



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:14.07.2017

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THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P (MD) No.13022 of 2017
and
W.M.P (MD) .No.10088 of 2017

M.Chithiraivel

... Petitioner

Vs.

1. The Director General of Police,
Mylapore, Chennai.
2. The Inspector General of Police,
South Zone, Race Course Road,
Madurai.
3. The Deputy Inspector of General of Police,
Near High Ground Government Hospital,
Palayamkottai,
Tirunelveli.
4. The Superintendent of Police,
Tirunelveli District,
Tirunelveli.
5. The Deputy Superintendent of Police,
Alangulam, Tirunelveli District.
6. The Inspector of Police,
Alangulam Police Station,
Tirunelveli District.
7. Ayyappan,
Inspector of Police,
Alangulam Police Station,
Tirunelveli District.
8. The Revenue Divisional Officer,
Thenkasi, Tirunelveli District.
9. The Tahsildar,
Alangulam,
Tirunelveli District.



10. M/s.Leit Wind Shriram Manufacturing Limited,
Represented by its Authorized Signatory,
J.Sriram.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus directing the 6th respondent not to provide any police protection for the purpose of day today operation and producing of Wind Energy by running the Wind Mill belonging to the 10th respondent herein situated at S.Nos.5/2, 3, 5,7,9,12,13,14,15,16(p), 17(p),18(p) and 19 of Naranapuram Village, Alangulam Taluk, Tirunelveli District.

For Petitioner : Mr.A.Saravanan
For R10 : MR.T.Sathishkumar
For R1 to R9 : A.K.Baskarapandian,
Special Government Pleader

O R D E R

This writ petition is filed for issuance of Writ of Mandamus, to direct the sixth respondent not to provide any police protection for the purpose of day today operation and production of Wind Energy by running the Wind Mill belonging to the tenth respondent.

2.The case of the petitioner in the affidavit filed in support of the petition are as follows:

2.1. The petitioner states that he own agricultural land in Naranapuram Village, Alangulam Taluk, Tirunelveli district and the petitioner also claims that he is the Nattamai of the said Village. It is stated that in Naranapuram Village, there is a big tank, which supplies water to other four tanks, situated near the Village. The petitioner and other neighbouring land owners are stated to be cultivating their land using the water from the tank in Naranapuram Village.

2.2. When the tenth respondent proposed to install a Wind Mill in Survey Nos.5/2,3,5,7,9,12,13,14,15, 16(p),17(p),18(p) and 19, the petitioner and other farmers stated to have objected for the erection of the Wind Mill, on the main ground that the land, in which, the tenth respondent was trying to establish the Wind Mill is classified as Government Promboke Kanmai. It is admitted that though the land was classified as a water catchment area, it was treated as an agricultural land. When the tank reaches its full capacity, it is contended that the land would be submerged in water. However it is also stated that the said land was assigned as agricultural land and public used the land for agricultural purpose, without hindrance to storage of water. Hence the land was classified as a water spread area of the tank. However it is stated that the land cannot be used for any commercial purpose and that if, any



construction should be made, it can be done only by obtaining No Objection Certificate from the Competent Authority.

2.3. Since the tenth respondent has started erecting the Wind Mill, which is a commercial activity, without any prior permission from the Competent Authority it is stated that the petitioner and others have objected to the attempt to erect the Wind Mill in the land in question, which was classified as Kanmai Promboke. The ninth respondent, namely the Tahsildhar, Alangulam, Tirunelveli District called for a Peace Committee Meeting by its letter dated 20.01.2017, in connection with the objection. In the Peace Committee Proceedings, the ninth respondent resolved not to permit the erection of the Wind Mill as the land, in which, the Wind Mill was sought to be erected was shown as Kanmai in village account, and that necessary recommendation will be forwarded to the Public Works Department as Law and Order problem will be created.

2.4. Subsequent to the resolution of the Peace Committee Meeting, the Revenue Divisional Officer, Tenkasi, the eighth respondent in this Writ petition issued a show cause notice to the tenth respondent on 10.02.2017 as to why the permission granted to the tenth respondent cannot be cancelled. Challenging the said show cause notice, dated 10.02.2017, the tenth respondent has filed a Writ petition in W.P.(MD).No.3200 of 2017. Even in the Writ petition filed by the tenth respondent, the interim prayer sought for was to forbear the respondents 1 to 4 therein from removing the Wind Electric Generator and its accessories, fittings and fixtures erected and kept in Survey No.5 in Naranapuram Village, Alangulam Taluk, Tirunelveli District. This Court passed an order dated 06.03.2017, directing the respondents to maintain status quo till 27.03.2017.

2.5. The petitioner further states that he has filed a petition to implead himself as a party in W.P(MD).No.3200 of 2017 in W.M.P(MD).No.5093 of 2017 and the same is pending. It is further stated by the petitioner that another Writ petition was filed by the rival claimant to the land, against the tenth respondent in which they have erected the Wind Mill. It is admitted that the said Writ petition was dismissed by this Court, directing Writ petitioner to work out his remedy before the appropriate civil forum. The said Writ petition has nothing to do with the present Writ petition, as the parties are different and the cause of action is also different. It is stated that the Writ petition in W.P(MD).No.3200 of 2017 is periodically adjourned.

2.6. It is admitted that the tenth respondent through his subordinate filed another Writ petition before this Court in W.P (MD).No.11833 of 2017 seeking the prayer, directing the sixth respondent, namely, the Inspector of Police to give protection to the life of the petitioner, workers of the tenth respondent's company and the Wind Mill, Transformer and other installations and materials of the Wind Mill at Survey Nos. 5/2,3,5,7,9,12,13,14,15,16



(p), 17(p), 18(p) and 19 in Naranapuram Village, Alangulam Taluk, Tirunelveli District. It is also admitted that by order, dated 27.06.2017, the respondent police was directed to conduct an enquiry and provide sufficient protection to the petitioner's Wind Mill and installation until the disposal of W.P(MD).No.3200 of 2017

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2.7. It is the specific case of petitioner that the Writ petition in W.P(MD).No.11833 of 2017 was filed only to protect the fixtures, fittings, accessories and electric Generator, as if the tenth respondent has already completed the erection of Wind Mill. It is stated that based on the apprehension of the tenth respondent, that heavy damage is likely to be caused to the Wind Mill fixtures, this Court also passed an order directing the respondents to give police protection. It is the case of the petitioner that the order of status-quo was only to protect erection of the Wind Mill as the main Writ petition itself was only against the show cause notice. It is further alleged that the tenth respondent taking advantage of the orders in the two Writ petitions is trying to operate the Wind Mill. It is contended that the sixth respondent was directed to provide sufficient protection to the Wind Mill and it's installation. Since the Wind Mill has not yet started functioning, the direction to the sixth respondent to provide police protection, cannot be extended to protect the functioning of the Wind Electric Generator.

2.8. It is alleged that the sixth respondent under the pretext of enforcing the direction of this Court by order dated 27.06.2017 in W.P(MD).No.11833 of 2017, deployed police force in the place of erection of Wind Mill from 07.07.2017 and allowed the tenth respondent to operate the Wind Electric Generator and generate electricity. It was therefore contended that the sixth respondent colluded with the tenth respondent by interpreting the orders in his own way and is giving police protection contrary to the order of this Court. Since, earlier order in the above said Writ petition was only to protect the installation of the Wind Mill, the sixth respondent cannot provide police protection by deploying police force in the Wind Mill premises for generating electric energy. The petitioner has sent a representation/complaint against the sixth respondent to the respondents 1 to 5. However, no action was taken against the illegal protection that was given to the tenth respondent for production of Wind Energy. It is alleged that instead of protecting the fixtures of the Wind Mill as per the direction of this Court, the sixth respondent is physically providing police force and give protection for the production of Wind energy contrary to the order passed by this Court.

2.9. Sum and substance, the petitioner's contention in the present Writ Petition is on the basis of the two orders passed by this Court earlier and the grievance of the petitioner is that the official respondents are colluding with the tenth respondent by a wrong interpretation of the orders passed in the two Writ petitions. It is also to be noted that the petitioner has stated that he has filed a petition to implead himself as a party in W.P(MD).No.3200 of



3. First of all, this Court does not find any merit in the present Writ petition. The petitioner has no *locus standi* to come before this Court. The negative prayer in the Writ petition on the interpretation of the earlier order passed by this Court is wholly misconceived and hence not maintainable. The above Writ petition is aimed at stalling the production of energy through the Wind Electric Generator installed by the tenth respondent.

4. The learned Counsel for the petitioner referred to the Peace Committee Meeting convened on 20.01.2017. In the Peace Committee Meeting dated, 20.01.2017, the tenth respondent is not a party. The undertaking of the participants that they will not create any law and order problem was recorded. The request of the villagers that part of the land, which according to them is a catchment area should be redeemed for public use after removing the posts installed in connection with the Wind Mill was considered and taking into account that one of the Survey Number namely, S.No.5/5 to which patta was issued on 27.02.1973 was registered previously as Kanmai Promboke, it was assured that steps would be taken not to allow the installation of Wind Mill by the officials. The Peace Committee Meeting does not indicate any decision as regards the classification of the land or as regards the legality of erection or operation of Wind Mill. When the tenth respondent was not made a party, the resolution can never be treated as binding on the tenth respondent.

5. By an order dated 06.03.2017 in W.P(MD).No.3200 of 2017, this Court directed the respondents to maintain status quo till 27.03.2017. The Writ petition in W.P(MD).No.3200 of 2017 was filed, challenging the show cause notice dated 10.02.2017, whereby, the permission that was granted earlier to the tenth respondent was sought to be cancelled. The petitioner himself admitted this in the affidavit that the show cause notice was only before cancelation of permission. By virtue of the interim order that was passed by this Court on 06.03.2017, it is made clear that the permission that was granted to the tenth respondent for erection of the Wind Mill is intact.

6. The learned Counsel appearing for the petitioner has also admitted the order passed by this Court in W.P(MD).No.11833 of 2017 on 27.06.2017, which reads as follows:

"When the matter was taken up for hearing the learned Additional Government Pleader submitted that on the complaint given by the petitioner, a petition enquiry is pending in C.S.R.No.229 of 2017.

2. It is also brought to the notice of this Court that the petitioner has been permitted by the TANGEDCO to erect a Wind Mill for Neyveli Lignite Corporation in the survey numbers mentioned in the writ petition. It is also seen that by virtue of the interim orders passed by this Hon'ble Court in



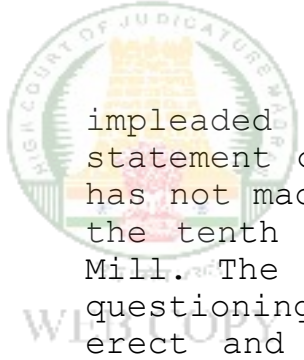
W.P(MD).No.3200 of 2017, the Wind Mill is said to be functioned. Under such circumstances, the respondent police is directed to conduct enquiry in C.S.R.No.229 of 2017 and provide sufficient protection to the petitioner's wind mill and installation until the disposal of W.P(MD).No.3200 of 2017".

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7. By virtue of the order passed by this Court, it can be seen that this Court has assumed that the Wind Mill is in operation. Therefore, after taking note of the fact that the petitioner's Wind Mill is functioning, a direction was issued to the respondent police to provide sufficient police protection to the petitioner's Wind Mill and installation, until disposal of the W.P(MD).No.3200 of 2017.

8. The grievance of the petitioner in the present case is that a direction of this Court earlier is only to give protection to the Wind Mill and not to permit the tenth respondent to produce energy by operating the Wind Mill. It is not in dispute that the tenth respondent has obtained permission from the statutory authorities to operate the Wind Mill. Hence, the protection required from the sixth respondent or from the police department would include to operate the Wind Mill and to produce Electric Energy from the Wind Mill installed by the tenth respondent. Having regard to the purpose of seeking police protection, the petitioner cannot make this distinction between erection and operation in the present context. The Writ petition is wholly misconceived inasmuch as the petitioner has come forward with this Writ petition without a *bona fide* cause but to prevent the tenth respondent, who has legally erected the Wind Mill with a heavy investment to operate Wind Mill and to produce energy. In this circumstances, the *locus standi* of the petitioner, who is a resident of the village has to be considered. The petitioner raised objection for the erection of the Wind Mill, with reference to a particular subdivision of survey No.5 which according to him forms part of a land which was classified originally as a Kanmai Promboke. However, the fact that patta was granted to this land to an individual even in the year 1973, is evident from the proceedings of the Tahsildhar dated 20.01.2017. Hence, even going by the records available, this Court is able to see that the disputed property in Survey.No.5/5 is a patta land which was recognized as a private land a decade before UDR. Further, the contention of the petitioner with regard to the character of the land is not supported by any materials and there is no *prima facie* case. The Wind Mill has been erected even according to the petitioner in a land comprising of several sub divisions of survey number No.5 in Naranapuram Village.

9. The dispute is only in respect of a small extent of 13 cents in Survey No.5/5. The person who is a *bona fide* litigant, would have come up with details of lands owned by the tenth respondent and the purpose for which the disputed land in Survey No.5/5 is utilized by the tenth respondent. The petitioner has



impleaded as a party in W.P(MD).N.3200 of 2017, even as per the statement of the learned Counsel for the petitioner. The petitioner has not made any attempt to clarify the order of status-quo, so that the tenth respondent would not proceed with operation of the Wind Mill. The petitioner has not filed any other Writ petition either questioning the licence that was granted to the tenth respondent to erect and operate the Wind Mill or the order to provide police protection to the Wind Mill.

10. The tenth respondent has installed the Wind Mill with heavy investment and keeping the Wind Electric Generator idle without commercial exploitation, will cause great prejudice to the tenth respondent. The petitioner's ultimate aim and object appears to be motivated for no *bona fide* cause. From the peculiar prayer to stall the production of energy, this Court finds that the real intention and object behind filing this Writ petition without approaching Civil Court is to give pressure to the tenth respondent for extraneous reasons. The Wind Mill is erected with due permission and the production of wind energy is lawful as on date. Unless, the erection of the Wind Mill, is found to be illegal by a competent Court, the petitioner is not entitled to any relief. If at all, the petitioner can move the Civil Court to establish the character of land by filing appropriate civil suit and seek cancellation of licence, if he succeeds in suit by establishing the character of land as part of water spread area. However at no stretch of imagination, the present Writ Petition can be treated as one for espousing a *bona fide* cause. Since this Court is of the firm view that the Writ Petition is filed with ulterior motive the Writ Petition is liable to be dismissed with heavy costs and accordingly the Writ Petition is dismissed with a cost of Rs.25,000/- (Rupees Twenty Five Thousand only) payable to the Honourable Chief Justice Relief Fund. Consequently, the connected W.M.P.(MD) No.10088 of 2017 is closed.

Sd/-

Assistant Registrar (AD-II)

/True Copy/

Sub Assistant Registrar

To

1. The Director General of Police,
Mylapore, Chennai.
2. The Inspector General of Police,
South Zone, Race Course Road,
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3. The Deputy Inspector of General of Police,
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9. The Tahsildar,
Alangulam,
Tirunelveli District.

+ 1 CC TO Mr.A.SARAVANAN, ADVOCATE IN SR No. 65929
+ 1 CC TO Mr.T.SAKTHIKUMARAN, ADVOCATE IN SR No. 65489
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 65914

CMR/MSA

TE/KK/SAR-IV : 02/08/2017 : 8P/13C

W.P(MD)No.13022 of 2017 and
W.M.P(MD) .No.10088 of 2017
14.07.2017