



W.P.No. 3955 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **01.02.2023**

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.No. 3955 of 2021

Hidayath

... Petitioner

Vs

1. The District Collector,
Krishnagiri District,
Krishnagiri.
2. The District Revenue Officer,
Krishnagiri District,
Krishnagiri.
3. The District Fire Officer,
Krishnagiri District.
Krishnagiri.
4. The District Health Officer,
Krishnagiri District.
5. The Special Officer/Block Development Officer,
In charge of Veppanapalli Village Panchayat,
Krishnagiri Taluk & District.
6. The Chairman,
Essar Oil Limited,
Essar House,
No. 7, Esplanade
Chennai – 18.



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7. The Divisional Engineer,
Tamil Nadu Highways Department,
Krishnangiri.

8. Tamilselvi

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, for the issuance of a Writ of Certiorari calling for the records pertaining to the proceedings of the second respondent made in Ref.No.Mu.Mu.No.25271/2019/C2 dated 20.12.2019 and quash the same as arbitrary, illegal and non-est in the eyes of law.

For the Petitioner	: Mr. V. Lakshmi Narayanan
For the Respondents	: Mr. U. Bharanidharan Additional Government Pleader for R1 to R5 & R7 Mr. Hariharan for R8

ORDER

The writ petition has been filed in the nature of writ of certiorari seeking interference with the order dated 20.12.2019 passed by the second respondent/District Revenue Officer, Krishnagiri District in Ref.No.Mu.Mu.No.25271/2019/C2

2. The writ petitioner is aggrieved by a no objection certificate granted to the eight respondent by the sixth respondent/ Essar Oil Limited, to put up a petrol bunk.



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3. The grievance of the petitioner is that the said petrol bunk had been permitted to be put up in a residential area and more particularly within the prohibited distance from the resident of the petitioner herein.

4. The petitioner filed an earlier writ petition. A competitor who had also applied for license but whose application was negatived by the sixth respondent had also filed a writ petition. Both the writ petitions in W.P.Nos. 28550 and 28965 of 2017 were disposed of by a common order dated 25.09.2019, by a learned Single Judge. The writ petition filed by the competitor was dismissed. The writ petition filed by the petitioner was kept alive by stating that a factual examination should be done with respect to the distance and therefore, the order impugned therein was set aside.

5. By the order dated 20.12.2019 now impugned in this writ petition, the second respondent/District Revenue Officer at Krishnagiri had, after examining various orders of learned Single Judges of this Court not only in the aforementioned two writ petitions but also in yet another writ petition namely W.P.No. 43012 of 2016



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which was disposed of on 24.01.2017 and W.P.No. 13059 of 2017 which was disposed of on 25.09.2019 and had proceeded to grant a no objection certificate to the eighth respondent. The petitioner herein is deeply aggrieved by that particular grant of no objection certificate and had filed the present writ petition in the nature of certiorari.

6. Heard Mr. V.Lakshmi Narayanan, learned counsel on behalf of the petitioner, Mr. U.Baranidharan, learned Additional Government Pleader on behalf of the respondents 1,2,3,4,5 and 7 and Mr. M. Vijaya Mehanath, learned counsel for the sixth respondent and Mr. Hariharan, learned counsel on behalf of the eighth respondent.

7. The earlier writ petition filed by the writ petitioner had been disposed of on 25.09.2019 primarily on the ground that there was an apprehension placed that the petrol bunk for which no objection certificate had been issued was within the prohibited distance of 50 meters. It was however represented that the 50 meter bench mark, had come in force only subsequent to the no objection certificate granted and would not be strictly applicable to the present case. But



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at any rate, the learned Single Judge of this Court, by an order dated 22.09.2022 directed the authorities to enter into a fact finding exercise to determine the actual distance from the house of the petitioner to the underground storage point and also to the filler points of the eighth respondent herein.

8. Accordingly, such distances were calculated not only from the outer wall of the residence of the petitioner but also from the compound wall of the residence of the petitioner herein. I do not think there can be any dispute with respect to the measurements taken. The measurement are as follows:

i) Distance from the house of the petitioner to the underground storage tank point is 50.5.meters.

ii) Distance from the compound wall of the petitioner to the underground storage tank point is 31.5 meters.

iii) Distance from the house of the petitioner to filling Point No. 1 is 47.9 meters.

iv) Distance from the compound wall of the petitioner to the filling point No. 1 is 28.9 meters.

v) Distance from the outer wall of the petitioner to the filling



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point No.2 is 51.3 meters.

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vi) Distance from the compound wall of the petitioner to the filling point No.2 is 32.3 meters.

9. These are actual distances given. I do not think there can be any ground to dispute the same. They have been measured by the jurisdictional surveyor and the learned Additional Government Pleader stated that they have also been certified by the Revenue Inspector, Krishnagiri.

10. Now the issue surrounds whether on the basis of such distances, no objection certificate granted by the second respondent can still be maintained or should be interfered by this Court.

11. It is the contention of the learned counsel for the eighth respondent that the original guidelines stipulated that the distance should only be 30 meters and thereafter, owing to various other circumstances, the guidelines were increased to 50 meters but, would apply only to petrol bunks wherein constructions have to be put up afresh or for which no objection certificate will have to be issued



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afresh.

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12. In the instant case the first time when the eighth respondent received the no objection certificate and permission to construct the petrol bunk was in the year 2016. It has been lamented by the learned counsel for the eighth respondent that thereafter the eighth respondent had to face a series of litigations and as a fact stated that about 7 litigations have been launched with intention to prevent him from proceeding further with operating the petrol bunk for which no objection certificate had been lawfully granted.

13. It is also seen that there is an office memorandum issued by the Central Control Pollution Board dated 29.01.2021. It had been stated that the criteria will not apply to those cases where PESO had already granted prior clearance or initial approval and construction had also been started before 07.01.2020.

14. In the instant case the underground storage and the fill up points have already been constructed but the operation alone had not commenced. There is also yet another guideline which had been



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referred during the course of the arguments and in that, it had been stated that the distance should be 50 meters and in that case it had also been held that " In case of constraints in providing 50 meters distance, the retail outlet shall implement additional safety measures as prescribed by PESO". This naturally implies that the 50 meter distance can be revisited by this Court provided, the eighth respondent undertakes to provide whatever the safety guidelines are stipulated by PESO.

15. It is stated that among various other safety measures, one important safety measure is the affixation of Vapor Recovery System. That would come in operation only when the pumping of petrol actually starts. There is a dispute whether the sixth respondent would supply Vapor Recovery System or the eighth respondent would have to provide it. But I would place an obligation that before the eighth respondent commences operation, it is ensured that the said vapor recovery system is actually put in place. A relook at the distances point out that from the outer wall of the residence of the petitioner, to the underground storage tank, there is a distance of 50.5 meters, to the first filling point 47.9 meters and to the second



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filling point 51.3 meters. The distance of 50 meter is adhered to and there is only a negligible shortage so far the distance to the first filling point is concerned. That aspect can always be addressed by putting safety measures as required namely the vapour recovery system. If any other safety measures are required to be put up, I am confident that the eighth respondent shall do so and in this regard, I would place a caveat on both the second respondent/District Revenue Officer who had issued the no objection certificate and also on the sixth respondent who is to provide petrol to ensure that the petrol outlet of the eighth respondent adheres to all safety norms and conditions as would be required and to allay the fears of any other residents around the area. There was one other issue which was pointed out namely that the residence of the eighth respondent itself is quite close to the proposed petrol pump.

16. Learned counsel for the eighth respondent stated that the eighth respondent would vacate that particular premises and shift to some other place. The District Revenue Officer and the sixth respondent may ensure that the eighth respondent does actually vacate the premises and ensure that there is no hazard or danger



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caused to any of the residents.

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17. With the above observations, I hold that the eighth respondent should not be any further prevented from carrying on business and there cannot be any unreasonable restraint on trade. It must be ensured that there are safety precautions are put in place and it has to be the responsibility of the second respondent and the sixth respondent to ensure that safety measures are actually put in place.

18. The writ petition stands dismissed with a direction to the second and sixth respondent to put in place every safety measure and ensure that if already put in place they confirm to the regulations and requirements and to permit the eighth respondent to commence the business. No costs. Consequently, connected W.M.P.No. 4521 of 2021 is closed.

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Index: Yes/no
mrn



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C.V.KARTHIKEYAN, J.
(mrn)

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