

S.Muppidathi Vs. the Chief Engineer

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Court : Chennai

Decided On : Nov-17-2011

Judge : V. Ramasubramanian, J.

Acts : [Companies Act, 1956](#); [Factories Act, 1948](#) - Sections 2(g), (k); Tamil Nadu Panchayats Building Rules, 1997; Tamil Nadu Panchayats Act, 1994 - Section 160

Appeal No. : W.P.(MD)No.9930 of 2011 And M.P.(MD) Nos.1 and 2 of 2011

Appellant : S.Muppidathi

Respondent : The Chief Engineer

Judgement :

1. The petitioner has come up with the above writ petition, seeking a Mandamus, forbearing the respondents 1 to 6 from installing the High Tension Wire Poles and windmills within 30 meters of the petitioner's agricultural land in Kaluneerkulam Village, Alangulam Taluk, Tirunelveli District.

2. I have heard Mr.T.Lajapathi Roy, learned counsel for the petitioner, Mr.M.Alagarthevan, learned Special Government Pleader for respondents 2 to 5, Mr.G.Kasinathadurai, learned Standing Counsel for respondents 1 and 6 and Mr.T.S.R.Venkataramana, learned counsel for the seventh respondent.

3. The petitioner is the owner of the agricultural lands in Survey No. 75/7A, 75/7B, 75/7C and 75/7D, measuring an extent of about 2 acres in Kaluneerkulam Village,

Alangulam Taluk, Tirunelveli District. The seventh respondent purchased adjoining land of an extent of 2 acres in Survey No. 75/8 and 75/8B for the purpose of erecting a windmill. After the seventh respondent started erecting the windmill, the petitioner came up with the above writ petition, seeking to prohibit the respondents from doing so.

4. The grounds on which the petitioner seeks to prohibit the respondents from erecting and installing the windmill in the adjoining land are as follows:-

(i) that the seventh respondent did not take the permission of the Kaluneerkulam Panchayat, in terms of Section 160 of the Tamil Nadu Panchayats Act, 1994, before installing the windmill;

(ii) that the location of the windmill is within 30 meters of the land of the petitioner, violating the prescription; and

(iii) that the windmill is sought to be located within 64 meters of the residential houses and within one kilometer of the Village Tank.

5. Before meeting the main contentions raised by the petitioner, Mr.T.S.R.Venkataramana, learned counsel for the seventh respondent raised two preliminary objections viz., (i) that no writ petition would lie as against the seventh respondent which is a limited company; and (ii) that since the erection of the windmill has already been completed by the seventh respondent, the prayer for prohibitory order sought against the respondents 1 to 6 has already become infructuous.

6. I do not agree with the first contention. The seventh respondent may be a company incorporated under the [Companies Act, 1956](#). But the seventh respondent is erecting a windmill, for the purpose of generating and supplying electrical energy to the Tamil Nadu Electricity Board, which is an instrumentality of State. In any case when an element of public interest is involved, a writ would certainly lie. Therefore, the first preliminary objection is liable to be overruled.

7. It is true that the prayer in the main writ petition is so worded that a Mandamus is sought only against the respondents 1 to 6, though it is the seventh respondent,

who is installing the windmill. It may be true that the windmill has also been installed. But so far it has not commenced operations. Therefore, the Court is always entitled to mould the relief and overlook the mistake in the manner in which the reliefs are worded. Hence the second preliminary objection is also overruled.

8. Now let me take up the main contentions raised in the writ petition. As pointed out earlier, one of the objections taken by the petitioner is that the windmill is erected within 30 meters of the boundary line of his property. But there are a few factual disputes on this. It appears that another person has filed a suit in O.S.No.462 of 2011 on the file of the Principal District Munsif Court, Tenkasi against the the seventh respondent herein seeking an injunction against the installation of the very same windmill. In that suit, an Advocate Commissioner was appointed to measure the distance between the center point of the base of the windmill and the boundary of the land belonging to the plaintiff in that suit. The Commissioner appears to have filed a report pointing out that the distance is as prescribed.

9. In any case, this question is one of fact on which there appears to be a dispute between the parties. The requirement to maintain a particular distance between the windmill and the adjoining land is prescribed under Board Proceeding Per.B.P.(Ch) No.324 (Technical Branch) dated 27-7-2005. The relevant portion reads :-

1. The distance between your proposed WEG's with adjacent windmill, if any, formed in a row, should be at least five times the diameter of the rotor. The row should be formed such that it is perpendicular to the predominant wind direction. The distance between subsequent rows should be at least seven times the diameter of the rotor, so that performance of the WEG's will not get affected in any manner .

As per the above clause it is clear that the developer need not own the entire land, which has been specified as minimum distance required between the windmills, in a row or between rows. However to avoid aerial trespass of the windmill blades into the neighbouring land, Board is insisting that the developer should leave at least { . D (D=the diameter of the rotor) + 5m} as boundary distance in all four

directions. That means the developer should own the land or taken on lease to the extent of $. D + 5$ meter in all four directions. Since no mention has been made about the minimum boundary distance in the Noted for Record letter , certain neighbouring land owners of existing windmill locations or proposed locations, approach various Courts insisting that they should own the land to the extent of $(7 D \times 5 D)$ dimensions. Hence Chairman has approved the proposal mentioning about minimum boundary distance. In the Noted for Record letters to be issued to the developers in future, in addition to mentioning of spacing of windmills.

Further, due to enormous growth in this sector over the last two years, there is shortage of land in high wind prone areas. Hence, certain developers are erecting windmills nearer to residential places, school building etc. Further the windmills were being erected in inland and far away from residential area, the developers were instructed to keep the minimum boundary distance of $(. D + 5 m)$ from the neighbouring land. Now the windmills are proposed to be erected nearer to the buildings, considering the safety on public and buildings, it is felt that the minimum boundary distances or such cases may be revised based on the falling distance of the windmill power. Hence the Chairman has approved the proposal of revision of minimum boundary distance to such cases, as detailed below:

Height of the Tower + . Rotor Diameter + 5 m Hence in this regard, based on the Chairman's approval, the following procedure may be adhered in future, while processing the windmill applications and while issue of Noted for Record letter to each developer:

1. The Additional Chief Engineer/Superintending Engineer/WEDC should give clear instructions to the private developers that the following minimum boundary distance is to be maintained:

a) $(. D + 5 M)$, if there is no building, school, residential place etc., are nearby.

b) Height of the Tower + $. D + 5 M)$ if the location is nearer to a building, school, residential place etc.

2) If any person constructs a building nearby a existing windmill location or proposed location, for which approval has already been accorded, then it is for his look out to satisfy the boundary norms of Tower height . D + 5 M since he is a later entrant and TNEB should not be made responsible in such cases. 3) The ACE/SE/WEDC should make arrangements for giving wide publicities in and around Kanyakumari, Tirunelveli and Coimbatore areas through Press, for intimating the public, with regard to the condition stipulated in para (2) above. The ACE/SE/WEDC/Tirunelveli should also intimate the same to the District Collectors of Tirunelveli, Kanyakumari and Coimbatore to inform the same to the concerned Revenue and other officials.

4) In addition to mentioning of the spacing between the windmills such as 5D, 7D, the minimum boundary distance to be maintained by the developer with their neighboring land, as stipulated in para (1) above, is to be notified in each 'Noted for Record' letter to be issued in future.

10. Since there is a dispute on facts about the distance left by the 7th respondent and also since it is not possible to adjudicate this disputed question of fact, Mr.T.Lajapathi Roy, learned counsel for the petitioner submitted that he may not be able to press this objection in a writ petition.

11. The last objection relating to the location of the residential area within a prohibited distance, is also equally a question of fact. The petitioner has filed photographs, but they do not show the distance. Therefore, it is not possible even to decide this question of fact in a writ petition.

12. However, the objection arising out of Section 160 of Tamil Nadu Panchayats Act, 1994, requires greater consideration. Section 160 of the Tamil Nadu Panchayats Act, reads as follows:-

Permission for construction of factories and the installation of machinery:- 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.

13. On the first date of hearing, it was contended by the learned counsel for the seventh respondent that the permission of the local body is not necessary, as the windmill is not a factory or workshop where any manufacturing activity is carried on. On the next date of hearing, the learned counsel for the seventh respondent also produced a copy of the letter bearing No.7703/C2/2010 dated 6.9.2010 issued by the Principal Secretary to Government, Energy Department, Government of Tamil Nadu addressed to the Assistant Director, Rural Development (Panchayat), Tirunelveli. The communication of the Government reads as follows:-

I am directed to enclose a copy of the reference cited and to state that the windmill is not a factory or an industry with a manufacturing process. It is a stand alone piece of equipment that harnesses wind power and converts the same into electricity. Hence, necessary clearance may be given.

14. It appears that in a meeting of all elected Presidents of local bodies in Tirunelveli District convened by the District Collector on 20.6.2007, it was resolved to levy a tax on generation of electricity, as per Sections 159 and 160 of the Tamil Nadu Panchayats Act. After coming to know of the said resolution, the seventh respondent has paid an amount of Rs.12,000/- for the 2 windmills erected by them and has also produced the receipts. In the light of the payment now made by them, it is contended by the learned counsel for the seventh respondent that they have also complied with the mandate of Section 160 of the Act.

15. Therefore, two questions arise for consideration viz., (i) as to whether a windmill comes within the purview of Section 160 and (ii) as to whether the payment of tax by the seventh respondent during the pendency of the writ petition

would tantamount to the grant of permission in terms of Section 160, assuming that the provision is applicable.

16. On the first question, though Mr.T.S.R.Venkataramana, learned counsel for the seventh respondent originally took a different stand, he later conceded that permission of the local body is required for erecting a windmill, in terms of Section 160. Whatever be the stand taken by the seventh respondent, it was settled long ago by a Constitution Bench of the Supreme Court in *Ardeshir H. Bhiwandiwalla vs. State of Bombay* {AIR 1962 SC 29}, that an open land or building or both, could constitute a factory. The [Factories Act, 1948](#), merely restricted its applicability to two categories of factories viz., (i) those employing 20 or more workmen in a manufacturing process without the aid of power and (ii) those employing 10 or more workmen in a manufacturing process with the aid of power. The definition of the word Factory differed from Act to Act, for the simple reason that every enactment was intended to achieve a different object. But the fundamental concept is that any premises, whether land, building or both, where a manufacturing process is carried on, would be a factory. It may be covered or not covered by the Labour Welfare Legislations, depending upon the number of employees and the use of power.

17. In *Nagpur Electric Light and Power Co. Ltd vs. Regional Director* {AIR 1967 SC 1364}, the Supreme Court pointed out, having regard to the definition of the words power and manufacturing process under Sections 2(g) and (k) of the [Factories Act, 1948](#), that the process of transforming electrical energy from a high to a low potential and the process of transmitting the energy through supply lines are both manufacturing processes. Even the definition of the expression manufacturing process in Section 2(k) of the [Factories Act, 1948](#), includes a process for generating, transforming and transmitting power . The [Factories Act, 1948](#) defines even the expressions prime mover , transmission machinery and machinery . The definitions of these expressions are wide enough to cover any appliance which generates or otherwise provides or transforms or transmits power.

18. In windmills, the wind passes through the airfoil section of the blades and the lift produced due to the aerodynamics of the airfoil, generates a torque which is

then transformed to electricity in the generator. In simple terms, a windmill converts the wind energy into mechanical energy of the turbine and it is then converted into electricity. Normally, the main parts of the windmill are as follows:-

- (i) The rotors consisting of the blades and the hub.
- (ii) The drive train and gears along the mechanical breaks (to be used when there is a storm).
- (iii) The generator which generates electricity.
- (iv) The yaw system which rotates the housing towards the direction of the wind.
- (v) Tower and foundation.
- (vi) Battery and the electrical system to transmit to the grid.

19. 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.

20. 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 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.

21. The second question as to whether the payment of tax by the seventh respondent would tantamount to the grant of permission under Section 160, poses no difficulty. Admittedly, the seventh respondent erected the windmill without obtaining the permission of the Panchayat Union Council. But in the course of hearing of the writ petition, the petitioner has remitted the tax to the local body. The seventh respondent claims to have paid it in terms of a decision taken at a meeting of the Presidents of all local bodies convened by the District Collector on 20.6.2007. The said payment cannot be termed as a fee paid for construction or establishment of a factory. It is a recurring payment, which the seventh respondent may be obliged to pay from time to time. Therefore, the payment of the same would not amount to a post facto permission.

22. Once it is found that the erection of the windmill by the seventh respondent was without the permission of the local body and once it is also found that the payment of tax by the seventh respondent during the pendency of the writ petition would not amount to the grant of permission under Section 160 of the Tamil Nadu Panchayats Act, 1994, it follows automatically that the petitioner is entitled to succeed on this short ground. But it is claimed both by the seventh respondent and by the Tamil Nadu Electricity Board, whose officials are also parties to the proceedings, that the installation of the windmill had already taken place. But it has not commenced operations, in view of the interim orders.

23. Therefore, taking into account the above, the writ petition is disposed of, permitting the seventh respondent to apply to the local body, which is not a party to the proceedings. Within 2 weeks of the seventh respondent submitting an application for permission under Section 160, the local body shall convene a meeting and take a decision in accordance with law. There will be no order as to costs. Consequently connected miscellaneous petitions are closed.