

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CAV ON 08/12/2014

DATED: 07/07/2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.9313 of 2014

C.Suresh

... Petitioner

Vs.

1. The Chairman,
Tamil Nadu Generation and Distribution
Corporation Limited No.800,
Anna Salai, Chennai - 600 002.
2. The Tamil Nadu Generation and Distribution
Corporation Limited,
Rep. by its Superintending Engineer,
Chennai Electricity Distribution Circle / West,
Ambattur, Chennai - 600 053.
3. The Assistant Executive Engineer,
O & M, Tamil Nadu Generation and Distribution
Corporation Limited, Ambattur,
Chennai - 600 053.
4. The Assistant Engineer,
O & M, Tamil Nadu Generation and Distribution
Corporation Limited, CEDC/West,
Thiruvankadam Nagar, Ambattur,
Chennai - 600 053.
5. The Chennai Metropolitan Development Authority,
Rep. by its Member Secretary,
No.1, Gandhi Irwin Road,
Egmore, Chennai - 600 008.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for a Writ of Mandamus, to direct the respondents to grant electricity connection to the petitioner's flat situated at Plot No.284 and comprised in Survey No.206/1A2A pt situated at Door No.506, Bazaar Street, Varadarajapuram, Old MTH Road, Ambattur, Chennai - 600 053, without insisting completion certificate from the fourth respondent.

For Petitioner : Mr.K.Sasindiran for M/s.Achari& Antoni
For Respondents : Mr.P.R.Dilipkumar (TNEB) for R1 to R4
Mr.A.Kumar (CMDA) for R5
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O R D E R

The short facts of the case are as follows:-

The petitioner is the owner of the property bearing plot No.284, comprised in Survey No.206/1A2A pt situated at Door No.506, Bazaar Street, Varadarajapuram, OLD MTH Road, Ambattur, Chennai - 600 053. The above said property was settled in his name by his father. Since the building was old and in a demolished condition, he had an intention to develop the above said property into residential apartment consisting of stilt and two floors. The petitioner submits that he applied for planning permission to the Ambattur Municipality on 01.02.2009 to build residential apartment consisting of stilt plus two floors consisting of four dwelling units. The Ambattur Municipality also granted planning permission vide Permit No.139/2009, dated 27.02.2009. Accordingly, he completed the construction work as per the building approval and sought for electricity connection in the month of February 2013 and also paid the necessary charges on 25.02.2013.

2. The petitioner further submits that the entire construction for the building put up at the above said address is completed as per the approved plan and there is no floor violation. The petitioner is suffering without electricity service connection as the third respondent is insisting upon the production of the Completion Certificate / NOC from the planning authorities viz., CMDA, the fifth respondent herein. The petitioner further submits that the NOC from the fifth respondent is not necessary for the building in question and it is evident from the circular issued by the CMDA dated 18.03.2013 to the first respondent and the same reads as follows:-

"With reference to your letters in the reference 3rd cited, requesting clarification on the definition of Special and multi-storied buildings, the following clarification is furnished.

It is clarified that the basement floor + Stilt Floor not treated as floors for the purpose of calculation number of floors. Hence two floors mean Ground Floor + First Floor + Stilt Parking Floor + two Floors irrespective of provision of Basement Floor. It is further clarified that in some cases, the applicants opt for part of the regular floor and part of stilt floor parking at the ground floor level. In such cases, the ordinary building with reference to number of floors consist of ground floor (in ground floor level with stilt for parking and part will be for

habitable use) first floor and second floor (part) over the area of stilt floor (part) at the ground level. Thus the applications are permitted to construct the second floor part only on the portion approved as stilt floor (part). As long as the building should be seen whether any part of the building exceeds ground floor + first floor or stilt floor + 2 floors."

Therefore, the fifth respondent clarifies that No Objection Certificate is not necessary for the ordinary building. The petitioner's building is an ordinary building and does not require any NOC from the fifth respondent. The petitioner further submits that in similar circumstances, this Court has directed the respondents to provide electricity by the authorities within a reasonable time. The petitioner further submits that in similar circumstances, this Court was pleased to direct the Electricity Board authorities to provide electricity service connection pursuant to the circular issued by CMDA by letter dated 18.03.2013. The petitioner further submits that the building in question is made ready for occupation of the respective flat owners as early as in February 2013. For want of electricity connection, the flat owners could not occupy their respective flats and they are put to great hardship. Hence, the petitioner has filed the above writ petition.

3. The third respondent has filed a counter statement on behalf of the other respondents 1, 2 and 4, who are attached to the Tamil Nadu Electricity Board. The third respondent submits that the petitioner's building is granted with approval for construction of stilt + 2 floors residential building vide permit No.139/2009 dated 27.02.2009. However, the petitioner has deviated in construction and therefore unable to get Completion Certificate, which is mandatory, by virtue of the order of the Hon'ble Division Bench, for providing power supply to the building. The third respondent further submits that Thiru.C.Suresh applied for a new commercial service connection on 30.01.2013 to a load of 55 Kilo Watts to the building constructed at Plot No.284, comprised in Survey No.206/1A2A pmt situated at Door No.506, Bazaar Street, Varadarajapuram, Old MTH Road, Ambattur, Chennai - 600 053 which involved the major extension of erection of 2 Pole Structure with 100 KVA Distribution Transformer. The estimate was sanctioned and extension work has been completed.

4. The third respondent further submits that even though by their office circular dated 22.11.2006, they had executed insistence on production of CC/NOC for effecting service connection with respect of ordinary building the same is superseded by the letter of the fifth respectfully to TANGEDCO vide letter dated 18.03.2013 whereby the same was clarified and insisted upon CC/NOC for the buildings like the petitioner building, which comes under the category of Special Building since petitioner had constructed stilt + three floors. Moreover the building plan approved by the Ambattur Municipality is for stilt + 2 floors but construction has been

completed for stilt + 3 floors. As per the Circular dated 03.12.2012 by the Chief Engineer / Commercial / TANGEDCO, the above building comes under Special Building Category. The total floor area is 647.76 sq.meter. As per the above said circular, more than 300 sq.m commercial building comes under Special Building Category. Hence, the completion certificate from the competent authority was insisted.

5. The third respondent further submits that it is stoutly denied that the subject building is in strict conformity to the sanction plan as stated in paragraph 3 of the affidavit filed in support of writ petition and in fact there are floor violation in the building and therefore, the petitioner is not entitled for service connection for want of completion certificate. The third respondent further submits that even though the duty to supply on request under Section 43 of the Electricity Act do not contemplate such demand, CC/NOC from the fifth respondent is insisted upon by this Board following the decision of the Division Bench in Common Action group's case. Hence, the third respondent entreats the Court to dismiss the above writ petition.

6. The highly competent counsel Mr.K.Sasindiran appearing for the petitioner submits that the petitioner had obtained building plan permission from the Ambattur Municipality for constructing residential apartments consisting of stilt + 2 floors consisting of 4 dwelling units at door No.506, Bazaar Street, Ambattur, Chennai - 53. After obtaining the building plan, he has constructed the said building, thereafter, he sought for electricity service connection from the respondents 1 to 4 in the month of February 2013 and also paid necessary mandatory charges on 25.02.2013. After a lapse of 2 years, the respondents insisted on the petitioner to produce Completion Certificate / No Objection Certificate from the fifth respondent herein. Actually, there is no violation or deviation over the said construction. Further, the petitioner's building does not come under the special and multi-storied building and as such, the petitioner is exempted to submit the No Objection Certificate for securing new electricity service connection.

7. The highly competent counsel appearing for the petitioner further submits that the petitioner has availed financial assistance from various sources and the occupants are in eager anticipation for their occupation and enjoyment of their new building. Now, for want of electricity service connection, which is a basic amenity in dwelling, the newly constructed building is kept vacant. The petitioner is entitled to enjoy the same as per the rights clarified in Indian Constitution.

8. The highly competent counsel Mr.P.R.Dilipkumar appearing for the respondents 1 to 4 submits that the petitioner after obtaining the building plan from the fifth respondent constructed the building, wherein there is a deviation and violation over the said

building. As such, the petitioner is not entitled to secure a new electricity service connection for his building. Further, as per the Hon'ble Division Bench order, the completion certificate is mandatory. Hence, the respondents directed the petitioner to produce the No Objection Certificate since the petitioner's building falls in the category of Special Building. Further, the petitioner has violated the approved plan. Hence, the highly competent counsel entreats the Court to dismiss the above writ petition.

9. The highly competent counsel Mr.A.Kumar appearing for the fifth respondent submits that the fifth respondent had granted planning permission vide permit No.139/2009, dated 27.02.2009 for constructing stilt + 2 floors residential buildings. However, the petitioner has constructed more than 2 floor and violated the building plan permission. Therefore, the petitioner is not entitled to secure No Objection Certificate from the fifth respondent due to violation caused over the building.

10. From the above discussions, this Court is of the view that:-

(i) The petitioner had obtained planning permission for constructing his residential building vide permit No.139/2009, dated 27.02.2009. On the basis of the said permission, the petitioner has constructed stilt + 2 floors and the same has been completed in the month of February 2013. For want of electricity supply, the newly constructed building has not been occupied. As such, the petitioner is put into hardship and irreparable loss.

(ii) For constructing the new building, money power, manpower, time and utilization of materials have already taken place and as such, the completed building shouldn't be kept vacant as its occupants are eagerly waiting to occupy the same and have accordingly made their arrangements.

(iii) For providing electricity service connection it is the safety alone that is of paramount importance. In the instant case, if there is any violation or deviation over the construction, that can be rectified / modified at any time in the future in order to utilize a high cost valuable building. The safety measure stands applicable on both sides.

(iv) The proposed eager occupants are waiting for a comfortable and suitable place for their occupation and enjoyment and to cater to the needs of their children such as schooling etc and hence, the livelihood of the occupants should not be compromised and disturbed.

(v) A similar issue has been decided in favour of the petitioner in W.P.No.17612 of 2014, dated 19.11.2014, and the same was upheld by the Hon'ble Division Bench in the Writ Appeal No.33 of

2015, dated 01.07.2015, which became final and operated upon. Therefore, the petitioner's prayer is permissible.

11. On considering the facts and circumstances of the case and arguments advanced by the highly competent counsels on all sides and on perusing the typed-set of papers, and this Court's views as mentioned above (i) to (v), this Court allows the above writ petition with a direction to the respondents 1 to 4 to provide a new electricity service connection to the petitioner's premises within a period of four weeks from the date of receipt of a copy of this order. However, the fifth respondent is at liberty to initiate legal action against the petitioner, if any violation is found over the building which is going against the mandatory provision. If the respondents are not satisfied with this Court's directions, they are at liberty to file an appeal after providing a new electricity service connection to the petitioner's premises, without prejudice.

12. In the result, the above writ petition is allowed. There is no order as to costs.

r n s

s/d-
Assistant Registrar (CS-III)

True Copy

Sub-Assistant Registrar

To

1. The Chairman,
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Corporation Limited No.800,
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5. The Member Secretary,
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Egmore, Chennai - 600 008.

+ 1 cc to Mr.K.Sasindran, Advocate SR 34133

+ 1 cc to Mr.P.R.Dilipkumar, Advocate SR 34136

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