BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.10.2022

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THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

W.P.(MD).No.184 of 2013
and
M.P.(MD).Nos.1, 2 of 2013 & 1 of 2014

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,
Chinnamanur Panchayat Union,
Chinnamanur,
Theni.

5.The President,
Eranampatti Village Panchayat,
Pottipuram Revenue Village,
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.Wind Energy/Tax/2012-2013 dated 04.10.2012 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.536/1A, 537/2A, 435/5, 553/2A, 551/12, 435/3, 592/8 and 512/5, 6 in Pottipuram Revenue Village, Eranampatti Panchayat Limits, Uthamapalayam 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 04.10.2012 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.536/1A, 537/2A, 435/5, 553/2A, 551/12, 435/3, 592/8 and 512/5, 6 at Pottipuram Revenue Village, Eranampatti Panchayat Limits, Uthamapalayam Taluk, Theni District.

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

3. It is submitted by the learned counsel for the petitioner and the learned counsel for the Respondents in unison that the question as to whether there could be levy of property tax on windmills stands resolved in a decision of this Court in W.P.(MD).No.2970 of 2013. The relevant portion of the order reads as follows:

> *5.I have carefully considered the submissions made on the either side.*
>
> *6.The second respondent herein by his proceedings, dated 14.06.2012, has infact framed the rules under section 161 of Tamil Nadu Panchayat Act, 1994. As per section 160 of Tamil Nadu Panchayat Act permission of construction of factories and installment of machinery should be obtained from the Panchayat Union Council. However, a perusal of section 161 clearly indicates that the power to frame such rules are within the exclusive domain of the Government. Especially, section 161 (1)(C) empowers the*

Government to prohibit or regulate the grant of permissions under section 160.

7. Hence, it is clear that the Government alone has got powers to frame rules with regard to permission or grant of license by the Panchayat Union for the construction of factories or installation of machinery. Hence, the procedures contemplated in the impugned order are completely without jurisdiction.

8.The impugned order refers to the judgment of this Court in W.P.(MD).No.9930 of 2011 reported in (2012) 3 MLJ 6 (S.Muppidathi Vs. The Chief Engineer, Tamil Nadu Electricity Board, Chennai and others) to draw powers to issue the impugned order. Paragraph Nos.18 and 19 of the said judgment are extracted as follows:

"18. Therefore, it may not be possible to contend that a Windmill which generates and transmits electricity is not involved in a manufacturing process. Nor can it be contended that a Windmill cannot be treated as a machinery. The fact that the Secretary to Government, Energy Department, sent a communication dated 6.9.2010 claiming that Windmill is not a factory, cannot be taken to be an authoritative pronouncement of the law on the point. The fact that hundreds of Windmills have been established without any such permission from any of the local bodies, is also no ground to interpret the provisions of law differently. Therefore, the applicability of Section 160 of the Tamil Nadu Panchayats Act, 1994 to a Windmill, which generates electricity and which is therefore a factory involved in a manufacturing process, cannot be doubted.

19. Even if it is assumed for the sake of argument that the Windmill cannot be treated as a factory or workshop, it will not escape at least the definition of the word "building", in terms of Section 2(1-A) of the Tamil Nadu Panchayats Act. It defines a

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building as something which includes a house, outhouse, tent, stable, latrine, shed, hut, wall (other than a boundary wall not exceeding 2.5 meters in height) and any other structure, whether of masonry, bricks, wood, mud, metal or any other material whatsoever. Therefore, the seventh respondent ought to have obtained permission at least under the Tamil Nadu Panchayats Building Rules, 1997."

9.There cannot be any dispute that a Windmill is a factory involving a manufacturing process thereby attracting Section 160 of Tamil Nadu Panchayats Act, 1994 . The learned Single Judge of this Court has considered Section 2(1-A) of the Tamil Nadu Panchayats Act which defines a building and has arrived at a finding that a Windmill being erected with a metal would also be considered to be a building for the purposes of Tamil Nadu Panchayats Building Rules, 1997. This observation has been the basis of the present impugned order.

10.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.*

11.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.

12.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, 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.*

13.The second 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 definition of 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.

14.That apart, the second 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 stage 2 contemplated under the impugned order is also without jurisdiction.*

15.The second 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. The District Collector has no jurisdiction whatsoever to fix the license fee or permission fee for the erection of any wind mill or for the establishment of any factory. Hence, the stage 3 contemplated in the impugned order is also without jurisdiction."

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 judgment.

5. In view of the above, the impugned order dated 04.10.2012 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.2970 of

2013 dated 22.09.2022. All questions including jurisdiction of the Respondents is left open.

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

12.10.2022

Index : Yes / No
Internet : Yes/ No
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Rural Development and Local Administration Department,
Fort St.George, Chennai – 600 009.

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MOHAMMED SHAFFIQ, J.

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