

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18023 of 2024

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Ajay Kumar Son of Laxman Prasad Singh @ Lakshman Prasad Singh
Resident of Village- Laxmipur Bara, P.O- Enai Police Station- Baheri,
District- Darbhanga, Proprietor of M/s Lakshman Biofuels Centre Laxmipur
Bara- Murli Road, Baheri Darbhanga ... Petitioner

Versus

1. The State of Bihar, through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Department of Revenue and Land Reforms,
Government of Bihar, Patna.
3. The District Magistrate, Darbhanga.
4. Indian Biofuels Corporation Limited, through General Manager, Bihar Sales
Office, 31 Ashiana Galaxy, Exhibition Road, Patna P.S. Gandhi Maidan,
District Patna.
5. The Sales Head (Marketing Division) I.B.F.C India (Pvt.) Ltd 31 Ashiana
Galaxy, Exhibition Road, Patna, P.S- Gandhi Maidan, District- Patna.

... Respondents

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Appearance :

For the Petitioner : Mr.Jagdish Prasad Singh, Adv.
For the Respondents : Mr.Rakesh Ranjan, AC to GP XII

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CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY
ORAL ORDER

5 15-04-2025 Heard the parties.

2. The present writ petition has been filed for the
following relief(s) :

*I. Certiorari- For setting aside of order issued under
the signature of Rajiv Raushan dated 06.09.2024
whereby and where under petitioner's NOC
Certificate Letter No. 1650 dated 23.09.2021 for
storage of petroleum product has been cancelled with
immediate effect contrary to provisions as contained
in Rule 150 of petroleum Rules 2002 without asking
show cause or without providing opportunity of being
heard completely on instance of Respondent IBFC.*



II. Mandamus:- Directing the Respondents not to disturb the petitioner in dealing with petroleum product.

III. Any other appropriate writ or direction be issued which may be applicable in the facts and circumstances of the case.

2. The only question involved in the present Writ Petition is as to whether the District Magistrate has power to cancel the 'No Objection Certificate' issued to the petitioner.

3. The matter is squarely covered by the judgment of this Hon'ble Court passed in C.W.J.C. No. 18284 of 2017 dated 06.03.2018 wherein the Hon'ble Court has held as under :

"This aspect of the matter has been considered by the Hon'ble Supreme Court in Yogesh Kumar's case (supra) in the context of the corresponding Rule 151 of the Petroleum Rules, 1976, wherein it has been held as follows —

"4. The High Court has rightly observed that the District Authority under Rule 151 can cancel the 'No Objection Certificate' only when the licensee ceases to have any right to use the site for storing petrol. However, there are certain subsequent observations made by the High Court in the impugned judgment which might lead to an inference that so long as the licensee



continues to have leasehold rights on the site, the 'No Objection Certificate' cannot be cancelled at all. That does not appear to be the correct position of law. On a reading of sub-rule (1) of Rule 151 it is clear that a 'No Objection Certificate' granted under Rule 144 can be cancelled wherever the licensee ceases to have any right to use the site for storing petrol and that right could be lost by a licensee either by his tenancy or right to the use of the site coming to an end or for any other reason whereby, in law, the right to use the site for storing petrol ceases."

10. The exercise of power by the District Magistrate in cancelling the NOC must accordingly be held to be ultra vires the scope of power and jurisdiction vested in him under Rule 150 of the Rules."

4. Further the Division Bench of this Hon'ble Court in L.P.A. No. 491 of 2024 reported in 2008 2 BBCJ 600 dated 02.04.2008 has held as under :

"12. From a plain reading of the aforesaid provision, it is evident that for holding a 'no objection certificate the lesser establish right to the site. No objection certificate is liable to be cancelled in case the licensee has ceased to have right to use the site. The words "right to use the site" in the aforesaid Rule, in my opinion, means a legal right to continue with the



possession and not a juridical or litigious possession. The period of lease is already over and the lessor has obtained decree of eviction and in such a situation the lessee cannot assert that it has right to use the site. Continued occupation of the site by the lessee without any order of a competent authority or Court of law in his favour cannot be regarded as lawful In view of the authoritative pronouncement of the Supreme Court in the case of C. Albert Morris Va Chandrasekaran & Others (2006(1) SCC 2281, this point need not detain me much. In the said case it has been held as follows :-

"In our opinion, any right which the dealer has over his site was the right which he had acquired in terms of the base. When that lease expired and when the landlord declined to renew the same and also called upon the erstwhile user to surrender possession, the erstwhile lessee could no longer assert that he had any right to the site. His continued occupation of something which he had no right to occupy cannot be regarded as source of a right to the land of which he himself was not in lawful possession, As observed by this Court in MC Chockalingam Vs. V. Manickavasagam litigious possession cannot be regarded as lawful possession. As rightly pointed out by the Division Bench of the High Court the right referred to in this rule has necessarily to be regarded as right which is in accordance with law and the right to the site must be one which is capable of being



regarded as lawful. We have already referred to Bhawanji Lakhamshi vs Himarlal Jamnadas Duni wherein this Court held that the act of holding over after the expiration of the term does not create a tenancy of any kind A new tenancy is created only when the landlord agrees to accept rent for the continued possession of the land by the erstwhile tenant.”

5. Having regard to the above law laid down by this Court in the case above cited and also as seen from the record in this particular case the petitioner has not been served any show cause notice before the impugned order is passed therefore the impugned order, dated 06.09.2024, is liable to be set aside.

7. The Writ Petition is accordingly allowed.

(A. Abhishek Reddy , J)

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