
(2014) 10 RAJ CK 0106
In the Rajasthan High Court
Case No : Civil Writ Petition No. 8955/2011

Gajendra Kunwar

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 01-10-2014

Acts Referred:

Rajasthan Land Revenue Act, 1956 — Section 90B
Rajasthan Tenancy Act, 1955 — Section 16

Citation : (2014) 10 RAJ CK 0106

Hon'ble Judges : Sunil Ambwani, Acting C.J.; Vijay Bishnoi, J

Bench : Division Bench

Advocate : M.C. Bhoot, Senior Advocate, Arpit Bhoot and Vineet Dave, Advocate for the Appellant; P.S. Bhati, Sajjan Singh, Rajesh Panwar and Sunil Joshi, Addl. Advocate Generals, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Sunil Ambwani, Actg. C.J.

1. This petition purportedly filed in public interest seeks to quash the order dated 7th January, 2011 passed by District Collector, Jaisalmer by which he had allotted 1890.01 bighas of land in villages Damodara, Dujasar, Jamra, Khabha, Khabhiya, Kanoi, Dedha, Salkha, Keshvo-Ki-Basti and Siyalo-Ki-Basti Tehsil Jaisalmer District Jaisalmer to M/s. Vish Wind Infrastructure Limited for establishment of 159.2 Megawatt Wind Energy Farm, for which recommendations were made in its favour by the State Government, on certain conditions. The petitioners have also prayed for setting aside the lease deed dated 24th February, 2011 executed by District Collector, Jaisalmer of the land measuring 1792.11 bighas in the aforesaid villages for a period of 30 years for setting up Wind Farm Project with a provision for further extension, after permission of the State Government and for which the possession of the land was given to the lessee in the villages on various dates between 19.1.2011 and 28.1.2011.

2. The allotment of land dated 7th January, 2011 and the lease deed dated 24th

February, 2011 have been challenged by the petitioners allegedly running a "Resort Rawala" in Jaisalmer on the ground that setting up of Wind Energy Farm will adversely affect the petitioners' health and livelihood and the health of their animals including cows, goats and camels; and is also likely to affect the heritage character of District Jaisalmer, which is known as "Golden City". The tourism in the District has been seriously affected by the setting-up of several Wind Mills in the District of Jaisalmer. The Wind Mills have caused "visual pollution", affecting the enjoyment of camel safaris run in the District by the tourists from every part of the world. The tourists enjoy the culture, life-style, festivals, historical & heritage monuments and sand-dunes with lakes having a fascinating view of sunset in the middle of Thar desert. It is alleged that the setting up of Wind Mills in the District of Jaisalmer affects the geographical status, religion and rich culture of the District.

3. It is submitted that on the setting up of Wind Mills, the visit of tourists to Jaisalmer has been considerably reduced. The statistics of the number of foreign national visiting Jaisalmer from 1982 to 2010 has been annexed with the writ petition to establish that the number of tourists visiting Jaisalmer has come down. It is further submitted that the dedicated tourist area: "Desert National Park", has suffered a serious set-back with the establishment of Wind Mill Farms and will further be affected by the proposed Wind Mill farms in the District of Jaisalmer.

4. Mr. M.C. Bhoot, learned counsel for the petitioners submits that apart from the public interest, which this petition seeks to serve, the procedure for allotment of the land to M/s. Vish Wind Infrastructure Limited, suffers from gross violation of the provisions of the Rajasthan Land Revenue (Allotment of Land for setting up of Power Plant based on Renewable Energy Sources) Rules, 2007 (for short, hereinafter referred to as "the Rules of 2007"). A large area recorded as gochar land has been allotted by the State Government without following the prescribed procedure, which requires consideration of the proposals by the Gram Panchayat before making any allotment. The Rajasthan Tenancy Act, 1955 and the Rajasthan Land Revenue Act, 1956 prohibit the allotment of land of public utility including gochar land to a private party. The land used cannot be converted except in accordance with the procedure provided under the Rules. Section 16 of the Rajasthan Tenancy Act and Section 90B of the Rajasthan Land Revenue Act prohibit the allotment of land in the catchment area. Instead of taking approval from the Gram Panchayat for conversion of agricultural land for industrial use, the permission was directly given by the State Government purportedly at the influence of politicians and on which, the Rajasthan Renewable Energy Corporation Ltd. recommended allotment of land to M/s. Vish Wind Infrastructure Ltd. for establishment of Wind Power Project for generating 159.2 Megawatt of electricity.

5. Shri M.C. Bhoot submits that the procedure prescribed for allotment was given a go-bye and that the requisite permission was also not taken from the

competent authority under the Rajasthan Tourism Trade (Facilitation and Regulation) Act 2010, which came into effect on 24.2.2011 for setting up the Wind Mill Farms as an industry in the area visited by the tourists.

6. Learned Additional Advocate General appearing for the respondents has pointed out to the Court that the allotment of land was earlier challenged by Libra India through its Managing Trustee Sanjeet Purohit in D.B. Civil Writ Petition (PIL) No. 12850/2011 on the ground that the action of the respondent-authorities in making frequent discrimination and blind allotment of the common land/charagah land/charai land for the purpose of setting up of Wind Farms was illegal, more particularly, in view of the Supreme Court judgment in Jagpal Singh and Others Vs. State of Punjab and Others, The Division Bench of the High Court vide judgment dated 17.2.2012 dismissed the writ petition filed by Libra Limited, after examining the jamabandis submitted by the respondents, from which it was manifest that various lands allotted by the Collector are gair mumkin and the rocky area. The allotment order dated 7.1.2011 itself demonstrates that gair mumkin gochar land was not allotted by the Collector to M/s. Vish Wind Infrastructure Ltd.. The writ petition was dismissed imposing cost of Rs. 25,000/- on the petitioner. It is submitted that once again an attempt has been made almost on the same cause, now giving it a colour of a petition filed in public interest, for protection of tourism trade in the State of Rajasthan.

7. Learned Additional Advocate General submits that the petitioner no. 1 has not disclosed the location of her "Resort Rawala" and has filed the writ petition without disclosing her bonafides. He submits that Wind Mill Farms have been set up in the Rajasthan under the Energy Policy of 2007. The Rajasthan Renewable Energy Corporation is the Nodal Agency. The power producing company has to file an application in proforma-A provided under the Policy to the Nodal Agency, which registers every project and recommends the concerned District Collector for allotment of land. The District Collector, on the basis of the recommendations of RREC, forwards the proposal to the State Government for approval. The State Government decides each case on its own merits, after which, the allotment orders are passed, on determination of the cost of land and rent for a period of one year. The land in question is outside the peripheral area of Municipal Board/UIT and is a rural area and thus, the provisions of the Municipalities Act are not attracted. The land in question was Government land at the time of allotment and therefore, the Conversion Rules will also not apply. The land was allotted while adhering to Rule 5 of the Rules of 2007. The Company's name has been changed by the Registrar of Companies, on which a requisite Certificate has been issued. The Company had applied for allotment of lands measuring 3106.13 bighas, but after examining the provisions of Rules of 2007, only 1890.01 bighas of land was found allottable for installation of Wind Mills. It was not allotted for construction of residential area etc. for workers. There was no complaint made in the installation of the Wind Mills of any nature affecting human lives or causing any inconvenience. The installation of the Wind Mills was for the production of cost effective electricity without causing any pollution.

8. It is submitted that the land was allotted prior to enforcement of the Rajasthan Tourism Trade (Facilitation and Regulation) Act 2010, which came into effect on 24.2.2011, whereas the allotment was made on 7.1.2011. In any case, the objections raised by the Assistant Director of the Tourism Department on the establishment of the Wind Mills have been considered and that for future, a decision has been taken that the Wind Mills will be established with sufficient care that they do not fall within the areas, affecting the camel safaris.

9. So far as the generation of electricity from Wind Mills, it is stated that the conversion of energy generated by the wind mills, running with the aid of the high speed wind, has a distinct advantage as a non-conventional energy source, over the thermal, hydel and nuclear energy sources. It is submitted that the noise generated by the generator is within the decibel limits, notified under the Environment Protection Act and has no effect on the health of the residents in the neighbouring areas. The relevant paragraph in the reply is quoted below:-

"Further, it is absolutely wrong to contend that the use of land causes nuisance and obstructs the flow of water or destroys the catchment area and the crops. It is also incorrect to contend that the cultivable land becomes non-irrigable and the agriculturists are deprived of their livelihood. It may be submitted here that the wind mills installed by the respondent no. 5 are equipped with the latest modern technology which are high-tech and designed gearless advanced technology. The wind mills produce no harmful noise. On the contrary, local vehicles, trains or for that matter aircrafts make much more noise. The wind mills are set up far from the populated areas and there are no case reported wherein the fertility of land has been affected. On the contrary, the installation of wind mills has given a boost to the local economy and created the avenues of employment for the local people. That apart, the lands allotted for setting up of such wind mills also results in huge revenue collection to the benefit of the public exchequer.

It is also absolutely incorrect to state that the wind mills will affect human body causing deafness and impotency and other mental problems. It is humbly submitted that such allegations have been made in an utterly loose fashion without even bothering to provide a basis for the same. It is humbly submitted that the allegations have been simply levelled against the respondent and this Hon'ble Court has been left to trace out the basis for such allegations. It is, however, submitted that setting up and operation of wind mills do not in any manner affect the health either of human beings or animals. There is no question of causing deafness or impotency or other mental problems on account of operation of wind mills. Not a single case has been reported to have suffered from any ailment on account of operation of wind mill. On the contrary, wind mill has been found to be better sources of generation of electricity as it does not result into any pollution either water, air or noise.

At this stage, it would relevant to quantify that how much a wind based generating plant can help in both ways. These wind mills with an approximated

installed capacity of 470.88 MW will collectively generate around 86,62,30,848 (Eight Six Crore Sixty Two Lakhs Thirty Thousand Eight Hundred Forty Eight) units in their lifetime of 20 years. This will be a significant contribution to the power deficit scenario of the Nation at large. Moreover, the abovementioned generation will also prevent around 8,22,157 Tones of Carbon Di Oxide emission (to produce 1 MWhr of electricity, 0.94912 Tonnes of CO2 Emissions will take place) which otherwise would be inevitable."

10. After hearing learned counsel for the parties, we are of the view that this writ petition is wholly meritless. It does not seek to protect any valid interest. The tourism is not affected by the setting up of Wind Mills. There is no such thing as "visual pollution" recognized in law for the purpose of giving cause of action to the petitioners to file the writ petition. The geographical status, historical & heritage monuments, rich culture and sand-dunes of District Jaisalmer are not going to be affected by the installation of Wind Mills as non-conventional energy source. There is no pollution caused by the setting up of Wind Mills. We are not impressed by the submission that the Wind Mills will spoil the beauty of the desert as there is no study undertaken by any person, which may establish the proposition that the setting up of Wind Mills will obstruct the views of the desert and thus affect the tourism.

11. A writ petition was earlier filed in public interest by Libra India challenging the procedure for allotment of land and lease deed in favour of the respondent-Company for setting up of Wind Farm. The writ petition was found to be mischievous and was dismissed with cost of Rs. 25,000/-. The same issues cannot be permitted to be raised again by the petitioners.

12. We find that despite a clear objection taken in the reply that the petitioner no. 1 has not given the location of her "Resort Rawala", which is alleged to be running from 2001, and recognized by the Tourism Department. No details of the location nor any recognition or registration from the Department of Tourism has been produced.

13. We are not satisfied with the credentials of the petitioners, which are necessary for the purpose of filing any writ petition in public interest. We also do not find that any private interest has been affected or that the allotment of the land for setting up of Wind Mills has affected the health of any person or is likely to affect the health of any person or animal in the District of Jaisalmer.

14. Learned counsel for the petitioners has not been able to establish that the allotment of land for setting up the non-conventional energy source was not made in accordance with the procedure provided under the Rules. We do not find that any of the provisions of the Act or Rules has been violated in issuance of the allotment order and execution of the lease deed for setting up of Wind Mill Farm. The land belongs to the State Government and has been allotted by the District Collector after taking care and compliance of the revenue laws. The conditions of allotment clearly provide that in case of misuse of the site, the same was liable

to be cancelled.

15. We further find that the allotment of land and execution of lease deed in the present case were made prior to the enforcement of the Rajasthan Tourism Trade (Facilitation and Regulation) Act 2010, which came into effect on 24.2.2011. In any case, the objections of the Assistant Director, Tourism Department have been considered and that in a State Level meeting, a decision has been taken that in future, the setting up of any industry will require clearance from the Tourism Department. The Tourism Department will carry out a "Tourism Impact Assessment" of such activity on the tourism in the State.

16. For the aforesaid reasons, there is no merit in this writ petition. The writ petition is dismissed.