



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.04.2021

CORAM:

**THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE S.ANANTHI**

**W.A. (MD) No.516 of 2021
in WP (MD) .723 of 2020**

A.Chandrasekaran ... Appellant/Petitioner

-vs-

1.The District Collector
Thoothukudi District
Thoothukudi

2.The Superintending Engineer
(Distribution)
Tirunelveli Electricity Circle
Maharaja Nagar, Tirunelveli

3.M/s.Suzlon Gujaraj Wind Park Ltd.,
No.5, Shrimali Society
Near Shree Krishna Complex
Navrungpura, Ahmedabad
Gujarat

... Respondents/Respondents

Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 14.07.2020, passed in W.P.(MD) No.7234 of 2020, on the file of this Court.

Prayer in WP(MD). 7234 of 2020 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ or order or Direction more in the nature of writ or Mandamus directing the 1st Respondent to consider the petitioners objection dated 01-07-2019 regarding the erection of electric tower and overhead lines across the land in S.No.168, 220 and 224 at Akkanayakkanpatti Marudhanvazhvu Narikinaru Village, Ottapidaram Tk., Thoothukudi District and pass order in accordance with Rule 3 of the works of licensees Rules, 2006, read with Section 17 of the indian Telegraph Act, 1885.



For Appellant : Mr.H.Arumugam

For Respondents : Mr.K.P.Krishnadass

Special Government Pleader for R1
Ms.S.Srimathy

Special Government Pleader for R2
Mr.Ajmal Khan, Senior Counsel

assisted by Mr.C.Venkatesh Kumar for R3

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J U D G M E N T

[Judgment of the Court was made by T.S.SIVAGNANAM, J.]

Heard Mr.H.Arumugam, learned counsel appearing for the appellant, Mr.K.P.Krishnadass, learned Special Government Pleader appearing for the first respondent, Ms.S.Srimathy, learned Special Government Pleader appearing for the second respondent and Mr.Ajmal Khan, learned Senior Counsel, assisted by Mr.C.Venkatesh Kumar, learned counsel for the third respondent.

2. This writ appeal is directed against the order dated 14.07.2020 passed in W.P.(MD) No.7234 of 2020.

3. The appellant filed the said writ petition seeking direction to the first respondent to consider his objection dated 01.07.2019 regarding erection of electric towers and drawal of overhead electric lines to evacuate electricity generated by the Wind Mills established by the third respondent - Company. The said writ petition was dismissed on the ground that for a similar relief, the appellant / writ petitioner came before this Court on the earlier occasion in W.P.(MD) No.18225 of 2019 and the said writ petition was dismissed and with regard to the plea raised by the appellant / writ petitioner that the third respondent is an encroacher, the Writ Court observed that if there is any dispute with regard to the title to the property, then it is for the appellant / writ petitioner to approach the Civil Court.

4. Mr.Ajmal Khan, learned Senior Counsel, assisted by Mr.C.Venkatesh Kumar, learned counsel for the third respondent - Company, would strenuously contend that the learned Single Bench was right in dismissing the second writ petition for the same relief and the appellant / writ petitioner was having suffered an order before the Division Bench in the earlier writ petition.

5. After elaborately hearing the learned counsel for the parties and perusing the materials on record, we are not inclined to accept the entire reasonings of the learned Single Bench for dismissal of the writ petition. Firstly, we need to take note of



the facts pleaded in the representation of the appellant / writ petitioner dated 01.07.2019. The representation of the appellant / writ petitioner should be read as a letter addressed by a person of reasonable intelligence and knowledge. Though in the representation the third respondent was termed as a trespasser, the sum and substance of the representation is that the land owner has been dealt with unreasonably at the behest of the third respondent - Company by erecting towers and drawal of overhead electric lines for a Private Company. The Division Bench earlier dismissed the writ petition by order dated 26.08.2019 as it appears that what was canvassed before the Division Bench was that the third respondent is an encroacher. Therefore, the Division Bench was right in rejecting the writ petition. So far as the second writ petition is concerned, which has been dismissed by the impugned order, the prayer sought for is slightly different in the sense that the appellant / writ petitioner wants his objection to be considered. Bearing that prayer in mind, if we read the representation, apart from the allegation of the third respondent being trespasser, there are other objections conveyed. Therefore, as pointed out earlier, we are not in full agreement with the observations made by the Single Bench. Be that as it may, towers have already been erected, overhead electric lines have also been drawn and electricity has been evacuated through those lines. Therefore, the only issue, which remains for consideration is whether the appellant / writ petitioner is entitled for compensation, which requires to be determined by the first respondent / District Collector.

6. It is the submission of the learned Senior Counsel appearing for the third respondent - Company that compensation has been made to the appellant's co-owner, which fact has also been noted by the learned Single Bench in the impugned order. So far as the appellant / writ petitioner is concerned, if he is co-owner of the property, his rights cannot be forfeited or parted away by the other co-owner unless and until there is a document to show that the appellant / writ petitioner has also agreed to the private negotiation and obtained monetary compensation from the third respondent. No record has been placed before the Writ Court nor before us in this regard by the third respondent. Therefore, we are inclined to issue appropriate directions to the District Collector to consider the matter regarding payment of compensation alone.

7. For the foregoing reasons, the writ appeal is allowed and the order and directions issued in the impugned order are set aside and the matter is remanded back to the District Collector, Thoothukudi District / first respondent for consideration with regard to the compensation payable to the land owners on account of the towers erected in the land and the drawal of overhead



electric lines across the land. It will be well open to the third respondent to participate in the enquiry and produce records to show that the appellant's co-owner has been paid compensation. The correctness of the submissions shall be tested by the District Collector. This direction be complied with within a period of eight weeks from the date of receipt of a copy of this Judgment. No costs.

Sd/-

Assistant Registrar(CO)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

krk

Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the Judgment may be utilized for official purposes, but, ensuring that the copy of the Judgment that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To:

1.The District Collector,
Thoothukudi District,
Thoothukudi.

2.The Superintending Engineer,
(Distribution),
Tirunelveli Electricity Circle,
Maharaja Nagar, Tirunelveli.

+1 CC to M/s.SPL GP (SR-16049[F] dated 16/04/2021)
+1 CC to M/s.H.ARUMUGAM, Advocate (SR-16088[F] dated 16/04/2021)
+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-16125[F] dated
17/04/2021)

W.A. (MD) No.516 of 2021
15.04.2021

KM(CO)

TR(28.04.2021) 4P 6C