

**IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH**

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**CWP-5527-2016 (O&M).
Date of Decision: 16.01.2023.**

INDIAN OIL CORPORATION LTD

.. Petitioner

Versus

STATE OF PUNJAB & ANR

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Ashish Kapoor, Advocate,
for the petitioner.

Ms. Niharika Sharma, AAG, Punjab.

VINOD S. BHARDWAJ, J. (ORAL)

The instant writ petition has been filed for seeking issuance of directions to the respondents to decide the pending request/application for grant of 'No Objection Certificate' for setting up of a retail outlet under Rule 144 of the Petroleum Rules, 2002.

The petitioner-Indian Oil Corporation is a Government owned Company and had entered into a lease agreement with one Jasbir Singh Bal for an area measuring 2025 sq. meters as per the jamabandi for the years 1999-2000 situated in village Heir, Tehsil and District Amritsar vide registered lease deed dated 28.05.2003 for a period of 30 years. The details of the above land are mentioned in paragraph No.2 of the present petition. An application for seeking NOC for establishing a retail outlet was submitted with the District Magistrate, Amritsar, under Rule 144 of the Petroleum Rules, 2002 and was initially granted by respondent No.2 on

31.03.2003 (Annexure P-2). The retail outlet was duly made functional. Thereafter, the regular dealer was appointed by the Company. A writ petition, however, was filed by the lesser before the Hon'ble High Court of Delhi which was dismissed on 08.02.2008. The SLP was also filed against the said order before the Hon'ble Supreme Court and the same was also dismissed on 31.07.2008 vide Annexure P-3.

Since the M & H Contractor did not vacate the premises, an Estate Officer was appointed in view of the Notification dated 27.01.2008 issued by the Central Government in exercise of the powers conferred under Section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as 'the Act of 1971'). A notice thereafter was issued by the Estate Officer to the person in unauthorized occupation including the lessor of the land under Section 4 (2) of the Act of 1971. During the pendency of the above said dispute, the District Magistrate, Amritsar, cancelled the NOC granted for establishment of the retail outlet vide order dated 31.01.2009 by giving following reasons:-

- (a) The retail outlet is not as per the approved drawing
- (b) In the approved drawing there are two tanks whereas physically there are 4 underground tanks available
- (c) The retail outlet land includes Khasra No.23//20 which is of village Bal whereas the NOC is for village Heir.

Thereafter, the Estate Officer appointed by the Central Government under the Act of 1971, ordered eviction of the respondent M & H Contractor and lessor vide order dated 09.04.2010 against which an appeal was filed before the Additional District Judge. The petitioner-Corporation

also preferred a separate writ petition before the High Court for issuance of directions to the Police and Civil Authorities to implement the order dated 09.04.2010 passed by the Estate Officer and to provide necessary police assistance as per Rule 7 of the Public Premises (Eviction of Unauthorised Occupants) Rules of 1971. The above said writ petition was disposed of by this Court vide order dated 29.04.2013, directing the Appellate Authority to decide the appeal within a period of two months from the date of receipt of certified copy of the order. Police Commissioner was also directed to provide assistance in case the eviction order sustained. The appeal was subsequently dismissed by the Additional District Judge, Amritsar on 05.07.2013. The above said facts were also apprised by the officer of the petitioner-Corporation to the District Magistrate with a request to restore the NOC earlier withdrawn.

The petitioner-Corporation was thereafter served with a communication dated 29.05.2012 calling upon the petitioner-Corporation to apply for a fresh NOC under Rule 144 of the Petroleum Rules, 2002. Accordingly, the petitioner-Corporation applied for a fresh NOC on 05.03.2014.

It is submitted that there was some dispute with respect to the demarcation of the site, however, the same was also duly dispelled after seeking demarcation. The District Magistrate called for reports from various Departments for considering the application for the grant of NOC. The present petition was thus filed for seeking issuance of directions to the respondents to decide the pending application for grant of NOC under Rule 144 of the Petroleum Rules, 2002.

Written statement on behalf of respondents No.1 and 2 had been filed wherein they have averred as under:-

“3 That, petitioner has not arrayed all necessary parties as respondents. and therefore, no relief can be claimed by the petitioner. It is submitted that the land upon which earlier the retail outlet petrol pump was installed was the ownership of one Sh. Jasbir Singh Bal. Said Jasbir Singh Bal owner of the land, had already instituted one Civil Suit seeking possession of the property bearing 2025 sq.mts. upon which the petitioner had earlier installed its retail outlet petrol pump whose NOC was cancelled on 30.01.2009 (Annexure P-3). The copy of said Civil Suit dated 29.04.2009 is appended herewith as Annexure R-1. It is also submitted that though the said suit was dismissed in default on 11.01.2017, but application filed for restoration of such suit is pending adjudication and is now fixed for 26.04.2019. The copy of the proceeding sheet of Civil Suit filed by owner of land alongwith order dated 11.01.2017 dismissing the suit for non-prosecution is appended herewith as Annexure R-2 and proceeding sheet alongwith relevant orders passed in application for restoration of suit is appended herewith as Annexure R-3. In the year 2014, when the petitioner applied for grant of fresh No Objection certificate from the 0/0 respondent No. 2, said Civil Suit was pending which was concealed by the petitioner from respondent No.2 as well as from this Hon'ble Court.

4. That, in this respect, it is submitted that initially vide order dated 31.03.2003 (Annexure P-2), No Objection Certificate was granted to erstwhile IBP Company Limited for retail outlet Petrol pump at Village Heir, Tehsil and District Amritsar. However, on the complaint received in the 0/0 District magistrate, Amritsar, the NOC earlier granted was cancelled (Annexure P-3). A perusal of Annexure P-3 would reveal that

NOC was cancelled as the company had violated the terms and conditions of the NOC earlier granted.

5 *That, thereafter, petitioner again submitted an application for grant of No Objection Certificate vide its request letter dated 07.03.2014 (Annexure P8) and also submitted various documents like copy of lease deed, copy of previous NOC, copy of letter for cancellation of NOC, copy of demarcation done by revenue authorities, copy of drawings for actual retail site. It may also be relevant to mention here that at no point of time any action was taken by the petitioner for renewal of its earlier NOC granted as it was an admitted fact that NOC was cancelled as the terms and conditions of earlier NOC was violated. Even as per demarcation report freshly conducted by the revenue authorities dated 28.02.2014 (Annexure P-7), it reveals that earlier NOC was issued for Village Heir only, whereas part of the land also existed in Village Bal. Therefore, there was no illegality on the part of answering respondent No. 2 in cancelling the NOC vide its order dated 30.01.2009.*

6 *That, since the lease deed in question on the basis of which the petitioner as lessee has applied for grant of No Objection Certificate is pending adjudication before the Ld. Civil Courts, therefore, at this stage no further action can be initiated by the answering respondent for consideration of grant of No Objection Certificate to the petitioner.”*

It is evident that the decision on the application submitted by the petitioner Company had been kept pending on account of the dispute sub judice before the Civil Court.

Learned counsel appearing on behalf of the petitioner,

CIS No.CM/14/1027 titled as ‘Jasbir Singh Vs. Indian Oil Corporation etc.’ has already been withdrawn by the plaintiff on 14.05.2022 and the statement in this regard was recorded before the Presiding Officer (National Lok Adalat)/-cum-Civil Judge (Jr.Divn.), Amritsar. He thus contends that the only reason given by the respondents for not taking any decision on the application submitted by the petitioner-Corporation for the grant of NOC was the pendency of the Civil Suit. Since the said Civil Suit stands withdrawn on 14.05.2022, there is no impediment on the respondents to proceed with the pending application and to pass an order thereupon in accordance with law.

Taking into consideration, the totality of the circumstances as noticed above and the fact that the application for grant of NOC under Rule 144 of the Petroleum Rules, 2002, has remained pending and the fact that the Civil Suit was also withdrawn on 14.05.2022 and a period of more than 07 months has passed even thereafter, this Court deems it appropriate to dispose of the present petition with a direction to respondent No.2-District Magistrate, Amritsar, to consider the pending application under Rule 144 of the Petroleum Rules, 2002, and to pass a reasoned and speaking order thereupon within a period of 04 months of the receipt of a certified copy of this order in accordance with law.

The petition is accordingly disposed of.

January 16, 2023
raj arora

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No