

**BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN BENCH AT CHENNAI
APPLICATION No.09 OF 2017**

IN THE MATTER OF:

Mr. Y V Pratap Reddy,
S/o Y V Naga Reddy
No. 1-137, Reddyvari Street, Thondur, Cuddapah
Andhra Pradesh – 516 401

AND

1. The Union of India
Rep. by its Secretary
Ministry of Environment and Forest
New Delhi
2. The State of Andhra Pradesh
Rep by its Secretary,
Department of Environment and Forest
Science & Technology
Hyderabad
3. The District Collector
Office of Collectorate, Cuddapah
4. The Revenue Divisional Officer,
Jammalamadugu, YSR Kadapa District
5. The Tahsildar,
Thondur Mandal, YSR Kadapa District
6. The Chief Conservator of Forests
Kurnool Circle, Kurnool
7. The Divisional Forest Officer,
Prodattur (WL), Prodattur
8. The New and Renewable Energy Development
Corporation of Andhra Pradesh
207/2, Pishah Complex, Nampally
Hyderabad – 500 001
9. M/s. Esteem Energy Private Limited
Ground Floor, 17B, Vengal Rao Nagar,
Hyderabad.

D. Vishwan
23/09/21

MEMO FILED BY THE RESPONDENTS 6 AND 7

1. In pursuance of the directions issued by the Hon'ble Tribunal in their orders dated:20-09-2021, the records from the offices of Divisional Forest Officer (Wildlife), Proddatur; Conservator of Forests, Kurnool Circle, Kurnool were called for and based on the documents the following report is submitted. There is no file pertaining to the project in the office of Principal Chief Conservator of Forests & Head of Forest Force, Andhra Pradesh except the communication of the affidavits in the court cases filed.
2. It is respectfully submitted that the District Collector, Kadapa in his ref.no.E1/134/2015, dt:04-02-2015 addressed the Tahsildar, Thondur Mandal to inspect the lands to an extent of Ac.30.00 cents in Sy.No.1036 of Mallela Village and to an extent of Ac. 10.00 cents in Sy.No.1 of Udavagandla Village of Thondur Mandal and submit lease proposals in full shape if feasible for setting up of wind power project through the Revenue Divisional Officer, Jammalamadugu in accordance with new land policy. The Tahsildar, Thondur Mandal addressed a letter to Divisional Forest Officer (Wildlife), Proddatur in his ref.no. A/52/2014, dt:02-03-2015 and sought for clarification whether the lands are vested and under control of Forest Department or not. The Divisional Forest Officer (Wildlife), Proddatur in his letter no. 561/2015-P9, dt:12-03-2015 replied to the Tahsildar, Thondur Mandal stating that the lands in Sy.No.1036/1 and Sy.No.1 of Mallela and Udavagandla Village of Thondur Mandal are not falling in Reserve Forest or Wildlife Sanctuaries etc. He also informed that there is no objection from the Forest Department.
3. It is respectfully submitted that the Principal Chief Conservator of Forests & Head of Forest Force, Andhra Pradesh in his ref.no. DO.No.17347/2015/FCA-3, dt:31-10-2015 communicated the copy of affidavit in PIL No.273/2015 filed by Sri A. Srinivasulu Reddy,

A. Krishan
23/09/21

Kadapa. The Chief Conservator of Forests, Kurnool was informed that if the status of land is classified as "Forest Reserve" land, then the proceeding issued by the Tahsildar, Thondur Mandal is null and void. He was further informed to address the District Collector, Kadapa to withdraw the orders of the Tahsildar, Thondur Mandal duly informing the procedure of F(C) Act, 1980 and also to take action against the Tahsildar. It was also advised to inform the user agency to follow the procedure laid down under the F(C) Act, 1980 and see that no violation takes place in the forest areas.

4. It is respectfully submitted that as per the instructions of the Principal Chief Conservator of Forests & Head of Forest Force, Andhra Pradesh the Chief Conservator of Forests, Kurnool Circle, Kurnool in his ref.no. 4590/2015-TO, dt:16-11-2015 addressed the District Collector, Kadapa and requested to cancel the orders of the Tahsildar, Thondur Mandal for leasing of the "Forest Reserve" lands for establishing amendments. It was also requested to take action against the Tahsildar, Thondur Mandal for violating the provisions of Forest (Conservation) Act, 1980. It was also requested to advise the user agency to follow the procedure laid down under Forest (Conservation) Act, 1980. The above letter was followed by two more letters dt:29-02-2016 and 02-09-2016 but there was no response from the District Collector, Kadapa.
5. It is respectfully submitted that the District Collector, Kadapa in his ref.no. E1/134/2015, dt:22-12-2015 addressed the Revenue Divisional Officer, Jammalamadugu and Divisional Forest Officer Proddatur to inspect the land and submit joint inspection report as to whether the said land belongs to Forest or Revenue for onward submission to the Chief Commissioner of Land Administration (CCLA) Andhra Pradesh. the joint inspection was conducted on 18-02-2016 and concluded that M/s Esteem Energy Private Limited has been

A. Kishan
23/09/21

laying the roads from Mallela Village and in their leased lands without prior permission from the Government.

6. It is respectfully submitted that the District Collecto, Kadapa in his letter no. E6/2847/2016, dt:11-04-2017 addressed the Principal Chief Conservator of Forests & Head of Forest Force, Andhra Pradesh and reiterated that the Revenue Forest Reserve land in Mallela Village is not a forest land and will not attract the provisions of Forest (Conservation) Act, 1980. He also stated that the land lease given in the name of a Government owned and Managed Corporation and hence there is no violation of sub-section 2(iii) of Forest (Conservation) Act, 1980. And there is no possibility of taking action against the investor under WALTA Act as no trees were cut down and no water courses are damaged. He further requested to issue suitable instructions on the proposals of lease to NREDCAP and its developer jointly as requested by the Chief Commissioner of Land Administration (CCLA) Andhra Pradesh in order to encourage, develop and promote wind power generation in the State with a view to meet the growing demand for power in an environmentally and economically sustainable manner. He also requested to initiate action against the Divisional Forest Officer, Proddatur for issuing an NoC, then arbitrarily canceling it and filing a counter without properly examining the Forest (Conservation) Act, 1980 and the judgment of Hon'ble Apex Court.
7. It is respectfully submitted that the letter of District Collector, Kadapa dt:11-04-2017 was not traceable in the office of Principal Chief Conservator of Forests & Head of Forest Force, Andhra Pradesh and hence no reply was given to the District Collector, Kadapa.
8. It is respectfully submitted that as seen from the counter affidavit filed by the Tahsildar, Thondur Mandal in WP (PIL) No.14/2016 the land was handed over to the District Manager, NREDCAP, Kadapa on 25-06-2015 and the instructions were given by the Principal Chief

A. Krishan
23/09/24

Conservator of Forests & Head of Forest Force, Andhra Pradesh on 31-10-2015 to initiate action under the Forest (Conservation) Act, 1980, which is not complied with.

9. It is respectfully submitted that the classification of the land in Revenue records is not within the knowledge of the Forest Department and when it was brought to the notice of the department through complaints and the PIL No.273/2015, the Forest Department requested the District Collector, Kadapa and user agency to comply with the directions of the Hon'ble Supreme Court of India as the land proposed to be used by the user agency is classified as "Forest Reserve" in Revenue records/Government record.
10. It is respectfully submitted that as narrated above the project proposals were not discussed at the Head Office level but were processed at the Tahsildar level only wherein the classification of land was not given prominence which was later revealed through complaints/court cases. The user agency was requested to comply with the provisions of Forest (Conservation) Act, 1980 and the project itself was not proposed to be stopped.

Hence it is prayed that this Hon'ble Tribunal may be pleased to record this Memo and pass such further or other orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case and thus render justice.

Dated at Guntur on this 23rd day of September, 2021

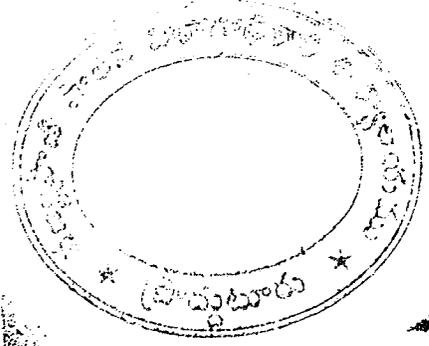
A. Visham
23/09/21
COUNSEL FOR THE RESPONDENTS 6 AND 7

C.No. 563
7/3/015

REVENUE DEPARTMENT

From
Sri K V. Ramana, IAS.,
District Collector,
Y.S.R District, Kadapa

To
The Tahsildar,
Thondur Mandal.



Ref.No.E1/134/2015 dated:04.02.2015

Sir,

Sub:- Lease of LAND - Y.S.R. District - NREDCAP forwarded the application of M/s Esteem Energy Ltd., for allotment of land to an extent of Ac.30.00 cents in Sy.No.1036 of Mallela village and to an extent of Ac.10.00 cents in Sy.No.1 of Udavagandla village of Thondur Mandal on lease basis for setting up of Wind power project - Feasibility report called for - Regarding.

- Ref:- 1) The VC & Managing Director, NREDCAP Ref.No. NREDCAP/WE/EEPL/87/2015 Dt:-03.01.2015.
2) This office Ref.No.E1/134/2015 Dt:-24.01.2015.
3) Lr.No.3317/Revenue/2014,Dt:-28.01.2015.
4) This office Note orders Ref.No.E1/134/2015 Dt:-02.02.2015.

-000-

I invite attention to the references cited.

In the reference 1st cited, the VC & Managing Director, NREDCAP has represented to the District Collector stating that the NREDCAP has sanctioned 19.50 MV & 6.42 MW capacity for setting up wind power project at Thondur Mandal by the M/s Esteem Energy Pvt Ltd., and the private developer has requested for allotment of land to an extent of Ac.30.00 cents in Sy.No.1036 of Mallela village and to an extent of Ac.10.00 cents in Sy.No.1 of Udavagandla village of Thondur Mandal on lease basis.

Finally, the VC & Managing Director, NREDCAP has requested to take necessary action for allotment of Government land on lease basis jointly in the name of the above Private developer and NREDCAP as per the G.O.Ms.No.571 Dt:-14.9.2012 on foot print basis to set up wind power project at the earliest.

I therefore request you to inspect the lands to an extent of Ac.30.00 cents in Sy.No.1036 of Mallela village and to an extent of Ac.10.00 cents in Sy.No.1 of Udavagandla village of Thondur Mandal and submit lease proposals in full shape if feasible for setting up of wind power project through the Revenue Divisional Officer, Jammalamadugu in accordance with new land policy.

Yours faithfully,
Sd/-S.Sulochana
For Collector,

\\t.c.b.o.\\

Sd/-
Superintendent
4/2/15

Copy to the Revenue Divisional Officer, Jammalamadugu for necessary action.

Copy to the VC & MD, NREDCAP, Nampally, Hyderabad for information.

Copy to the M/s Esteem Energy Pvt Ltd, Ground Floor, 17-B, Vengal Rao Nagar, Hyderabad.

C.No. 561
9/3/15



REVENUE DEPARTMENT

To:

d, B.Com.,

The Divisional Forest Officer,
Proddatur.

Roc. A/52/2014 dated: 2-3-2015.

Sir,

Sub:- Lease of Land - Y.S.R District - Thondur Mandal - Mallela and Udavagandla villages - Sy.No. 1036/1 Ext. of Mallela village and Sy. No. 1 of Udavagandla village - M/s Esteem Energy Private Limited, Hyderabad applied for lease of 40 acres of land for setting up of wind mills - Clarification regarding objection if any - Regarding.

Ref:- 1.Requisition of M/s Esteem Energy Private Limited, Hyderabad.
2. District Collector, Kadapa Ref. No. E1/134/2015 dated 2-3-2015.

I am to inform that M/s Esteem Energy Private Limited, Hyderabad has applied for lease of land for setting up of wind mills for generation of wind power on the hill tops situated in S. No. 1036/1 Ext. of Mallela village and Sy. No. 1 of Udavagandla village of this mandal. In the reference 2nd cited, the District Collector, Kadapa, directed to submit proposals for granting lease. The company proposes to set up 12 wind mills in Sy. No. 1036/1 Ext. of Mallela village and four wind mills in Sy. No. 1 of Udavagandla village.

As could be seen from the Revenue Records, the lands are Government lands vested with the Revenue Department. But the lands are covered by hillocks. I therefore request to kindly clarify whether these lands are vested under the control of the Forest Department or not?.

Yours faithfully,

[Signature]
2/3/15
Tahsilildar
THONDUR MANDAL
Y.S.R. DISTRICT, A.P.

Copy submitted to the Revenue divisional Officer, Jammalamadugu, for information.

Copy submitted to the District Collector, Kadapa, for kind information.

0
F.O. No. 1036/1
and submit report into map.
9/3/15

u.p.s. NO.

3
Government of Andhra Pradesh

Forest Department

From

Sri P. Siva Sankara Reddy, SFS
Divisional Forest Officer,
Proddatur Wildlife Division,

To

The Tahsildar,
Thondur (Mandal).
YSR District.

Rc. No.561 / 2015 - P9, Dt. : 12-3-2015

Sir,

Sub:- Lease of LanY.S.R.District-Thondur Mandal -Mallela and Udavagandla villages-Sy.No.1036/1 Ext.of Malla village and Sy.No.1 of Udavagandla village M/s. Esteem Energy Private Ltd., Hyderabad applied for lease of 40 Acres of land setting up of wind mills - Clarification regarding objection if any - It is not falling in RF - Issue of NOC - Regarding.

Ref :-Tahsildar, Thonduru Ref. No.A/52/ 2014, Dt : 02/03/2015.

It is to inform that in the reference cited, the Tahsildar, Thonduru Mandal has requested to issue clarification regarding objection if any in the above said lands in Sy.No.1036/1 and Sy.No.1 of Mallela and Udavagandla Villages. In this regard, I have instructed the Forest Range Officer, Muddanur to inspect the above said area and called for detailed report.

Accordingly the Forest Range Officer, Muddanur has submitted a report in the reference cited stating that he had inspected the proposed area on 09/03/2015 and submitted that the Sy.No.1036/1 and Sy.No.1 of Mallela and Udavagandla Villages are not falling in Reserve Forest or Wildlife Sanctuaries, National Parks and other important sites. But the proposed wind mill machine location (15th point) is located at 56 Mts distance from the nearest Mallela South Reserve Forest. In this regard there is no objection from Forest Department.

This is for information and necessary action.

Yours faithfully

Encl:-Location Map.

P. S. Sankara Reddy
12/3/15
Divisional Forest Officer
Proddatur Wildlife Division

Copy to the Forest Range Officer, Muddanur for information.

B. S. Sankara Reddy
11/3

4590
13-11-15
6

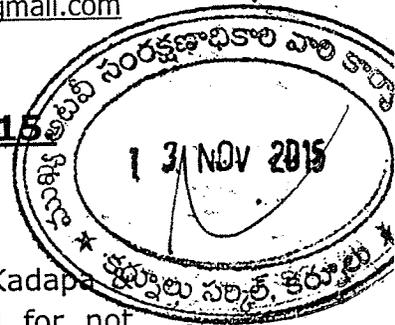
(1), (1)

P.A.V. UDAYA BHASKAR, I.F.S
Addl.Pri.Chief Conservator of Forests
(FCA)



O/o Pri. Chief Conservator of Forests (HoFF),
Aranya Bhavan, Saifabad, A.P. Hyderabad-04
Ph: (O) 040-2323 1491 (R) ~~040-23747444~~
Fax : 040-2323 1605 Mobile: 94408 10027
e-mail : fcact1980ap@gmail.com

D.O.No.17347/2015/FCA-3, dt. 31.10.2015



Dear Sri Murthy,

Sub:- PIL No.273/2015 filed by Sri A.Srinivasulu Reddy, Kadapa and two others in the Hon'ble High Court, Hyderabad for not granting lease for establishing windmills by suspending the proceedings issued by the Thasildar, Thondur (M), Kadapa District - Report called for - Reg.

TO

- Ref :-
1. PIL No. 273/2015 filed in Hon'ble A.P.High Court, Hyd., on 18.9.2015.
 2. Hon'ble High Court Orders in PIL No.273/2015, dt.28.9.2015.

* * * * *

Copies of the references cited are enclosed herewith.

You are requested to go through the PIL No.273/2015 filed by Sri A.Srinivasulu Reddy, Kadapa and examine the letter of Tahsildar, Thonduru (M), YSR Kadapa District stated in affidavit and status of land for which permission for establishing wind mill was reportedly granted. If the status of land i.e. Sy.No.1036/1 of Mallela (V) is classified as "Forest Reserve" land, then the proceedings issued by the Tahsildar is null and void.

In this regard, you are requested to address the District Collector, Kadapa to withdraw the orders of the Tahsildar, Thonduru (M) duly informing the procedure of F(C) Act, 1980 and also to take action against the Tahsildar. You are also requested to advise the user agency to follow the procedure laid down under the F(C) Act, 1980 and see that no violation takes place in the forest areas.

You are requested to issue necessary instructions of the Divisional Forest Officer, Kadapa to prepare and file counter affidavit in this case duly consulting the Govt.Pleader for Forests, A.P.High Court and submit the copy of the same to this office within (5) days positively.

With good wishes,

Yours sincerely,

Encl.:- As above.

(P.A.V.Udaya Bhaskar)

To
Sri J.S.N.Murthy, I.F.S.,
Chief Conservator of Forests,
Kurnool.

Stamp
Murthy
Pl. examine & put up
13/11/15

17

**GOVERNMENT OF ANDHRA PRADESH
FOREST DEPARTMENT**

FROM
Sri J.S.N.Murthy, IFS.,
Chief Conservator of Forests,
Kurnool Circle, Kurnool.

TO
The Collector & District Magistrate,
KADAPA.

Rc.No.4590/2015-TO, Dated:-11.11.2015

Sir,

Sub:- PIL No.273/2015 filed by Sri A.Srinivasulu Reddy, Thondur (V) & (M), Kadapa District and two others in the Hon'ble High Court, Hyderabad for not granting lease for establishing wind mills by ~~respending~~ the proceedings issued by the Tahsildar, Thondur (M), Kadapa District - Reg.

Ref:- PCCF, AP, Hyderabad D.O.Rc.No.17347/2015/FCA-3, Dt.31.10.2015.

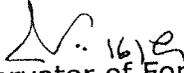
It is ^{to inform} ~~submitted~~ that the Prl.Chief Conservator of Forests, Andhra Pradesh, Hyderabad in the reference cited has communicated the PIL No.273/2015 filed by Sri A.Srinivasulu Reddy, Thondur (V) & (M) in Hon'ble High Court, Hyderabad in which the petitioner has stated that M/s Esteem Energy Private Limited, Vengal Rao Nagar, Hyderabad has applied for granting lease for establishing 16 wind mills in an extent of 30.00 Acres in old Sy.No.1036/1 in Mallela (V) and an extent of 10.00 Acres in old Sy.No.1 of Udavagandla (V) of Thondur (M). Basing on the recommendation of the Tahsildar, Thondur (M), the Revenue Divisional Officer, Jammalamadugu in his proceeding Ref No.(A)/269/15, Dt.24.07.2015 has submitted the report to the District Collector, Kadapa for granting lease for establishing the wind mills. Further the petitioner has stated that the Revenue Divisional Officer, Jammalamadugu in his report stated that the land applied in Mallela (V) i.e., Sy.No.1036/1 is classified as "Forest Reserve" land and the land was sub-divided into fresh Sy.Nos.1174 to 1185 each admeasuring 2.50 Acres for 12 pieces of land". Similarly the Sy.No.1 of Udavagandla (V) was sub divided into fresh Sy.Nos.506 to 509 each admeasuring 2.50 Acres for 4 pieces of land. It is further stated that even though the land in Mallela (V) is classified as a "Forest Reserve", it is not a reserve forest under the control of the Forest Department, it is purely Revenue land and the land in Udavagandla (V) is a hill land which is vested in Revenue Department. It is stated that as such both the lands are Government lands and no permission or consent of any other Department is required and further as this is a case of only leasing, no change of classification is warranted. Since the Tahsildar, Thondur (M) has violated the provisions of the Forest (Conservation) Act, 1980, the petitioner has filed a PIL No.273/2015 in Hon'ble High Court, Hyderabad

for not granting the lease for establishing wind mills as it is a illegal, arbitrary without jurisdiction. The Pr.Chief Conservator of Forests, Andhra Pradesh, Hyderabad in the reference cited has requested to address the District Collector, Kadapa to withdraw the orders of the Tahsildar, Thondur (M) and to take action against the Tahsildar, Thondur (M).

In this connection, it is ^{informed} ~~submitted~~ that as per the Forest (Conservation) Act, 1980, the term "Forest land" mentioned in Section-2 of the Act refers to Reserved forests, protected forests or any area recorded as "forest" in Government lands. ^{Reserved} Lands which are notified u/s 4 of Indian Forest Act would also come within the purview of the Act (Supreme Court's Judgement in ATPC's case). It would also include "Forest" as understood in the dictionary sense. (Supreme Court Order Dt.12.12.1996 in W.P No.202/95, Annexure-I). All proposals for diversion of such areas to any non forest purpose, irrespective of its ownership, would require the prior approval of the Central Government. Hence as per the Forest (Conservation) Act, 1980, the Central Government, approval is required for granting lease for establishing wind mills in "Forest Reserve" lands.

In view of the above, I request that the orders of the Tahsildar, Thondur (M) recommending ^{to} ~~granting~~ lease in forest reserve lands for establishing wind mills may be cancelled, as it is violation to Forest (Conservation) Act, 1980. It is also requested to take action against the Tahsildar, Thondur (M) for violating the provisions of the Forest (Conservation) Act, 1980. The user agency may be advised to follow the procedure laid down under Forest (Conservation) Act, 1980. ^{in this regard}

Yours faithfully,


Chief Conservator of Forests,
Kurnool Circle, Kurnool.


16/12/15

copy to the O.F. part (12) for information and necessary action.

**GOVERNMENT OF ANDHRA PRADESH
FOREST DEPARTMENT**

FROM
Sri J.S.N.Murthy, IFS.,
Chief Conservator of Forests,
Kurnool Circle, Kurnool.

TO
The Collector & District Magistrate,
KADAPA.

Rc.No.4590/2015-TO, Dated:-29.02.2016

Sir,

Sub:-PIL No.273/2015 filed by Sri A.Srinivasulu Reddy, Thondur (V) & (M), Kadapa District and two others in the Hon'ble High Court, Hyderabad for not granting lease for establishing wind mills by suspending the proceedings issued by the Tahsildar, Thondur (M), Kadapa District - Reg.

Ref:- 1) PCCF, AP, Hyderabad D.O.Lr.No.17347/2015/FCA-3, Dt.31.10.2015
2) This office Rc.No.4590/2015-TO, Dt.16.11.2015 & 16.12.2015.
3) News item published in Kadapa District edition of Eenadu Telugu daily paper, Dt:25.02.2016.

I invite your kind attention to the reference 2nd cited, wherein it was requested to cancel the orders of the Tahsildar, Thondur (M) recommending for grant of lease in forest reserve lands for establishing wind mills as it is violation to Forest (Conservation) Act, 1980 and also requested to take action against the Tahsildar, Thondur (M) for violating the provisions of the Forest (Conservation) Act, 1980. But there is no response from you in the matter.

Further it is informed that a News item is published in Kadapa District edition of Eenadu Telugu daily paper on 25.02.2016, stating that road works are going on in Mallela and Udavagandla villages of Thondur (M) as a part of establishing wind mills by M/s. Esteem Energy Pvt. Ltd, Hyderabad, though the Hon'ble High Court, Hyderabad issued orders to stop the road works immediately. Copy of the News item is herewith enclosed. It is requested

that necessary action may please be taken in this regard and also file counter affidavit in the Hon'ble High Court as the lands applied for establishing the wind mills in old Sy.No.1036 of Mallela Village and old Sy.No.1 of Udavagandla Village of Thondur (M) are under the control of Revenue Department. It is requested that the action taken in the matter may please be intimated to this office at an early date for submitting a compliance report to the Prl.Chief Conservator of Forests, (HoFF) Andhra Pradesh, Hyderabad by this office.

Yours faithfully,
Sd/-J.S.N.Murthy,
Chief Conservator of Forests,
Kurnool Circle, Kurnool.

Copy to the Divisional Forest Officer, Proddatur (WL) for information and necessary action.

//t.c.b.o//


Technical Officer 28/2/16

57c

GOVERNMENT OF ANDHRA PRADESH

FOREST DEPARTMENT



From

Sri S. Ravi Shankar, SFS,
Divisional Forest Officer,
Proddatur (WL) Division.
YSR Kadapa.

To

The Chief Conservator of Forests,
Kurnool Circle,
Kurnool.

Rc. No. 563 / 2015 - P9, Dated : 09/09/2016

TO
Sir,

Sub:-PIL No. 273 / 2015 filed by Sri A. Srinivasulu Reddy, Thondur (V) & (M) and two others in the Hon'ble High Court, Hyderabad for not granting lease for establishing wind mills by suspending the proceedings issued by the Tahsildar, Thondur (M), Kadapa District - Report submission - Regarding.

Ref :- Chief Conservator of Forests, Kurnool Rc. No. 4590 / 2015 / TO, dated : 16-07-2016.

In obedience to the reference cited, I submit that, the NOC issued by the Divisional Forest Officer (WL), Proddatur in Rc. No. 561 /2015-P9, Dt. 12/03/2015 is cancelled by this office Rc. No. 563/2015-P9, Dt. 31/01/2016 in respect of Wind Mills of M/s Esteem Energy Private Limited Hyderabad. A copy of the same is enclosed herewith for information.

Further it is also submitted that, a letter was addressed to the Revenue Divisional Officer, Jammalamadugu for taking action against the wind mills of M/s Esteem Energy Private Limited Hyderabad for violation of Forest (Conservation) Act. I have inspected the Sy. Nos. 1036/1 of Mallela Village and Sy. No. 1 of Udavagandla Village and verified that these Sy. Nos. are not of any CA lands and not handed over to the Forest Department. As per Revenue records the legal status of Sy. No 1036 of Mallela Village of Thondur Mandal and in ROR (1B) it is written as "Forest" and under the control of Revenue Department.

Regarding filing of draft counter affidavit on PIL No. 273 / 2015 filed by Sri A. Sreenivasa Reddy, Thondur (V) & (M) and two others in the Hon'ble High Court, Hyderabad for not granting lease for establishing wind mills, it is submitted that, since the case was already withdrawn by the petitioner on 23-11-2015, I did not implead as one of the official respondents.

This is submitted for favour of information.

Encl. :- As above.

Yours faithfully
Sd/- S. Ravi Shankar,
Divisional Forest Officer
Proddatur (WL) Division.

//T.C.B.O.//

S.M. Bellu
Superintendent

Government of Andhra Pradesh

Forest Department

65

S. Ravi Shankar, SFS
Divisional Forest Officer,
Proddatur Wildlife Division,

To

The Tahsildar,
Thondur Mandal
YSR District.

Rc. No. 563 / 2015 - P9, Dt. : 31-01-2016

Sir,

Sub:- Lease of Land - YSR District - Thondur Mandal - Mallela and
Udavagandla villages - Sy. No. 1036/1 Ext. of Mallela village
and Sy. No. 1 of Udavagandla village - M/s. Esteem Energy
Private Limited, Hyderabad applied for lease of 40 Acres of land
setting up of wind mills - Clarification regarding objection if any
- Regarding.

Ref :- This office Rc. No. 561 / 2015 - P9, Dt. : 12/03/2015.

It is to draw your attention that the No Objection from the Forest
Department in the reference cited may be treated as **Cancelled**.

This is for information and necessary action.

Yours faithfully

S. Ravi Shankar
31/1/16

Divisional Forest Officer
Proddatur Wildlife Division

2015
31/1/16

Copy to the Revenue Divisional Officer, Jammalamadugu for favour of
information and necessary action.

Copy to the Forest Range Officer, Muddanur for information.

S. Ravi Shankar
11/2/16

JOINT INSPECTION REPORT OF THE REVENUE DIVISIONAL OFFICER, JAMMALAMADUGU AND DIVISIONAL FOREST OFFICER, WILD LIFE, PRODDATUR ON THE LANDS LEASED IN FAVOUR OF ESTEEM ENERGY PRIVATE LIMITED FOR ERECTION OF WIND MILLS IN MALLELA REVENUE VILLAGE OF THONDUR MANDAL ON DATED: 18.02.2016.

- 1). In pursuance of the directions issued by the District collector, Kadapa Revenue Divisional Officer, Jammalamadugu, Divisional Forest Officer, Wild Life, Proddatur, Tahsildar Thondur, Forest Range Officer, Muddanur, Mandal Surveyor, Thondur and Forest Beat Officers have conducted the joint inspection on the leased lands granted in favour of M/s Esteem Energy Private Limited, Hyderabad on dated, 18.02.2016.
- 2). The land in Sy.No. 1036/1 Total Extent 1567.52 acre of land is classified as forest Reserve lands vested with Revenue Department as per the RSR of Mallela Revenue Village of Thondur Mandal. (Divisional Forest Officer, Wild Life, Proddatur and Revenue Divisional Officer, Jammalamadugu)
- 3) The Tahsildar, Thondur has submitted the proposals for grant of lease for erection of Wind Mills to an extent of 30.00 acres in Mallela Revenue Village of Thondur Mandal, out of total extent of 1567.52 acres of land in favor of M/s. Esteem Energy Private Limited, Hyderabad. Accordingly he has submitted the proposals along with sub division records with prior approval of Assistant Director Survey and Land Records, Kadapa. The details of proposed lands and sub divisions are as follows. (Revenue Divisional Officer, Jammalamadugu)

Sl.No.	Village	Old Sy.No	New Created Sy.No	Extent in Acres	Classification
1	Mallela	10361/1	1174	2.50	Reserve Land (Forest Reserve)
2			1175	2.50	Reserve Land (Forest Reserve)
3			1176	2.50	Reserve Land (Forest Reserve)
4			1177	2.50	Reserve Land (Forest Reserve)
5			1178	2.50	Reserve Land (Forest Reserve)
6			1179	2.50	Reserve Land (Forest Reserve)
7			1180	2.50	Reserve Land (Forest Reserve)
8			1181	2.50	Reserve Land (Forest Reserve)
9			1182	2.50	Reserve Land (Forest Reserve)
10			1183	2.50	Reserve Land (Forest Reserve)
11			1184	2.50	Reserve Land (Forest Reserve)
12			1185	2.50	Reserve Land (Forest Reserve)
Total				30.00	

- 4.) The Tahsildar, Thondur has published A1 notice in Mallela Revenue Village and all the specified places of Thondur Mandal. No objections have been received for the local public of Mallela Gram Panchayat. The mallela Gram panchayat has been Gram Panchayat Resolution for grant of no objection for lease of lands in favour of M/s Esteem Energy Private Limited, Hyderabad, resolution dated: 13.02.2015. (Revenue Divisional Officer, Jammalamadugu)
- 5.) During our inspection the land in Sy.No. 1036/1 Extent 1567.52 acres of land Mallela village. There are trees like Gotika, Kalivi, Sundari, Buddatumma, Regu, Nendra & Boda grasses in the land, including spiny bushes here and there. The entire land is covered with boulders and the lesser quantity of soil on top in the said land. There are no permanent structures, wells, tombs existing in the proposed land. (Divisional Forest Officer, Wild Life, Proddatur and Revenue Divisional Officer, Jammalamadugu)
- 6.) The Physical feature of the land in Sy.No. 1036/1 Extent 1567.52 acres in hilly area at around 1410 feet height from the base land of Mallela Village. The entire land is not fit for Agriculture purpose; no encroachments were booked as per Revenue records and also reported during our joint inspection. (Divisional Forest Officer, Wild Life, Proddatur and Revenue Divisional Officer, Jammalamadugu)
- 7.) As per the orders of the District Collector, Kadapa vide Ref.No. E1/134/2015 Dated: 21.06.2015 the above lands were already handed over to the District Manager NREDCAP, Kadapa on 25.06.2015. During our joint inspection, it is revealed that the agency has taken up the work of laying of gravel road from Mallela village to the lands allotted to them. While laying roads no great damage except few bushes & small trees removal took place. (Revenue Divisional Officer, Jammalamadugu)
- 8.) The leased lands except at a corner at the highest elevation Lat Lon: **14.56726** Longitude: **78.33224** are away from the existing Reserve Forest Lands. The Agency did not cause any damage to the Reserve Forest land limits. They have taken up their work only in the leased lands. (Divisional Forest Officer, Wild Life Proddatur)
- 9.) The lease holders has taken only 30 acres of land for erecting of 12 Wind Mills to generate wind energy but they have utilized road to an extent of 23.17 acres of land for laying of roads without any prior permission from the Government. As per the Government Memo. No. 12640/Assn V(1), 2015-1 Dated 07.05.2015 that reads AP Wind Power Policy 2015. (Revenue Divisional Officer, Jammalamadugu)

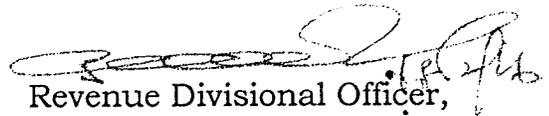
- 10) As per the request made by the irrigation Department an extent of 905.00 acres of land in Sy.No. 1036/1 was identified and proposed for Compensatory Afforestation vide this office Rc.No. A/1134/2015 Dated 10.10.2015 out of the total extent 1567.52 acres in lieu of Compensatory Afforestation for GNSS Project Phase-II after conducting joint inspection by Revenue Divisional Officer, Jammalamadugu and Divisional Forest Officer, Wild Life Proddatur. The proposal is pending for allotment of land to the Forest Department. (Divisional Forest Officer, Wild Life, Proddatur and Revenue Divisional Officer, Jammalamadugu).

The A.P. Wind Power Policy 2015 stipulated that, to facilitate faster execution of Projects, the District Collectors shall handover advance possession of the land including pathways to NREDCAP and the land shall be allotted in the Joint name of NREDCAP and the developer. The concerned District Collector after taking into account all the necessary undertakings of land proposal shall permit the developer to start the construction. NREDCAP shall withdraw its rights from the land once the project gets commissioned. (Revenue Divisional Officer, Jammalamadugu)

Our joint inspection report reveals that M/s. Esteem Energy Private Limited has been laying the roads from the Mallela Village and in their leased lands without prior permission from the Government, but the agency has utilized nearly 30.00 more acres of land in Sy.No. 1036/1 for laying roads for transportation of wind Mills material and other purpose without prior permission for the Government. The lease holders caused least damage to trees & bushes in their leased lands. They have removed spiny bushes and small trees while forming the road. They did not enter the notified Reserve Forest lands. We have prepared a detailed survey Records and sketch and submitted herewith for kind perusal.


18/2/16

Divisional Forest Officer
Proddatur WL Division


Revenue Divisional Officer,
Jammalamadugu

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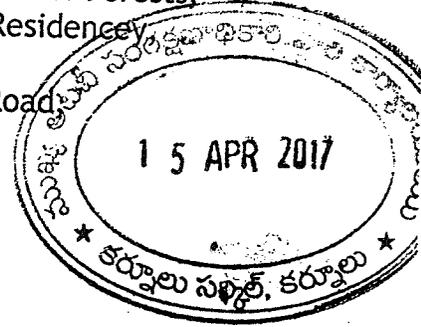
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REVENUE DEPARTMENT

From
Sri K.V.Satyanarayana, I.A.S.,
District Collector,
YSR District, Kadapa.

To
The Principal Chief Conservator of Forests,
Aranya Bhavan, Sankurathri Residency,
Agathavarappadu,
Mahatma Gandhi inner Ring Road,
Peda Kakani Mandal, Guntur,
Andhra Pradesh-522509.



Ref.No.E6/2847/2016, dated:11.04.2017

Sir,

Sub:- Lease of Government lands for wind mills - Y.S.R. Kadapa District - Thondur Mandal - Mallela and Udavagandla Revenue villages - 30.00 acres of land granted on lease to wind mills in Sy.No.1036/1 of Mallela Revenue village and 10.00 acres of land granted on lease to wind mills in Sy.No.1 of Udavagandla Revenue village - NOC issued by Forest Department and later cancelled - Request to stop the wind mill project - Reply to objections - Regarding.

T.O
Call for the remedy of the above Proddatur

- Ref:-
1. The Divisional Forest Officer, Proddatur Rc.No.561/2015-P9, dated:12/03/2015.
 2. The Divisional Forest Officer, Proddatur Rc.No.563/2015 - P9, dated:31/01/2016.
 3. Chief Conservator of Forests, Kurnool Rc. No. 4590/2015-TO, Dt. 16/11/2015, 29/02/2016 and 02/09/2016.
 4. Counter submitted by the Divisional Forest Officer, Proddatur, in Application 9 of 2017SZ in the National Green Tribunal, South Chennai.
 5. Revenue Divisional Officer, Jammalamadugu Ref.No. A/269/2015, dated: -3-2017.
 6. Report of the Tahsildar, Thondur dated 30-3-2017.
 7. Chief Commissioner of Land Administration, A.P., Hyderabad Ref.No.Assn.III(1)/790/2015, dated:01.07.2016.

I invite attention to the references 1st to 7th cited. In the reference 5th cited, the Revenue Divisional Officer, Jammalamadugu, has reported that he has deputed the Tahsildar, Pulivendula to National Green Tribunal, South Zone, Chennai, in connection with a case filed in the reference 4th cited to meet the Standing Counsel and discuss the matter. Accordingly, the Tahsildar visited the Green Tribunal and contacted the Standing Counsel for the Government of Andhra Pradesh and discussed the matter. The Tahsildar, Pulivendula reported that the Standing Counsel informed him that the Forest Department and the Revenue Departments are taking contrasting views in the case and further informed to give a reply to the Forest Department in the matter. Accordingly, the Revenue Divisional Officer, Jammalamadugu, in his letter 5th cited requested to take further action.

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In this context, it is submitted that, the case relates to leasing of Government land for setting of wind mills in Thondur Mandal of YSR District. In this case, the NREDCAP, a Government Corporation designated as the nodal agency for development of wind Energy, applied for grant of lease of 30.00 acres of land in Sy.No.1036/1 of Mallela Revenue village and 10.00 acres of land in Sy.No.1 of Udavagandla Revenue village of Thondur Mandal for setting up of wind mills. Both the above lands are contiguous and bears the same physical features. The land Sy.No.1036/1 of Mallela Revenue village is classified as "Forest Reserve" Poramboke in the Revenue Records and the land in Sy.No.1 of Udavagandla Revenue village is classified as "Hill" Poramboke. Both these lands are purely Government lands vesting with the Revenue Department. The lands have rock sheets underneath and soil is eroded and hence virtually no trees grow in the area except only some spiny bushes here and there. It is a pure barren, eroded and rocky area with semi desert like features. There are no rare/endangered/unique species of flora and fauna found in the area. No protected archaeological/heritage site/defence establishment or any other important monument is located in the area.

On receipt of the application from the NREDC of Andhra Pradesh, the Tahsildar, Thondur sought NOC from the Forest Department. The Forest Range Officer, Muddanur inspected the land proposed for lease along with the Tahsildar and his staff and submitted his report to the Divisional Forest Officer, Proddatur and later the Divisional Forest Officer, Proddatur issued an NOC vide reference 1st cited. Basing on the NOC, the land was proposed for lease by the Tahsildar, Thondur and later advance possession was also given jointly in the name of NREDC of Andhra Pradesh and the developer approved by the NREDC as laid down in the Wind Energy policy of the Government of Andhra Pradesh. The developer proceeded for laying roads and installation of wind mills. At this juncture, some vested interested persons who want to sabotage the installation of wind mills for personal gains filed writ petitions and PILs in the Hon'ble High Court of Andhra Pradesh requesting to stop laying of roads and declare the wind mill project as illegal and void. But no final orders have been passed for stoppage of the windmills project.

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In this case, in the reference 4th cited, the Divisional Forest Officer, Proddatur, filed a counter in the Green Tribunal stating that he cancelled the NOC issued in connection with the installation of wind mills and to ask the developer company to seek permission from the Central Government as the land is a Forest Land. In the counter, he also mentioned that even the Chief Conservator of Forests, Kurnool addressed the District Collector & Magistrate, Kadapa vide Rc.No.4590/2015-TO, Dated:16/11/2015, 29/02/2016 and 02/09/2016 requesting to cancel the recommendation orders of the Tahsildar, Thondur, in leasing out of Forest Reserve lands as the lands are Forest lands under the Forest Conservation Act, 1980. As could be seen from the counter of the Forest Department, the Department is taking the following stand in the case.

1. That under the Forest Conservation Act, 1980, all Forest lands notified u/s 4 of Indian Forest Act would be Forest lands. As per Supreme court judgment in ATPC's case, not only the notified forest lands but also any land classified as Forest in any Government records, irrespective of its ownership, would become a Forest land. Thus, the Revenue land in Sy.No.1036/1 Extent 1568.00 acres of Mallela Revenue village of Thondur Mandal, which is classified as "Forest Reserve" Poramboke in the Revenue Records would also become a Forest land. Here the status of the land proposed on lease is questioned.
2. That Section 2 (iii) of the Forest Conservation Act clearly prohibits assignment of the Forest lands or any portion thereof by way of lease or otherwise, except with prior approval of the Central Government. Thus, the lease granted in the name of Esteem Energy in the Forest land in Sy.No.1036/1 of Mallela village of Thondur Mandal is violating the provisions of Forest Conservation Act 1980. As such, the wind mill company will have to take permission from the Central Government. Here the point is the necessity to take permission from the Central Government.
3. That since the Wind mill Company laid roads and cleared area for installation of wind mills in the area leased in the Forest land, the matter should be examined for taking action under the WALTA Act for which the Tahsildar is the Chairman. Here, the point is to take action under the WALTA Act.
4. That since, the NOC issued by the Forest Department for the lease of the land is cancelled, the lease given should also be cancelled. Here, the point is

cancellation of the NOC already granted by the Forest Department and its non applicability for the lease of the land.

5. That since the Tahsildar, Thondur, recommended for grant of lease to a land, which comes under the Forest Conservation Act, action is to be initiated against him for contravening the provisions of the Forest Conservation Act. Here the main point is contravening the provisions of the Act by the Tahsildar, Thondur, while recommending for the lease.

For the above points, the following reply is given;

1. Status of the land :-

As could be seen from the letters of the Divisional Forest Officer, Proddatur and the Chief Conservator of Forests, Kurnool, the Forest Department is treating the 'Forest Reserve, land under the Revenue Department basing on the judgment of the Hon'ble Apex Court dated:12-12-1996 issued in the case of T.N. Godavarman Tirumulkpad V. Union of India & others. In the order, the Hon'ble Apex Court had clearly defined the two core issues i.e., *1. The motive behind enactment of the Forest Conservation Act and 2. The exact meaning of the words "Forest" and Forest land*". The extract of the relevant portion of the judgment is given below:-

"The Forest conservation Act 1980, was enacted with a view to check further deforestation which ultimately results in ecological imbalance and therefore, the provisions made therein for the conservation of forest and for matters connected therewith, must apply to all forests irrespective of the nature of ownership or classification thereof. The word "Forest" must be understood according to its dictionary meaning. This description covers all the statutorily recognized forests, whether designated as reserved, protected or otherwise for the purpose of Section 2 (i) of the Forest Conservation Act. The term "forest land" occurring in Section 2, will not only include "Forest" as understood in the dictionary sense, but also any area recorded as forest in the Government records irrespective of the ownership. This is how it has to be understood for the purpose of Section 2 of the Act. The provisions enacted in the Forest Conservation Act, 1980 for the conservation of forests and the matters connected therewith must

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apply clearly to all forest so understood irrespective of the ownership or classification thereof".

Thus, as per the above judgment, even though, the 'Forest Reserve' land in Mallela village in Sy.No.1036/1 is not a notified Forest land under Sec 2 (i) of the Forest Conservation Act 1980, by virtue of the above judgment, there is possibility of the land being treated as "Forest" as it is having the Word 'Forest' in its classification in Government Records. However a keen observation of the core issues discussed in the above judgment shows that the land cannot be treated as "Forest". There are four main points in the judgment. 1. Why the Forest Conservation Act, 1980 was enacted?. 2. What is a "Forest"?. 3. Which is a "Forest land"?. and 4. Application of the Act to all those lands, which have forest in them and Which are classified as Forest in Government records irrespective of its ownership.

In the judgment, the Hon'ble Apex Court clearly defined the motive of enacting the Forest Conservation Act, 1980. The Apex court clarified that *"the Forest Conservation Act, 1980, was enacted with a view to check further deforestation"*. That means the land which is already having natural thick growth of trees in it should be protected along with its thick growth of trees from further deforestation. *This is one of the prerequisites to decide whether a land is a forest land or not under the Forest Conservation Act, 1980.* There is no problem with this prerequisite with the notified lands and as they would be Forest lands whether having forest in them or not?. However, when dealing with those lands that are not notified but having Forest in their classification on Government Records, this prerequisite becomes essential. If there are no naturally grown trees in a particular land then the question of deforestation would not arise as per the above definition of the Supreme Court and hence the non notified lands without a "forest" cannot be termed as Forest lands. The land in Mallela village, which is an eroded, barren and rocky area devoid of trees could not pose a danger to further deforestation. The Forest Department has also admitted the fact of non existence of trees in the land in various counters filed in the Hon'ble High Court. Hence, as defined by the Hon'ble Apex Court, the Revenue "Forest Reserve" land in Mallela village having no trees in it and no forest in it could

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never pose the danger of further deforestation of the already existing vegetation. Hence the land would never attract the provisions of Forest conservation Act, even though, it is classified as "Forest Reserve" in Government records.

The second point is the meaning of Forest. "The apex court clearly defined the term Forest, which should be understood according to its dictionary meaning. The dictionary meaning of a Forest is thick growth of naturally grown trees". So if any land has to be treated as Forest under the Forest Conservation Act, it must have thick growth of naturally grown trees. Sparsely existing thorn bushes can never be termed as Forest according to the dictionary meaning. The Forest Reserve land in Mallela village is having only sparsely existing thorn bushes here and there in it as already admitted by the Forest Department in various counter filed in courts. Hence, as defined by the Hon'ble Apex Court itself in the above judgment, the Revenue "Forest Reserve" land in Mallela village could never be termed as a 'Forest' according to dictionary meaning under the provisions of Forest conservation Act. Hence, the Forest Conservation Act would not apply to this land even though it is having the word 'Forest' in its classification.

The third point is Forest land. The general meaning of a Forest land is a land having forest in it. As per the above judgment, there are two types of forest lands that would attract the provisions of the Forest Conservation Act. One type of land are notified Forest lands under the control of the Forest Department. The other type of Forest lands are not notified lands but having forest in them and classified as 'Forest' in the Government records and rests with the other departments. Actual Forest exists in both these two types of lands and as such they are undoubtedly forest lands. But the Revenue 'Forest Reserve' land in Mallela village is an eroded, barren and rocky land devoid of trees and with only spiny bushes. Thus as defined by the Hon'ble Apex Court itself in the above judgment, the land is not having any forest in it and hence it can never be termed as a Forest Land under Forest conservation Act even though the word forest exists in its classification.

Further, consequent to the pronouncement of the above judgment by the Hon'ble Apex court, the Forest Department to ward off any ambiguity should have

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taken steps to examine the status of the non notified lands which are classified as Forest in Government records and should have decided whether the lands are having 'Forest' as defined by the Apex Court in them or not?. If there are forests in the lands, then the Forest Department will have to have issue a notice calling for objections if any and after taking into consideration the objections if any, should have to decide the status of the lands. This is the standard procedure to be adopted in the cases relating to non notified lands under the control of others. But the Forest department without following any of the above procedures and without caring for the specific guidelines of the Hon'ble Supreme Court, is simply claiming that the lands are forest lands under the Act. It never examined the applicability of the definitions given to the "purpose of enacting the FC Act", the meaning of "Forest" and "Forest lands" by the Hon'ble Supreme Court to the lands in Mallela village. Thus without providing a chance to raise objections to the Revenue Department, the Forest Department unilaterally declaring the huge extents of erode, barren and waste lands Revenue lands as Forests. This is totally against the standard procedure to be adopted while dealing with the lands under the control of others. As such, the claim of the Forest Department is totally against rules and not sustainable under law.

It is further informed that no act itself will become an order. The competent authority should decide, whether that act applies to a particular case or not and will have to pass an order under the Act deciding its status. Further, if anything is claimed as per the Judgment given by the Apex court, the concerned authority should carefully examine whether that judgment applies to it or not. The meaning of a judgment should not be taken in fragments according to our necessity but it should be taken in its entirety. In this case, the Forest Department is mentioning only that portion of the judgment where it is ordered that every land having the word 'Forest' in Government records should be treated as Forest. But the Forest Department failed to appreciate the explanations given in the judgment to the core issues regarding the motive of enactment of the FC Act, the meanings given to the words "Forest" and "Forest lands". As such, here the Forest Department is taking a view totally against

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the spirit of the judgment by reading only a fraction of the judgment and neglecting the vital points of the judgment.

It is very important to note that the Forest Conservation Act is not an act enacted with an aim to acquire lands in the name of Forest. It is an Act enacted to protect those lands, which are already having Forest growth and having "Forest" in them as understood in the dictionary meaning and to arrest further deforestation of that already existing Forest Growth. It never automatically applies particularly to the lands, which are under the control of other departments and private persons. As such, under the Forest Conservation Act, a land having no Forest in it could be ever be treated as Forest land. It is very important to note that In the Forest Conservation Act, there is no provision for treating a barren, eroded, rocky and waste land devoid of trees as a Forest. Even the Hon'ble Supreme Court never said that even eroded, barren and waste lands devoid of any trees and not having forest qualities could also be treated as Forest land basing only on their classification as Forest in Government records.

The Hon'ble Apex Court of India in its judgment issued in B.S.Sandhu Vs Government of India in civil appeals Nos. 4682-4683 of 2006, while discussing in detail the above judgment in T.N. Godavarman case, clearly said that if a land is to be treated as Forest land then it should have forest meaning qualities as per dictionary meaning. In this case, basing on the explanation given to the Core issues i.e., the motive of enactment of the Forest Conservation Act, the word Forest and Forest land, the Hon'ble Apex Court set aside the orders of the high Court issued confirming a certain piece of land as notified Forest land under PLP Act. The case of the land in Mallela village classified as "Forest Reserve" in Government records fits exactly into the same facts and circumstances of the above case. Hence, it can never be termed as Forest under any circumstances under any act or under any judgment even though it is classified as Forest Reserve.

It is pertinent here to mention another important case, which is very similar to the case of the proposed lease lands in Mallela village is that of A.Narendraraja Vs Government of Andhra Pradesh and others reported in AIR 2008, AP 220:2008

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AJHC(NOC) 928 AP. Where in a quarry lease was cancelled as lease land is classified as "Adavi Poramboke" and was under the control of the Revenue Department. The Hon'ble court held that the land was far away from Reserve Forest and there was no Tree growth and the land was full of rocks and boulders. Such land cannot be termed as "Forest" and there is no possibility of any "Forest" being grown and developed in future. Therefore cancellation of the lease on the ground that land come into purview of Forest conservation Act is improper. In this case the Hon'ble court has taken the word "Forest" as core issue and decided that the Forest Conservation Act would not apply since there is no Forest in the land. As such, since there is no 'Forest' in the lands of Mallela village, the Forest Conservation Act would not apply to them as per the judgment. Hence the proposed lease land in Mallela village cannot be treated as Forest even though it is classified as Forest Reserve in Government records.

2. Regarding status of the lease, it is pertinent here to mention the provisions under Sec. 2 (iii) of the FC Act.

"Notwithstanding anything contained in any other law for the time being in force in a state, no state Government or other authority shall make, except with the prior approval of the Central Government, any order directing (iii) that any forest land or any portion thereof may assigned by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organization not owned, managed or controlled by Government;"

Under this provision of the Act, the Chief Conservator of Forests, Kurnool opined that permission from Central Government is required for setting up wind mills. But a careful reading of the above sub-section shows that lease to private persons or to any authority, corporation, agency or any other organization not owned, managed or controlled by Government requires Central Government's prior permission. But no such restriction is levied on the Government controlled corporations or agencies. As such, this sub-section applies only to those cases where a lease is proposed for a private person or to a private entity and not for the Government entities. In this case, the lease is proposed jointly in the name of the New Renewable Energy Development Corporation of Andhra Pradesh and a developer as per Government wind power

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policy. The NREDCAP is the nodal agency for wind power development in the A.P. State. It is a pure Government corporation owned and controlled by the Government of Andhra Pradesh. As such, the restriction levied under this sub-section would not apply to the lease and hence there is no need to take prior Central Government permission as there is exemption in the Act itself for the lease.

Further, the above sub-section applies only to the Forest lands where there is apprehension of further deforestation. It would not apply to those lands where there is no forest in them. Since, the land in Mallela village is a barren, eroded and waste land and having no forest in it, it cannot result in any deforestation. As such, giving lease in a waste non forest land and non declared Forest land requires no permission from the Government of India as per rules.

3. Regarding taking action under WALTA Act, it is informed that the Tahsildar, Thondur reported that there are no trees in the land and no trees have been cut down while executing the project. There are no constructions resulting in damage to water course. As such, there is no possibility of taking any action against the investor under the WALTA Act.

4. Regarding issue of NOC by the Divisional Forest Officer, it is informed that the Divisional Forest Officer, Proddatur issued an NOC vide Rc.No.561/2015-P9 dated:12/03/2015 after receiving inspection report from the Forest Range Officer, Muddanur. In the NOC, it is clearly mentioned that "the proposed lands are not falling in Reserve Forest or wild life sanctuary, National Parks and other important sites. The Forest Range Officer never mentioned that there exists a 'Forest' in the proposed lease lands and tree growth would affect if lease is granted and there is danger of any deforestation. Since it is barren, eroded and rocky area he did not apprehend any deforestation".

Basing on the NOC of the Divisional Forest Officer, Proddatur, after clearly satisfying himself that no Forest matters are involved in the case, the Tahsildar, Thondur, proposed the lease and advance possession was given to the NREDC and to

the developer jointly. The developer invested about 175 Crores or so and installed the wind mills. But after 11 months, the Divisional Forest Officer, Proddatur wrote a letter to the Tahsildar vide Rc.No.563/2015-P9 dated:31/01/2016 informing that the "No Objection from the Forest Department vide the Divisional Forest Officer, Proddatur Rc.No.561/2015-P9, dated:12.03.2015 may be treated as cancelled". The letter is not a specific order and moreover it is ambiguous. No officer is competent enough to cancel his own orders; only higher authorities can do that. It is a clear will full violation of the rules and regulations.

The Divisional Forest Officer, Proddatur never properly examined the Supreme Court judgment in its entirety and hastily came to a conclusion basing on a fraction of the judgment. It seems that the Divisional Forest Officer, Proddatur had never apprised the facts of the case properly to the higher authorities of Forest Department and might have actually misled them. Moreover, he had filed a counter in the Hon'ble National Green Tribunal without properly appraising the facts of the case as per the Hon'ble Supreme Court judgment. In the counter, he tried to throw the blame on others and escape. His counter is supporting the application filed against the interests of the Government and the petitioner in the Hon'ble National Green Tribunal is also taking support of his counter and trying to stall the wind mill project. Some vested interested persons in the district are trying to extract ransom from the industrialists by implicating them into legal litigations. In these circumstances, the counter filed by the Divisional Forest Officer, Proddatur leads to a doubt whether the Divisional Forest Officer is hands in glove with the petitioner and trying to sabotage the wind mill project and damaging the reputation of the District as investment friendly region. Finally, it is submitted that the issue of NOC by the Divisional Forest Officer and improper cancellation of it by himself and filing a counter in support of the petitioner are the root causes of all these problems and legal litigations.

5. Regarding taking action against the Tahsildar for the alleged contravening the provisions of the Forest Conservation Act, it is informed the Tahsildar, Thondur, explained the facts as follows:-

He said that after receipt of proposals for the lease, he sought clarification on the objections if any from the Divisional Forest Officer, Proddatur. The local Forest Range Officer inspected the land along with the Tahsildar and Mandal surveyor and then sent a report to the Divisional Forest Officer, Proddatur. After that, the Divisional Forest Officer, Proddatur issued an NOC vide Rc.No.561/2015-P9 dated:12/03/2015, stating that the proposed lands are not falling in Reserve Forest or wild life sanctuary, National Parks and other important sites. As the Forest Officials themselves issued NOC after proper verification, he thought that there is no violation of Forest rules and hence submitted lease proposals to the Higher Authorities. The land was given on advance possession immediately as per the Government policy and the developer began to lay roads and began to install the wind mills. While the installation was almost over, the Divisional Forest Officer, Proddatur wrote a letter to him vide Rc.No.563/2015-P9 dated:31/01/2016 informing to treat the NOC as cancelled. He further says that the Divisional Forest Officer took 11 months to inform about the cancellation and by that time much of the work was completed. This resulted in danger of hanging over the huge investments made by the developer. He also informed that no officer is competent to voluntarily cancel his own orders unless authorized under any special rule. As such, the Divisional Forest Officer cannot cancel his own order. Only his higher authorized authority is competent to cancel his order and hence the Divisional Forest Officer cancellation order is not valid. He further reported that if the Forest Officials had raised the same objections, which they are now raising, before submission of lease proposals, he would not have recommended the lease and would have sought clarifications as per rules and then only the lease proposals may be submitted as per rules. He also replied that he is not at fault in the matter.

He reiterated the judgments of the Apex court as mentioned in the previous paragraphs and claimed that the land cannot be treated as Forest. Since the lease is proposed in the name of a Government owned and controlled corporation, the lease proposals are in accordance with the provisions of Sec 2 (iii) of the FC Act and hence no Central Government permission is required. Since the land is never declared as

Forest, the land is still a Revenue land and hence there is no violation of FC Act. He further informed that keeping silent on the issue pertaining to NOC, the Forest Officials are one-sidedly requesting to take action against him as though he alone violated the provisions. The Forest Department is under the wrong presumption that the land is a Forest land. He finally informed that he has not done anything wrong in submitting lease proposals and never violated the provisions of the Forest Conservation Act.

Further, it is submitted that, in the reference 7th cited, based on the NOC issued from the Forest Department in Rc.No.561/2015-P9, dated:12.03.2015 by the Divisional Forest Officer, Proddutur and Joint Inspection report of both Revenue and Forest Departments with location map the Chief Commissioner of Land Administration, Andhra Pradesh, Hyderabad has requested to the District Collector, YSR Kadapa District to take necessary action as per the provisions BSO 15 (Disposal of land) part-II, Section-I(1) to (3), duly converting the classification of the land Forest Reserve to A.W.D., if the provisions of the Forest (conservation) Act 1980 does not attract.

Finally, it is submitted that as per the judgment of the Apex court, as explained in the foregone paras, the Revenue Forest Reserve land in Mallela village is not a Forest land that attracts the provisions of the Forest Conservation Act; that the land is given lease in the name of a Government owned and managed corporation and hence there is no violation sub-section 2 (iii) of the FC Act; that there is no possibility of taking action against the investor under WALTA act as no trees were cut down and no water courses are damaged as reported by the Tahsildar, Thondur in his report in the reference 6th cited and that as the Revenue Forest Reserve land in Mallela village cannot be termed as a Forest land either as per the FA Act or as per the judgment of Hon'ble, supreme court.

In the circumstances explained above, it is requested to go through all the facts hitherto mentioned and to issue suitable instructions in this regard to take further action in the proposals of lease to NREDCAP and its developer jointly as requested by the Chief Commissioner of Land Administration, A.P., Hyderabad vide

reference 7th cited in order to encourage, develop and promote wind power generation in the State with a view to meet the growing demand for power in an environmentally and economically sustainable manner.

It is also requested to initiate action against the Divisional Forest Officer, Proddatur for issuing an NOC, then arbitrarily cancelling it, further, filing a counter without properly examining the Forest Conservation Act and the judgment of the Hon'ble Supreme Court.

Yours faithfully,
Sd /- K.V.Satyanarayana,
District Collector,
Y.S.R. Kadapa District.

//t.c.b.o//

S. B. Reddy
Superintendent 12/19/16

Swish
12/19/16

Copy submitted to the Principal Secretary to Government, Environment, Forest, Science & Technology, 4th Block, Ground Floor, Room No.187, A.P.Secretariat, Velagapudi, Guntur District for favour of kind information.

Copy to the Chief Conservator of Forests, Kurnool for information. *by R.P.*

Copy to the Divisional Forest Officer, Proddatur for information.

Copy to the Revenue Divisional Officer, Jammalamadugu for information.

Copy to the Tahsildar, Thondur, for information.