



W.P.(MD).No.3276 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 17.08.2022

PRONOUNCED ON : 19.09.2022

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD).No.3276 of 2012

and

M.P.(MD)No.2 of 2012

- 1.M/s Gamesa Wind Turbines
Private Limited,
represented by its Authorized Signatory,
S.Dhanasekar,
The Futura" 8th Floor, No.334,
Rajiv Gandhi Salai,
Sholinganallur, Chennai-600 119.

 - 2.M/s Beta Wind Farm Private Limited,
represented by its Authorized Signatory,
A.Ponnambalam, 'Sigappi Achi Building',
4th Floor, No.18/3, Rukmani Lakshmipathi Road,
Egmore, Chennai 600 008
- ... Petitioners

Vs.

- 1.The Government of Tamilnadu,
represented by Secretary to Government,
Rural Development and Local

1/13



W.P.(MD).No.3276 of 2012

Administration Department,
Fort St. George, Chennai 600 009.

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2.The District Collector,
Tuticorin District,
Tuticorin.

3.The Block Development Officer
(Village Panchayats),
Kayathar Panchayat Union,
Kayathar 628 721,
Tuticorin District.

4.The President,
Kumarettiapuram Village Panchayat,
Kumarettiapuram,
Kayathar Panchayat Union Limits,
Kayathar 628 721, Tuticorin District.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records relating to the proceedings of the 4th respondent herein in Letter No.15, dated 17.02.2012 and Letter No. 17, dated 28.02.2012 and to quash the same and consequently, to forbear the respondents herein from, in any manner, demolishing or dismantling or interrupting functioning of the Wind Turbine Generators erected by the



W.P.(MD).No.3276 of 2012

1st petitioner in Kumarettiapuram Village, Kayathar Panchayat Union Limits, Kayathar 628 721, Tuticorin District, pursuant to the proceedings of the 4th respondent herein in Letter No. 17, dated 28.02.2012.

For Petitioners	: Mr.D.Venkatesh
For R1 and R2	: Mr.Veera Kathiravan Additional Advocate General assisted by Mr.N.Muthuvijayan Special Government Pleader
For R3	: Mr.S.Bharathi
For R4	: Mr.G.Prabhurajadurai

ORDER

The present writ petition has been filed challenging an order passed by the 4th respondent herein under which building plan approval fees, house tax and professional tax was demanded from the writ petitioner who has erected a windmill. The petitioners have also challenged the consequential order passed by the second respondent herein under which the 5th respondent has threatened to remove the constructions, if the amount demanded in the first impugned order, dated 17.02.2012 is not paid, then the constructions would be treated as encroachment and they would be removed.



W.P.(MD).No.3276 of 2012

2.The learned counsel for the petitioners has contended that they have put up wind turbine generators falling in the survey numbers falling within the jurisdiction of the 5th respondent village panchayat. The petitioners have further submitted that the 4th respondent addressed a letter on 16.12.2011 that without permission from the panchayat, the windmill is being erected and operated and he had called upon to furnish details of various wind turbine generators erected within the limits of the panchayat.

3.Though the petitioner had demanded source of authority and the rights of local authority, the 4th and 5th respondents were reportedly making demands for payment of tax without disclosing the basis of imposition of tax and calculation thereof. Hence, the petitioners had submitted application on 27.12.2011 under RTI act to the 4th respondent requesting him to furnish details with regard to taxes. However, by a reply, dated 17.01.2012, the 4th respondent herein had contended that he is not bound to furnish any information but sent summons for appearance. On failure to appear, the 4th respondent had stated that he



W.P.(MD).No.3276 of 2012

would invoke G.O.Ms.No.255, Rural Development and Local Administration Department, dated 13.12.1999 and on the said basis, he will impose property tax upon the writ petitioners.

4. According to the learned Counsel for the writ petitioners, the order impugned in the writ petition, dated 17.02.2012, was passed by the 5th respondent herein invoking the power under G.O.Ms.No.255, Rural Development and Local Administration Department, dated 13.12.1999, under which they have imposed charges for building plan approval and also proceeded to impose house tax. The said order is under challenge in the present writ petition. The main ground of attack of the petitioners is that section 160 contemplates that permission for construction of factories and installment of machineries has to be obtained only from the Panchayat Union Council and not from the Panchayat. The rules relating to grant of permission or for renewal of licence has to be framed as contemplated under section 161 of Tamil Nadu Panchayat Act. So far Tamil Nadu Government has not framed any rules as contemplated under section 161 of the Act. The petitioners have further contended that the



W.P.(MD).No.3276 of 2012

respondent panchayat has no power whatsoever to demand any amount towards establishment or construction of factories and installment of machineries which is clearly in violation of section 160 of the Act. Despite several demands, the 5th respondent Panchayat has refused to divulge their statutory powers so as to impose these taxes on the writ petitioner companies. Hence, he prayed for allowing petition.

5.Per contra, learned Additional Advocate General appearing for respondents have contacted that the respondent authorities have invoked their power to Section 172 read with relevant rules for passing impugned order and the same may be sustained.

6.I have carefully considered the submissions made on either side. As per section 160 of the Tamil Nadu Panchayat Act, a person intending to construct factory or install machinery should obtain prior permission only from the Panchayat Union and not from the Panchayat. Hence, the 4th respondent panchayat has no jurisdiction whatsoever to call for the documents or to direct the petitioners to apply for planning permission.



W.P.(MD).No.3276 of 2012

The charges levied by the 4th respondent Panchayat for plan approval are clearly without jurisdiction. The Government has not yet framed Rules under Section 161 of the Panchayats Act.

7.Let us consider the various provisions of Tamil Nadu Panchayats Building Rules, 1997. A building plan approval has to be submitted under Section 4(1)(b) of the Rules as contemplated under Appendix-D. The Rules provide for the manner of flooring, room size, drainage, height of the walls and rooms, ventilation, sanitation, latrine, compound wall and rain water harvesting. Rule 32 empowers the Executive Authority to require alteration of work, in case, if it is not in accordance with the plans or specifications which has already been approved. Rule-33 provides for stoppage of work endangering human life. Rule -34 provides for demolition or alteration of building works unlawfully commenced, carried on or completed. Rule-35 provides for levy of fees by Village Panchayats granting building plan approval. Appendix-F provides for levy of fees. The maximum rates and fees that could be levied for a building plan approval is Rs.100/- per square meter or part thereof.



W.P.(MD).No.3276 of 2012

8.A cursory perusal of the above said provisions will make it clear that the said provisions are intended only for the purpose of a building which is used for human habitation or work place or a place frequented by human beings on a regular basis. There is every possibility of the Executive Authority refusing to grant building plan permission for a Windmill on the ground that rain water harvesting, toilet, ventilation, sanitation or compound wall has not been shown in the plan. A perusal of Rule 4(5) indicates that approval should not be granted for construction if electric lines are very close to the building. The Windmills are being erected/installed only for the purposes of generation of electricity and quite naturally, they are connected with electrical lines. Hence, these provisions, if applied to a Windmill will clearly result in disastrous consequences. The said provisions have not been brought to the notice of the learned Single Judge.

9.A further reading of the above said Building Rules will indicate that no specific standards are mentioned for erection of a Windmill. Unless specific standards are mentioned in the statutory rules, a



W.P.(MD).No.3276 of 2012

Windmill generator could not seek approval for his building plan that it is as per specific Rules. The learned Single Judge of this Court in a judgement reported *in 2012 (5) CTC 450 (Mad) (The President, Gangaikondan Panchayat, Tirunelveli Vs. The Chief Engineer, Chennai and others)* in Paragraph No.15 has recorded that the Rules are yet to be framed under Section 159 of the Tamil Nadu Panchayat Act. Until such Rules are framed, the Panchayat Union cannot insist upon the Windmill owner to get license from them. No specific standards are mentioned in the statutory Rules and the Rules already framed relate only to the building meant for human occupation. When the Rules already framed do not in any way conform to the standard required for a Windmill, the question of invoking Tamil Nadu Panchayat Building Rules, 1997 does not arise.

10.The 4th respondent in his impugned order has invoked the Tamil Nadu Village Panchayat (Assessment and Collection of Taxes) Rules, 1999, for payment of property tax to the village panchayat. The second respondent has referred to section 172 of the Tamil Nadu Panchayat Act.



W.P.(MD).No.3276 of 2012

Section 172 specifically refers to house tax. The house is defined under section 2(14) of the Tamil Nadu Panchayat Act. Unless the building is fit for human occupation or used for garaging or parking bus or it is a factory or bus stand, taxes cannot be levied as contemplated under section 172. Unless section 172 could be invoked, the question of invoking Tamil Nadu Village Panchayat (Assessment and Collection of Taxes) Rules, 1999, does not arise.

11. That apart, the 4th respondent has failed to note that as per rule 16 (2) of the Tamil Nadu Village Panchayat (Assessment and Collection of Taxes) Rules, 1999, machinery and furniture have to be excluded for the purpose of determining the annual or capital value for assessment of property tax. In the present case, except machinery nothing is available on the land. The windmill is just a standalone machinery. In such view of the matter, the impugned order is without jurisdiction.

12. The 4th respondent in the impugned order has also fixed the license fee for installation of Windmill. It is a settled position of law that



W.P.(MD).No.3276 of 2012

no amount of tax or fee can be levied without the authority of law. In the present case, as stated supra, the rule making power is solely vested with the Government as contemplated under section 161 of the Tamil Nadu Panchayat Act. Hence, the entire impugned order is without jurisdiction and have liable to be set aside. However, the Panchayats are empowered to insist upon building plan approval and property tax for the office building or security room connected with the Windmill.

13.In view of the above said discussion, the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

19 .09.2022

Index : Yes / No
Internet : Yes / No

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W.P.(MD).No.3276 of 2012

To
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- 1.The Secretary to Government,
Government of Tamilnadu,
Rural Development and Local
Administration Department,
Fort St. George, Chennai 600 009.

- 2.The District Collector,
Tuticorin District,
Tuticorin.



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W.P.(MD).No.3276 of 2012

R.VIJAYAKUMAR ,J.

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