

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 05.01.2018

Pronounced on : 05.02.2018

CORAM :

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

AND

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.A.No.1167 of 2015

A.Palanisamy ... Appellant/Petitioner
Vs.

1. The Chief Engineer,
Non-Conventional Energy Sources,
Tamil Nadu Electricity Board,
No.144, Anna Salai, Chennai-2.
2. The Superintending Engineer,
Non-Conventional Energy Sources,
Tamil Nadu Electricity Generation and
Distribution Corporation,
Udumalpet - 54.
3. The Executive Engineer,
Wind Farm Project,
Tamil Nadu Electricity Board,
Udumalpet - 54.
4. M/s.LEPL Projects Limited,
59-14-10, Ramachandra Nagar,
Opp. Maris Stella College,
Vijayawada - 520 008. ... Respondents/Respondents

Prayer: Writ Appeal is filed under Clause 15 of the Letters Patent, against the passed by by this Court in W.P.No.17902 of 2014 dated 08.07.2014.

Writ Petition NO.17902/2014

Writ Petition filed Under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the Impugned Rejection Letter No.1804/ Mo.Po/ Ma.Sa.Ea/ Udumalai/ U.Se.Po/ Mu.Ni.Va/ Ko.Pugar/12 dated 29.9.2012 and quash the same and consequently

direct the respondents to remove or alter the position of the Wind Farm installed by the 4th respondent at S.F.No.903/4/P&896/ 2/P in Suriyanallur Village Dharampuram Taluk Tiruppur

For appellant : Mr.S.Doraisamy
For Respondents : Mr.Rameshwar for RR1 to R3
No Appearance for R4

JUDGMENT

[Judgment of the Court was made by P.VELMURUGAN, J.]

The writ appeal is filed against the order dated 08.07.2014, made in W.P.No.17902 of 2014.

2 The brief facts of the appellants' case in the writ petitions are as follows :-

2.1 The appellant has been a resident of Suriyanallur Village, Dharampuram Taluk, Tiruppur District in S.F.No.894/1, for more than 45 years. The appellant and his family members were engaged themselves in agricultural activities and residing in a hut house put up in the said land. He has also paid house tax. Since the said house was a hut, he applied for assistance under the scheme "Indira Memorial Housing Scheme" to convert his hut into a concrete house. Sanction was granted to the appellant by the District Collector, Tiruppur, in Na.Ka.No.971/2010/A9 dated 25.08.2010. An allotment order was also issued to the appellant by the Block Development Officer on 31.08.2010. As per the condition stipulated in the allotment order, the appellant has to complete the construction of concrete house within a period of six months from the date of receipt of a copy of the order and accordingly, he has completed the construction within the stipulated period of time.

2.2 During construction of the concrete house, the third respondent visited the adjacent land and conducted survey for the purpose of erection and installation of a New Wind Farm. When the same was questioned by the appellant, the authorities informed him that they would install the wind farm 200 meters away from the appellant's house. But, they have not adhered to the words given by them. Hence, the appellant sent series of representations to the third respondent and finally he sent a representation on 10.09.2012 to the first respondent, raising objections against installation of wind farm as the mandatory distance of 129 meters was not maintained from his house.

2.3 The third respondent rejected the representation of the appellant vide letter dated 29.09.2012. The fourth respondent continued the erection of new wind farm in S.F.No.903/4. Hence the appellant filed a writ petition before

this Court in W.P.No.4681 of 2013. The learned Single Judge disposed of the writ petition observing that the appellant only prayed for removing or altering the position of the Wind Electric Generator and he has not challenged the rejection order passed by the third respondent dated 29.09.2012. Thereafter, the appellant challenged the rejection order of the third respondent dated 29.09.2012 in W.P.No.17902 of 2014. After hearing the arguments of both sides, the learned Single Judge dismissed the writ petition by order dated 08.07.2014.

3 Aggrieved against the said order dated 08.07.2014 made in W.P.No.17902 of 2014, the appellant has preferred the present writ appeal.

4 We have heard the learned counsel for the appellant and the learned Standing Counsel for the respondents 1 to 3.

5 The appellant who was residing in a hut, which is lying within the limit of Suriyanallur Village, Dharapuram Taluk, Tiruppur District applied for the assistance under the Indira Memorial Housing Scheme in order to convert his hut into a concrete house. The allotment order was issued to the appellant on 31.08.2010 by the Block Development Officer. As per the condition stipulated in the said order, the appellant has to construct the concrete house within a period of six months from the date of receipt of a copy of the allotment order. According to the learned counsel for the appellant, the appellant constructed the house within the stipulated period of six months.

6 According to the learned counsel for the respondents 1 to 3, the fourth respondent gave an application to erect and install the wind mill in S.No.903/4(P) and 896/2(P) of Suriyanallur Village, Dharapuram Taluk, Tiruppur District to the office of the Chief Engineer/Non-Conventional Energy Source, Chennai vide proposal no.376(U)/2010-11 dated 26.08.2010, i.e. prior to the house allotment order issued to the appellant. As per the Regulation of the Board, preference would be given to the applicants who approaches the Board first i.e., on first come first priority basis. On that basis, the application of the fourth respondent to erect and install the wind mill was registered on 26.08.2010 and it was taken up for consideration. Once permission is granted by the Department, it cannot either be withdrawn or cancelled. In continuation of the proposal given by the 4th respondent, the third respondent surveyed the land on 20.09.2010 and at that time, there was no approved residential house nearby to the place in which the wind farm was proposed to be erected. The feasibility report and grid tie up feasibility has been submitted. Necessary safety certificate has been received from the Chief Electric Inspectorate of Government, Chennai for the erection and installation of the said wind mill.

Electricity service connection was given to the fourth respondent on 26.09.2011.

7 The appellant received the sanction order under the said scheme only on 31.08.2010 and he completed the construction of new concrete house. Later he obtained a new house tax receipt on 04.08.2011. Hence the representation given by the appellant on 10.09.2012 was rejected vide letter No.1204/M.E./NCER/Udumalai/AEE/k.complaint/12 dated 29.09.2012, treating him as a later entrant. The learned Single Judge after considering the rival submissions, dismissed the writ petition filed by the appellant on 08.07.2014 stating that the appellant had approached this Court belatedly and further held that the appellant has put up construction only after the proposal was approved by the Department. The impugned order was passed on 29.09.2012. The appellant has not challenged the said impugned order immediately.

8 A perusal of the records would reveal that the allotment order was issued to the appellant on 31.08.2010 by the Block Development Officer. If at all the appellant constructed the house within a period of six months from the date of receipt of the allotment order, he ought to have completed the construction before March 2011. But, he has sent the representation only on 12.08.2011. The appellant has to prove that as on the date of inspection, there was a house in the said land, which is a question of fact to be proved by adducing evidence. The writ court cannot conduct a roving enquiry on these aspects. The respondents have admitted that the distance between the residence of the appellant and the wind mill is only 116 meters. It is a matter of evidence as to whether the appellant has been residing more than 45 years in the said land. If at all he is aggrieved, the appellant has to approach the concerned Civil Court to establish his case on merits.

9 The appellant is at liberty to file a civil suit for redressal of his grievance. The writ appeal is disposed of with the above observation. No order as to costs.

Sd/-

Asst.Registrar (CS IX)

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Sub Asst. Registrar

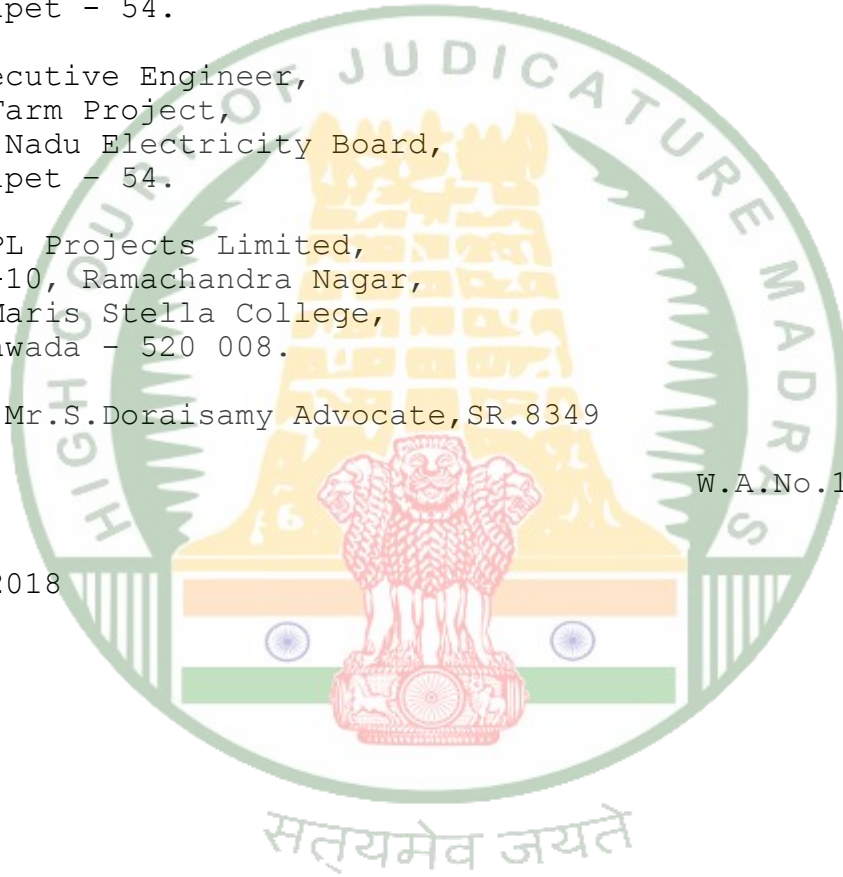
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To

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- + 1 cc to Mr.S.Doraisamy Advocate,SR.8349

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