

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **14.05.2015**

CORAM

THE HON'BLE MR.JUSTICE **R.SUBBIAH**

W.P.No.14676 of 2015

and

M.P.No.1 of 2015

P.L.Kannan

... Petitioner

vs.

1. The Executive Engineer (O&M)
Tamil Nadu Electricity Generation
and Distribution Company Ltd.,
Salem-1.

2. The Assistant Executive Engineer
Tamil Nadu Electricity Generation
and Distribution Company Ltd.,
Salem-6.

3. The Assistant Engineer
Seelanayakanpatti Village
Tamil Nadu Electricity Generation
and Distribution Company Ltd.,
Salem-6.

4. Balasubramaniam

5. V.K.Palanivelu

6. P.Pazhanisamy

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of mandamus forbearing the third respondent from disconnecting the free Agricultural service connection number 405-001-85 for the agricultural lands in S.No.76/1 and 76/3 at Seelanayakanpatti Village, Salem Taluk and District without considering the objections of the petitioner and without conducting any enquiry.

For petitioner : Mr.G.Rajan

For respondents : Mr.S.K.Rameshwar
1 to 3 Standing Counsel for TNEB

ORDER

The writ petition is filed seeking a mandamus forbearing the third respondent from disconnecting the free Agricultural service connection number 405-001-85 for the agricultural lands in S.No.76/1 and 76/3 at Seelanayakanpatti Village, Salem Taluk and District without considering the objections of the petitioner and without conducting any enquiry.

2. The case of the petitioner is that the property situated in Survey Nos.76/1 admeasuring an extent of 0.36 acres; Survey No.76/2 admeasuring an extent of 0.40 acres and Survey No.76/3 admeasuring an extent of 2.54 acres situated at Sellanayakanpatti Village, Salem Taluk and District all were originally a joint family property belonging to one Pitta.Venkatajalapathy Iyer, who had five sons. Due to the differences among the five brothers, a partition suit was filed in O.S.No.247 of 1975 on the file of the Sub Court, Salem and the same was decreed on 22.01.1985; the appeal filed as against the said order was also dismissed by the High Court. Later some of the properties were also sold to the third parties. While that being the position, the respondents 4 to 6 herein filed a fraudulent and collusive suit for partition in O.S.No.390 of 2013 on the file of the

learned I Additional Subordinate Judge, Salem with respect to the aforementioned property and also sought for mandatory injunction to cancel the free agricultural service connection existing in the property.

3. The main contention of the petitioner is that the free agricultural service connection number 405-001-85 was granted to the property situated in Survey Nos.76/1 and 76/3 in the name of the petitioner's father and it was for the common benefit of all the co-owners. The suit in O.S.No.390 of 2013 was filed by the fourth respondent herein and the fifth and sixth respondents remained exparte. As far as the Electricity Board is concerned, it was represented through an Advocate and a decree, as prayed for by the fourth respondent herein was granted by the learned I Additional Subordinate Judge, Salem. He would further contend that the petitioner who is the interested party and the other legal heirs of the deceased Pitta.Venkatajalapathy Iyer were not impleaded as party respondents in the said suit. However, the third respondent based on the said decree passed in O.S.No.390 of 2013, has issued a notice dated 29.04.2015 to disconnect the agricultural electricity service connection. He would further state that he has submitted his explanation to the said notice on 07.05.2015 and also by way of abundant caution has submitted a representation dated 10.05.2015. However the third respondent without either considering the explanation or the representation submitted by the petitioner is threatening to disconnect the free agricultural electricity service connection. Hence, the present writ petition.

4. The learned Standing Counsel appearing on behalf of the respondent-Tamil Nadu Electricity Board submitted that the notice for disconnecting the electricity service connection has been issued only pursuant to the decree passed by the learned I Additional Subordinate Judge, Salem in O.S.No.390 of 2013 and hence, there is no merit in the contention raised by the petitioner.

5. I have heard the learned counsel on either side and perused the materials placed on record.

6. Considering the facts and circumstances of the case and without going into the merits and demerits of the factual aspects of the matter, I am inclined to pass the following order:

Since the petitioner has already submitted his objections dated 07.05.2015 to the notice issued by the second respondent dated 29.04.2015, followed by the representation dated 10.05.2015, the third respondent before initiating any action for disconnecting the free agricultural electricity service connection, shall consider the same and pass appropriate orders on merits and in accordance with law, after affording an opportunity of hearing both the petitioner as well as the respondents 4 to 6, within a period of four weeks from the date of receipt of a copy of this order.

7. With the above direction, this writ petition is disposed of. No costs.
Consequently, the connected miscellaneous petition is closed.

14.05.2015

vj2

Index: Yes/No

Internet: Yes

Note: Issue order copy on 15.05.2015

To

1. The Executive Engineer (O&M)
Tamil Nadu Electricity Generation
and Distribution Company Ltd.,
Salem-1.
2. The Assistant Executive Engineer
Tamil Nadu Electricity Generation
and Distribution Company Ltd.,
Salem-6.
3. The Assistant Engineer
Seelanayakanpatti Village
Tamil Nadu Electricity Generation
and Distribution Company Ltd.,
Salem-6.

R.SUBBIAH.J.,

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