

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.08.2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.9647 of 2010

and

M.P.No.1 of 2010

Order Reserved on 22.12.2014 Judgment Pronounced on 11.08.2015

A.S.Palanivel

... Petitioner

Vs.

1. The Superintending Engineer,
Tamilnadu Electricity Board,
110/33 KV Sub Station,
Anna Main Road,
K.K.Nagar, Chennai - 78.

2. The Assistant Engineer,
Tamilnadu Electricity Board,
Ashok Nagar West Division,
No.20, Rajan Road,
K.K.Nagar, Chennai - 78.

3. Chinnapappa

... Respondents

(R3 Impleaded as per order dated 08.06.2010
by this Court in MP.No.2 of 2010
in WP.No.9647 of 2010)

Prayer: Writ petition is filed under Article 226 of the Constitution of India for issuance of a Writ of direction, directing the respondents herein to provide a new Electricity Service connection to petitioner shop situated in Old No.3, New No.5, Kamarajar Salai, Ashok Nagar, Chennai-83.

For Petitioner : Mr.M.Aravindan

For Respondents : Mr.P.Gunaraj (for R1 & R2)

Mr.V.Vijayashankar (for R3)

O R D E R

The petitioner submits that he is doing construction business and having an office at the above said address. He further submits that he had entered into an Agreement of Sale with one Mrs.Chinna Pappa wife of Late Perumal for the property situated at Door No.3, Plot No.32, Kamarajar Salai, Kanniappa Nagar, Ashok Nagar, Chennai-83, for a consideration of Rs.24,50,000/- and for the above said property on 15.12.2005 and he had paid an advance of Rs.7,50,000/-.

2. The petitioner further submits that after making a part payment towards the consideration of the property the possession and enjoyment of the property was handed over to him and ever since he was put into the peaceful possession and enjoyment of the above mentioned property. Ever since from the date of possession he has been paying the Electricity Bill and Water tax etc. He submits that thereafter even when he was ready to execute the sale deed in his favour the said Mrs.Chinnappa refused to execute the same for the reasons best known to her. Therefore, he was constrained to file a Civil Suit for specific performance before this Court in C.S.No.296 of 2007 and the same is pending.

3. The petitioner further submits that there are two shops in the above said property under the Agreement of sale and which is going to be sold to him for consideration and in that one shop was let out to one Mr.Nagaraj and other shop was used by him for the purpose of running his office for the construction business. From the date of his occupation and possession of the property he had been paying the Electricity Bill and there is a separate Electric meter was also setup to the portion which is his office. He submits that while so on 20.01.2010 one Mr.Mahendran and his female family members illegally trespassed into the property and disconnected the Electricity meter forcibly and also abused him by using filthy language and unparliamentary words and further he was threatened with dire consequences. Fearing danger to his life and property he had lodged a complaint with the Inspector of Police, R-7, K.K.Nagar Police Station, Chennai on the same day i.e. on 20.01.2010.

4. The petitioner further submits that his electricity has been disconnected illegally he could not carry on his business properly and hence he had made representation to the respondents herein on 12.03.2010 seeking a separate Electricity service connection to his shop portion in the above said property. But the second respondent had rejected his request for new electricity service connection stating that there is no proper sale deed registered in his name and agreement of sale is not a valid one and further a case is pending before this Court regarding the property. He submits that the new Electricity service connection to his shop is very much essential for his shop and he is in a desperate need of a new connection to his shop and the rejection of his request by the second respondent is illegal and baseless. Further, he is in the peaceful possession and enjoyment of the property since from the year 1997. Unless this Court directs the respondents herein to provide a new Electricity service connection to his shop situated in Old No.3, New No.5, Kamarajar Salai, Ashok Nagar, Chennai-83, he will be put to irreparable loss and mental agony. Further, no prejudice would be caused to the respondent if this Court directs to provide a new Electricity service connection to his shop.

5. The highly competent counsel, Mr.M.Aravindan, appearing for the petitioner submits that the petitioner is having office at Old No.3, New No.5, Kamarajar Salai, Ashoknagar. Further, he had entered into an agreement dated 15.12.2005 with the 3rd respondent herein to purchase the said property and paid a sum of Rs.7,50,000/- and total sale consideration of a sum of Rs.24,50,000/-. After paying part sale consideration, the possession and enjoyment of the property was handed over to the petitioner. From the date of possession, the petitioner has been paying the electricity bill and water tax. The petitioner had expressed his willingness and readiness to the 3rd respondent herein to pay the balance sale consideration and requested her to execute sale deed in his favour. The same was refused by the 3rd respondent. Hence, the petitioner has filed a suit for specific performance in C.S.No.296 of 2007, which is pending in this Court. The subject matter of the property consists of residential portions and two shops out of which one shop is occupied by one Nagaraj and the other shop is occupied by the petitioner for running his office for the construction work. However, there is no separate electricity service connection. Hence, the petitioner was constrained to pay the entire electricity consumed charges. Under the circumstances, one Mahendran and his family members, had illegally trespassed into the property and disconnected the electricity meter forcibly. Hence, the petitioner had levelled a complaint with the Inspector of Police, who is attached to the R-7, K.K.Nagar Police Station, dated 20.01.2010.

6. Hence, the petitioner made representation to the electricity board on 12.03.2010 and sought a separate electricity service connection to his occupied portion namely one shop. The said representation had been rejected by the 2nd respondent herein without assigning any valid reasons, since the petitioner did not produce any title deeds regarding his ownership. The very competent counsel further submits that it is an admitted fact that the petitioner had paid a sum of Rs.7,50,000/- on 15.12.2005 and sale agreement had been executed by the 3rd respondent and other joint owners.

7. The very competent counsel, Mr.V.Vijayashankar, appearing for the 3rd respondent submits that the petitioner has filed Civil Suit against the six defendants but as per the sale agreement only three persons had signed. As such, the sale agreement is not valid. Further, as per the sale agreement, the possession was never handed over to the petitioner. Further, the petitioner is not in physical possession. Now, the Civil Rights is under challenge before this Court. Under the circumstances, the petition is not maintainable. Further, the respondent had initiated rent control proceedings against the petitioner for eviction under the ground of wilful default. Hence, the learned counsel entreats the Court to dismiss the above petition.

8. The learned counsel Mr.P.Gunaraj, appearing for the 1st and 2nd respondents herein submits that there is a civil dispute between the petitioner and the 3rd respondent regarding ownership. The said case is pending on this Court's file. The petitioner had sent a representation to the 2nd respondent by post and the same was scrutinized. But, the petitioner had not submitted consent letter from the owner of the property. Further, he has not attached receipts for payment of property tax in the name of the petitioner. Besides, a Civil Suit is also pending. Hence, the 2nd respondent declined to grant electricity service connection.

9. Per contra, the learned counsel, Mr.M.Aravindan, appearing for the petitioner submits that the petitioner occupied a shop in the said premises and running an office in the name and style of Vijay Builders. The petitioner has occupied the said shop under the rental agreement which had been executed by husband of the 3rd respondent herein in the year of 1997. Thereafter, the original landlord namely Perumal had expired in the year of 2001. Subsequently, the legal heirs of late Perumal have divided the property amicably. As such, the 3rd respondent has become owner of the subject matter of property. The 3rd respondent has offered to sell the subject matter of the

property for a sum of Rs.24,50,000/-. The same has been accepted by the petitioner and he paid a sum of Rs.7,50,000/- as part payment on the date of agreement i.e., 15.12.2005. Now, the petitioner is entitled to receive separate electricity service connection as a lawful tenant as well as per the sale agreement dated 15.12.2005. As per the sale agreement, the petitioner has civil rights since the sale agreement dated 15.12.2005. As per the sale agreement, the petitioner has civil rights since the sale agreement is existing and operating over the property.

10. On considering the facts and circumstances of the case and arguments advanced by the highly competent counsel on all sides and on perusing the typed set of papers, this Court directs the 2nd respondent herein to provide new electricity service connection temporarily, since the petitioner is occupying and enjoying one shop, wherein he is running a construction office from the year 1997. Now, the existing electricity service connection to the said shop has been disconnected forcibly. The electricity service connection is a basic amenity. Therefore, this Court further directs the 2nd respondent to provide electricity service connection within four weeks from the date of receipt of this order after obtaining necessary required documents except ownership documents or consent letter from the 3rd respondent since it is an admitted fact that the petitioner is in physical possession. This order will not be prejudiced to the 3rd respondent, further the petitioner cannot claim any civil rights, the said property on the strength of getting temporary electricity service connection.

11. Hence, the above writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IV)

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Sub Assistant Registrar

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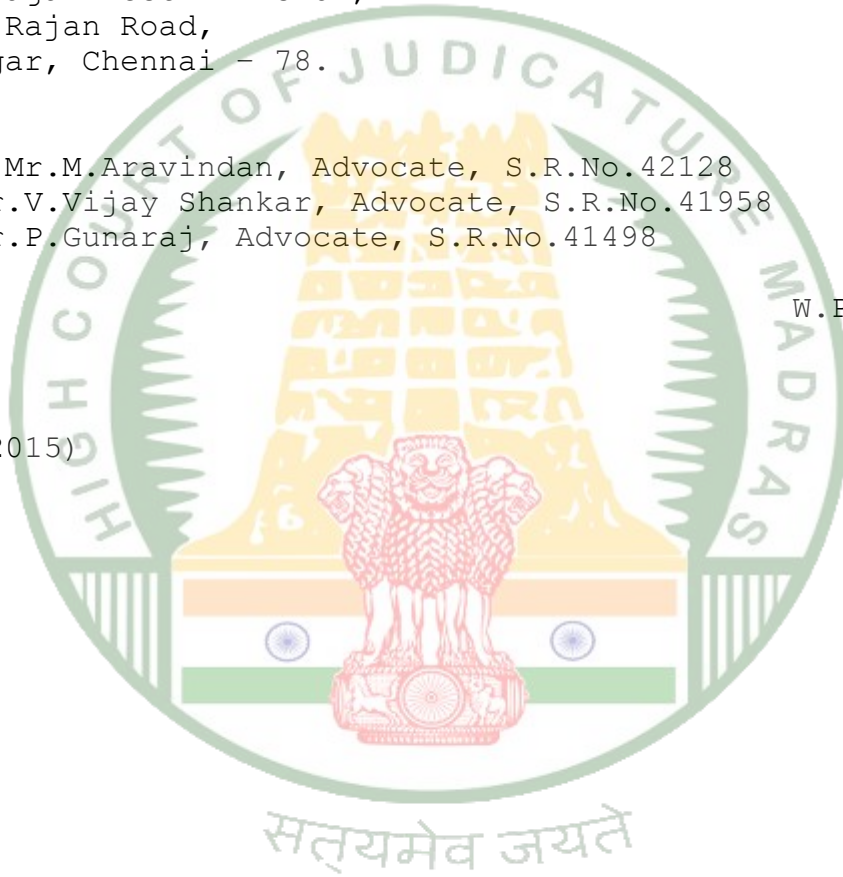
To

1. The Superintending Engineer,
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2. The Assistant Engineer,
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Ashok Nagar West Division,
No.20, Rajan Road,
K.K.Nagar, Chennai - 78.

+2cc's to Mr.M.Aravindan, Advocate, S.R.No.42128
+1cc to Mr.V.Vijay Shankar, Advocate, S.R.No.41958
+1cc to Mr.P.Gunaraj, Advocate, S.R.No.41498

W.P.No.9647 of 2010
and
M.P.No.1 of 2010

KGK (CO)
CA (25/09/2015)



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