



IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)

[3331]

MONDAY ,THE SEVENTEENTH DAY OF MARCH
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE SRI JUSTICE SUBBA REDDY SATTI

WRIT PETITION NO: 29400/2023

Between:

Mandi Rojashri

...PETITIONER

AND

The Union Of India and Others

...RESPONDENT(S)

Counsel for the Petitioner:

1.JADA SRAVAN KUMAR

Counsel for the Respondent(S):

1.M UMA DEVI (CENTRAL GOVT COUNSEL)

2.NH AKBAR

3.GP FOR REVENUE

4.(SC FOR CORPORATION)G KAVITHA

The Court made the following:

:: ORDER ::

The above writ petition is filed impugning the endorsement computer No.7998 dated 09.10.2023 issued by respondent No.3, rejecting to issue 'No Objection', as illegal, arbitrary and violative of Articles 14, 19 (1)(g), 21 and 300-A of the Constitution of India.

2. The facts, in brief in the affidavit, are that respondent No.9 is the owner of Ac.00-79 cents in survey No.87/2B, Padmapuram Village, Araku Valley, Alluri Seetha Ramaraju District (hereinafter referred to as 'lessor'). The lessor leased out the subject property to the petitioner (hereinafter referred to as 'lessee'), under registered document bearing No.29 / 2013 dated 18.11.2013 for 28 years, two months. The petitioner has been doing agricultural activities since 2013 and thereafter in 2022, the petitioner applied for conversation of land from agriculture to commercial purposes, under the Andhra Pradesh Land Conversion Act, 2006. The permission was accorded.

b) While the matter stood thus, Bharat Petroleum Corporation Limited (BPCL), respondent No.6, advertised on 24.12.2018 for awarding a retail outlet dealership at Araku Valley. In pursuance of the said advertisement, the lessee, made an application, to award MS/HSD Retail Outlet, Dealership at Araku Valley, Visakhapatnam District, in category ST, Type : CFS Regular, Advt. S.No.24. In response, the lessee received a letter of intent dated 05.07.2021. In pursuance of the letter of intent, the lessee applied for a grant of 'No Objection' from the appropriate authorities, as per the norms of BPCL and also made an application to the Tahsildar and Agency Sub-Registrar for the amendment of the lease deed, by inserting a provision for according sub-lease by the lessee to BPCL. The Tahsildar and Agency sub-Registrar issued an endorsement vide Rc.No.65/2019 SA dated 05.12.2019 and signed on 13.12.2019 (Ex.P5). Thereafter, the Sub-Collector, Paderu, respondent No.5 by proceedings in Rc.No.909/2019/SA-B dated 28.12.2022 (Ex.P6) submitted the report of the enquiry, conducted on the application for issuance of 'No Objection Certificate' made by Territory

Manager (Retail), BPCL. The Sub-Collector, through proceedings in Rc.No.909/2019/SA-B dated 27.07.2023 (Ex.P3) forwarded the report dated 21.07.2023 (Ex.P2) submitted by the Tahsildar, Araku Valley, to the Joint Collector. Thereafter, the District Collector addressed a letter to the Territory Manager, BPCL, stating that it is not possible to consider the request for a grant of NOC over the subject land since there is a dispute. Subsequently, the District Collector issued proceedings impugned, rejecting the request of the lessee for issuance of NOC for the establishment of BPCL petrol bunk.

3. Heard Ms. Kota Krishna Deepthi, learned counsel for the petitioner, Smt. M. Uma Devi, learned counsel for respondent No.1 and Sri Bhagath Singh, learned Assistant Government Pleader for Revenue for respondents 2 to 6. Though Sri N.A. Akbar, learned counsel filed vakalat for respondent No.9, there is no representation for respondent No.9.

4. Learned counsel for the petitioner, while reiterating the contentions as per the averments made in the writ affidavit would contend that respondent No.3 exceeded its jurisdiction and issued the endorsement, impugned in this writ petition. Issuance of NOC from the District Authority is to protect public interest and public safety. The authority shall not adjudicate the disputes between the lessor and lessee, if any. Respondent No.3 failed to consider Exs.P2, P3, P5 and P6.

5. Learned Assistant Government Pleader for Revenue, per contra would submit that respondent No.3 conducted an enquiry and recorded the statements of the lessor and lessee. The authority eventually, found a dispute regarding the lease deed and based on the enquiry, the endorsement, impugned in this writ petition was issued. There are no merits in the writ petition. He prayed to dismiss the writ petition.

6. There was no representation on behalf of respondent No.9 on 26.03.2024, 16.04.2024 and also on 06.03.2025, when the matter was heard and reserved.

7. The writ petition was listed on 10.11.2023 and thereafter adjourned from time to time at the request of learned counsel for the respondents to file a counter affidavit. However, no counter affidavit was filed by respondents 3 and 4.

8. The point for consideration is whether the endorsement dated 09.10.2023 (Ex.P4), impugned in this writ petition is legally sustainable?

9. Before discussing the factual aspects and the reports submitted by the respective authorities, it is appropriate to examine the concept of NOC under Rule 144 of the Petroleum Rules, 2002 (for short 'the Rules').

10. Chapter VII of the Rules deals with licenses. Rule 144 envisages NOC. Rule 144 of the Rules is extracted hereunder for better understanding:

"144. No-objection certificate:-

- (1) Where the licensing authority is the Chief Controller or the Controller, as the case may be, an applicant for a new license other than a license in Form III, XI, XVII, XVIII or XIX shall apply to the District Authority with two copies of the site-plan **showing the location of the premises proposed to be licensed** for a certificate to the effect that there is no objection to the applicant receiving a licence for the site proposed and the District Authority shall, if he sees no objection, grant such certificate to the applicant who shall forward it to the licensing authority with his application in Form IX.
- (2) Every certificate issued by the District Authority under sub-rule (1) shall be accompanied by a copy of the plan of the proposed site duly endorsed by him under his official seal.

- (3) The Chief Controller or the Controller, as the case may be, may refer an application not accompanied by certificate granted under sub-rule (1) to the District Authority for his observations.
- (4) If the District Authority, either on a reference being made to him or otherwise, intimates, to the Chief Controller or the Controller, as the case may be, that any licence which has been applied for should not, in his opinion, be granted, such licence shall not be issued without the sanction of the Central Government.
- (5) The District Authority shall complete his inquiry for issuing NO OBJECTION CERTIFICATE (NOC) under sub-rule (1) and shall complete the action for issue or refusal of the NOC, as the case may be, as expeditiously as possible but not later than three months from the date of receipt of application by him."

11. The proforma prescribed under Rule 144 of the Rules reads thus:

Pro forma
No Objection Certificate
[See Rule 144]

No.....

Date.....

Subject: No objection certificate

With reference to the application No..... dated Submitted by and in pursuance of Rule 144 of the Petroleum Rules, 2002, there is no objection for granting licence under the Petroleum Rules, 2002 to Shri/Smt./M/s. address For storage of petroleum products in their premises at Survey No...../Gat No...../Khasra No..... Plot No..... Village Taluka / Tehsil- District State as shown in the site plan duly endorsed and enclosed herewith.

(1) The following particulars have been considered while issuing this no objection certificate, that -

- (a) possession of the site by the applicant is lawful and authorization from land owner or lease holder for developing premises under these rules for storage of petroleum products;
- (b) interest of public, specially the facilities like schools, hospitals or proximity to places of public assembly and the mitigating measures, if any, is provided;
- (c) traffic density and impact on traffic;
- (d) conformity of proposal to the local or area development planning;
- (e) accessibility of the site to fire tenders in case of emergency and preparedness of fire services for combating the emergencies;
- (f) genuineness of purpose.
- (g) Any other matter pertinent to public safety;

Signature of the district authority issuing no objection certificate with his office seal (in towns having a Commissioner of Police, the Commissioner or a Deputy Commissioner of Police and for any other place the District Magistrate)

Note. – The licensing authority shall accept the no objection certificate within a period of three years from the date of its issue for considering grant of licence.]

12. The Preamble of The Petroleum Act, 1934, reads as under:

“An Act to consolidate and amend the law relating to the import, transport, storage, production, refining and blending of petroleum.”

13. For effectuating the purpose of the said Act, the Rules have been framed. To store petroleum in tank(s), an applicant has to apply under Rule 144 of the Rules to the District Authority with two copies of the site plan showing the location of the premises proposed to be licenced for a certificate to the effect that there is no objection to the applicant receiving a licence for the site proposed. The District Authority is thus, required to consider and grant no objection certificate after considering the suitability of the site proposed.

14. Thus, a careful perusal of the language employed in the Rule 144 along with proforma would discern that ‘No Objection Certificate’ is needed to the

applicant, for getting a license, for the site proposed for storing the product. While granting NOC, as per the proforma, the authority has to consider whether the possession of the site by the applicant is lawful and has authorization of the land owner or lease holder for developing the premises; interest of the public, specially the facilities like schools, hospitals or proximity to places of public assembly and the mitigating measures, if any, is provided; traffic density and impact on traffic; conformity of proposal to the local or area development planning; the accessibility of the site to fire tenders in case of emergency and preparedness of fire services for combating the emergencies; genuineness of purpose and any other pertinent to public safety.

15. Thus, the power under the Rules, as illustrated in Rule 144 and Proforma, clearly indicates that the insistence of NOC from the District Authority is to protect public interest and public safety. The location of the site plays a vital role for establishment of petrol tank qua safety and in that connection, the District Administration shall consider issuance of No objection. The dispute, if any, between the lessor and lessee is beyond the scope of the enquiry and that can be subject to separate challenge in appropriate proceedings. The District Authority must confine its scope of enquiry with the parameters referred to, under the Rule and proforma. Any enquiry beyond its power would amount to abdication of duty vested under the statutory provisions.

16. In the case at hand, the lessee submitted a registered lease deed dated 18.11.2013, for 28 years and two months. It is also pertinent to mention here that Tahsildar and Agency Sub-Registrar, Arakuvalley by endorsement Rc.No.65/2019 SA dated 05.12.2019 confirmed about execution of the lease deed for 28 years and that the amendment of the registered document was made after examining the lessor. The Tahsildar submitted a report to the Sub-Collector, ASR District, Paderu vide Rc.No.374/2023/SA dated 21.07.2023. Thereafter the Sub-Collector, ASR District forwarded the report of Tahsildar to the Joint Collector, vide Rc.No.909/2019/SA-B dated 27.07.2023 (Ex.P3).

17. The Sub-Collector, Paderu, earlier submitted a report vide Rc.No.909/2019/SA-B dated 28.12.2022 (Ex.P6) to the District Collector, mentioning about the concerned officer visiting the site on the ground and further stated that there are no civil disputes in respect of the subject land. It was also stated that there are no structures, dwelling houses, historical monuments, religious structures, or Tombs in and around the proposed site and there are no schools, Cinema Theatres or firecrackers godown, near the land, which is proposed for the establishment of Petrol / Diesel Retail Outlet. The authority recommended for issuance of NOC in favour of the applicant/ lessor. The other related documents were also annexed to the said report. As seen from the endorsements impugned in the writ petition, respondent No.3 summoned the lessor and lessee and recorded their statements; the lessor of the property disputed the lease period and non-payment of the amount and thus, respondent No.3 issued the endorsement impugned.

18. As discussed supra, the intendment of NOC under Rule 144 is to see to it that the storage of the product shall neither cause any prejudice to any neighbouring person nor any public disturbances. It is beyond the scope and jurisdiction of respondent No.3 to enquire into the title dispute, if any, between the lessor and lessee, that too when the lease deed is a registered document and the registering authority confirmed that the lease period is for 28 years. Thus, the endorsement issued by the 3rd respondent does not withstand legal scrutiny.

19. In **C. Albert Morris v. K. Chandrasekaran**¹ the Hon'ble Apex Court while considering Rule 144 of Petroleum Rules, observed as follows:

"Rule 144 deals with grant of NOC does not contemplate an enquiry into ownership of the land nor does it require the Collector to enquire into the nature of the right claimed by the person who has applied for NOC."

¹ (2006) 1 SCC 228

20. The Division Bench of the Kerela High Court in W.A. 1461 of 2022, reported in 2023 LiveLaw (ker) 508, regarding the scope of enquiry under Rule 144, observed as follows:

5. The nature of power under the Petroleum Act and Rules, 2002 as illustrated in Rule 144 and Proforma clearly indicates that the insistence of NOC from the District Authority is to protect the public interest and public safety. If the Indian Oil Corporation acted arbitrarily in allocating a petroleum outlet that is not a matter coming under the scope of power conferred on the District Authority. That can be subject to a separate challenge in appropriate manner under law. The District Authority must confine its scope of enquiry with the parameters referred under the proforma in the light of Rule 144 of the Petroleum Rules 2002. Any enquiry beyond its power would amounts to abdication of duty vested under the statutory provisions and that can be interfered by this Court under Article 226 of the Constitution of India. The scope of enquiry must be confined to protect the interest of public in the location proposed for the establishment of the petroleum outlet by the applicant. The question as to Whether location is covered by notification or not is not a matter to be decided by the District Authority.

21. No counter-affidavit was filed by the 3rd respondent despite the time granted. Rule 12 of the Writ Proceedings Rules prescribes 120 days from the date of service of notices, for filing of the counter affidavit, as substituted by amendment vide ROC No.2689/SO/2016, A.P Gazettee No.10 dated 08.05.2017.

22. In the case at hand, the writ petition was filed on 11.12.2023. For the reasons best known, neither respondent No.3 nor respondent No.4 filed the counter affidavit by annexing the relevant documents. It is also pertinent to mention here that despite the filing vakalat on behalf of respondent No.9, there was no representation for respondent No.9 on a couple of occasions including on 06.03.2025, when the writ petition was heard. In the absence of

any counter affidavit rebutting or adverting the averments made in the writ affidavit, it is deemed that the averments made in the writ affidavit are proved.

23. The Hon'ble Apex Court, in **Lohia Properties (P) Ltd., Tinsukia v. Atmaram Kumar**², while dealing with Order VIII Rule 5 of CPC, observed that non-traverse would imply admission. The relevant part is extracted hereunder:

13. Order 8 Rule 5(1) reads as follows:

“Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability:

Provided that the Court may in its discretion require any fact so admitted to be provided otherwise than by such admission.”

14. What is stated in the above is, what amounts to admitting a fact on a pleading while Rule 3 of Order 8 requires that the defendant must deal specifically with each allegation of fact of which he does not admit the truth.

15. Rule 5 provides that every allegation of fact in the plaint, if not denied in the written statement shall be taken to be admitted by the defendant. What this rule says is, that any allegation of fact must either be denied specifically or by a necessary implication or there should be at least a statement that the fact is not admitted. If the plea is not taken in that manner, then the allegation shall be taken to be admitted.

24. Rule 24 of the Writ Proceedings Rules prescribes that all other rules relating to causes and matters coming before the Original Side and Appellate Side of the High Court and the provisions of the Code of Civil Procedure, 1908 will apply to the Writ Petitions and the Writ Appeals insofar as they are not inconsistent with these rules.

² (1993) 4 SCC 6

25. Thus, the discussion supra, demonstrates that respondent No.3 conducted enquiry beyond its jurisdiction and power regarding the issuance of NOC under Rule 144 of the Petroleum Rules and issued endorsement (Ex.P4) impugned in the writ petition, which is legally unsustainable. The authority abdicated the power vested with it. Hence, the endorsement (Ex.P5) is liable to be set aside.

26. Given the discussion supra, this writ petition is allowed. The endorsement vide computer No.7998 dated 09.10.2023 of respondent No.3 is set aside. Respondent No.3 shall issue NOC in respect of the property in survey No. 87/2B, Padmapuram, Araku Valley, Alluri Seetha Rama Raju District, in terms of Rule 144 of the Rules, within one week from the receipt of a copy of this order. No costs.

Miscellaneous petitions pending, if any, shall stand closed.

SUBBA REDDY SATTI, J

Date: 17.03.2025

ikn

HONOURABLE SRI JUSTICE SUBBA REDDY SATTI

WRIT PETITION No.29400 of 2023

Dated: 17.03.2025
IKN