BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.10.2022

CORAM

THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

W.P.(MD).No.183 of 2013
and
M.P.(MD).No.2 of 2013

M/s.Green Infra Wind Generation Limited,
2nd Floor, Tower II, NBCC Plaza,
Pushp Vihar, Sector-V,
Saket, New Delhi – 110 017.
Represented by its Authorised Signatory,
C.Suresh Kumar. ... Petitioner

Vs.

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

2.The District Collector,
Theni District,
Theni.

3.The Director – Project,
Tamil Nadu Generation and Energy Development Corporation,
No.144, Anna Salai,
Chennai – 600 002.

4.The Block Development Officer,
Bodinaickanur Panchayat Union,
Bodinaickanur,
Theni.

5.The President,
Dombucheri Village Panchayat,
Dombucheri,
Theni District. ...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the proceedings of the 5th Respondent herein Na.Ka.No. /2012/P.1 dated 22.10.2012 and quash the same and consequently, forbear the Respondents herein from in any manner, interfering with or dismantling or interrupting functioning of the Wind Turbine Generators erected by the petitioner in S.Nos.186/4B, 5A, 5B, 191/1C1, 191/2A and 188/1A1A, 1A2A, 188/1A3A in Dombucheri Revenue Village, Bodinaickannur Taluk, Theni District.

For Petitioner	:	Mr.M.Ramachandran
For R-1 and R-2	:	Mr.M.Prakash, Additional Government Pleader.
For R-4	:	Mr.P.Subbaraj, Special Government Pleader.
For R-3 and R-5	:	No appearance

ORDER

The Writ Petition is filed challenging the proceedings of the 5th Respondent dated 22.10.2012 and consequently, forbear the Respondents herein from in any manner interfering with or dismantling or interrupting functioning of the Wind Turbine Generators erected by the petitioner in

S.Nos.186/4B, 5A, 5B, 191/1C1, 191/2A and 188/1A1A, 1A2A, 188/1A3A in Dombucheri Revenue Village, Bodinaickannur Taluk, Theni District.

2. The short question that arises for consideration is whether levy of building plan approval fees, house tax and professional tax on windmill is valid in law.

3. It is submitted by the learned counsel for the petitioner and the learned counsel for the Respondents 1, 2 and 4 in unison that the very same issue stands covered by an order of this Court in W.P.(MD).No.11117 of 2014 dated 22.09.2022. The relevant portion of the order reads as under:

> "*5.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 5th respondent panchayat has no jurisdiction whatsoever to call for the documents or to direct the petitioners to apply for planning permission. The charges levied by the 5th respondent Panchayat for plan approval are clearly without jurisdiction. The Government has not yet framed Rules under Section 161 of the Panchayats Act.*

6.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.

7.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.*

8.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 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, even 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.

9.The 5th 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. 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.*

10.That apart, the 5th 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.

11.The 5th respondent in the impugned order has also fixed the license fee for installation of Windmill. It is a settled position of law that 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."

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4. In view of the same, it is submitted that the matters may be remitted back to the Assessing Officer to redo the proceedings taking into account the above order of this Court.

5. In view of the above, the impugned order dated 22.10.2012 is set aside. It is open to the Respondents for de novo consideration in accordance with law by taking into account the order of this Court in W.P.(MD).No.11117 of 2014 dated 22.09.2022. All questions including jurisdiction of the Respondents are left open.

6. This Writ Petition is disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

12.10.2022

Index : Yes / No
Internet : Yes/ No
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To

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Rural Development and Local Administration Department,
Fort St.George,
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MOHAMMED SHAFFIQ, J.

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