



W.P(MD)No.24713 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.10.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.24713 of 2023

and

W.M.P.(MD)No.20894 of 2023

Solitaire BTN Solar Private Limited,
Represented by its authorized signatory Mr.Vijay Kandpal
239, Okhla Industrial Estate, Phase III,
New Delhi 110020

Also at:

Survey No.2643, Ward 14, Kottarpatti,
Genguvarpatti, Periyakulam Taluk,
Theni District 625 203, Tamil Nadu

... Petitioner

Vs.

1.The Executive Officer,
Genguvarpatti Town Panchayat,
Theni District.

2.The Assistant Director,
Town Panchayat,
Theni.

3.The District Collector,
Theni.

4.The Commissioner of Town Panchayat,
MRC Nagar, Chennai-28.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India,
praying this Court to issue a Writ of Mandamus, to direct the 1st respondent to



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grant change in land use letter / order in favour of the petitioner on the basis of the Rs.30,00,000/- already remitted by the petitioner to the 1st respondent.

For Petitioner : Mr.A.Sivaji

For Respondents : Mr.R.Baskaran
Additional Advocate General
assisted by Mr.K.Balasubramani
Special Government Pleader

ORDER

Heard the learned counsel appearing for the petitioner and the learned Additional Advocate General assisted by the learned Special Government Pleader for the respondents.

2. The petitioner had installed the solar power plant in Genguvarpatti Village in Periyakulam Taluk in Theni District. There are certain outstanding issues between the petitioner on the one hand and the local body on the other. According to the local body, the petitioner has to pay vacant land tax. The said issue is yet to be resolved. In the meanwhile, the petitioner sought land use conversion permission from the local body. Since their application had not been cleared, the present writ petition came to be filed.



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3. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to grant relief as prayed for.

4. The stand of the respondents is that since the petitioner is yet to pay the vacant land tax, the local body will not be in a position to grant permission as sought for. It is further contended by the learned Additional Advocate General that the requirements set out in Tamil Nadu Change of Land Use Rules, 2017 have not been complied with. He called upon this Court to dismiss the writ petition.

5. I carefully considered the rival contentions and went through the materials on record. It is not in dispute that the lands on which the solar power plant has been installed are dry lands. The issue has to be resolved in the light of Tamil Nadu Change of Land Use Rules, 2017. Rule 3, 4, 5, 8 & 9 are as follows:-

“3. Application for permission.-- Any person intending to carry out any development in the non-planning area shall apply to the local authority in Form-I. The applicant shall pay a nonrefundable scrutiny fee of Rs. 1,000/- (Rupees one thousand only) per plot to the local authority.

4. Processing of application.-- The local authority, before according permission for carrying out the development, shall obtain the prior concurrence



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of the Director.

5. Concurrence of the Director.-- The Director, after the receipt of the application from the local authority, shall obtain the prior concurrence of the Collector in the case of wet lands and a report from the Joint Director of Agriculture in case of dry lands.

8. Prior concurrence of the Director.-- The Director, if satisfied that prior concurrence may be given, then, he shall give his prior concurrence for the proposed development.

9. Land use conversion charge.-- The local authority, on receipt of the prior concurrence of the Director for the development shall collect land use conversion charge at the rate of 3% of the market value fixed under section 47-AA of the Indian Stamp Act, 1899 (Central Act 2 of 1899) and deposit the amount in Government head of account and grant permission for carrying out the development.”

6. A careful reading of the aforesaid provision would indicate that while the application for permission for change of land use will have to be made to the local authority, the local authority will have to obtain prior concurrence from the Director. It is obvious that the expression “Director” though not defined in the Rules, refers only to the Director of Town and Country Planning Act. The aforesaid Rules were made in exercise of power under Sub Section 2 of Section 122 r/w Section 47-A of Tamil Nadu Act 35 of 1972. Section 2(16) of Tamil Nadu Act 35 of 1972 states that “Director” means Director of Town and Country Planning appointed under Section 3. The Director will have to obtain concurrence from the District Collector in the case of wet lands and a



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report from the Joint Director of agriculture in the case of dry lands. The Joint Director of Agriculture has given a report favouring the petitioner as early as on 12.07.2019. It is again beyond dispute that the petitioner had remitted a sum of Rs.30,00,000/- towards land use conversion charges. In fact, in the letter dated 16.11.2022 issued by the Executive Officer, Genguvarpatt Town Panchayat, it has been mentioned that the petitioner should pay a sum of Rs.30,00,000/- computed at 3% of the market value towards land use conversion charges. Even though Rule 9 talks about Prior Concurrence of the Director before grant of permission by the local body for carrying out the development, in this case, the Concurrence of the Director has not been expressly given.

7. The learned counsel for the petitioner has not been able to draw my attention to any such proceedings. But then, even for remitting the land use conversion charge, the prior concurrence of the director is required. Unless there has been such concurrence, the land use conversion charges could not have been remitted. Once the said amount had been collected, the local authority is obliged to grant permission for carrying out the development. It is a matter of course. Even though in normal circumstances without such prior concurrence of the director, the local body cannot grant permission, since in this case the land use conversion charges had already been remitted and that too



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pursuant to the demand made by the first respondent, I direct the first respondent to issue the land use conversion order as sought for by the petitioner. This shall be done immediately and without any delay. I make it clear that allowing this writ petition will not have any bearing on the other demand of the local body for payment of vacant land tax from the petitioner.

8. The Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No
Internet : Yes/ No
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To

- 1.The Executive Officer,
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Theni District.
- 2.The Assistant Director,
Town Panchayat,
Theni.
- 3.The District Collector,
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G.R.SWAMINATHAN, J.

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