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W.P.Nos.6040 & 26292 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.04.2023

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.Nos.6040 & 26292 of 2017 and
W.M.P.Nos.27950, 11493,6470 & 27949 of 2017

Asghar Ali Khan .. Petitioner in
both W.Ps

VS

1. The District Collector, Nilgiris District.
2. District Revenue Officer, Nilgiris District.
3. The Chief Divisional Retail
Sales Manager, Indian Oil Corporation Ltd.
Marketing Division, 8/1079, Avinashi Road
Coimbatore.
4. Bhaskar Pandian

[R4 impleaded vide order dated
25.04.2017 in W.M.P.No.11492 of 2017
in W.P.No.6040 of 2017] ..

Respondents in
W.P.No.6040 of 2017

1. The District Collector
Chairman, District Committee
Nilgiris District.
2. District Revenue Officer, Nilgiris District.
3. The Chief Divisional Retail
Sales Manager, Indian Oil Corporation Ltd.
Marketing Division, 8/1079, Avinashi Road
Coimbatore.

Respondents in
W.P.No.26292 of 2017



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Prayer in W.P.No.6040 of 2017: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records in Rc.No.C2/383/2016 dated 22.11.2016 on the file of the second respondent and quash the same as ultra vires, illegal, unconstitutional arbitrary and adopting different yardstick by the second respondent on the same issue for different persons at different point of time and consequently direct the second respondent to issue no objection certificate as called for by the third respondent, by considering the petitioner's representation dated 06.01.2016 to install Kisan Seva Kendra Dealership (Retail Outlet) of Indian Oil Corporation in the petitioner's land is S.No.132/2B1A of Masinagudi, Nilgiris District, on the basis of recommendation in the form of NOCs issued by:

- (1) District Officer, Fire & Rescue Services, Nilgiris
- (2) Superintendent of Police, Nilgiris District
- (3) Revenue Divisional Officer, Nilgiris District.
- (4) Forest Range Officer, Nilgiris District
- (5) Executive Engineer, Agricultural Engineering, Ooty
- (6) Tahsildar Ooty, Nilgiris District.

By taking into account the earlier No Objection Certificates issued by the second respondent in his proceedings under RC.No.72020/2004 dated 03.02.2005 in favour of one Suresh Kumar and another proceedings under RC No.C2/28097/2008 datd 25.09.2008 in favour of Mrs.Sajitha, in connected with the installing of petrol bunks in Masinagudi as well as in in Nilliyalam, Pandalur Taluk, without insisting upon any clearance from the District Committee;



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Prayer in W.P.No.26292 of 2017: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records of the proceedings in Rc.C2.383/2016 dated 30.06.2017 issued by the second respondent on the strength of the proceedings of the first respondent in D.Dis.A4/22019/2016 dated 28.06.2017 and quash the same as ultra vires, unconstitutional, against the Rule of Law, against the principles of natural justice, discriminatory and contrary to the earlier proceedings of the second respondent in C2/No.72020/2004 dated 03.02.2005 and in 2/28097/2008 dated 25.09.2008 in the matter of not issuing No Objection Certificate to the petitioner to set up a petrol bunk in the land of the petitioner in S.No.132/2B1A, Masinagudi, Nilgiris District and consequentially directing the respondents 1 and 2 to issue No Objection Certificate to the petitioner to install a petrol bunk in the land of the petitioner in S.No.132/2B1A, Masinagudi, Nilgiris District, forthwith, following the NOCs granted to similarly placed persons ie., (1) Suresh Kumar in S.No.192/1A1 in Masinagudi, Nilgiris District and (2) Mrs.Sajitha in S.No.246/1A2 (old S.No.173) of Nelliayalam illage, Pandalur Taluk, Nilgiris District.

For Petitioner in
both W.Ps : Mr.Shanmugam
for M/s.Shanmugha Associates

For Respondents in
W.P.No.6040 of 2017: Mr.T.Arun Kumar
Additional Government Pleader
For R1 & R2

Mr.Vijaymehanath
for R3

Mr.G.Arul Murugan
for R4



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W.P.Nos.6040 & 26292 of 2017

For Respondents in
W.P.No.26292 of 2017:

Mr.T.Arun Kumar
Additional Government Pleader
For R1 & R2

Mr.Vijaymehanath
for R3

COMMON ORDER

W.P.No.6040 of 2017 is filed challenging the reply notice given by the District Revenue Officer, Nilgiris District to Mr.A.Jegadeesan / advocate pursuant to the legal notice issued by the advocate representing the petitioner. Further direction is sought for to consider the case of the writ petitioner to install Kisan Seva Kendra Dealership (retail outlet) of the Indian Oil corporation in the petitioner's land of Masinagudi, Nilgiris District on the basis of recommendation in the form of No Objection Certificate (for brevity, hereinafter referred to as “NOC”) issued by the various district level authorities.

2. The petitioner filed another writ petition in W.P.No.26292 of 2017 challenging the order passed by the District Revenue Officer and Additional District Level Magistrate, Ooty rejecting the application submitted by the writ petitioner for grant of NOC for setting up an Indian Oil Corporation Ltd. outlet in S.No.132/2BA1 in Masinagudi, Nilgiris District, Ooty Taluk.



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3. The petitioner states that he was duly selected by the Indian Oil Corporation for awarding Kisan Seva Kendra Dealership (retail outlet). The petitioner submits that the application for issuance of NOC, which were issued by the District Fire and Rescue Officer, the Superintendent of Police, Nilgiris District, the Revenue Divisional Officer, Ooty, the Executive Engineer, Agricultural Engineering, Udhagamandalam, the Tahsildar, Udhagamandalam and the Forest Range Officer, Singara Forest Range, Masinagudi. The NOC issued by all these parties were produced and the respondents have asked the petitioner to get NOC from the District Committee and the petitioner has issued a legal notice stating that he has complied with all the requirements as contemplated in the offer made by the Indian Oil Corporation and therefore, he should be permitted to commence the retail outlet in Masinagudi.

4. The advocate notice issued by one Mr.A.Jegadeesan, advocate on behalf of the writ petitioner was replied by the District Revenue Officer, Nilgiris by stating that, as per Section 3(2) of the Tamil Nadu Preservation of Private Forests Act, 1949 (for brevity, hereinafter referred to as “the TNPPF Act, 1949”), which states as, “no owner of any forest



and no person claiming under him, whether by virtue of a contract, license of any other transaction entered into before or after the commencement of the Tamil Nadu Preservation of Private Forests Act, 1946 or any other person shall without the previous permission of the Committee – (a) cut trees or reeds; or (b) any act likely to denude the forest or diminish its utility as a forest.” In view of the provisions of the TNPPF Act, 1949, the petitioner was asked to get permission from the District Level Committee under TNPPF Act, 1949 and submit the same for granting of NOC. However, the petitioner had not produced any such NOC by the District Level Committee. The petitioner submitted an application subsequently and the said application was considered by the District Revenue Officer and the Additional District Magistrate and based on the resolution passed by the District Committee in proceedings dated 28.06.2017, the Chairman of the District Committee, under Section 2A of the TNPPF Act, 1949 and the Collector of the Nilgiris District, the District Revenue Officer rejected the application submitted by the writ petitioner for grant of NOC.

5. The learned counsel for the Indian Oil Corporation made a submission that the Indian Oil Corporation, at this length of time, cannot consider the case of the writ petitioner for issuing Letter of Intend, since it



was a proposal originally issued to the writ petitioner based on the advertisement dated 16.10.2014 and the application submitted by the writ petitioner for awarding Kisan Seva Kendra Dealership (retail outlet), Masinagudi, Nilgiris District was found eligible and therefore, the petitioner was asked to produce the necessary documents including the NOC.

6. Clause (1) of the said letter of offer stipulates that the petitioner has to make available the land within two months from the date of the letter dated 30.12.2015, failing which, the offer will be withdrawn. The learned counsel for the Indian Oil Corporation made a submission that the petitioner had not complied with the conditions stipulated in the offer letter and however, the NOC was rejected by the District Level Committee, which was found in the order of the District Revenue Officer dated 30.06.2017. Since the petitioner had not complied with the conditions within the time limit stipulated in the order, now at this length of time, the case of the petitioner cannot be considered. That apart, the petitioner was not issued with the final order of NOC by the competent authorities and therefore, the writ petitions are to be rejected.



7. The learned Additional Government Pleader appearing on behalf of the respondents 1 and 2 objected the contentions raised on behalf of the petitioner by stating that the authorities have considered the application submitted by the writ petitioner. The land offered by the petitioner for installing a petrol bunk is situated adjacent to Child Jesus Primary School, where, 174 children are studying and 15 employees are working including teachers and it is not a safe place for installing a petrol bunk and hence the Superintendent of Police, Nilgiris has specifically objected to issue NOC to the petitioner considering the safety aspects of the children studying from UKG to 5th Standard. An application submitted by the writ petitioner to reconsider his case was also rejected.

8. The learned Additional Government Pleader made a further submission that since it is a forest area, the farmers of that locality also raised objections for granting NOC. Therefore, the District Level Committee also have not considered the case of the petitioner and based on the resolution passed by the District Level Committee, the District Revenue Officer passed the impugned order, rejecting the application submitted by the writ petitioner for grant of NOC.



9. At the outset, the NOC was rejected in the case of the writ petitioner both by the District Level Committee and by the District Revenue Officer. The Indian Oil Corporation has granted the offer in the year 2015 based on the advertisement issued in the year 2014. The Indian Oil Corporation states that they cannot consider the case of the writ petitioner at this length of time because, he has not produced the requisite documents within the time of two months as per the time limit prescribed in the offer letter. Taking note of all these facts and circumstances, this Court is of the considered opinion that the authorities have found certain impediment in granting NOC. More specifically, a School is situated nearby the land belonging to the petitioner and more so, it is a forest area and there is an objection from the farmers of that locality and the Indian Oil Corporation given the offer letter in the year 2015 and the petitioner was not able to produce the required documents within a period of two months.

10. Mere pendency of the writ petition for the past seven years cannot be a ground to grant the relief for awarding a retail outlet, since it requires other permissions under the Explosives Act and from other statutory authorities. After granting NOC, the matter has to go before the



W.P.Nos.6040 & 26292 of 2017

authorities under the Explosives Act and they have to give clearance regarding the construction of the petrol retail outlet and therefore, this Court cannot grant any such award at this length of time. More so, the petitioner has not complied with the conditions within the time limit prescribed by the Indian Oil Corporation and for all these reasons, the relief as such sought for cannot be granted. However, the petitioner is at liberty to submit an application if any fresh notification has been issued by the Indian Oil Corporation for awarding retail outlet or otherwise.

11. With this liberty, the writ petition stands dismissed. There will be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

Index : Yes/No
Neutral Citation : Yes/No

13.04.2023

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W.P.Nos.6040 & 26292 of 2017

To:

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Chairman, District Committee
Nilgiris District.
2. District Revenue Officer, Nilgiris District.
3. The Chief Divisional Retail
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S.M. SUBRAMANIAM, J.

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