



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 25.09.2020

Pronounced on: 16.10.2020

CORAM:

THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

W.P. (MD) Nos. 27233 and 27239 of 2019

and

W.M.P. (MD) Nos. 1908 and 7755 of 2020,
23524, 23526, 23529 and 23531 of 2019

1. Suzlon Gujarat Wind Park Ltd.,
Rep. by its Deputy Manager,
A. Iyyappan,
No. 116/9, Madurai Road,
Kayathar, Tuticorin District.

2. M/s. Green Infra Renewable Energy Ltd.,
Rep. by its Deputy General Manager,
D. Arnold Martin,
No. 892-K2, Chopra Cottage,
60 Feet Road, Rahmat Nagar,
Tirunelveli, Tirunelveli District.

... Petitioners
(in both writ petitions)

versus

1. The Deputy Inspector General of Police,
Tirunelveli Region, Tirunelveli.

2. The Superintendent of Police,
Tuticorin, Tuticorin District.

3. The Deputy Superintendent of Police,
Crime Branch, Tuticorin,
Tuticorin District.

4. The Inspector of Police,
Pudukkottai Police Station,
Tuticorin Taluk,
Tuticorin District.



5. Dinesh,
S/o. Ramachandran,
Harri Wind Farm Park Partner,
No. B6, Vivekananda Nagar,
Dindigul, Dindigul District.

6. R. Rajasekaran,
S/o. Raju

... Respondents
(in both writ petitions)

Prayer in W.P. (MD) No. 27233 of 2019: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, calling for the records relating to the impugned order passed by the second respondent in his proceedings in ந.க.எண் .சி.2/34159/2019 dated 04.09.2019 and quash the same as illegal.

Prayer in W.P. (MD) No. 27239 of 2019: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, directing the first respondent to provide adequate police protection to activate and generate the Wind Energy System situated in Survey Nos. 1098/1, 1098/2 and in Survey Nos. 713/3A, 713/3B at Umarikottai Village, Tuticorin Taluk, Tuticorin District, within the period that may be stipulated by this Court.

For Petitioners : Mr. M. Ajmal Khan
(in both writ petitions) Senior Counsel
for M/s. Ajmal Associates

For Respondent Nos. 1 to 4: Mr. S. Chandrasekar
(in both writ petitions) Additional Public Prosecutor

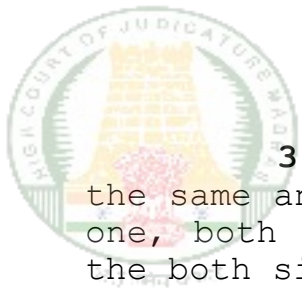
For Respondent No. 5 : Mr. P. T. S. Narendravasan
(in both writ petitions)

For Respondent No. 6 : Mr. A. R. L. Sundaresan
(in both writ petitions) Senior Counsel
for Mr. V. Janakiramulu

C O M M O N O R D E R

W.P. No. 27233 of 2019 has been filed praying for issuance of a Writ of Certiorari, calling for the records relating to the impugned order passed by the 2nd respondent in his proceedings in ந.க.எண் .சி.2/34159/2019 dated 04.09.2019 and quash the same as illegal.

2. W.P. No. 27239 of 2019 has been filed praying for issuance of a Writ of Mandamus, directing the 1st respondent to provide adequate police protection to activate and generate the Wind Energy System situated in Survey Nos. 1098/1, 1098/2 and in S. Nos. 713/3A, 713/3B at Umarikottai Village, Tuticorin Taluk, Tuticorin District, within a period that may be stipulated by this Court.



3. Since the parties to the above proceedings are one and the same and the prayer sought by the petitioners is an inter linked one, both these Writ Petitions are heard together and upon hearing the both side arguments, the following common order is passed.

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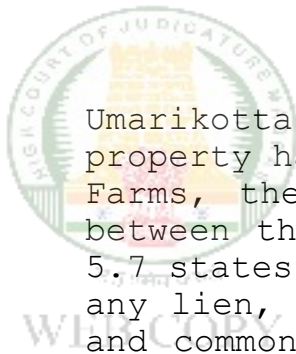
4. The grievance of the petitioners in both the Writ Petitions is that the 1st petitioner is the Deputy Manager in 1st petitioner's Company. He has filed these writ petitions for himself and on behalf of the 2nd petitioner herein.

5. The Ministry of New and Renewable Energy, Government of India (MNRE) sanctioned a scheme of 1000 MW wind power projects vide F.No.53/14/2016-WE dated 22.10.2016. The said scheme was implemented through the Solar Energy Corporation of India Limited (SECI), a public sector undertaking held by the MNRE, through RFS No.SECI/C&P/WPD/Rfs/1000MW/102016 dated 28.10.2016. Out of the 1000 MW capacity, M/s.Green Infra Wind Energy Limited, the 2nd petitioner has submitted its bid and vide LOI No.SECI/C&P/WPD/LOA/GIWEL/12359 dated 05.04.2017 to 1000 MW capacity and was awarded a capacity of 250 MW by SECI to be commissioned in Tamil Nadu.

6. For the purpose of commissioning the above project, the 2nd petitioner herein has entered into Land and Site Development Contract with the 1st petitioner. The project awarded in favour of the 2nd petitioner is a time bound Central Government assigned project, Ministry of New and Renewable Energy (MNRE) designated to produce Green Energy (non polluting). The said project is worth of more than 1500 Crores. The 1st petitioner is an Indian MNC, operating in across 7 countries, they purchased dry land from the land owners and after getting proper permission from the Tamil Nadu Electricity Board as per their norms and have installed more than 6000 Turbines in India. Likewise to implement the 250 MW Capacity Wind Project in Tuticorin District, the 2nd petitioner decided to purchase the lands in and around Ottapidaram and Tuticorin Taluks through the 1st petitioner.

7. The 1st petitioner herein purchased various lands in and around Ottapidaram and Tuticorin Taluks and installed 119 numbers of Wind Turbine Generators. The entire installation process was completed and electricity has been generated from 2018 onwards and to that effect Commissioning Certificate of Wind Power Project, was also issued by the Tamil Nadu Generation and Distribution Corporation Limited by his proceedings dated 10.10.2018 and as such, the petitioners have been commissioning 249.9 MW capacity of Wind Energy from the 119 numbers of Wind Turbine Generator.

8. Out of 119 members of Wind Turbine Generator, 2 Wind Turbines have been installed in S.Nos.1098/1, 1098/2 to an extent of 4.30 Acres and in S.Nos.713/3A, 713/3B to an extent of 6.52 Acres at



Umarikottai Village, Tuticorin Taluk, Tuticorin District. The said property has been purchased by the 1st petitioner from one Harri Wind Farms, the 5th respondent herein based on the Land Agreement made between them on 03.07.2017 in which one of the condition in clause 5.7 states that the vendor (the 5th respondent herein) shall not hold any lien, mortgage or charge upon any of the location, access roads and common roads, secured/produced and held by/or on behalf of the company and/or its Associates.

9. Later, the 2nd petitioner had purchased the above said land from the 1st petitioner, for which, two registered Sale Deeds dated 27.09.2017 and 21.12.2017 were executed. Further, in the purchased land, 2 Wind Turbines were installed and energy was commissioned on 07.10.2018 and so far 81,03,251 units have been generated from the above said 2 Wind Turbines. On 16.07.2019 at about 1.50p.m. the petitioners were informed that one of the Wind Turbine (MNS-100) situated in S.No.1098 was not functioning. On verification, it was found that the access to the Wind Turbine was blocked and fence has been put up by the 5th respondent from whom the petitioners purchased land for installation of Wind Turbine. Further, some of the rowdy elements with deadly weapons were also engaged by the 5th respondent to prevent the petitioners from reaching out their Wind Turbine.

10. On enquiry, the 5th respondent informed that they only switched off the Wind Turbine and blocked the access which leads to the Wind Turbine, further informed that he put up a fence around the Wind Turbine. More than that he demanded a sum of Rs.23,00,000/- for providing access to the Turbine and demanded a sum of Rs.7 Crores to register the said access. Because of his interruption, the petitioners are not able to generate the Wind Energy and it will lead to huge monetary loss for a sum of Rs.1,38,000/- per day.

11. Under Sections 163 and 164 of the Electricity Act, 2003, a licensee or any person duly authorized by a licensee may at any reasonable time, and on informing the occupier of his intention, enter any premises to which electricity is, or has been, supplied by him, of any premises or land, under, over, along, across, in or upon which the electric supply lines or other works have been lawfully placed by him.

12. Though the petitioners are having power to enter into the Wind Mill, when at the time they attempted to enter into the Wind Mill, the respondents 5 and 6 and their henchmen are threatening the petitioners with dire consequences. On 26.07.2019, the petitioners preferred a complaint to the respondents 2 and 3, requesting them to intervene in this issue and to take appropriate action against the respondents 5 and 6 and their henchmen and to provide adequate police protection to enter into the property and to operate the Wind Turbine. Having received the same, the respondents 2 and 3 have not taken any steps for providing Police protection and



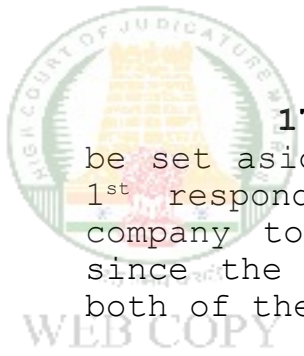
also not taken any appropriate action against the respondents 5 and 6.

13. In this regard, the petitioners filed a writ petition before this Court in W.P.(MD)No.17294 of 2019 seeking to issue a Writ of Mandamus, directing the respondents 1 to 3 to take appropriate action on the petitioner's complaint dated 26.07.2019. The said writ petition has been disposed of by an order dated 07.08.2019 by directing the Superintendent of Police, Tuticorin, the 2nd respondent herein to consider the representation given by the petitioners.

14. While the matter stood thus, the 4th respondent by his proceedings dated 16.08.2019 rejected the petitioners claim on the ground that there is no *prima facie* to register the case against the respondents 5 and 6. More than that the said rejection order had been passed without giving any opportunity to the petitioners for placing their case.

15. Further case of the petitioners is that due to the illegal act committed by the 5th respondent, the petitioners sustained loss to the tune of Rs.1,38,000/- per day, hence in order to avoid the same they had acceded to the illegal demand of the 5th respondent and paid a sum of Rs.23,20,000/- by way of giving Demand Drafts and also through RTGS, only for the purpose of allowing the petitioners into the Wind Turbine. Having received the same, they have not allowed the petitioners to access the Wind Turbine and with the help of rowdy elements demanded to pay huge amount. Therefore, the petitioners filed a writ petition before this Court in W.P.(MD) No.19693 of 2019 by challenging the order passed by the 4th respondent in his proceedings dated 16.08.2019 on the ground that the 4th respondent has no jurisdiction, since the specific direction only to the Superintendent of Police, Tuticorin, the 2nd respondent herein to pass appropriate orders on the petitioner's complaint dated 26.07.2019. However, the said writ petition has been withdrawn by the petitioners, with liberty to file a fresh petition by challenging the order passed by the 2nd respondent in his proceedings dated 04.09.2019. The 2nd respondent has simply rejected the request made by the petitioners on the ground that the issue between the petitioners and the respondents is purely in civil nature and therefore, the 2nd respondent closed the complaint and directing the petitioners to approach the Civil Court for appropriate remedy.

16. The complaint given by the petitioners is not in civil nature and the averments found in the complaint disclosed the *prima facie* case for the offences under Sections 447, 506(ii) and 406 IPC. In the said circumstances, the right conferred under Article 19(1) (g) of the Constitution of India, cannot be taken away lethargically and the same cannot be intervened by the respondents 5 and 6 to their own whims and fancies.



17. Therefore, the impugned order dated 04.09.2019 has to be set aside. Further, the petitioners are seeking direction to the 1st respondent to provide police protection to the petitioners' company to ensure free ingress and egress of men and materials, since the 1st petitioner is a contractor with the 2nd petitioner, both of them seeking police protection.

18. Opposing the claim made by the petitioners, the 2nd respondent herein filed a counter affidavit and states that the petitioners without exhausting the civil remedy available, are trying to circumvent the course of justice by invoking the jurisdiction of this Court, which is unfair, unjust and improper in the eyes of law. The dispute having by the petitioners with the respondents 5 and 6 are civil in nature. The affidavit filed by the petitioners in which they have stated that they paid the respondents 5 and 6, an amount of Rs.23,20,000/- as demanded by them. On conducting a detailed enquiry, the 4th respondent never found any truth on those allegations and closed the complaint by intimating the same to the petitioners.

19. Further, immediately after coming up to the knowledge, the petitioners, have not given a complaint in respect to the atrocities committed by the hooligans. The writ petition filed for the relief of police protection, is not agreeable. The only remedy available to the petitioners is to approach the Civil Court by way of filing the Suit for the relief of declaration and claim easementary rights to their property. Therefore, according to the 2nd respondent, the prayer sought by the petitioners cannot be entertained.

20. The 5th respondent herein also filed a counter and states as follows: in respect to order dated 04.09.2019 under challenge, it was passed based upon the complaint given against the 5th respondent by the 2nd petitioner, further the 1st petitioner herein was not a party to the complaint as well as to the impugned order and therefore, the 1st petitioner does not have the *locus standi* to file the writ petition.

21. It is settled law that whenever a Police Officer rejects any complaint after enquiry, the recourse available for the complainant is to approach the respective Magistrate and file a complaint seeking enquiry under Section 156(3) Cr.P.C. The contention that the land measuring to an extent of 6.52 acres comprised in S.Nos.713/3A, 713/3B at Umarikottai Village, Tuticorin was purchased by the 1st petitioner from the 5th respondent, is incorrect. The 5th respondent, sold an extent of 3.99 acres only and not 6.52 acres as mentioned by the petitioners. In the Sale Agreement dated 03.07.2017, the 5th respondent stated that he is not holding any right on access roads and common roads and the same can be verified by the petitioners. The property around and adjacent to



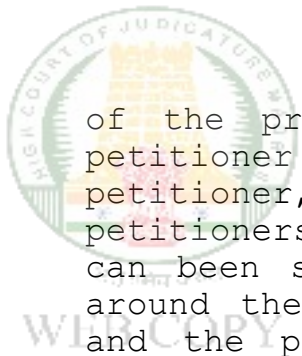
the petitioner's Wind Turbine is owned by the 6th respondent and as such, the 5th respondent is not having any right to act on behalf of the 6th respondent.

22. It is false to state that the 5th respondent demanded Rs.23,00,000/- for providing access to the road and Rs.7 Crores to register the property. In fact, in the year 2016, during the course of business transaction, the 1st petitioner is having the due to pay a sum of Rs.23,00,000/- to the 5th respondent and the said amount alone was given by the petitioners. In this regard, during the time of enquiry, the 5th respondent appeared before the 4th respondent and produced the relevant documents. Now, the 6th respondent filed a civil suit in O.S.No.170 of 2019 before the Sub Court, Thoothukudi, seeking injunction restraining the petitioners or anyone representing the petitioners from disturbing his lawful possession of the property in the name of pathway. If the 2nd petitioner is aggrieved by lack of access to his property, he should approach his seller, the 1st petitioner herein. Both of them colluded and are causing hardship to the 6th respondent.

23. The petitioner is a Public Limited Company generating electricity for its own profit and there is no larger interest of the public involved in it. There is no violation of any fundamental right in doing his business as alleged.

24. The 6th respondent herein also filed a counter and states as follows: The petitioners themselves admit that in Para 9 of their affidavit that they do not have any right to enter into the land as the 6th respondent is the absolute owner. However, the petitioners in their attempt to find a way to enter into the 6th respondent property has wrongly quoted that they have power under Sections 163 and 164 of Electricity Act, 2003. The said provisions are not applicable to the petitioners as the sections specifically states that a licensee or any person duly authorised by a licensee only can enter into any land after informing the occupier and that too only for the purpose of inspecting, testing, repairing or altering the electric supply lines. The petitioners cannot seek to enforce any right in respect of the private property owned by the 6th respondent. The police protection for entering into another man's property cannot be sought for. The petitioners are not licensees under the Electricity Act, 2003. Mere supplying electricity to TANGEDCO would not become as the petitioners are licensees.

25. The Superintending Engineer, Non-Conventional Energy Sources (NCES), TANGEDCO has informed the 6th respondent that the electric poles in S.Nos.713/3B and 1100/3A of Umarikottai Village, Tuticorin District have not been erected by TANGEDCO. Based upon the complaint given by the 2nd petitioner before the 4th respondent, the 6th respondent was called for an enquiry. During the enquiry, the 6th respondent produced the relevant documents for proving the ownership



of the property. From the records, it was proved that the 2nd petitioner had purchased the disputed property from the 1st petitioner, who had earlier purchased it from the 5th respondent. The petitioners while buying the said property did not have pathway as can be seen from their sale deed itself. The property situated around the 2nd petitioner's property belongs to the 6th respondent and the petitioners were trespassing into the land despite the objection raised by the 6th respondent. Only to protect the property of the 6th respondent from encroachers in the name of pathway, the 6th respondent put up a fence after giving due notice to the petitioners. In fact, the 6th respondent filed a civil suit in O.S.No.170 of 2019 before the Sub Court, Thoothukudi, seeking injunction restraining the petitioners or any one representing the petitioners from disturbing his lawful possession of the property under the guise of pathway.

26. Further, in the additional counter filed by the 6th respondent he has stated that none of the provisions of the Electricity Act are applicable to the case of the petitioners. If the 2nd petitioner is aggrieved by lack of access to his property, he should approach his seller, the 1st petitioner herein. But both of them colluded and are causing hardship to the 6th respondent. From the records, it was proved that the 2nd respondent had purchased the disputed property from the 1st petitioner, who had earlier purchased it from the 5th respondent. The petitioners while buying the said property did not have pathway as can be seen from their sale deed itself. The property situated around the 2nd petitioner's property belongs to the 6th respondent and the petitioners were trespassing into the land, despite objection made by the 6th respondent. In otherwise, the writ petition filed by the petitioners is devoid of merits.

27. Heard Mr.M.Ajmal Khan, learned Senior Counsel for the petitioners, Mr.S.Chandrasekar, learned Additional Public Prosecutor for the respondents 1 to 4, Mr.P.T.S.Narendravasan, learned counsel for the 5th respondent and Mr.ARL.Sundaresan, learned Senior Counsel representing Mr.V.Janakiramulu for the 6th respondent.

28. The first and foremost contention raised by the learned Senior Counsel for the petitioners is that under Sections 163 and 164 of the Electricity Act, 2003 and also under Sections 10 and 11 of the Indian Telegraphic Act, 1885, the petitioners are as a licensee entitled to enter into the premises and remove fittings or other apparatus. Further, the petitioners are entitled to enter into the property in order to repair or remove telegraphic lines or posts. In this regard, the learned Senior Counsel for the 6th respondent would contend that those provisions are applicable only to a licensee under Section 14 of the Electricity Act, 2003.



29. Now, on considering the rival submissions made by the learned counsel appearing on either side, it is necessary to see the judgment of this Court in **VAI.PALANISAMY vs. UNION OF INDIA** made in **W.P. No.15077 of 2019** wherein it was held as follows;

"10. The Power Grid Corporation of India, has been notified as a licensee, as per Section 14 of the Electricity Act, 2003 by the Central Government. Further, it has also conferred power of Telegraph Authority under the Indian Telegraph Act, 1885 by exercising its Power under Section 164 of the Electricity Act, 2003. While so, under Section 10 of the Indian Telegraph Act, 1885, they enter upon the lands through which the project passes. Among the petitioners herein, some of them have given their objections and same has been considered by the District Collector, who is the Authority competent to consider the objections. After hearing the objections, the District Collector has ordered remove of obstruction and also pass award of compensation."

30. Therefore, it is necessary to see whether the petitioners herein are notified as a licensee, as per Section 14 of the Electricity Act, 2003. In this regard, Section 14 of the Electricity Act, 2003 reads as follows:

"14. **Grant of licence.**- The Appropriate Commission may, on an application made to it under section 15, grant a licence to any person-

(a) to transmit electricity as a transmission licensee ; or

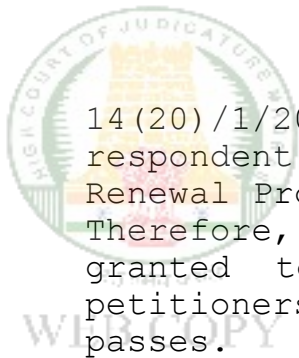
(b) to distribute electricity as a distribution licensee ; or

(c) to undertake trading in electricity as an electricity trader, in any area as may be specified in the licence...."

31. Accordingly, only the appropriate commission may, on an application is having the power, to issue a licence to any person. In this regard, in respect to appropriate commission, Section 2(4) of the Electricity Act, 2003 defines the same as follows:

"Section 2(4). **"Appropriate Commission"** means the Central Regulatory Commission referred to in sub-section (1) of section 76 or the State Regulatory Commission referred to in section 82 or the Joint Commission referred to in section 83, as the case may be ;"

32. Therefore, the Central Regulatory Commission referred to in sub-section (1) of Section 76 or the State Regulatory Commission referred to in section 82 are the competent forum to issue a licence. But in this regard, only the Central Electricity Authority proceedings dated 10.08.2018, in File No.CEA-PS-12-



14(20)/1/2018-PSPA-II Division, accorded permission to the 2nd respondent for laying 230 KV S/c Transmission line from "Green Infra Renewal Project at Ottapidaram to Tuticorin-II GIS Pooling Station". Therefore, it is made clear that appropriate commission has not been granted to any licence and thereby, it cannot be said the petitioners could enter upon the lands through which the project passes.

33. The petitioners second submission would be that in earlier when at the time of effecting sale in favour of the 1st petitioner, the 5th respondent herein agreed to provide the pathway to the land which has been purchased by the 1st petitioner. Violating the said agreement, now the respondents 5 and 6 put up the fence around the Wind Turbines which has been installed by the petitioners and refused to enter into the said area. Therefore, in order to enter into the area in which the Wind Turbine was erected it is necessary to provide police protection.

34. In this regard, the learned Senior Counsel for the 6th respondent would submit that the 6th respondent is not a party in a sale effected by the 5th respondent in favour of the 1st petitioner. Therefore, the assurance given by the 5th respondent is no way affect the right having by the 6th respondent and therefore, the said submission made by the learned Senior Counsel for the petitioners cannot be accepted.

35. Now on considering the rival submissions made by the learned counsel for the appearing on either side, it is necessary to see the Land Agreement dated 03.07.2017 made between the 1st petitioner and the 5th respondent. In the said Agreement, Clause 5.7 reads as follows:

"5.7. The Vendor shall not create or hold or claim to hold any lien, mortgage or charge upon any of the Location (s), Access Roads and Common Roads, secured/procured and held by/or on behalf of the Company and/or its Associates."

36. But here it is a case that the grievance of the petitioners is that the 6th respondent by putting the fence did not permit the petitioners to enter into the campus in which the Wind Turbine was erected. The said circumstances is very clear that the petitioners and the 6th respondent are not having any contract in respect to access and common roads. In otherwise, in the same agreement, in Clause 3.8, it was stated as the Vendor shall facilitate the Company in obtaining appropriate consents, wherever required from the adjacent land owners to enable the Company and/or its Associates for laying of overhead / underground electrical lines, cables etc. alongside access and common roads. The said clause reads as follows;

"3.8. The Vendor shall procure permanent right of way with proper approach to each and every Location land and the surrounding area. The Vendor shall facilitate the



Company in obtaining appropriate consents, wherever required from the adjacent land owners to enable the Company and / or its Associates for laying of overhead / underground electrical lines, cables, etc. alongside Access and Common Roads. The Vendor shall procure (as per the specifications and requirement issued by the Company) land required for widening and development around corners and sides of Access Roads and Common Roads, sufficient for transportation of wind turbine generators and its components, to and from the Locations. The Vendor shall resolve, at his own cost and expenses, any disputes and ensure peaceful and absolute transfer, free from all encumbrances and enjoyment of the lands procured for the Company. The Vendor shall be responsible for resolving cases or suits, appeals, complaints filed in revenue or judicial courts arising out of defect in title of the Location, Access Roads and/or Common Roads or construction of road or electrical line alongside the Access Roads and Common Roads at his own cost and expense for the next 25 years."

37. Therefore, the said clause reveals the fact that as of now in violation of the said terms, the 5th respondent herein supported the 6th respondent and acted against the welfare of the petitioners. However, in this aspect, this Court cannot compel the 6th respondent to provide access to the petitioners for entering into the property owned by the petitioners.

38. The next contention raised by the learned Senior Counsel for the 6th respondent is that in respect to the right having by the 6th respondent, he filed a civil suit in O.S.No.170 of 2019 before the Sub Court, Thoothukudi, in which he prayed the relief of permanent injunction against the petitioners herein. In the said suit, the petitioners herein filed written statement for counter claim and praying for the relief of declaration that the petitioners herein are entitled to use the pathway and for consequential injunction and also for a mandatory injunction to remove the barbed wire fence put up by the 5th respondent across the pathway.

39. In this regard, he would further submit that since the suit is pending on the file of competent forum only the Civil Court has to decide the issue involved in this writ petition. Therefore, after filing the suit before the competent court, allowing the petition which filed for providing police protection, is against the principles of law. In this regard, he relied on the judgment of our Hon'ble Apex Court in **P.R.MURLIDHARAN vs. SWAMI DHARMANANDA THEERTHA PADAR** reported in **(2006) 4 SCC 501** wherein our Hon'ble Apex Court has held as follows:

"11. A Writ Petition under the guise of seeking a writ of mandamus directing the police authorities to give



protection to a Writ Petitioner, cannot be made a forum for adjudicating on civil rights. It is one thing to approach the High Court, for issuance of such a writ on a plea that a particular party has not obeyed a decree or an order of injunction passed in favour of the Writ Petitioner, was deliberately flouting that decree or order and in spite of the petitioner applying for it, the police authorities are not giving him the needed protection in terms of the decree or order passed by a court with jurisdiction. But, it is quite another thing to seek a writ of mandamus directing protection in respect of property, status or right which remains to be adjudicated upon and when such an adjudication can only be got done in a properly instituted civil suit. It would be an abuse of process for a Writ Petitioner to approach the High Court under Article 226 of the Constitution of India seeking a writ of mandamus directing the police authorities to protect his claimed possession of a property without first establishing his possession in an appropriate civil court. The temptation to grant relief in cases of this nature should be resisted by the High Court. The wide jurisdiction under Article 226 of the Constitution would remain effective and meaningful only when it is exercised prudently and in appropriate situations.

12. In the case on hand, various disputed questions arose based on a deed of trust and the facts pleaded by the Writ Petitioner and controverted by the other side. The High Court should have normally directed the Writ Petitioner to have his rights adjudicated upon, in an appropriate suit in a civil court. The fact that a Writ petitioner may be barred from approaching the civil court, in view of Order IX Rule 9 of the Code of Civil Procedure, or some other provisions, is no ground for the High Court to take upon itself, under Article 226 of the Constitution, the duty to adjudicate on the civil rights of parties for the purpose of deciding whether a writ of mandamus could be issued to the police authorities for the protection of the alleged rights of the Writ Petitioner. A writ of mandamus directing the police authorities to give protection to the person of a Writ Petitioner can be issued, when the court is satisfied that there is a threat to his person and the authorities have failed to perform their duties and it is different from granting relief for the first time to a person either to allegedly protect his right to property or his right to an office, especially when the pleadings themselves disclose that disputed questions are involved. My learned Brother has rightly pointed out that the High Court was in error in proceeding to adjudicate on the rights and obligations arising out of



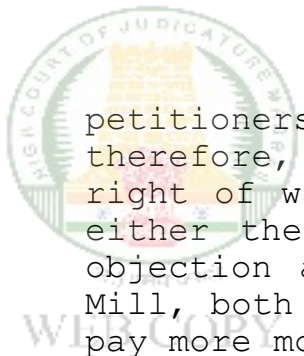
the trust deed merely based on the affidavits and the deed itself. I fully agree with my learned Brother that the High Court should not have undertaken such an exercise on the basis that the right of the Writ Petitioner under Article 21 of the Constitution of India is sought to be affected by the actions of the contesting respondents and their supporters and that can be prevented by the issue of the writ of mandamus prayed for.

13. A writ for "police protection" so-called, has only a limited scope, as, when the court is approached for protection of rights declared by a decree or by an order passed by a civil court. It cannot be extended to cases where rights have not been determined either finally by the civil court or, at least at an interlocutory stage in an unambiguous manner, and then too in furtherance of the decree or order."

40. Now, applying the said principle set out by our Hon'ble Apex Court with the case in our hand herein also it is admitted on either side that the 6th respondent herein approached the Civil Court for determining the right having by him in the disputed land. Similarly, the petitioners had also filed a counter claim in respect to the right having by them in the disputed land which purchased from the 5th respondent. However, it is obvious that without any decree from the competent Civil Court, this Court is not in a position to direct the respondents 1 to 4 to protect the right having by either petitioners or respondents as alleged by them. In fact, in a suit filed by the 6th respondent either the decree or atleast an interlocutory order has not been passed in favour of the 6th respondent.

41. Another submission made by the learned Senior Counsel for the petitioners is that in the land purchased by the petitioners in the year of 2018, erected 2 Wind Turbines which estimated so many crores of rupees. Now without any information the said Wind Turbine was switched off by the 6th respondent, which is an offence under the Indian Penal Code. In fact, only after entering into lands having by the petitioners there may be the possibility to switch off the said Wind Turbine. Therefore, for the said allegation, it is necessary to register the case by following the **Lalit Kumari's** case. But in this regard only by mentioning the land dispute, the complaint given by the petitioners was closed by the respondent police, which is erroneous in law.

42. He would further contend that in respect to the land having by the 6th respondent, he had purchased the same from the 5th respondent. Similarly, prior to the said purchase the petitioners herein also purchased his land only from the 5th respondent, further both of them had purchased the lands pertains to the same survey number. Therefore, it seems that for the property owned by the



petitioners and the 6th respondent there may be a common ancestor and therefore, the petitioners are entitled to use his property with the right of way. Further, during the time of erecting of Wind Turbine either the 5th respondent or the 6th respondent did not raise any objection and only after commissioning the petition mentioned Wind Mill, both the respondents 5 and 6 raised objection and demanding to pay more money for giving access to the Wind Mill. The said attitude committed by the petitioners is atrocious one and if the said act is permitted to continue, the petitioners herein may sustained the loss to the tune of multi crores.

43. In response to the said submission, the learned counsel for the 5th respondent would submit that the subsequent payment said to have been given by the petitioners is the long pending dues towards the 5th respondent, in respect to the land purchased earlier by the petitioners. In otherwise, law is very clear as only after obtaining the result in the Civil Suit, the petitioners are entitled to enter upon the property which have been purchased from the 5th respondent. In this regard, the learned counsel for the 6th respondent has also reiterated the same and made submission as the Writ Court cannot entertain these type of petitions, since alternative remedy is available before the Civil Court in which the suit was instituted by the 6th respondent.

44. Upon considering the rival submissions made by learned counsel appearing on either side, in this aspect it is necessary to see the judgment of our Hon'ble Apex Court in **DWARKA NATH vs INCOME TAX OFFICER** reported in (1965) 3 SCR 536 wherein our Hon'ble Apex Court has held as follows:

"4. We shall first take the preliminary objection, for if we maintain it, no other question will arise for consideration. Article 226 of the Constitution reads :

"... every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases any Government, within those territories directions, orders, or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose."

6. This article is couched in comprehensive phraseology and it ex facie confers a wide power on the High Courts to reach injustice wherever it is found. The Constitution designedly used a wide language in describing the nature of the power, the purpose for which and the person or authority against whom it can be exercised. It can issue writs in the nature of prerogative writs as understood in England; but the scope of those writs also



is widened by the use of the expression "nature", for the said expression does not equate the writs that can be issued in India with the those in England, but only draws an analogy from them. That apart, High Courts can also issue directions, orders or writs other than the prerogative writs. It enables the High Courts to mould the reliefs to meet the peculiar and complicated requirements of this country. Any attempt to equate the scope of the power of the High Court under Article 226 of the Constitution with that of the English Courts to issue prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a comparatively small country like England with a unitary form of Government to a vast country like India functioning under a federal structure. Such a construction defeats the purpose of the article itself. To say this is not to say that the High Courts can function arbitrarily under this Article. Some limitations are implicit in the article and others may be evolved to direct the article through defined channels. This interpretation has been accepted by this Court in *Basappa v. Nagappa* and *Irani v. State of Madras*."

45. Further, in a case reported in **ANDI MUKTA S.M.VS.J.M.S TRUST vs. V.R.RUDANI** reported in (1989) 2 SCC 691, our Hon'ble Apex Court has held as follows:

"22. Here again we may point out that mandamus cannot be denied on the ground that the duty to be enforced is not imposed by the statute. Commenting on the development of this law, Professor de Smith states : "To be enforceable by mandamus a public duty does not necessarily have to be one imposed by statute. It may be sufficient for the duty to have been imposed by charter, common law, custom or even contract." (Judicial Review of Administrative 'Act 4th Ed. p. 540). We share this view. The judicial control over the fast expanding maze of bodies effecting the rights of the people should not be put into watertight compartment. It should remain flexible to meet the requirements of variable circumstances. Mandamus is a very wide remedy which must be easily available 'to reach injustice wherever it is found'. Technicalities should not come in the way of granting that relief under Article 226. We, therefore, reject the contention urged for the appellants on the maintainability of the writ petition."

46. Therefore, the ratio laid down in the above 2 judgments, made clear that though the dispute is related to the
<https://hcservices.ecourts.gov.in/hcservices/>



civil in nature, observation of our Hon'ble Apex Court is very clear, as for doing the complete justice, in an extraordinary circumstances, it is appropriate to issue such directions, which are necessary.

47. Now, it is not in dispute that in the disputed land the petitioners erected the Wind Mill after investing Rs.28 Crores. All are aware if the electronics apparatus are not used continuously there may be a chance for occurring repair. Ultimately, if anything happened as above, the entire amount invested by the petitioners will go away. More than that the project now having by the petitioners is a time bound Central Government assigned project, agreed by the Ministry of New and Renewal Energy.

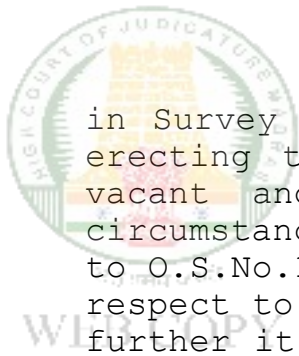
48. Further, though the production of electricity is for the profit of the petitioners, due to the production of the electricity and by consumption of the said electricity, the people at large are having benefited. In this regard, in **MORAN MAR BASELIOS MARTHOMA MATHEWS vs. STATE OF KERALA** reported in (2007) 6 MLJ 1088 (SC), wherein our Hon'ble Apex Court has held as follows:

"8. A distinction, in our opinion, must be borne in mind in regard to the exercise of jurisdiction under Article 226 of the Constitution of India in relation to the matters providing for public law remedy vis-a-vis private law remedy. The High Court while exercising its jurisdiction under Article 226 of the Constitution, no doubt, exercises a plenary power but then certain limitations in regard thereto are well-accepted. Ordinarily, a writ of or in the nature of mandamus would be issued against a 'State' within the meaning of Article 12 of the Constitution of India or the public authorities discharging public functions or a public utility concern or where the functions of the respondents are referable to a statute, which a fortiori would mean that save and except for good reasons Court would not entertain a matter involving private law remedy."

49. Therefore, before deciding the issue involved in these Writ Petitions, it is necessary to borne in mind that due to the act committed by the petitioners only public will be benefited.

50. Secondly, in respect to the alleged further payment given by the petitioners to the 5th respondent, it is unbelievable that the 5th respondent after completing the sale proceedings left 10% of the sale amount with the petitioners. In this regard, the submission made by the learned counsel for the 5th respondent as the said amount is a long pending dues towards the 5th respondent, payable by the petitioners cannot be accepted.

51. One another important fact in this case is that the properties have been purchased by the petitioners are comprised



in Survey Nos.1098/1, 1098/2 and 713/3A and 713/3B, in fact before erecting the Wind Mill in the said land, the same has been kept vacant and there was no cultivating activities. In the said circumstances, on going through the copy of the plaint which relates to O.S.No.170 of 2019 filed by the 6th respondent, he filed a Suit in respect to so many Survey Numbers including S.Nos.713/3A and 713/3B, further it was alleged that the said land has been purchased by the 6th respondent from the 5th respondent. On the other hand, the petitioners also purchased their property from the 5th respondent that too from the same Survey Numbers. The said circumstances reveals the fact that in earlier both the lands now purchased by the 6th respondent and petitioners are in the hands of the common ancestor. In the said circumstances, it is necessary to see Section 13 of The Indian Easements Act, 1882 which reads as follows:

"13. Easements of necessity and quasi easements.-Where one person transfers or bequeaths immovable property to another,-

(a) if an easement in other immovable property of the transferor or testator is necessary for enjoying the subject of the transfer or bequest, the transferee or legatee shall be entitled to such easement; or

(b) if such an easement is apparent and continuous and necessary for enjoying the said subject as it was enjoyed when the transfer or bequest took effect, the transferee or legatee shall, unless a different intention is expressed or necessarily implied, be entitled to such easement; or

(c) if an easement in the subject of the transfer or bequest is necessary, for enjoying other immovable property of the transferor or testator, the transferor or the legal representative of the testator shall be entitled to such easement; or

(d) if such an easement is apparent and continuous and necessary for enjoying the said property as it was enjoyed when the transfer or bequest took effect, the transferor, or the legal representative of the testator, shall, unless a different intention is expressed or necessarily implied, be entitled to such easement.

Where a partition is made of the joint property of several persons,-

(e) if an easement over the share of one of them is necessary for enjoying the share of another of them, the latter shall be entitled to such easement, or

(f) if such an easement is apparent and continuous and necessary for enjoying the share of the latter as it was enjoyed when the partition took effect, he shall, unless a different intention is expressed or necessarily implied, be entitled to such easement.

The easements mentioned in this section, clauses (a), (c) and (e), are called easements of necessity.



Where immovable property passes by operation of law, the persons from and to whom it so passes are, for the purpose of this section, to be deemed, respectively, the transferor and transferee.

Illustrations

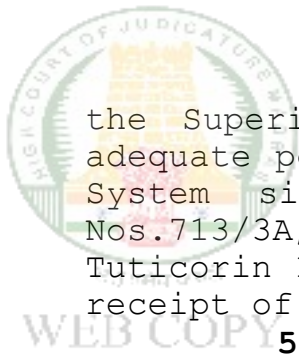
(a) A sells B a field then used for agricultural purposes only. It is inaccessible except by passing over A's adjoining land or by trespassing on the land of a stranger. B is entitled to a right of way, for agricultural purposes only, over A's adjoining land to the field sold."

52. In the said circumstances, though the right of Easements Act has to be decided only by the Civil Court, now considering the necessity as already Rs.34 Crores was invested by the petitioners for the production of electricity and also the same is for the use of public at large, some intermediate arrangement is necessary in respect to the dispute having by the petitioners with the 5th and 6th respondent.

53. All are aware, all the lands are necessarily having the access to reach the roads but here it is a case after purchasing land the petitioners installed Wind Turbines, which are huge in quantity, further at the time of installment, nobody had raised objection including the 5th and 6th respondent. Therefore, raising objection after installing the Wind Turbines particularly after commissioning the same is not proper. Moreover since the land having by the respondents 5 and 6 are a dry land, without any agricultural activity opening access to reach the Wind Turbines owned by the petitioners, cannot create much hindrance to the respondents.

54. This Court fully agree that the title and right having by the parties has to be determined only by the Civil Court. But here it is a case only in recent days, both the parties have approached the Civil Court and therefore, for attaining the final decision in a case instituted by the 6th respondent considerable time is requested. In the said circumstances, if the Wind Turbines erected by the petitioners are kept without any use, the petitioners may sustained huge loss without any reason, consequentially production of electricity also will suffer. Therefore, considering the said circumstances, this Court is of the considered opinion that the prayer sought by the writ petitioners has to be granted for a considerable period particularly till the final disposal of the Civil Suit filed in O.S.No.170 of 2019 before the Sub Court, Thoothukudi.

55. Accordingly, in the light of the above discussions, without prejudice to the rights having by either parties in a Suit filed in O.S.No.170 of 2019 on the file of the Sub Court, Thoothukudi, this Court is inclined to pass the following orders; the impugned order passed by the second respondent in his proceedings in **ந.க.எண் .சி..2/34159/2019** dated 04.09.2019 is quashed and



the Superintendent of Police, Tuticorin, is directed to provide adequate police protection to activate and generate the Wind Energy System situated in Survey Nos.1098/1, 1098/2 and in Survey Nos.713/3A, 713/3B at Umarikottai Village, Tuticorin Taluk, Tuticorin District, within a period of three weeks from the date of receipt of a copy of this order.

56. These Writ Petitions are allowed, with the above directions. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

sri

To

1.The Deputy Inspector General of Police,
Tirunelveli Region, Tirunelveli.

2.The Superintendent of Police,
Tuticorin, Tuticorin District.

3.The Deputy Superintendent of Police,
Crime Branch, Tuticorin,
Tuticorin District.

4.The Inspector of Police,
Pudukkottai Police Station,
Tuticorin Taluk,
Tuticorin District.

+1 CC to M/s.PT.S.NARENDRAVASAN, Advocate (SR-20520[F] dated 19/10/2020)

Common Order in
W.P. (MD) Nos.27233 and 27239 of 2019 and
W.M.P. (MD) Nos.1908 and 7755 of 2020,
23524, 23526, 23529 and 23531 of 2019

16.10.2020

SGS (CO)

NR (28/10/2020) 19P : 6C