



W.P.No.34058 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.07.2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.34058 of 2022

and

W.M.P.Nos.33520 of 2022 and 2900 of 2023

K.Sezhiyan

... Petitioner

Vs.

- 1.The State of Tamil Nadu,
Rep. by its Principal Secretary,
Department of Highways & Minor Ports,
Fort St. George,
Chennai.
- 2.The District Collector,
Office of the District Collector,
Cuddalore.
- 3.The District Revenue Officer,
District Collector Office,
Cuddalore.
- 4.The Divisional Engineer,
Highways & Construction & Maintenance,
Beach Road, Cuddalore.
- 5.The Executive Engineer,
P.W.D.Kollidam Basin Division,



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Water Resource Department,
Railway Station Road,
Chidambaram,
Cuddalore District.

6.The Territory Manager (Retail),
Bharat Petroleum Corporation Ltd.,
1st Floor, Raj Towers,
Near Kalaignar Arivalayam,
Karur Bypass Road,
Trichy – 620 002.

7.Mr.Kamaraj

8.Mrs.Vasugi

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari and call for the records the impugned order C1/4984/2013 dated 03.06.2022 and the consequential endorsement in C1/4984/2013 dated 23.06.2022 passed by the 3rd respondent and quash the same.

For Petitioner : Mr.R.Sankarasubbu

For R1 to R5 : Mr.D.Ravichander,
Special Government Pleader

For R6 : Mr.M.Vijayan
for M/s.King & Patridge

For R7 & R8 : Mr.S.N.Subramani



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ORDER

WEB COPY The NOC issued in proceedings dated 03.06.2022 by the Additional Collector (Revenue), Cuddalore District is under challenge in the present writ petition.

2. The writ petitioner states that he was inducted as a Cultivating tenant in Survey No.74/2B with an extent of 8 ares of Orathur Village within the Sub Registration District of Chidambaram in Cuddalore District. As per the Agricultural Tenancy Agreement dated 07.09.2010, he was inducted as a tenant by one Karunakaran, who was the owner of the property. Putting his personal labour and with the assistance of his family members, the petitioner is cultivating the said property. Meanwhile, the owner of the land Mr.Karunakaran sold the said property to the respondents 7 and 8 by way of registered Sale Deed dated 08.08.2013. The petitioner filed O.S.No.117 of 2016 on the file of District Munsiff Court, Chidambaram for permanent injunction, restraining the 3rd respondent from issuing NOC to the respondents 7 and 8 for establishing petrol bunk in the said property.

3. Considering the objections raised by the writ petitioner, the District Collector, Cuddalore District refused to issue NOC to the respondents 7 and 8 in



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three proceedings dated 03.11.2014, 30.12.2014 and 26.08.2015. Those orders passed by the District Collector, Cuddalore were not challenged by either of the parties.

4. Suppressing the fact regarding the rejection order passed by the District Collector, Cuddalore to grant NOC for establishing petrol bunk, the respondents 7 and 8 have obtained NOC on 03.06.2022 issued by the 3rd respondent. The petitioner was not served with a copy of the said NOC. Based on the NOC issued by the 3rd respondent, the 6th respondent is attempting to establish petrol bunk in the said property. Admittedly, the petrol bunk is not functioning and is under construction.

5. The learned counsel for the petitioner mainly contended that the respondents 7 and 8 has no right whatsoever to establish petrol bunk, since O.S.No.117 of 2016 is pending. It is contended that the NOC was granted in violation of the Indian Roads Congress (IRC) Regulations.



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6. The IRC issued guidelines for Access, Location and Layout of Roadside Fuel Stations and Service Stations. Clause 5 of the IRC Regulations stipulates “Plot Size for Fuel Station” and Clause 5.2 reads as under:

“5.2 From these considerations, the minimum size of the plot for fuel station along highways/roads shall be as follows:

(i) On undivided carriageway in plain and rolling terrain -

35m(frontage)x35m(depth)

(ii) On divided carriageway in plain/rolling terrain -

35m(frontage)x45m(depth)

(iii) In hilly and mountainous terrain – 20m(frontage)x20m(depth)

(iv) In urban stretches - 20m(frontage)x20m(depth)

7. Relying on the above guidelines, the learned counsel for the petitioner reiterated that a fraudulent measurement has been taken in collusion with the then Executive Engineer, one Mr.R.Selvakumar and based on such certificate, the impugned NOC was issued in violation of the guidelines as stated above.



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8. The Central Pollution Control Board (Ministry of Environment, Forest and Climate Change) also issued an Official Memorandum on 16th August 2021, which is addendum to the guidelines for setting up of New Petrol Pumps issued on 7th January 2020. The addendum to the guidelines for setting up of New Petrol Pumps reads as under:

“a) All the surface water bodies irrespective of utility shall be protected from any possible contamination. These include lakes, ponds, streams, rivers, wetlands, canals and creeks, as per revenue records. Retail Outlets shall not be located within a distance of 50 meters from the nearest point of water bodies. In case of streams and rivers, the distance shall be considered from floodway. In case floodway is not defined, the distance shall be considered from firm banks/edge of river. The siting criterion is to be implemented for all new petrol pumps where construction by OMCs starts post the issuance of these guidelines.

b) Retail outlets coming within 50 meter to 100 meter from the nearest point of surface water body shall have secondary containment by way of double walled tanks or concrete protection walls around Underground Storage Tank (UST).

c) Groundwater and soil quality monitoring near the premises of



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fuel retail outlets shall be conducted by OMCs once a year through E (P) Act, 1986 approved labs or labs with national / international accreditation. The monitoring shall be done for those Fuel Retail Outlets, which are located within 100 meter from the nearest point of surface water bodies. These shall be applicable to all petrol pumps, regardless of the date of establishment. In case of any clarification and/or difficulty in obtaining samples for groundwater and soil quality monitoring, OMCs may seek assistance of local administration/SPCB/PCC/CGWB. Protocol for soil and groundwater monitoring is annexed as Annexure-I.

d) Groundwater and soil quality monitoring shall also be conducted by OMCs before installation of the new fuel retail outlet, for those retail outlets coming up within 100 meter from the nearest point of surface water bodies.”

9. The learned counsel appearing on behalf of the 6th respondent / Bharat Petroleum Corporation Limited raised an objection by stating that the NOC was granted based on the measurement taken by the then Executive Engineer, Public Works Department in his letter dated 11.03.2014. As per the said letter, the distance between river bund and the underground tank is 100 meters and therefore, the authorities have acted on the basis of the said measurement.



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10. The learned counsel for the 6th respondent further made a submission that the IRC guidelines are unenforceable and therefore, the reliance placed by the petitioner in this regard is untenable. It is contended that the NOC was granted by following the procedures and there is no infirmity as such. The issues between the writ petitioner and the respondents 7 and 8 are disputed facts, which need not be adjudicated in writ proceedings. For all these reasons, the writ petition is to be rejected.

11. The learned counsel for the 6th respondent has stated that the authorities of Bharat Petroleum Corporation had measured the area and found that the distance between the river bund and the storage tank is about 136.46 meters. Therefore, there is no perversity in the matter of issuance of NOC in favour of the 7th respondent.

12. The learned counsel appearing on behalf of the respondents 7 and 8 raised an objection by stating that the authorities have measured the land and based on the letter of the Executive Engineer dated 11.03.2014, NOC has been issued and



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therefore, there is no infirmity as such. Consequently, the writ petition is to be rejected.

13. Earlier the Civil Suit filed by the writ petitioner in O.S.No.251 of 2013 has been dismissed for default. Therefore, the subsequent suit filed by the writ petitioner in O.S.No.117 of 2016 alone is pending. The Interlocutory Application filed along with the suit has already been dismissed. The learned counsel for the respondents 7 and 8 made a submission that the petitioner has suppressed about the dismissal of the earlier writ petition.

14. The learned Special Government Pleader appearing on behalf of the State made a submission that pursuant to the interim orders passed by this Court, the District Revenue Officer, Cuddalore, measured the distance between the river bund and the storage tank and submitted a report along with map. As per the District Revenue Officer, Cuddalore, the distance between river bund and the storage tank is 37.4 meters.

15. Since the parties have raised repeated objections regarding the measurement, Mr.K.Karunagaran, Executive Engineer, Water Resources Department, Chidambaram has measured the distance between the river bund and



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the storage tank and found the distance is 37.4 meters. The measurement taken both by the District Revenue Officer, Cuddalore and the Executive Engineer, Water Recourses Department, Chidambaram are tallying and therefore, the authorities have subsequently found that the measurement originally taken was improper and the actual distance between the river bank and the storage tank is 37.4 meters as per the Revenue Records.

16. The Executive Engineer, who is present before this Court, explained that the measurement is to be taken from the actual bund of the river and the initial measurement was taken erroneously from inside the river point, which is incorrect. The measurement from river bund is to be taken from the outer point of the river and therefore, the distance, as of now is 37.4 meters, with reference to the river bank and the storage tank.

17. With reference to the earlier certificate issued by the then Executive Engineer, Mr.R.Selvakumar, he has not specifically stated the distance and simply mentioned the distance is beyond 100 meters. In the absence of any specific measurement, the said letter cannot be trusted. If at all the letter has been given based on any collusion or on extraneous consideration, the Engineer-in-Chief, Water



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Recourse Organization, has to initiate appropriate action against the said Executive Engineer. Even if the officer has attained the age of superannuation and retired from service, suitable actions under law is to be initiated.

18. As far as the Bharat Petroleum Corporation is concerned, the issue is not directly connected with them. Once NOC has been issued by the competent authority, thereafter, the Oil Corporation is empowered to grant permission to establish Petrol Bunks. In the present case, the NOC granted was based on the letter of the then Executive Engineer, wherein he has not measured the distance properly and issued a communication to the District Revenue Officer, Cuddalore, stating that the distance between the river bund and the storage tank is beyond 100 meters. It is an apparent error committed and therefore, the reason is to be enquired into.

19. Regarding the earlier writ petition filed by the writ petitioner, this Court did not elaborately adjudicated these aspects. Since the petitioner has questioned the order dated 07.02.2013, this Court disposed of the writ petition on the ground that the letter of intended was already granted in favour of one Smt.Vasuki. There was no adjudication of merits in that writ petition and therefore, the present writ petition is to be considered. In the present writ petition, when serious allegations are raised by



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the petitioners, this Court directed the authorities to measure the distance, so as to ensure that the purpose and object of the guidelines issued by the Central Pollution Control Board and IRC has been complied with. The re-measurement conducted both by the District Revenue Officer and the Executive Engineer, Water Recourse Department reveals that the distance between the river bund and the storage tank is 37.4 meters and therefore, the NOC granted by the competent authority is infirm and not in consonance with the guidelines issued by the Central Pollution Control Board on 01.07.2020.

20. It is needless to state that the water resources are to be protected. It is the duty of the Water Resources Organization to ensure that the purity of the water in the river is protected and contamination in any form is prevented. Installation of the Petrol Bunk nearby river would not only cause pollution, but also would pose danger to the people, who all are utilizing the river water for various purpose including irrigation purposes. Thus, the NOC granted in favour of the petitioner, which is in violation of the guidelines issued by the competent authority in the impugned order C1/4984/2013 dated 03.06.2022 and the consequential endorsement in C1/4984/2013 dated 23.06.2022 passed by the 3rd respondent are quashed and the



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6th respondent / Bharat Petroleum Corporation Limited has to ensure no such permissions are granted within the prohibited area in future in the interest of public.

21. With these observations, the writ petition stands allowed. No costs.
Consequently, connected miscellaneous petitions are closed.

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Index : Yes

Speaking order

Neutral Citation : Yes

To

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Chennai.

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