

IN THE COURT OF DEPUTY COMMISSIONER UTTARA KANNADA KARWAR

Present: Sri. S S Nakul, I.A.S.
Deputy Commissioner,
Uttar Kannada, Karwar.

No. DCB/MAG-1/MAG-13/8/2016-1882



Between

1. Sri. Chandrakant Devappa Naik
R/o Hantimath, Alvekodi, Taluk: Kumta

.... Petitioner

V/s

1. Manager, Total Oil India Pvt. Ltd.,
138, Ground & 1st Floor, Raheja Paramount
Residency Road, Bangalore-580025
2. Shri J. Uday Bhat,
Managing Director,
M/s Putturu Petroleum Product Pvt. Ltd.
NH-17, Kumta

.... Respondents

Sub: Application dated 09-04-2017 for cancellation of NOC dated 18-10-2016 issued to respondents.

Ref: Order dated 14-07-2017 passed by the Hon'ble High Court in W.P. No. 103866/2017 (GM-RES) filed by Chandrakant Devappa Naik V/s The Deputy Commissioner & District Magistrate and others.

Preamble:

The Hon'ble High Court of Karnataka in W.P. No. 103866/2017 (GM-RES) in between Chandrakant Devappa Naik V/s The Deputy Commissioner & District Magistrate and others has passed order dated 14-07-2017 with a direction to respondent No. 1 the Deputy Commissioner and District Magistrate Uttara Kannada Karwar to consider the application dated 18-10-2016 filed by the petitioner Chandrakant Devappa Naik requesting for cancellation of No Objection Certificate issued to respondent No.2 Total Oil India Private Limited.

Pursuant to the directions of the Hon'ble High Court, notices were issued to the petitioner Chandrakant Devappa Naik and the respondent No. 1 Total Oil India Private Limited and Respondent No. 2 Shri. Uday Bhat to appear before the Court. Accordingly, the petitioner entered appearance through his counsel Shri Santosh V. Bhagwat & N.S. Bhat. Respondent No. 1 remained absent. Respondent No. 2 appeared through one Shri. Krishna Bhat.

The brief facts of the case are as hereunder:

That, out of total extent of 1-9-0 (A-G-A) of land in Sy.No. 367/9A of Kalbhag village in Uttara Kannada District, an area measuring 0-34-0 guntas was converted into non-agricultural purpose in the name of the owner of Laxmi W/o Narayan Naik vide order dated 17-07-1995 subject to certain terms and conditions specified therein. The land owner Laxmi W/o Narayan Naik sold entire extent of the land including the converted area to Shri. Kiran Chand Bogilal Shaha of Hubli without utilizing the land for the purpose to which it was granted i.e. industrial purpose. Later, Shri. Kiran Chand Bogilal Shaha sold the converted land measuring 0-34-0 guntas in favour of Shri. Krishna Venkatesh Mallya who has put up commercial buildings in the land and leased

portion of the land measuring 0-9-0 guntas to the respondents for 20 years under a lease deed dated 27-07-2013 for installing Gas Dispensing Unit. Thereafter, as requested by the respondents, NOC dated 31-05-2013 was issued by the then Deputy Commissioner and District Magistrate Karwar after considering various aspects along with reports submitted by various authorities. In the meanwhile, some civil cases appears to have been filed before the Civil Courts. There was also allegations that while constructing the building the respondents have encroached the adjoining 0-15-0 guntas of government land. This encroachment was later cleared by the concerned authorities. Hence the 1st respondent vide application dated 06-04-2016 has requested to revalidate the NOC dated 31-05-2013. The application was accompanied with revised plan and other relevant documents. After a thorough enquiry and considering all legal aspects including reports from the concerned authorities, the revised NOC was issued on 18-10-2016. Thereafter the petitioner Chandrakant Devappa Naik filed application seeking cancellation of the NOC. Besides, he has also filed W.P. No. 103866/2017 (GM-RES) before the Hon'ble High Court of Karnataka Dharwad Bench challenging validity of the NOC dated 18-10-2016 and also to issue direction to the Deputy Commissioner and District Magistrate to consider his representation dated 09-04-2017. In the meanwhile based on the application filed by one Vinod Bhaskar Koda, an enquiry was conducted and conversion order dated 17-07-1995 was cancelled vide order dated 02-05-2017 as the land was not used for the purpose to which it was granted i.e. industrial purpose. This order is challenged by the land owner Shri. Krishna Venkatesh Mallya by filing appeal before the Karnataka Appellate Tribunal Bangalore in Appeal No. 629/2017 against the Deputy Commissioner as respondent No. 1 and the Tahasildar, Kumta as respondent No. 2.

The advocate for the Petitioner argued as hereunder:

1. The NOC granted by the District Magistrate goes against the principles of the natural justice.
2. The specific guidelines of PESO are not followed while issuing NOC.
3. Several objections from the neighbourers and public are not considered.
4. Shri. Krishna Bhat son of respondent J. Uday Bhat has no authority to appear on behalf of respondent No.2. There is encroachment of the public road while installing auto LPG dispensing unit as observed by the Assistant Commissioner and Tahasildar, Kumta. Their observations are not considered.
5. The project of the respondents is illegal and will be hazardes to the public in future.
6. An Anganwadi is situated within the radius of 50 meters which is a bar to issue NOC.
7. The reports filed by various authorities are not considered.
8. The previous NA order was cancelled subsequently under a separate order. Though stay is granted by the KAT, the original conditions of NA still continue.
9. Litigations are still pending before the various Courts against respondents regarding encroachment of government land and the public road.



10. The conditional NOC could not have been issued in view of the documents submitted by PESO which is contrary to law.
11. The request by the respondents was only to revalidate the earlier NOC and not to issue fresh NOC.
12. Though the respondents have undertaken to fulfill the conditions laid down in the circular No. RW/NH-33023/19/99-DO-III dated 25-09-2003 they have not yet complied those conditions.
13. The observations in the letter dated 11-04-2017 from the office of Deputy Chief Controller of Explosive for Chief Controller of Explosive are not considered. So also the reports and letters from other authorities are not considered while issuing the NOC.

Respondent No. 1 remained absent, respondent No. 2 is represented by one Shri. Krishna Bhat.

The submissions on the side of the respondents based on the records are as hereunder:

1. NOC dated 31-05-2013 was issued only after considering all the relevant points in proper perspective.
2. NOC dated 18-10-2016 was issued based on the revised layout plan with a request to revalidate the NOC as the respondents have vacated the alleged encroachment of the abutting government land.
3. The stay granted in all the civil suits referred by the petitioner are already vacated.
4. The NOC dated 18-10-2016 was issued only after considering all the reports and documents referred therein and also subject to the direction/order of the concerned Courts (Pending in JMFC Kumta & AC, Kumta) and therefore there are no illegality in issuing the NOC.

On perusal of the records, it is seen that No Objection Certificate dated 18-10-2016 was issued only after considering various reports and letters referred therein as could be seen under reference No. 1 to 8. It is clearly stated in the NOC that the respondent shall put up auto LPG Pump only after fulfilling all the conditions laid down by the Chief Fire Officer, Karnataka Fire & Emergency Services, Mangalore, Tahasildar, Kumta, Police Department, Kalbhag Gram Panchayath and Health Department. Further it is specifically stated in the NOC that it is valid subject to the direction/order of the concerned Courts (Pending in JMFC Kumta & AC, Kumta).

However, it is pertinent to note that based on the application filed by one Vinod Bhaskar Koda, an enquiry was conducted and conversion order dated 17-07-1995 was cancelled vide order dated 02-05-2017 as the land was not used for the purpose for which it was granted i.e. industrial purpose. This order is challenged by the land owner Shri. Krishna Venkatesh Mallya before the Hon'ble Appellate Tribunal in Appeal No. 629/2017. The Appellate Tribunal has stayed the order dated 02-05-2017. The validity of the impugned NOC dated 18-10-2016 will be effective subject to the final



results of the appeal. Therefore in the interest of justice and equity, I am of the opinion that the impugned NOC dated 18-10-2016 be cancelled for the time being.

Hence after a careful scrutiny of the entire material on record, I proceed to pass the following order.

No. DCB/MAG-1/MAG-13/8/2016 E-1882

Date:20-8-2018

Order

NOC issued by this office dated: 18-10-2016 is hereby withdrawn. Respondent is free to re-approach this authority after final disposal of KAT case.

(Order dictated to type stenographer, got computerized, verified and pronounced in open court on 20-8-2018)



J. Uday Bhat
20/8
**Deputy Commissioner &
District Magistrate,
Uttara Kannada, Karwar**

Copy to:-

1. Advocates Sri Santosh V. Bhagwat & Sri. N.S. Bhat to the petitioner for information.
2. Manager, Total Oil India Pvt. Ltd. for information.
3. J. Uday Bhat, Managing Director, M/s Puttur Petroleum Production Pvt. Ltd. for information.