IN THE HIGH COURT OF KARNATAKA,

KALABURAGI BENCH

DATED THIS THE 17TH DAY OF MARCH, 2025

BEFORE

THE HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE

WRIT PETITION NO. 201665 OF 2024 (LB-RES)

BETWEEN:

1. CLEAN MAX PHOTOVOLTAIC PVT. LTD.,
A COMPANY REGISTERED UNDER THE
COMPANIES ACT, 1956 HAVING ITS
REGISTERED OFFICE AT #13A,
13TH FLOOR PLOT-400, THE PEREGRINE APARTMENT
KISMAT CINEMA, PRABHADEVI
MUMBAI – 400 025.
REPRESENTED BY ITS AUTHORISED SIGNATORY
SHWETHA S.

2. CLEAN MAX MERCURY PVT. LTD.,
A COMPANY REGISTERED UNDER THE
COMPANIES ACT, 1956
HAVING ITS REGISTERED OFFICE AT #13A,
13TH FLOOR PLOT-400, THE PEREGRINE APARTMENT
KISMAT CINEMA, PRABHADEVI
MUMBAI – 400 025.
REPRESENTED BY ITS AUTHORISED SIGNATORY
SHWETHA S.

3. CLEAN MAX ENVIRO ENERGY SOLUTION PVT. LTD.,
A COMPANY REGISTERED UNDER THE
COMPANIES ACT, 1956 HAVING ITS
REGISTERED OFFICE AT #13A,
13TH FLOOR PLOT-400, THE PEREGRINE APARTMENT
KISMAT CINEMA, PRABHADEVI,
MUMBAI – 400 025.
REPRESENTED BY ITS AUTHORISED SIGNATORY

Digitally signed by
BASALINGAPPA
SHIVARAJ
DHUTTARGAON
Location: HIGH
COURT OF
KARNATAKA

SHWETHA S.

…PETITIONERS

(BY SRI M.VINAYAKEERTHY, ADVOCATE)

AND:

1. STATE OF KARNATAKA
   REPRESENTED BY ITS SECRETARY
   DEPT. OF URBAN DEVELOPMENT,
   VIKASA SOUDHA,
   VIDHANA VEEDHI, BENGALURU – 560 001.

2. DEPUTY COMMISSIONER
   KALABURAGI,DISTRICT KALABURAGI – 585 101.

3. MEMBER - SECRETARY
   TOWN PLANNING AUTHORITY,
   FLAT NO.5, MG ROAD, UDAGI RASTE SEDAM,
   KALABURAGI DISTRICT – 585 322.

…RESPONDENTS

(BY SRI SHESHADRI JAISHANKAR, A.G.A.)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT OF CERTIORARI QUASHING THE IMPUGNED ENDORSEMENT NO.NAYOPRASE/TAPA/2024-25/818-833 DT. 04.06.2024 (ANNEXURE-T) ISSUED BY THE THIRD RESPONDENT OVERRULING THE PETITIONER'S OBJECTION AND CALLING UPON THE FIRST PETITIONER TO SUBMIT FRESH APPLICATION ALONG WITH REQUISITE FEE SEEKING FOR CHANGE OF ZONAL REGULATIONS / LAND USE AND ETC.

THIS WRIT PETITION, COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE

ORAL ORDER

(PER: HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE)

Heard the learned counsel appearing for the petitioners and the learned counsel appearing for respondent No.3 and also learned Government Advocate.

2. The petition is filed assailing the communication at Annexure – T. The said communication is addressed by the Member Secretary, Town Planning Authority, Sedam and it is addressed to the petitioner. In terms of the said communication, the Member Secretary i.e., 4th respondent has insisted the petitioners to seek necessary approval for the solar park developed by the petitioners. It is further stated that in case the permission is not obtained under Section 17 of the Karnataka Town and Country Planning Act, 1961 (Hereinafter referred to as the 'Act, 1961' for short), the Secretary has proposed to address a letter to the Deputy Commissioner to recall the conversion order granted in favour of the petitioners.

3. Aggrieved by the aforementioned communication, the petitioners are before this Court.

4. Learned counsel for the petitioners taking through the facts of the case would contend that the petitioners are the Companies registered under the Companies Act and engaged in the business of generation of solar power. It is stated that petitioners No.2 and 3 are the subsidiary companies of petitioner No.1. Petitioners further claim that on 04.04.2018 necessary permission to commence the solar electricity generation park was issued by the Karnataka Power Transmission Company Limited (KPTCL for short) and the copy of the said permission is marked at Annexure – B. The petitioners also claim that on 20.06.2019 certain provisions relating to the Act, 1961 were amended and the requirement to obtain the master plan approved to commence the solar generation park is dispensed with by amending Section 13-E of the Act, 1961. The said amendment reads as under:

> "Not withstanding anything contained in the Zonal Regulations of approved master plans of any planning area within the state, the Ground based Solar P.V units are allowed in all land use zones, irrespective of the land use specified in the approved master plans except land specified for the purpose in clause (b) of Sub-Section (1) of Section 12 of Karnataka Town and Country Planning Act, 1961. The conversion opinion for the same is not required from the local planning authorities".

5. Referring to this, learned counsel for the petitioners would contend that the petitioners obtained the conversion order from the competent authority viz., the Deputy Commissioner to use certain lands in terms of the conversion orders at Annexures D, E and F dated 27.08.2020, 22.09.2020 and 22.09.2020 respectively. It is further urged by the learned counsel for the petitioners that the conversion order itself would recognize the amendment brought into the Act, 1961 and the conversion order is granted without insisting for the approval from the competent authority from the Act, 1961.

6. Learned counsel for the petitioners would submit that in the light of the amendment and the conversion order granted by the Deputy Commissioner, it is not open to 4th respondent to insist for the approval as such, he would submit that the impugned communication at Annexure – T is unsustainable.

7. Learned Government Advocate appearing for respondents 1 and 2 would submit that the petitioners have violated the land use regulations and before conversion they have utilized the land for non-agricultural use and noticing this,

the Deputy Commissioner has imposed penalty and same is noticed in the conversion order itself.

8. Learned counsel appearing for respondent No.3 on the other hand would contend that the amendment was brought into effect in the year 2019. However, Annexure – B, the certificate issued by the KPTCL would itself reveal that the solar project has commissioned on 28.03.2018 at 8.02 p.m. and admittedly, on that day there was no exemption in terms of the amendment to the Act, 1961. It is also his further submission the fact that the project commenced even before the conversion order was passed by the Deputy Commissioner is evident from the conversion order itself wherein it is stated that the land has been used for non-agricultural use without prior approval. Thus, he would contend that Annexure – D is sustainable in law and action is initiated in accordance with law.

9. This Court has considered the contentions raised at the bar and perused the records.

10. From the documents placed before this Court it is evident that the lands in question are converted in terms of the order passed by the Deputy Commissioner. Both the

petitioners and respondents are relying on the same documents. The said undisputed documents would disclose that the lands are used for non-agricultural use and Deputy Commissioner has imposed penalty. It is also noticed from the "commissioning certificate" dated 04.04.2018 that the project commenced on 28.03.2018 at about 8.02 p.m. and is interconnected to KPTCL Grid at 220/110/33-11KV R/S Sedam with bulk metering arrangements through 220KV terminal bay with RR.No.YIPP-33. These documents would indicate that the solar generation commenced much before the conversion order was issued and because of the use of the land for non-agricultural purpose without prior approval, the Deputy Commissioner also imposed penalty. Whether that amount is paid or not is not forth coming from the records.

11. However, what is required to be noticed is in the year 2019, there is an amendment to Section 13-E of the Act, 1961. The said amendment exempted the approval from the authority under the Act, 1961 from taking approval for commencing Ground based Solar park.

12. This being the position, Annexure – T which is issued on 04.06.2024 after the amendment to the Act, 1961 is unsustainable. Hence, the same is quashed.

13. However, what is required to be noticed is if the solar generation has commenced before the amendment of Act, 1961 as indicated in terms of Annexure – B - the commissioning certificate and the order passed by the Deputy Commissioner for conversion, it is open for the 3rd respondent to take such steps in accordance with law for having violated the provisions of the Act which was in force till 2019. However, the 3rd respondent cannot insist for approval to be taken from the 3rd respondent – authority, as such approval is no longer required in view of the amendment which was brought into effect in the year 2019.

14. Hence the following:

ORDER

(i) Writ Petition is **allowed**.

(ii) The impugned communication dated 04-06-2024 marked at Annexure – T is quashed.

(iii) Liberty is reserved to 3rd respondent to take such action in case there is violation of the provisions of The Karnataka Town and Country Planning Act, 1961 up to 20.06.2019 – the date of amendment of Section 13-E of The Karnataka Town and Country Planning Act, 1961.

(iv) It is further made clear that the date of commencement of the solar project indicated in this order is tentative and there is no definite finding on the date of commencement. It is open to the competent authority to decide on such date relating to alleged violation of the law relating to land use.

Sd/-
(ANANT RAMANATH HEGDE)
JUDGE

BRN
List No.: 2 Sl No.: 52