

BEFORE THE NATIONAL GREEN TRIBUNAL (SZ) CHENNAI

Application No.09 of 2017

BETWEEN :

Mr. Y.V. Pratap Reddy,

...Applicant

AND

The Union of India,
Represented by its Secretary,
Ministry of Environment and Forests,
and 8 others

...Respondents

BRIEF NOTE OF SUBMISSIONS ON BEHALF OF RESPONDENT NO. 9

APPLICATION

1.1 The Application is filed challenging the installation of 12 wind mills in Sy.no. 1036/1 (subdivided as Sy.no. 1174 to 1185) in 30 acres of land in Mallela village and proposed installation of 4 wind mills in Sy.no.1 (sub divided as Sy.no. 506 to 509) in 10 acres of land in Udavagandla Village. The properties, having a total extent of 40 acres, lie as one block in two adjoining villages of Thondur Mandal, Y.S.R District.

1.2 The Applicant states that he is an agriculturist of Thondur Village in Cuddapah District and out of "occupational affairs" frequents the project area. In August, 2016 he noticed that several wind mills were being erected in forest areas. The reliefs are sought on the footing that the project activity does not have clearance under Section 2 (ii) of the Forest (Conservation) Act, 1980.

BACKGROUND FACTS

2.1 On 15-6-1893, Notification No.269 was issued under the Madras Forest Act - V of 1882 notifying the Mallela North Forest Reserve and Mallela South Forest Reserve, after identifying forest land in the area.

[Doc no.1 in typed set of R9- Page 1 to 8]

2.2 An extent of 2163 acres of land involved in the two adjoining Villages of Mallela (1568 acres in Sy no.1036/1) and Udavagandla (595

acres in Sy no.1), lying as a single block of land with similar physical features, was not included in the notification.

[Reply of R4- Para 3, 4]

2.3 At the time of resurvey and resettlement of lands, 1568 acres in Mallela village was classified as Government lands with the remark '*Forest Reserved*' and the 595 acres in Udavagandla village as Government land with the remark '*Hill*'.

[Doc no.1 to 4 A in typed set of Applicant - Pages 1 to 16 particularly Page 13]

2.4 A Perusal of the remarks column at Page 13 of the typed set of the Applicant indicates entries like '*Hill*', '*Stream*', '*Hillock*', '*Road*' and '*Forest Reserved*'. These are obviously observations made by the officials. They are not made as part of a statutory classification, either under the Forest related or Survey related laws. Suffice it to say that even in 1893, the features of a Forest were noticed only in some areas and the same was duly notified as Reserved Forest.

PROJECT

3.1 The New and Renewable Energy development corporation of Andhra Pradesh (NREDCAP for short), a Government of A.P enterprise installed a wind mast in the two bits of Government waste land aforesaid and determined the area as suitable for setting up wind mills.

3.2 NREDCAP by letter dated 03-01-2015 requested the District Collector, Kadappa to allot 40 acres for setting up wind mills jointly to NREDCAP and R9.

3.3 The Forest department inspected the property and issued a No Objection Certificate on 12-03-2015.

[Doc no. 5 in typed set of Applicant- Page 18]

3.4 The land was allotted and handed over.

[Doc no.7 in typed set of Applicant- Page 21]

3.5 Proceedings were taken by the Forest Department to cancel the order.

[Doc no.4 to 11 in typed set of Applicant - Pages- 19 to 27]

3.6. 15 windmills were commissioned in 2016.

[Counter of R9- Para 14,15]

3.7 The present application is filed on 19-01-2017.

CONTENTIONS ON MAINTAINABILITY

4.1 This Application is part of a serial challenge to the project on the same grounds. W.P.No. 273 of 2015 was filed before the Hon'ble High Court of Andhra Pradesh and Telengana by Sreenivasalu Reddy and two others and the same was withdrawn (Para 8 of the Application). W.P.No. 14 of 2016 was filed by Devireddy Manohar Reddy and it was withdrawn with liberty to approach this Hon'ble Tribunal in two weeks. The Applicant is his associate but the liberty reserved in the Judgement does not enure to the Applicant.

[Doc no.17 in typed set of R9- Page 64 to 70]

4.2 The Application is belated, the project having been substantially completed long before the filing of the Application.

4.3 Until and unless the land is established to be a Forest, the jurisdiction of this Hon'ble Tribunal is not attracted.

CONTENTIONS ON MERITS

5.1 In terms of the decision in *T.N.Godavarman* AIR 1997 SC 1228 = 1997 (2) SCC 267 Para 4, a Forest is

- (i) Statutorily recognized as a Forest or
- (ii) is a Forest as understood in the dictionary sense but also
- (iii) any area recorded as a Forest in any Government record.

The Judgement also directs the States to identify/determine the Forest areas in the respective states.

5.2 The process of identification would have been taken up/completed in most States, as more than two decades have passed

since the directions were issued. These aspects are considered in *T.N.Godavarman* 2006 (4) JT 557 Para 2,3,30 and the subsequent enquiry was utilized to uphold the allotment of land to Maruti. The broad principles initially issued have to be applied in *presentaei* only based on a positive identification of the parcel of land as a Forest.

5.3 The land involved in the present case is not a statutorily recognized Forest under any law. In the clarification issued by the Hon'ble Supreme Court in *T.N.Godavarman* on 8-9-2016 Pages 15 and 16, a parcel of land that is not notified as Forest under a statute cannot be classified as Forest land, warranting clearance under Section 2 (ii) of the Forest (Conservation) Act, 1980. The parcel of land in this case is certified to be not statutorily notified as a Forest, on date.

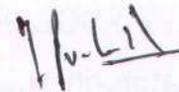
[Doc no. 18 in typed set of R9- Page 71]

5.4 The land involved does not have any of the features of a Forest going by the dictionary meaning of that word. This is evident from the joint inspection report of the Revenue and Forest departments.

[Doc no. 16 in typed set of R9- Page 50 to 63]

5.5 A mere remark in a Government record, made a century ago cannot be the basis for classifying the land as a Forest as held in *B.S.Sandhu* (2014) 12 SCC 172 Para 16 to 24. As held in that case the status of a large parcel of land (3700 acres in one village in the reported case and 2163 acres of land in two villages in the present case) as a Forest cannot be concluded on the basis of a remark in an old Government record.

5.6 This is a most environment friendly project.



Counsel for the Respondent No.9

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