

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CAV ON 12/12/2014

DATED: 08/01/2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.12151 of 2014

&

M.P.No.1 of 2014

S.Gunasekaran

...Petitioner

Vs.

1. The Chairman,
Tamil Nadu Electricity Board,
Anna Salai, Chennai - 600 002.

2. The Executive Engineer,
Tamil Nadu Electricity Board,
Guindy, Chennai - 600 032.

3. The Assistant Engineer (O&M),
Tamil Nadu Electricity Board,
Guindy, Chennai - 600 032.

4. Saradha,
W/o. Late P.Subramani,
No.16/1, Rajaji Street,
Retikuppam Road, Saidapet,
Chennai - 600 015.
(R-4 impleaded as per order
dated 30.10.2014 in M.P.No.2 of 2014 in
W.P.No.12151 of 2014)

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for a Writ of Mandamus, to direct the respondents to restore the Electricity Connection bearing account No.211-023-734, at Old No.12, New No.1, Swarnambigai Street, 3rd Lane, Ekathuthangal, Chennai-600 032.

For Petitioner : Mr.M.Kamalakannan

For Respondents : Mr.P.Gunaraj (TNEB) for R1 to R3
Mr.M.Ayyadurai for R4

O R D E R

The short facts of the case are as follows:-

The petitioner submits that his father who from the income derived from his own sources had purchased the property bearing Plot No.347, Swarnambigai Street, 3rd Lane, Ekatuthangal, Chennai-32, by sale deed dated 29.05.1971 and other property bearing plot No.346, Swarnambigai Street, 3rd Lane, Ekatuthangal, Chennai-32, by sale deed dated 27.07.1973, measuring 1331 sq.ft and 1242 sq.ft respectively and presently bearing Old No.12, New No.1, Swarnambigai Street, 3rd Lane, Ekatuthangal, Chennai-32. The petitioner further submits that in the year 1990 in order for putting up a building in the above said land, a loan of Rs.80,000/- was taken from Sathyamurthi Society and for about 3 years no payment was made, hence, the property was brought on public auction. The petitioner further submits that as on said date, the outstanding was Rs.1,65,000/- and his mother along with other brothers' Children started to pressurize him to save them out of the said situation as in the event of failure to make any payment, the property would be sold out in the public auction and to his mother went to the extent of stating that he being the eldest son so as to save the dignity of the family and other children who are his brother and sisters.

2. The petitioner further submits that he was left with no other option but to save the property and also the prestige of the family and out of his own and independent income and from other personal loans, he had paid Rs.1,25,000/- and saw that the auction was stopped. The petitioner further submits that his mother made promises that while settling the properties, he would be given his entitled share for the payments already made. The petitioner further submits that in the year 1994, his mother was pestering him stating that in the event of putting a new building in the first floor, it would fetch a good income and that out of the said income his mother promised to allot proportionate property to him. He further submits that his mother was also stating that out of the meager income his mother could not meet the ends in upbringing the 7 other children including the daughter, viz., his sister. The petitioner further submits that he being the eldest son was left with no other alternative but to yield to the request of his mother and spend about Rs.1,75,000/- for the putting up the first floor in the above said properties. The petitioner further submits that from the year 1990, he is living in a portion of the ground floor of the said property, viz., Old No.12, New No.1, Swarnambigai Street, 3rd Lane, Ekattuthangal, Chennai-32. He further submits that in the year 2004 at his mother's request, he had constructed a sump spending Rs.45,000/- for which, his mother has to account for. He further submits that during the said period, he was doing business in petrol and its allied products, and being the eldest member of the family and with good interest on the family spent all the money earned having full trust on his mother.

3. The petitioner further submits that after some years there was some loss in the business due to being cheated by the creditors who after the purchase failed to repay. He further submits that due to which, he was put into heavy loss in the business and was forced to close down the said business. He further submits that he had to take care of his family and was left with no other alternative but to start a lathe in the same premises in the year 2011 after spending to the tune of Rs.2,00,000/- which was taken as a loan from various friends of him. He further submits that from the year 2011 after erecting the said lathe, he was taking care of himself and his family members till this date. The petitioner further submits that on many occasions, he had requested his mother and other brothers to help him as he was in financial crisis. He further submits that on many occasions, he had requested his mother to reach some amicable solutions over the partition of the properties with his mother as his mother is also getting older and with a view to see that no difference of opinion crops in between him and the other brothers. He further submits that for the reasons best known to him alone, his mother was postponing over his request with some lame excuses.

4. The petitioner further added that his mother for reasons unknown is prompting the other children to act against him and on many occasions his mother had started to pester him to vacate the said premises. He further submits that for the sake of the family and he being the eldest son, he had contributed all his income and hard work for the uplift of the family and to save the properties earned by his father. He further submits that after getting all the help from his mother being instigated by some of the other sons is bent upon to see that he being vacated from the lathe portion. Whereas, he had been put into such a situation wherein, he cannot raise money for putting up the lathe again. Knowing well that he will be put into a very difficult situation, his brothers are instigating his mother to give unnecessary mental tension and torture to him at the working spot, due to which, he was unable to concentrate in the business and again being forced to meet out further loss. He reserves his rights to file appropriate cases for recovery of the amount spent on the family as stated above and for the partition of the family at later stage.

5. The petitioner further submits that on various occasions his mother along with his brothers had come to the lathe portion and attempted to interfere with the daily routine of the business. He further submits that on 14.02.2013, his mother alone entered his residence and scolded him and his family members with filthy languages and attempted to manhandle him. Hence, he was left with no other option, but to lodge a complaint before the Inspector of Police (Law & Order), J-3 Guindy Police Station, Chennai-32, wherein, he was given CSR/66/J3/2013 and was advised to settle amicably. The said brothers and more particularly his mother herein started to scold him in filthy languages and he approached the

local police, viz., The Inspector of Police, Guindy Police Station, Chennai on 05.02.2014 and the Inspector after hearing the whole issue refused to interfere as the matter is being a family affair and is of civil nature. He further submits that he was left with no other option but to file O.S.No.1046 of 2014 for permanent injunction restraining his mother and his brother from interfering with his peaceful possession and enjoyment of his business and residence at Old No.12, New No.1, Swarnambigai Street, 3rd Lane, Ekatuthangal, Chennai-600 032 pending before the XIII Assistant Judge, City Civil Court at Chennai.

6. The petitioner further submits that with a view to circumvent the law, it is learnt that his mother along with his brothers had forced the third respondents to cut the electricity connection being given under account number 211-023-734 and the respondents without any information or intimation had cut the said connection from 08.04.2014, whereas the white card is with him and upto date, he had paid the electricity charges. He further submits that till date, he had contacted the respondents, who turned their deaf ears and it was informed that as his brothers warned that if the same is not cut, they would do dharna in the office and hence, the respondents were left with no other alternative but to disconnect the same. The petitioner further submits that the electricity being the essential service and he had invested a huge amount of money in the business and he had suddenly due to the action of the respondents had been thrown on the streets with the family members. He further submits that he had exhausted all the remedies and he had been left with no other option except to approach this Court for getting relief.

7. The fourth respondent has filed a counter statement and refuted the above writ petition. The fourth respondent denies the allegations made in the affidavit of the petitioner that the father of the petitioner purchased the properties from his own source of income, but in contrary, she purchased the above said two properties from her hard work and she earned money by way of doing milk vending business from rearing cows and she had purchased the properties in Plot No.347, on 29.05.1971 and in property in plot No.346 on 27.07.1973 measuring 1331 sq.ft and 1242 sq.ft respectively at Old No.12, New No.1, Swarnambigai Street, 3rd Lane, Ekkatuthangal, Chennai-32. When she purchased the said property, the petitioner's age was about 9 years and he is nowhere connected with the properties.

8. The fourth respondent further submits that it is false to state that the outstanding loan obtained for the purpose of construction of building in the year 1990 from Sathiyamoorthy Society and the property was brought into auction. It is also false to state that the petitioner was pressurized by her and the petitioner's brother to repay the loan to save the property. No such circumstance arose for her to make such request to the petitioner for financial help. She alone made the arrangement to

repay the loan amount in order to save the property. The fourth respondent submits that the above said property is her self-acquired property and nobody is having any right or share over the properties and nobody had given any financial assistance to her for purchase of said properties or build up house or raising her children. She further submits that as the petitioner is her eldest son, she permitted the petitioner to live in the said premises on the ground floor but the petitioner is using the premises for both residential and non-residential lathe work without her consent and now had rented out the property to some other third party. The fourth respondent further submits that now the petitioner has let out the two portions of the ground floor to somebody and the petitioner is collecting monthly rent without her consent. She revoked the permit in the year 2005 and asked the petitioner to vacate the premises, but the petitioner had not vacated the premises and still illegally occupying the ground floor without paying rent to her. She further submits that from the year April 2005, she asked the petitioner to pay the rent, but the petitioner did not pay the rent from the month of April 2005. She further submits that the petitioner has no right in law to occupy the said portion and there is no contract or consent with the petitioner to occupy the premises from April 2005.

9. The fourth respondent further submits that now the petitioner has colluded with neighbors and his illegal tenant trespassed into the said portion and the petitioner is also from time to time threatening her that the petitioner would forcibly take possession of the entire property unless, she voluntarily surrenders the property and stop trying to take independent possession and trying to set up a title contrary to taking independent possession and trying to set up title contrary to her ownership. She further submits that whenever she went to visit the property, the petitioner came to the mentioned property and would threatening her without considering her as his mother and the petitioner using filthy language against her. The fourth respondent further submits that if she gave any complaint against the petitioner to the police official, they are not even ready to receive a complaint for criminal trespass and for threatening and the police refused to take action against the petitioner, since the dispute is civil in nature. She further submits that now the petitioner is eagerly waiting and trying to fleece the property from her. The fourth respondent submits that the petitioner is adopting an illegal method by engaging somebody having high level power and trying to convert the property title into the petitioner's name. She being frightened with the attitude of the petitioner and since the petitioner is a powerful man using illegal force, so she sent legal notice dated 09.10.2014 through her Advocate to evict and surrender the occupation of the property and let out property together with mesne profits for the period, the petitioner has been in such illegal occupation.

10. The fourth respondent further submits that the petitioner received the said notice on 15.10.2014. She further submits that despite the service of the aforesaid legal notice, the petitioner herein has not come forward to evict and surrender the occupation of the property, let out property and also failed to make the mesne profits within the stipulated period of 10 days. The fourth respondent further submits that the petitioner has filed a suit before the XIII Assistant City Civil Court as O.S.No.1046 of 2014 for permanent injunction restraining the fourth respondent and her other son from interfering with peaceful possession and enjoyment now which is pending. The fourth respondent further submits that the petitioner without knowledge of his mother forged her signature and got the commercial line of the Electricity connection to his lathe and this activity of the petitioner is an offence under criminal law and the petitioner had not approached this Court with clean hands and on this ground alone, this petition is liable to be dismissed. The fourth respondent further submits that she is the owner of the premises and she purchased this property from her own earning after knowing the illegal activity of the petitioner, she gave complaint to the Electricity Board, then the concerned authority disconnected the electricity connection which is illegally issued to the petitioner's lathe, so there is no illegality in doing there legal duty, and no questions of violation of natural justice.

11. The fourth respondent further submits that the petitioner has no right to request the authority to restore the commercial Electricity connection. She further submits that the petitioner is still enjoying the electricity for his house without any interruption. The petitioner without her knowledge forged her signature and obtained commercial Electricity line to his lathe as connection No.211-023-734 which was disconnected on her complaint and the petitioner has no legal or moral right to restore the Electricity connection to his illegal occupying premises. The fourth respondent further submits that the petitioner is doing commercial activity in residential area without consent of authority and creates the nuisance to general public. The fourth respondent further submits that the petitioner comes forward with the above writ petition only for getting benefit from his own wrong. She therefore stated that there are no merits in his contentions and hence, the above writ petition is liable to be dismissed.

12. The highly competent counsel Mr.M.Kamalakaran appearing for the petitioner submits that the father of the petitioner had purchased the property bearing plot Nos.347 and 346, at Swarnambigai Street, third lane, Ekkatuthangal, Chennai-32. Thereafter, for constructing a building over the said lands, a sum of Rs.80,000/- was obtained as loan from Sathyamurthi Society. The said loan amount and accrued interest thereon was not repaid to the Society. The fourth respondent, who is the mother of the petitioner and other family members insisted him to settle the said

loan amount, as he was the elder son of the fourth respondent. Accordingly, the petitioner had remitted a sum of Rs.1,25,000/- to the Society and prevented the public auction proceedings to sell the said property. Further, on the request of the fourth respondent, the petitioner had constructed first floor, over the said property, for which, he had spent a sum of Rs.1,75,000/-. Besides, he has also spent a sum of Rs.45,000/- for formation of sump. As such, the petitioner is a joint owner of the property and also has more civil rights over the said property since, he had invested more money for constructing the building. The fourth respondent and other family members asked him to vacate the premises and also had given unnecessary mental torture. Besides this, all of them had jointly attempted to interfere with his routine business. Hence, he lodged a complaint before the Guindy Police Station. The Inspector of Police advised both parties to effect a compromise among themselves since all are belonging to the same family. In order to protect the civil rights, the petitioner has levelled a civil suit in O.S.No.1046 of 2014, for permanent injunction restraining the fourth respondent herein and others. Further, the third respondent had disconnected the electricity service connection on 08.04.2014, without prior intimation. Hence, the above writ petition has been filed to restore the electricity service connection which was already existing in the same premises.

13. The highly competent counsel Mr.M.Ayyadurai appearing for the fourth respondent submits that the Plot Nos.346 and 347, to an extent of 1242 sq.ft. and 1331 sq. ft. respectively have been purchased by the fourth respondent in the year 1971. During the relevant period, the petitioner was a minor and aged about 9 years. Therefore, the subject matter of the property is belonging to the fourth respondent herein and the same was acquired by her on her own sources of income. The petitioner had submitted an application before the respondents 1 to 3 after forging the fourth respondent's signature. Further, the petitioner had let out the properties to third persons in order to grab the entire property. The petitioner forged his mother's signature and obtained commercial line. As such, the petitioner is an offender. Further, the petitioner is enjoying domestic electricity service connection without any interference. Under the circumstances, the petitioner has no right to secure one more electricity service connection for commercial purpose.

14. The highly competent counsel, Mr.P.Gunaraj appearing for the respondents 1 to 3 submits that the petitioner forged his mother's signature in the application for obtaining electricity service connection for commercial purpose. The fourth respondent had levelled a complaint against the petitioner stating that the petitioner had forged his mother's signature. Knowing the same, the respondents had disconnected the electricity service connection. Further, the petitioner has not produced any valid title deeds over the property in order to prove his civil rights. Further, the petitioner and fourth respondent are now facing civil suit before

the City Civil Court regarding title. Under the circumstances, the respondents are unable to take rightful decision regarding ownership. Further, there is existing service connection at the same premises for domestic purpose. As such, the basic amenities of both parties have not been affected.

15. On considering the facts and circumstances of the case and arguments advanced by the learned counsels on all sides and on perusing the typed set of papers, this Court does not find any force in the contentions set out in the writ petition to allow it. Hence, this Court dismisses the above writ petition. Further, this Court is of the view that the two sale deeds which had been attached in the typed set of papers clearly reveals that the property has been purchased in the name of the fourth respondent herein, who strongly opposed the writ petition. Under, the circumstances, it is evident that there is a title dispute over the said property. Hence, the above writ petition is dismissed. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

r n s

To

1. The Chairman,
Tamil Nadu Electricity Board,
Anna Salai, Chennai - 600 002.
2. The Executive Engineer,
Tamil Nadu Electricity Board,
Guindy, Chennai - 600 032.
3. The Assistant Engineer (O&M),
Tamil Nadu Electricity Board,
Guindy, Chennai - 600 032.

1 CC to Mr.M.Ayyadurai, Advocate SR.No. 873

1 CC to Mr.P.Gunaraj, Advocate SR.No. 845

1 CC to Mr.M.Kamalakannan, Advocate SR.No. 1084

W.P.No.12151 of 2014 &
M.P.No.1 of 2014

EV (CO)

PST (03.02.2015)

<https://hcservices.ecourts.gov.in/hcservices/>