BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 20.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

WP(MD)No.9347 of 2016
and
WMP(MD)Nos.7403 and 7820 of 2016

P.Muthiah Pandian ... Petitioner

Vs

1.The Chief Engineer,
Non-conventional Energy Sources (NCES),
TANGEDCO,
No.144, Annasalai
Chennai.

2.The Chairman,
Tamil Nadu Pollution Control Board,
Guindy, Chennai.

3.The District Collector,
Tirunelveli District,
Tirunelveli.

4.The District Environmental Board,
No.30/2, Sipco campus,
Pettai, Tirunelveli District.

5.The Executive Engineer,
Non-Conventional Energy Sources,
TANGEDCO,
Arignar Anna Buildings,
Maharaja Nagar,
Tirunelveli,
Tirunelveli District.

6.The President,
Moovirunthali 2nd grade Panchayat,
Sankarankovil Taluk,
Tirunelveli District.

7.The Inspector of Police,
Thevarkulam Police Station,
Tirunelveli District.

8.M/s.Eveready Textiles,
Wind Farm,
No.16, Old No.23,
Jothi Theatre Road,
Tiruppur.

9.M/s.Suzion Energy Limited,
No.104, 1st Floor,
Delta Wing, Raheja Towers,
No.177, Annasalai,
Chennai. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of mandamus, forbearing the 8th and 9th respondents from installing High tension wire poles and wind mills nearby petitioner's agricultural land in Survey No.92/14A and 92/14D, situated at Moovirunthali Village, Tirunelveli District, Consequently direct the respondents to issue suitable directions to the respondents 1 to 5 not to grant any permission to erect any wind mill nearby agricultural lands of the petitioner in Survey Nos.92/14A and 92/14 D situated at Moovirunthali Village, Tirunelveli District.

For Petitioner	:	Mr.S.Balamurugan
For Respondent No.1 and 5	:	Mr.S.Deenadhayalan, Standing Counsel
For Respondent Nos.2 and 4	:	Mr.Vijayalakshmi Natarajan
For Respondent No.3	:	Mr.A.Kannan, Additional Government Pleader
For Respondent Nos.6 and 8	:	No appearance
For Respondent No.7	:	Mr.Vaikkam Karunanithi, Government Advocate
For Respondent No.9	:	Mr.T.Antony Arul Raj

ORDER

This writ petition is filed for a writ of mandamus forbearing 8th and 9th respondents from installing High tension wire poles and wind mills in Survey No.92/14A and 92/14D, situated at Moovirunthali Village, Tirunelveli District and for a consequential direction to the respondents not to grant any permission to erect any wind mill nearby agricultural lands of the petitioner.

2.The learned Counsel for the petitioner submits that the petitioner is an agriculturist, having an agricultural land to an extent of 1.19 acres in Moovirunthali Village in S.Nos.92/14 and 92/14A and it is his ancestral property. The petitioner has been cultivating paddy, peanut and other seasonal crops thereon. While so, 8^{th} and 9^{th} respondents without obtaining any prior permission or approval as per Section 160 of the Tamil Nadu Panchayat Act, 1994 from the competent authorities have installed windmills adjacent to his agricultural land within the prohibited distance from the agricultural lands and residence and therefore, he is unable to carry out agricultural works, unable to sleep during night hours, due to the noise of the windmills and there is also possibility of lightening attack on account of the installation of the windmills. In this regard the petitioner submitted a representation to the respondents on 03.05.2016, but it was not considered and therefore, this writ petition has been filed.

3.Respondent No.9 has filed counter affidavit that they have established wind mill in S.Nos.91/6 and 82/5 and the said land was purchased from the petitioner's father by a registered sale deed in document No.684/2016 on 18.02.2016. The petitioner is also a witness to the document. Knowing that they have purchased the land for installation of the windmills, they sold the property. But contrary to the same this writ petition is filed. Further TANGEDCO has also verified the safety distance and given clearance for processing the proposal to install the windmill in the year 2016 and thus the windmill is functioning from the year 2016.

4.The learned Counsel further submits that the Panchayat is not having any authority to grant permission for erection of windmill, which has been already settled by this Court in **Beta Wind Farm Private Limited, Chennai Vs. The Secretary to Government** [WP(MD)No.7620 of 2012, dated 19.09.2022].

5.The learned Standing Counsel appearing for 1st respondent submits that only after verifying all the required conditions and safety distance, they have given clearance for installing windmill.

6.This Court considered the rival submissions and perused the materials placed on record.

7.The petitioner has approached this Court that 8th and 9th respondents have installed windmills without obtaining permission from 6th respondent as per Section 160 of the Tamil Nadu Panchayat Act, 1994 and Section 160 of the Act is extracted hereunder:

> *"160. No person shall, without the permission of the panchayat union council in panchayat villages and except in accordance with the conditions specified in such permission,- (a) construct or establish any factory, workshop or workplace in which it is proposed to employ steam power, water power or other mechanical power or electrical power, or (b) install in any premises any machinery or manufacturing plant driven by any power as aforesaid, not being machinery or manufacturing plant exempted by the rules."*

8.This Court in Beta Wind Farm Private Limited, Chennai

Vs. The Secretary to Government [WP(MD)No.7620 of 2012, dated 19.09.2022] has held as follows:

> "*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. 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.*

16.The second respondent by his impugned order has also directed the Panchayat to collect professional tax from the employees working in the windmill companies. The Panchayat is empowered to collect tax on profession to trade, calling and employment who are transacting business within the Panchayat village as contemplated under section 198-B of the Tamil Nadu Panchayat Act. Half yearly tax rates have also been specified in the table in section 198-B of the said Act. Chapter IX A of Tamil Nadu Panchayat Act exclusively deals with tax on professions. The trade, calling and employments rates specified by the second respondent herein under the impugned order are not in consonance with the table specified under section 198 B of the Act. The second respondent herein has no authority or power to enhance the rate of *professional tax as contemplated under the relevant provisions. Hence, the stage 4 of the impugned order directing the village Panchayat for recovery of professional tax at a rate different from that of the table found in section 198-B is also without jurisdiction.*

17.Even though Tamil Nadu Panchayat Act has been enacted in the year 1994 and section 161 of the said Act empowers the Government to frame rules for the purpose of granting permission for construction of factories and installment of machinery, so far the State Government has not taken any efforts to frame any rules under section 161 of Tamil Nadu Panchayat Act. In view of the erection of various Mobile Phone Towers, Windmills and solar power plants all over the State of Tamil Nadu, it is right time that the state of Tamil Nadu immediately frame rules as contemplated under section 161 of the Tamil Nadu Panchayat Act. The State should also frame necessary rules for collection of property tax from the above said entities, so as to augment the income of the Panchayat/Panchayat Union. 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."

9.In view of the above orders of this Court, this writ is dismissed. No costs. Consequently connected miscellaneous petitions are also dismissed.

20.02.2023

Internet : Yes / No

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To

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B.PUGALENDHI, J.

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WP(MD)No.9347 of 2016

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