

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.06.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.15462 of 2018

Thavathiru Alavandar Naicker Trustee
represented by its author of the Trustee
as well as the Managing Trustee K.M.Swamy
Vadasiruvallur Village
Thaniyal Road, Tindivanam Taluk
Villupuram District .. Petitioner

-vs-

1. National Institute of Wind Energy
No.657/1A2, Velachery
Tambaram Main Road
Pallikarnai, Chennai
Tamilnadu 600 100
2. Hindu Religious and Charitable
Endowment Board
Uthamar Gandhi Road
Chennai
3. The District Collector
Kancheepuram District .. Respondents

Petition under Article 226 of the Constitution of India,
praying for the issue of a Writ of Mandamus, directing the first
respondent not to cause hardship to the petitioner property in
erecting windmills in 150 acres of land in the villages namely
Pattipulam, Nemili etc., in the Mahabalipuram area which are the
properties found in the Will executed by the deceased
Muthukrishna Naicker.

For Petitioner ::

Mr.S.V.Ramamurthy

For Respondents::

Mr.M.Maharaja

Special Government Pleader for R2

Mr.V.Jayaprakash Narayanan

Special Government Pleader for R3

ORDER

This writ petition has been filed by Thavathiru Alavandar Naicker Trustee represented by its Author of the Trustee as well as the Managing Trustee K.M.Swamy, Villupuram District seeking a mandamus directing the National Institute of Wind Energy, Pallikarnai, the first respondent herein not to cause any hardship to the petitioner's property by erecting the windmills in the 150 acres of land in the villages, namely, Pattipulam, Nemili etc., which are the properties found in the Will executed by the deceased Muthukrishna Naicker.

2. Learned counsel for the petitioner submitted that the petitioner is the Author and Managing Trustee of Thavathiru Alavanthar Naicker Charitable Trust, which is a registered organization. The said Alavanthar Naicker, S/o Venkatapathy Naicker, a staunch Vaishnavite who led a saintly life, had respectable association with the British Government in the early 20th Century. He was also having 1549.16 acres of land in different villages in Chengalpet District, which is now in Kancheepuram District. He had executed a registered Will dated 22.6.1914 in favour of his younger brother Veeraswamy's son Muthukrishna Naicker to manage the said properties after his lifetime and he also died on 9.7.1914. Thereafter, the said Muthukrishna Naicker, S/o Veeraswamy Naicker executed a Will on 13.11.1995 in favour of the petitioner and he also died on 21.3.1997. As per the Will executed in favour of the petitioner, he has got complete control over the entire properties, for which he has instituted intestate proceedings. Now the first respondent is taking efforts to establish windmills in the land in question. As the properties belonged to Alavanthar Naicker and the same have been bequeathed in favour of the petitioner, a direction be issued to the first respondent not to cause any inconvenience to the petitioner's properties.

3. It is not known how the petitioner can come to this Court asking for an injunction on the basis of the Will said to have been executed in his favour. Secondly, the counter affidavit filed by the Commissioner of Hindu Religious and Charitable Endowments Department in W.P.No.12433 of 1999 disputes the legality of the petitioner's possession and enjoyment of the land in question. The averment in paragraph-5 of the said counter affidavit also shows that the H.R. & C.E. Department is having control over the affairs of the charities on the ground that the allotment is a religious endowment. But this Court is not inclined to delve further into the matter. Since there are claims and counter claims by both parties, they have to resolve their dispute before the appropriate forum and the said disputed questions cannot be gone into by this Court

exercising its jurisdiction under Article 226 of the Constitution of India. Hence, this writ petition is dismissed, as the petitioner has to work out his remedy by approaching the civil Court, if so advised.

Sd/-
Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

SS

To

1. The Commissioner
Hindu Religious and Charitable
Endowment Board
Uthamar Gandhi Road
Nungambakkam
Chennai
2. The District Collector
Kancheepuram District
3. National Institute of Wind Energy
No.657/1A2, Velachery
Tambaram Main Road
Pallikarnai, Chennai
Tamilnadu 600 100

+1cc to Mr.S.V.RAMAMURTHY, Advocate, S.R.No.40170
+1cc to the Government Pleader, S.R.No. 41425 & 41561

W.P.No.15462 of 2018

SKV (CO)
TR(03/07/2018)

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