



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.07.2021

CORAM :

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P. (MD) .No.8495 of 2021

M/s.Green Infra Renewable Energy Ltd.,
Rep. by its Assistant General Manager,
S.Selvakumar

... Petitioner

Vs.

1.The District Collector,
O/. the Collectorate Campus,
Thoothukudi,
Thoothukudi District.

2. R.Dinesh
S/o.Ramachandran,
Harri wind Farm Park Partner,
No.B6, Vivekananda Nagar,
Dindigul,Dindigul District.

3.R.Rajesakaran,
S/o.Raju,
No.2/52-2 Raj Kudil,
Pithalaipatti Village,
Athoor Taluk,
Dindigul,
Dindigul District.

... Respondents

***RR 2&3 are suo motu impleaded by order dated 15.07.2021 in WP(MD) 8495/2021.**

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, to direct the respondent to acquire a portion of land in Survey Nos.1099/2, 1100/3C, 1101/3C and 713/3B situated at Umarikottai Village, Tuticorin Taluk, Tuticorin District for the expansion (pathway) for the Wind Mill run by the petitioner by invoking Section 3 of the Tamil Nadu Acquisition of land for Industrial Purpose Act, 1997 r/w Tamil Nadu Land Acquisition Laws (Revival of Operation, Amendment and Validation) Act, 2019 by considering the petitioner's representation dated 21.01.2021 within the period that may be stipulated by this Court.

For Petitioner	: Mr.M.Ajmal Khan Senior Counsel for Mr.C.Venkatesh Kumar
For Respondent No.1	: Mr.M.Lingadurai Government Advocate For R1
For Respondents 2 & 3	: Mr.V.Janakiramulu



ORDER

Mr.R.Dinesh, S/o.Ramachandran and Mr.R.Rajendran, S/o.Raju are *suo motu* impleaded as the second and third respondents in this writ petition.

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2. The instant writ petition has been filed seeking for the issue of writ of mandamus directing the first respondent to initiate proceedings under the Tamilnadu Acquisition of Land for Industrial Purpose Act, 1997 (hereinafter called as 'the Act') and to acquire a portion of the land in the subject property for establishing a pathway to the wind mill that is operated by the petitioner company.

3. The case of the petitioner is that they entered into an agreement with Suzlon Gujarat Wind Park Ltd., for the purpose of commissioning 250 MW plant. The said Suzlon Gujarat Wind Park Ltd., had purchased various lands and had installed 119 Wind Turbine Generators and electricity is being generated from the year 2018 onwards. The further case of the petitioner is that the TANGEDCO has also issued proceedings dated 10.10.2018 and effected commissioning certificate for the wind power project. Accordingly, 249.9 MW capacity of wind energy is being generated from the 119 wind Turbine Generators.

4. It is stated that two of the Wind Turbines are installed in the subject property. There is some dispute from the owners of the properties around this place which resulted in a law and order problem and there was an earlier round of litigation before this Court in W.P.(MD).Nos.27233 and 27239 of 2019. Final orders were passed in these writ petitions on 16.10.2020 and this Court directed the police to give protection to enable the petitioner to activate and generate the wind energy system that is situated in the subject property. This order was also passed without prejudice to the rights of the concerned parties in the suit that is pending in O.S.No.170/2019 before the Sub Court, Thoothukudi.

5. The petitioner with a view to find a permanent solution for the problem, made a representation to the first respondent on 21.01.2021 requesting for acquiring a portion of the land to use as a pathway. According to the petitioner, if this acquisition is made, there will be no difficulty for the petitioner to access the wind Turbine Generator in the subject property. Since no action was taken on the representation made by the petitioner, the present writ petition has been filed before this Court seeking for appropriate directions.

6. Heard Mr.M.Ajmal Khan, learned Senior counsel appearing for the petitioner, Mr.M.Lingadurai, learned Government Advocate appearing for the first respondent and Mr.V.Janakiramulu, learned counsel appearing for the impleaded respondents 2 & 3.



7. The first respondent has filed a counter affidavit. A stand has been taken in the counter affidavit to the effect that a preliminary report was called for from the Tahsildar, Thoothukudi after conducting an inspection in the site and it was reported that there were objections raised by the owners of the adjacent lands. It is also stated in the counter affidavit that the petitioner is a private company and therefore the Act cannot be invoked for acquisition of lands. It is also further stated that there is a civil suit that is pending before the competent Civil Court and there is a dispute regarding the pathway and therefore it may not be feasible to acquire the lands.

8. In the considered view of this Court, the stand taken by the first respondent to the effect that the lands cannot be acquired under the Act, is not sustainable. A reading of Section 2(e) of the Act shows that it is an exhaustive definition where an industrial purpose includes the starting of the new industry as well as expansion of an existing industry. Therefore, the petitioner being an existing industry will also be entitled to claim for acquisition for industrial purpose for expansion. The expansion in the present case pertains to acquiring portions of lands to ensure free access to the Wind Turbine that are located in the subject property.

9. The first respondent seems to have taken a stand that the acquisition can be made only for Government or Public Sector undertakings. Such an interpretation of the Act may completely go against the very object of the Act. This Act was brought into force for speedy acquisition of lands for industrial purpose in the State of Tamilnadu. Therefore the acquisition can be made by the State for any industry which satisfies the requirements of the definition of "Industrial Purpose". In view of the same, the stand taken by the first respondent that the Act can never be invoked for acquiring lands for private players, may not be sustainable.

10. In the present case, the petitioner is involved in generation of electricity from Wind energy. The 119 wind Turbine Generators are producing nearly 250 MW wind energy. This alternate renewable energy plays a major role in generation of electricity and there is a lot of public interest involved in encouraging such entities by the Government.

11. Section 3(1) of the Act deals with the power to acquire lands. The power to acquire land is within the exclusive domain of the Government and it can be exercised wherever a land is required for any industrial purpose or for any other purpose in furtherance of the objects of the Act. Therefore it is always open to the respondent to keep in mind the object of the Act and deal with the representation made by the petitioner.



12. The first respondent shall keep in mind the observations made by this Court while dealing with the representation made by the petitioner on 21.01.2021. The respondent shall take a decision and convey the same to the petitioner within a period of six weeks from the date of receipt of a copy of this order. It is made clear that the orders passed in this writ petition will not have any bearing insofar as the disputes that are pending before the Civil Court between the private respondents and the petitioner and the same will be decided on its own merits and in accordance with law. Even if the State decides to proceed further with the acquisition, it involves a detailed procedure and a notification has to be issued and objections will have to be called for and only thereafter a decision can be taken. Therefore merely taking a decision to acquire, will not affect the rights of any one, since there is a procedure to be followed before the acquisition takes place.

13. This writ petition is disposed of accordingly. No Costs.

Sd/-

Assistant Registrar (W)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

PJL

NOTE:

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

To

1.The District Collector,
Thoothukudi District,
Thoothukudi.

+1 CC to M/s.AJMAL ASSOCIATES, Advocate(SR-22874[F]dated 16/07/2021)

+1 CC to M/s.SPL GP (SR-22955[F] dated 16/07/2021)

+1 CC to M/s.V.JANAKIRAMULU, Advocate (SR-23149[F] dated 19/07/2021)

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15.07.2021

RK (05.08.2021) 4P 5C