Diesel retail outlet at R.S.No.132/1 and 132/2 of No.37 Vanjore Revenue Village, T.R.Pattinam Coommune Panchayat in Karaikal District by installing 4 underground storage tanks and 6 dispensing pumps to store Petroleum Products and to quash the same and forbear the third respondent herein from granting licence to the fourth/fifth respondents under Petroleum Rules 2002 for setting up of a Petrol/Diesel retail outlet in the above said land.

For Petitioner : Mr.S.Aravindan
for M/s.Fox Mandal & Associates

For Respondents 1, 2&6 : Mrs.V.Usha
AGP (Pondy)



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For Respondent 3 : Mr.C.Kulanthaivel
SPC

For Respondent 4 : Mr.M.Vijayan
for M/s.King and Patridge

For Respondent 5 : Mr.N.Ramakrishnan
for M/s.Waraon Sai Rams

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ORDER

This writ petition has been filed challenging the order dated 13.05.2014, granting No Objection Certificate to the Fourth Respondent for setting up of a Petrol/Diesel retail outlet at R.S.No.132/1 and 132/2 of No.37 Vanjore Revenue Village, T.R.Pattinam Coommune Panchayat in Karaikal District by installing 4 underground storage tanks and 6 dispensing pumps to store Petroleum Products and to forbear the third respondent herein from granting licence to the fourth/fifth respondents under the Petroleum Rules 2002 for setting up of a Petrol/Diesel retail outlet in the above said land.

2. The brief facts leading to the filing of this writ petition is as follows:

(i) The case of the writ petitioner is that about 600 acres of land in Keezhavanjore village, Karaikal, Union Territory of Puducherry was allotted/leased to the petitioner by the Government of Puducherry for



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developing and operating the Karaikal Port vide Lease and Possession Agreements dated 23.02.2006, 28.07.2008 and 05.02.2007 which was consolidated and re-confirmed vide Re-stated Lease and Possession Agreement dated 19.11.2010, registered as document No.1211 of 2010.

(ii) The Karaikal Port was developed and constructed with a huge investment by the petitioner and is in commercial operation since 2009. The lands comprised in R.S.Nos.131/1, 131/2 and 132/2B, Vanjore Village, Karaikal which is abutting the National Highway NH-45A is part and parcel of the total land leased to the petitioner.

(iii) The said stretch of land is the only available means to access the port. The entire port land is used for port operations, warehousing, receiving and discharging cargo, preserving cargo, administrations and all other connected activities of the port and as such the land area is only meant for the said port purposes and not for any other purposes.

(iv) The petitioner has also proposed to construct a railway over bridge which would lead to NH45A directly from the port, which will change the purpose and usage of the stretch of land abutting NH45A which



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may be used for storage purposes.

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(v) The petitioner has also sharing certain portion of the revenue collected from such operations as concession fee besides payment of lease rentals for the lands.

(vi) The entire port area including the stretch of land abutting the NH45A is a customs area as notified vide Customs Department Notification dated 09.04.2009 and declared the petitioner as the custodian of the Port vide Customs Department Notification dated 06.04.2011.

(vii) The entire port facility established in the port land including the land abutting NH45A is a high security zone. Further, it is a protected area and which cannot be permitted for any purposes other than port operations and related purposes. Therefore, permitting any person to use the port lands / facilities for any other purposes would tend to create a threat to the security of the port besides would tantamount to violating codes/guidelines of security as envisaged under the laws of India.

(viii) The 4th and 5th respondents have proposed to establish a



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petroleum retail outlet, in the land adjacent to the stretch of land abutting NH45A used for petitioner's private access at present, comprised in R.S.No.132/01 (Part B) and 132/2a/1 (Part B) at Vanjore Village. The 5th respondent by letter dated 28.02.2012, requested the petitioner to provide permission to establish a petroleum retail outlet in the said area and to permit access through the land abutting NH45A (exclusive private access) of the petitioner. The same was denied by the petitioner vide letter dated 24.03.2012.

(ix) Despite the refusal by the petitioner, the 4th and 5th respondents applied for No Objection Certificate (NOC) to the 1st respondent to install the petrol outlet in the said land under Rule 144 of the Petroleum Rules, 2002.

(x) The first respondent had called a meeting on 11.05.2012 and 28.05.2012 and similarly the second respondent has also called a meeting on 18.02.2014. The petitioner has given his objections in writing vide letters dated 24.03.2012, 21.04.2012 and 20.07.2012.

(xi) The second respondent which is the planning authority under the



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provisions of the Puducherry Town and Country Planning Act vide its communication dated 04.10.2012 had mentioned that the proposal for establishment of petroleum retail outlet has been declined by the Planning Authority Committee on 26.09.2012. Further it was also recommended to shift the public road belonging to T.R.Pattinam Commune Panchayat on Southern side to Northern side of the port stretch of land abutting NH45A (used by Port as access at present). Therefore, it is contended that if at all the 5th respondent need to access the land where the proposed petrol retail outlet is to be established, it shall only be through the T.R.Pattinam Commune Panchayat road (PWD road) and the village road and certainly cannot be through the petitioner's land abutting NH45A (used at present for access of the port and its authorized users).

(xii) Despite of the petitioner's objections and refusal to provide permission for the commercial purposes of the 5th respondent, the 1st respondent has issued the NOC dated 13.05.2014 for installing the petrol bunk with the condition that the installation of the petrol bunk will not in any way affect the security and logistics concern of the MARG Port.

(xiii) Hence it is the contention of the writ petitioner that the 1st



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respondent has no authority in law to approve and provide NOC, the impugned order, based on the usage of the petitioner's land (private port access) for ingress and egress of the proposed petrol retail outlet. The NOC was issued without the consent letter from the petitioner and therefore the issuance of the NOC is totally arbitrary and against the Petroleum Act and Rules.

(xiv) The 4th and 5th respondents had given application on 11.01.2012 to the first respondent for NOC and the meetings were called by the first respondent on 11.05.2012 and 28.05.2012 and suddenly on 13.05.2014, the first respondent has given the NOC under the said Rule. Based on this NOC, now the 3rd respondent who is the controller under the said Rules is in the process of issuing final licence to establish the petroleum outlet under the said Rules.

(xv) The 5th respondent has also removed the fence of the petitioner. Hence the impugned NOC dated 13.05.2014, issued by the 1st respondent is arbitrary, illegal and against the provisions of the Petroleum Act and Rules.

(xvi) The 1st respondent has not considered the findings of the 2nd



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respondent, which is the Planning Authority under the provisions of the Puducherry Town and Country Planning Act vide its communication dated 04.10.2012, wherein the proposal for establishment of petroleum retail outlet has been declined by the Planning Authority Committee on 26.09.2012 itself.

(xvii) The entire port facility established in the port land including the land abutting NH45A is a high security zone and it is a protected area, which cannot be permitted for any purposes other than port operations and related purposes.

(xviii) The 1st respondent has not conducted the inquiry in the manner contemplated under Rule 144 of the Petroleum Rules, 2002 and issued the NOC in the year 2014 related to the application submitted in the year 2012. Hence, the present writ petition has been for the aforesaid reliefs.

3. The 1st respondent filed a counter affidavit, inter alia, contending as follows:

(i) It is admitted by the first respondent that the lands comprised in R.S.No.131/1, 131/2 and 132/2B in Vanjore Revenue Village which is



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abutting the National Highway NH45A is the land leased to the petitioner by the Government of Puducherry in which the petitioner's port has developed Metal Road for having access to the port. It was contended that a municipal road already existed parallel to the southern side of the metal road laid by the petitioner's port which gives access to the villagers of Keezhavanjore Pet. On the southern side of the road there exist two burial grounds belonging to various communities and on the Northern side of the port road, Keezhavanjore Pet village, one burial ground exist besides the patta land of the 5th respondent where the petrol bunk is permitted. According to the first respondent, the port road obstruct the access to Keezhavanjore Pet village burial ground and the patta land of the 5th respondent from the existing municipal road.

(ii) The stretch of land abutting the NH45A, where the road was laid by port authority is only an access to the port and no port activities is being carried out in that stretch of land. Further, the port road is being used by the Keezhavanjore Pet villagers as public road, since the Municipal road is at a depth of 4 feet down of the port road.

(iii) Further as per Clause 3.7 of the Concession agreement for the



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Development of Karaikal Port, Government of Puducherry reserves its rights on easements and right-of ways with reference to the premises for the purpose of maintaining and/or modifying utility lines and access roads.

(iv) Clause 3.9 stipulates that Government of Puducherry grants to Marg Construction Limited the right to construct and maintain a roadway over the land if any owned by Government of Puducherry for the purpose of providing a direct connection and free access to and from the land leased.

(v) Clause 3.10 stipulates that Government of Puducherry and its licensees, permittees and invitees shall have right of free access, ingress to and egress from the premises through the existing roads or roadways to be constructed by Marg Construction Limited for the purposes relating to the agreement.

(vi) It is submitted that all the departments connected with the commissioning of a petrol bunk, viz., Public Works Department, Electricity Department, Police, Fire Service, T.R.Pattinam Commune Panchayat, Town and Country Planning had given NOC's with regard to the establishment of this retail outlet. The administration had also evolved all the merits and



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demerits on the establishment of a retail outlet and essentiality of a retail outlet, followed the rules stipulated under the Petroleum Rules 2002 and issued NOC for the Commissioning of a petrol bunk in the proposed site. Therefore, there is no need to seek NOC from the port authority.

(vii) It is further submitted that the proposed site where the petrol bunk is permitted is 500 meters away from the Port Premises and there is no question of security and logistic concern. However, assurance of the 5th respondent has been obtained not to affect, in anyway, the safety and logistics concerns of the Port.

(viii) It was admitted by the 1st respondent that the land/premises where the port activities are going on is a high security zone and protected area which cannot be permitted for any purpose other than port operation and related purposes. Whereas, the road access to the port premises is a public road accessible to Keezhavanjore Pet village. The villagers cannot be denied access to lead to their village using the port road. Hence the 1st respondent seeks dismissal of the writ petition.

4. The 4th respondent filed a counter affidavit, inter alia, contending



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as follows:

WEB COPY (i) The lands comprised in R.S.Nos.131/1, 131/2 and 132/2B of Vanjore village was acquired by the Government of Puducherry for the purpose of laying of a road leading from NH45A to Karaikal Port. Therefore the contention of the petitioner that they can use the property comprised in R.S.Nos.131/1, 131/2 and 132/2B for any other purposes such as port operations, warehousing, receiving and discharging cargo, preserving cargo, administration, etc. is entirely misplaced.

(ii) The claim of the petitioner that the internal roads developed by them are exclusively to be used only for the internal movement of cargo and the authorized personnel of the port is applicable and restricted only to the internal roads which fall within the main entry gate of the Karaikal Port. The petitioner cannot treat the road leading from NH45A to Karaikal Port which was developed on the already existing municipal road, as a private road. As a matter of fact, the said road is being used by the general public without any restriction whatsoever.

(iii) The petitioner does not have any ownership rights over the lands in question and what has been given to them by the Government of



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Puducherry is only a leasehold right on the lands and the concession to develop the Karaikal Port under a BOT scheme. Therefore, the petitioner stands only in the shoes as an agent of the Government of Puducherry to fulfill certain obligations and eventually the rights of the petitioner gets extinguished.

(iv) The lands lying within the compound wall of the port and accessed through the main gate alone can be declared as Customs Notified Area. It is not the case of the petitioner that they have installed a gate at the entry point from NH45A to the road and access beyond the same is restricted nor can it be possible by the reason of the fact that the new road is using the culvert which was already existing in the earlier Municipal Road and the Government land and the intersection leading to the East Vanjore Road also bifurcates the road. There is no restriction by the petitioner on whatsoever nature for the use of this road by the general public as on today. Therefore, the contention of the petitioner that the road leading from NH45A to Karaikal Port is also a Customs Notified Area is not correct.

(v) Therefore, hundreds of acres of private lands, common amenities such as burial ground, commercial establishments, culverts and other private



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properties are situated on both sides of the road and these private properties stretch far beyond the NH45A towards the port on the eastern side.

Therefore, there is no truth in the contention of the petitioner that the road leading from NH45A to the port would also form part of the high security zone and the usage of the same by any other person would tantamount to violating the various Codes / Guidelines of security as envisaged by the laws of India.

(vi) The 4th respondent HPCL had applied for obtaining the NOC under Rule 144(1) of the Petroleum Rules, 2002 and admittedly, it was granted after considering all the objections said to have been raised by the petitioner. The road laid by using the culverts which already existed in the municipal road situated on Government lands. Similarly, the road is also cutting across the intersection between the old municipal road leading from NH45A and East Vanjore Road. Hence, it is contended that the claim of the petitioner is wholly against public policy and infringes upon the right of every individual who owns property, business or other amenities on both sides of the road. The petitioner cannot be permitted to destroy or supersede the existing Municipal road in the process of laying the new road and thereafter prevent the public from using the new road to access to their



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properties. This would clearly amount to a denial of the rights available to the public and the same cannot be permitted.

(vii) The respondents 1 to 3 has granted necessary NOC and permitted the 4th respondent to set up petroleum retail outlet after considering the objections raised by the petitioner. Hence the 4th respondent seeks dismissal of the writ petition.

5. The learned counsel appearing for the petitioner would submit that the entire area measuring an extent of 600 acres of land in Keezhavanjore village, Karaikal, U.T. of Puducherry was leased to the petitioner by the Government of Puducherry for developing and operating the Karaikal Port by way of a registered Lease Deed and Possession Agreement dated 19.11.2010. The land comprised in R.S.Nos.131/1, 131/2 and 132/2B, which is abutting the National Highway NH 45A is also part and parcel of the total area of land leased to the petitioner. The said stretch of land abutting NH 45A is the only access to the port.

6. It is contended by the learned counsel appearing for the petitioner that the entire port facility established in the port land including the land



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abutting NH 45A has been notified as a high security zone by Customs Department. Whereas the 5th respondent owns land adjacent to the area leased out to the petitioner has sought NOC to open a petrol bunk which was declined by the petitioner. Whereas, the first respondent by the impugned NOC dated 13.05.2014, has granted permission to the 5th respondent by imposing some conditions that there should not be any hindrance to the traffic movements in the MARG road and the installation of petroleum retail outlet in any way should not affect the security and logistics concern of the MARG port.

7. According to the learned counsel appearing for the petitioner when the road itself is only a private road and it is not a public road, granting permission to establish the petroleum bunk in a private property and granting access over the private land which was exclusively given to the port is not valid in the eye of law. NOC has been issued contrary to the Petroleum Rules in spite of objections raised by the petitioner.

8. It is also submitted by the learned counsel appearing for the petitioner that the lane has been created exclusively and merely because some road has been used by some villagers at present the same cannot



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convey any right to the 4th and 5th respondents to contend that they have right to use the road to operate their petroleum retail outlet adjacent to the port property.

9. It is the contention of the learned counsel appearing for the petitioner that in the minutes of the meeting held on the Chambers of the District Collector on 20.06.2014, it has been clearly agreed by the Government of Puducherry for creation of 4.8 meters road on both sides of the existing road giving way for public to have access to their land. The proposed public access road is proposed to be formed with a width of 4.8 meters in R.S.No.119/7 part and 132/2B part on the Northern side while in R.S.No.119/5 and 131/5B part in the Southern side of the land which are under the custody of the Karaikal Port Private Limited. Thus the Government of Puducherry has agreed to form a new road for the purpose of public use and the said road can be used to reach their respective lands and property. Therefore, now the first respondent cannot contend that public has right of way over the Port road, which is contrary to the agreement.

10. It is his further contention that the Planning Authority under the provisions of the Puducherry Town and Country Planning Act has also



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declined the proposal for establishment of petroleum retail outlet. Despite the above NOC has been issued by the first respondent. Therefore, it is his contention that Rules have been violated and since the port area has been notified as a high security zone by the Customs Department, granting NOC for establishment of petroleum retail outlet adjacent to the said area is not valid in the eye of law. Hence the learned counsel appearing for the petitioner submitted that the impugned NOC dated 13.05.2014 has to be quashed.

11. In support of his submissions the learned counsel appearing for the petitioner relied upon a Division Bench Judgment of this Court in M/s.Hindustan Petroleum Corporation (HPCL) Vs. The Commissioner, Greater Chennai Corporation in W.P.Nos.17277 and 20298 of 2020 dated 10.03.2022 wherein it is held that without getting proper planning permission from the competent authority, HPCL has no right to open petroleum retail outlet.

12. Whereas, it is the contention of the learned Additional Government Pleader (Pondy) appearing for the first respondent that the lands have been leased to the petitioner as per the clauses of the Concession Agreement for Development of Karaikal Port dated 25.01.2006. The



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Government has reserved certain rights particularly with regard to easement rights. After the formation of the port road in the land allotted to the port access to municipal road leading to the near by villages has been obstructed and therefore port road has been used by the villagers to reach their villages. According to them, petroleum bunk has been established in a private land of the 5th respondent which is not coming under the port property and in fact 500 meters away from the port premises and therefore the 5th respondent cannot be prevented from running the petrol bunk in the above area and accordingly NOC has been issued after considering the objection of the writ petitioner. Therefore, the learned Additional Government Pleader (Pondy) seeks dismissal of the writ petition.

13. Whereas, the learned counsel appearing for the 4th and 5th respondents would submit that public have right to way and the petrol bunk was established in a private property and the petitioner cannot restrict the business activities of an individual. The 5th respondent has right to carry on his business activities. As per the Rules, NOC has been granted and licence has been granted to the 5th respondent as per Petroleum Rules, 2002 taking into consideration all the relevant factors.



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14. It is further contended that if access road has not been obstructed by the port and left the road for its original usage the dispute would not have been arisen at all. Having obstructed the access road usage, now the Port cannot take advantage of the fact that merely because certain lands were abutting the road laid is also part of the agreement of lease. Hence, the learned counsel submitted that licence has been legally issued and the petitioner has no right to seek for its cancellation.

15. I have heard the learned counsel on either side and also perused the entire materials available on record carefully.

16. It is not in dispute that an extent of 600 acres of land was originally leased out by the Government of Puducherry to the petitioner for construction of the Port. An agreement was also registered on 19.11.2010. The disputed area relates to R.S.Nos.131/1, 131/2 and 132/2B of Vanjore Village, Karaikal. A perusal of the registered agreement makes it clear that survey numbers is also part of the lands allotted to the petitioner by way of an agreement of lease. The above three survey numbers which are abutting the National Highway NH 45A, it appears that the road has been laid by the petitioner port, which is called as port road to enter the port premises.



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WEB COPY 17. From the records, particularly the survey sketch included in the typed set of papers and photographs, there was an existing road adjacent to the port road. While laying the port road for exclusive use for the port, the access municipal road adjacent to the road as been obstructed and the villagers and the adjacent land owners started using the port road.

18. In the Status Report dated 23.08.2022, filed by the Port Department of the Government of Puducherry, wherein, they have admitted that the Government of Puducherry is also receiving lease charges for the above R.S.Nos.131/1, 131/2 and 132/2B from Karaikal Port Private Limited every year and so far Karaikal Port Private Limited has paid Rs.4.32 Crore as land lease charges to the Government of Puducherry. It is also admitted in the Status Report that the approach road coming under R.S.Nos.131 and 132 are part of area notified by the Customs Department, Trichirappalli for loading and unloading of goods by Karaikal Port Private Limited and they have also admitted that there should not be any hindrance to the movement of cargo / port related activities and the petrol / diesel retail outlet should in no way affect the security, logistics and future expansion / development avenues etc. of the port.



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WEB COPY 19. The Concession Agreement for Development of Karaikal Port was signed on 25.01.2006. In Clause 3.7, it has been indicated that the Government of Puducherry reserves its rights on the mineral rights, air space and easements and right-of-ways with reference to the premises for the purpose of maintaining and/or modifying utility lines and access roads without expense to Marg Construction Limited. Clauses 3.9 and 3.10 reads as follows:

"Clause 3.9.Access to MCL: Subject to provisions hereof, MCL including subtenants as permitted herein, licensees, invitees, and permittees have the right of free access, ingress to and egress from the Land leased by GOP and over the land owned if any by GOP for the purpose of port related activities. GOP hereby grants to MCL the right to construct and maintain a roadway over the land if any owned by GOP for the purpose of providing a direct connection and free access to and from the land leased. The said right shall be exercisable throughout the term hereof and shall be exercised at MCL's own expenses.

Clause 3.10. Access to GOP : GOP and its



licensees, permittees and invitees shall have right of free access, ingress to and egress from the premises through the existing roads or the roadways to be constructed by MCL for the purposes relating to this agreement."

20. A combined reading of the above Clauses makes it clear that reservation is only with regard to the licensees, permittees and invitees. No where it is stipulated that third parties are also entitled to use the land, which was exclusively given on lease to the petitioner.

21. Be that as it may, as gathered from the facts, in the above three survey numbers approach road has been laid by the Port from NH 45A and the entire area is leased out to the port and it is also notified under the Customs Notification No.01/09 Customs (N.T), dated 09.04.2009. The Notification shows that all the survey numbers are leased out and a part has been notified as customs area. Similarly in the Customs Notification No.02/2011, dated 06.04.2011, the same has been reiterated. Therefore, once the area has been notified as Customs Area and the land is exclusively given to the petitioner, now it cannot be contended by the respondents that since the villagers are using the land as access road to reach their respective



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villages and adjacent lands, the same road can also be used by the 4th and 5th respondents to run their petroleum retail outlet.

22. It is also relevant to note that the usage of the port road by the villagers is only a temporary arrangement since the municipal road which was available just adjacent to the port road has not been maintained by the concerned local body. The Government of Puducherry has not provided proper access to the villagers and other land owners who are owning lands.

23. It is also relevant to note that in one of the minutes passed in the meeting held in the Chamber of the District Collector on 20.06.2014, it was decided to allow public access road on both sides of the port road, wherein all the concerned departments of Puducherry Government and Port authorities have also participated. It is also recorded to the effect that a metal road with a width of 17 meters abutting National Highway NH 45A leading to the secured premises of Karaikal Port Private Limited had been developed and is being used by the Karaikal Port Private Limited. The land comprised in R.S.Nos.131/1, 131/2 and 132/2B abutting NH 45A are part and parcel of the total lands leased to Karaikal Port for the development of Port and other Infrastructure facilities. It is also admitted that Karaikal Port Private Limited



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has developed a metalled road for access to the main premises. There were private lands abutting the road leading to the Karaikal Port Private Limited linking NH 45A. Some of the land owners abutting the port road has filed petition seeking the intervention of the District Administration to resolve the issue of their right of ingress and egress to their private lands from the port road. In order to ensure unhindered movement of bulk goods traffic to and from the port, the port authorities had reluctance to allow the dedicated road to be used by vehicular traffic servicing lands abutting port road. Considering the gravity of the situation, a meeting has been organised with the participation of the officers and the port authorities to have an amicable settlement and after due deliberations the following decisions were arrived at:

"1. Providing 4.8 meters road on both sides of the existing road giving way for public to have access to their land. The proposed public access road is proposed to be formed with a width of 4.8 meters in R.S.No.119/7 pt and 132/2B pt on the Northern side while in R.S.No.119/5 and 131/5B pt in the southern side of the land which are under the custody of the Karaikal Port Pvt. Ltd. The Karaikal Port Pvt. Limited has accepted for the formation of road for public utility.



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2. *As the local body has no sufficient fund to meet the expenses for the formation of a metal road, the Superintending Engineer - III has been requested to take initiative for the formation of the road out of Public Works Department Fund.*

3. *The exact boundaries of land to be technically verified and intimated to the Karaikal Port Pvt. Limited by the Survey / Revenue Department and to be incorporated by Revenue, Town and Country Planning and Commune Panchayat records.*

4. *A culvert / canal is required to be constructed in the Southern part of the proposed road as there is a channels in existence.*

5. *The Commissioner, TR Pattinam Commune Panchayat to take early action for the demolition of the cremation shed near the arrack shop, after consulting all stake holders."*

24. The above decision makes it clear that the port authorities also accepted to the formation of the road for public utility on the Northern and Southern side of the road and the Superintending Engineer - III, P.W.D.,



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Karaikal was directed to make necessary arrangements for the formation of road on either side of the existing road and the construction of a culvert / canal. Having taken such a decision in the meeting held by the District Collector, the Government has not taken any steps to form the road despite the Port expressed their acceptance for the formation of road for public utility on both sides of their road. Therefore, when the Government has already leased out the property and collecting lease charges from the port authorities and the area has also been notified as Customs Area as per Customs Notification referred above, merely because the Government has not been able to form the road all these years and some villagers were permitted to use the road to reach their villages, that cannot be a ground to hold that the same can be used by the 4th and 5th respondents to run their petrol bunk in their private land.

25. Be that as it may, now the question that arises for consideration in the writ petition is whether the NOC has been issued by the first respondent as per the Rules.

26. It is an admitted fact that the petitioner has expressed their objections from the very beginning. The 5th respondent has in fact sought



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permission from the port authorities by letter dated 28.02.2012 to install and run the petrol bunk by utilizing the road for the vehicles coming to the bunk for fueling purposes. However the same was declined by the writ petitioner on 24.03.2012.

27. Thereafter, it appears that the first respondent has issued notice on 08.05.2012 to the port authorities to discuss the issue of NOC for installation of petrol retail outlet in favour of the 5th respondent. Similar letter was also issued on 25.05.2012. Objections have been issued by the port authorities.

28. Thereafter, it appears that on 04.10.2012, Karaikal Planning Authority addressed a letter to the Sub Collector, wherein it is made very clear that the permission sought by the 5th respondent to establish petroleum retail outlet at his land was discussed in Karaikal Planning Authority Committee meeting held on 27.08.2012 and the Committee decided to decline the proposal on the ground of non availability of public approach to the site and the same was communicated to the 5th respondent on 26.09.2012. Besides the Committee also suggested means of providing public approach to the above said site by way of outright purchase of private



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lands either from the Nagore Main road or from the Keezha Vanjore road.

The Committee also mooted a proposal to shift the public road belonging to TR.Pattinam Commune Panchayat (on the Southern side of Port Road) to the Northern side, in lieu of Port access land of same width being shifted to the Southern side. Thereafter, the Committee suggested to shift the public road belonging to TR.Pattinam Commune Panchayat (on the Southern side of Port Road) to the Northern side in lieu of port access land of same width being shifted to the Southern side may kindly be processed further, subject to the consent of concerned authorities / parties.

29. The letter dated 04.10.2012, makes it clear that planning permission for construction of single storied retail outlet building for the establishment of petroleum retail outlet has been rejected on 27.08.2012 and the same has also been communicated to the Sub Collector, Karaikal.

30. Despite rejection of the planning permission, now the 1st respondent has issued the impugned NOC dated 13.05.2014, to the 4th respondent HPCL to obtain licence as per Rule 144(1) of the Petroleum Rules 2002. In paras 8 and 9 it is stipulated that there should not be any hindrance to the traffic movements in the MARG Road and the installation



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of petroleum retail outlet in anyway should not affect the security and logistics concern of the MARG port. It is relevant to note that despite the planning permission was rejected by the Committee, without reference to the said rejection order, which has been informed to the Sub Collector on 04.10.2012, the impugned NOC has been issued.

31. Rule 144 of the Petroleum Rules, 2002 reads as follows:

"Rule 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) Every certificate issued by the District Authority under sub-rule (1) shall be accompanied by a copy of the plan of the proposed site duly



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receiving a licence for the site proposed and the District Authority shall if he sees no objection, grant such certificate.

33. Section 47 (3) of the Puducherry Town and Country Planning Act, 1969, reads as follows:

“47(3) No building operations shall be undertaken in a Planning area contrary to the building Bye-laws and Zoning Regulations made under subsection (1) above without permission in writing from the Planning Authority.”

34. In the Pondicherry Town and Country Planning Rules 1974, Chapter IV Rule 36 deals with Map and Register showing present land use. The Land Use Code 200 shown as “commercial” and sub-code 212 relating to Petrol Pump.

35. Whereas Section 3 of the Puducherry Building Bye-laws and Zoning Regulations, 2012, stipulates that no person shall erect any building without obtaining prior permission in writing from the Competent Authority duly notified by the Government for this purpose.



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36. Pursuant to the above Rules when the planning authorities rejected the permission, the 1st Respondent ought not to have issued NOC.

As no permission has been obtained, NOC issued by the first respondent cannot be sustained in the eye of law. However, it is well open to the 4th respondent to apply fresh permission for NOC from the 1st respondent after obtaining the planning permission from the concerned authority. However with a caveat that the port road cannot be used by the 4th and 5th respondents. It is for the Government of Puducherry to ensure that proper access is made ready to villagers as well as nearby land owners as per the Minutes of the meeting held on 20.06.2014.

37. The Government after executing the lease deed for a period of 30 years and collecting land lease charges from the port authorities and the port has also been notified under Custom Notification, the land allotted to the port can be used only by the petitioner exclusively and therefore the Government of Puducherry cannot usurp the right of the petitioner on the ground that the villagers are using the port road as access road to go to their villages. It is the responsibility, duty and obligation of the Government of Puducherry to create alternate road as agreed in the meeting held on 20.06.2014. The Government of Puducherry cannot delay the above laying



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of the road on the ground that funds are not available. Therefore, this Court directs the Government of Puducherry to form roads on both sides as agreed by them in the meeting held on 20.06.2014 within a period of six months from the date of receipt of a copy of this order. Till the roads are laid as agreed in the meeting held on 20.06.2014, the present arrangement of using the road by the villagers shall continue. Accordingly, this writ petition is allowed and the impugned NOC dated 13.05.2014, granted by the 1st respondent, is set aside. It is open to the 4th respondent to apply for fresh NOC after proper permission from the Planning Authority to run petroleum retail outlet in the land of the 5th respondent and can use the alternate road to be developed by the Government of Puducherry. Consequently, the connected miscellaneous petitions are closed. No costs.

28.10.2022

Index : Yes / No

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To

1. The Deputy Collector (Revenue)
cum Sub-Divisional Magistrate,
Government of Puducherry,
District Collectorate,
Karaikal - 609602.

2. The Member Secretary,



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Karaikal Planning Authority,
Karaikal.

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3. The Joint Chief Controller of Explosives,
Shastri Bhavan, Haddows Road,
Chennai - 600034.
4. Hindustan Petroleum Corporation Ltd.,
No.90, 2nd Floor, MDSR Enclave,
Barathidasan Road, Contonment,
Tiruchirapalli.
5. The Director of Ports,
Port Department,
Government of Puducherry,
Puducherry.



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N.SATHISH KUMAR, J.

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ORDER
in W.P.No.14113 of 2014
and W.M.P.No.6038 of 2018
& M.P.No.2 of 2014

RESERVED ON : 20.10.2022

DELIVERED ON : 28.10.2022