

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:22.12.2015

Date of Reserving the Order	Date of Pronouncing the Order
09.12.2015	22.12.2015

Coram

The Hon'ble Mr. Justice T.S. SIVAGNANAM

W.P.No.32266 of 2015
& W.P.No.21372 of 2014

W.P.No.32266 of 2015

M/s.Chennai Radha Engineering Works Pvt., Ltd.,
Rep., by its Vice President Mr.K.Sukumar
40, Sapthagiri Colony,
Jafarkhanpet, Chennai - 600 083.

... Petitioner

Vs.

1.Executive Engineer,
TANGEDCO
Operation and Maintenance,
Palladam, Thiruppur - 641641

2.The Assistant Engineer,
Operation and Maintenance
TANGEDCO
Tiruppur Electricity Distribution Circle,
Kethanur - 641 671,
Thiruppur District.

3.The Chairman,
TANGEDCO,
10th floor, NPKRR Maaligai,
144, Anna Salai,
Chennai - 600 002.

4.Mr.M.R.Palanisamy

... Respondents

R-4 is suo-moto impleaded as per order dated 09.10.2015 in
W.P.No.32266 of 2015

W.P.No.21372 of 2014

Mr.M.R.Palanisamy

... Petitioner

vs.

1.The Assistant Executive Engineer,
Tamilnadu Electricity Board,
Kethanur - 641 671,
Tiruppur District.

2.The Assistant Engineer,
Operation and Maintenance,
TANGEDCO,
Tiruppur Electricity Distribution Circle,
Kethanur - 641 671.
Tiruppur District.

3.M/s.Chennai Radha Engineering,
Works Pvt., Ltd., Rep., by its
Manager T.Narayanasamy,
40, K.R., Lay out,
Sapthagiri Colony,
Jafarkhan pet,
Chennai - 600 083.

.... Respondents

Prayer in W.P.No.32266 of 2015 :-Petition filed under Article 226 of the Constitution of India praying to issue Writ of Mandamus, to direct the first and second respondents to rectify the damaged pole at SF No.90(S)(P) & 477/1(P) of Kethanur village that was erected under Lr.No.EE/PDM/DM/F.W.F/HT.SC.No.820/D.807/2009, dated 16.07.2009, and restore the electric lines as per the representation, dated 13.03.2015.

Prayer in W.P.No.21372 of 2014 :-Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings in letter No.AEE/Kethanur/File-petition/A No.82/14, dated 18.06.2014, issued by the second respondent, quash the same and consequently forbear the respondents from erecting or carrying out any work for installing electricity lines into the Petitioner's lands comprised in S.No.89/2, 90 and 477/1, Kethanur village, Palladam Taluk, Tiruppur District.

For petitioner .. Mr.N.Manokaran in W.P.No.21372/2014

For Respondents .. Mr.s.Suresh for R3 in
W.P.No.21372/2014 and Petitioner in
W.P.No.32266/2015

Mr.S.K.Rameshwar for RR1 to 3 in
W.P.No.32266/2015 and R1 & R2 in
WP.No.21372/2014

Mr.A.Thiyagarajan and Mr.T.Balaji for R4

C O M M O N O R D E R

The petitioner in W.P.No.32266 of 2015 is a Private Limited Company, which has erected three Wind Electric Generator at S.F.No.90 [N][P] 90(S)(P) & 377/ 1P at Keethanur village and the Wind Electric Generators were commissioned on 20.06.2009 and have been supplying power to TANGEDCO. For the purpose of evacuating the power generated, poles have been erected by TANGEDCO for drawing the power lines to their establishment. In this Writ Petition, the petitioner company seeks for a direction upon the TANGEDCO to rectify the damaged pole which was erected on 16.07.2009, by considering their representation. The fourth respondent which was suo-moto impleaded by this Court is objecting to rectification of the damaged poles and he has filed W.P.No.21372 of 2014, challenging a communication sent by the Assistant Engineer (O&M), TANGEDCO, dated 18.06.2014, wherein the fourth respondent was informed that the work proposed to be carried out by them is only to rectify a damaged pole, which was already in existence and not a new installation. For the sake of convenience the parties shall be referred to as the petitioner company and the fourth respondent.

2. The stand taken by the fourth respondent is that his father late Thiru.Ramasamay Gounder purchased an extent of 2.81 acres in S.No.81/2A and 1 acre in S.No.90 of Keethanur village during 1969 and after his demise, the property devolved upon his four sons including the petitioner and pursuant to a family arrangement among themselves the property in Survey No.89/2A and Survey No.90 is said to have been allotted to the fourth respondent. The fourth respondent would further state that the petitioner company purchased the lands in S.F.No.477/1P, which is nearby his property. It is alleged by the fourth respondent that the documents based on which the vendor sold the property to the petitioner company are fraudulent documents and in this regard, complaint has been given to the Police on 09.06.2009, and while so, the petitioner Company filed a Suit in O.S.No.268 of 2009, before the vacation Court at Coimbatore, which was

later transferred to the District Munsif court, Tiruppur and re-numbered as O.S.No.168 of 2009 and in the said Suit, an application for interim injunction has been filed and the same is pending. This according to the fourth respondent is to prevent him from proceeding further with this criminal complaint. The fourth respondent would further state that under the guise of repairing the pole, the attempt of TANGEDCO is to draw the power lines through/across his land and therefore, he is affected and hence, justified in objecting the steps being taken by the TANGEDCO.

3. Though elaborate factual submissions were made by the learned counsel for the fourth respondent by referring to Section 16 of the Indian Telegraphic Act and the law laid down by this Court in several decisions as to the manner in which such objections have to be dealt with, however, to decide the controversy in this Writ Petition, it may not be necessary to refer to the statutory provisions or to the decision referred to by the learned counsel for the fourth respondent as it has to be seen whether the fourth respondent has locus standi to raise such an objection and whether his plea is bonafide.

4. The learned counsel appearing for the petitioner Company by referring to the representations and the averments in the affidavit filed in support of their Writ Petition submitted that the poles were erected in 2009 and the Wind Energy Generators have been generating power since the time and all along no objection was raised by the fourth respondent and the line which was already drawn does not pass through the fourth respondent's property and that apart the fourth respondent does not claim any right over the property purchased by the petitioner Company, as it is evident from paragraphs 3 & 4 of the affidavit filed in support of the Writ Petition, Writ Petition No.21372 of 2014 and the fourth respondent has admitted that he is attempting to canvass the case of some other person which is not clearly stated in the Writ affidavit. Furthermore, it is submitted that the petitioner company undertakes before this Court and submits that the EB line does not pass through the fourth respondent's property and this may be placed on record. Therefore, it is submitted that the plea raised by the fourth respondent lacks bonafide, it is tainted with malafide and the Writ Petition filed by the fourth respondent is a clear abuse of process of law and the entire attempt of the fourth respondent is to harass the petitioner's company.

5. TANGEDCO in their counter affidavit supports the stand taken by the petitioner company and it is submitted that due to natural calamity one of the electric poles has been damaged and the remaining poles along with over headlines are intact and the

fourth respondent never raised any objection when the poles were erected and when the lines were drawn in 2009 and the fourth respondent is preventing TANGEDCO from carrying out their statutory duty and in particular the duty cast upon them under Section 43 of the Electricity Act, 2003.

6. In the light of the above factual position, it has to be seen as to whether the objection raised by the fourth respondent is justified. As rightly pointed out by the learned counsel for the petitioner Company, the fourth respondent does not clearly state as to how he is an aggrieved person when admittedly the fourth respondent is not a rival claimant in respect of the lands purchased by the petitioner Company, the details of the property owned by the fourth respondent show that the property is not the property on which the electric poles have been laid nor the land in which three Wind Energy Generators have been installed. In the affidavit filed in support of the Writ Petitions, the fourth respondent has made a vague statement that his lands are located nearby the lands owned by the petitioner Company and the TANGEDCO is very keen to erect the poles across his lands. However, this appears to be a false statement and not established by the fourth respondent in any manner. The petitioner company has taken a categorical stand stating that neither the poles nor the electric lines are erected or drawn through the fourth respondent's land. In such circumstances, this Court is of the clear view that the fourth respondent has absolutely no locus standi to raise any objection more so, when the poles and lines were in existence since 2009. That apart, it is not clear as to in what manner the fourth respondent lodged a Police complaint alleging forgery and fabrication when the fourth respondent does not clearly state that as to what is his interest in the lands purchased by the petitioner company in S.F.No.477/1P, Keethanur village. Thus, it appears that the objection raised by the fourth respondent obstructing the rectification of one of the damaged poles lacks bonafide and has been made for reasons best known to the fourth respondent. On account of the frivolous objection raised by the fourth respondent, the damaged pole could not be rectified as a result of which the Electricity Generated could not be evacuated and thus on account of the frivolous objection of the fourth respondent, it has resulted in loss of electric energy, ultimately affecting the public. Furthermore, on facts, this Court cannot issue any Writ of Mandamus to forbear the TANGEDCO from exercising their statutory duty.

7. For all the above reasons, it is held that the Writ Petition filed by the fourth respondent in W.P.No.21372 of 2014, is devoid of merits and the TANGEDCO should be permitted to rectify the damaged poles so as to enable the petitioner Company

to evacuate the power from the three Wind Electricity Generators installed by them.

8. In the result, the W.P.No.32266 of 2015 is allowed and the TANGEDCO is directed to restore the electric lines within a period of two weeks from the date of receipt of a copy of this order and W.P.No.21372 of 2014 is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

sd/-
Assistant Registrar (Cs-V)

/TRUE COPY/

Sub-Assistant Registrar

pbn

To

- 1.The Chairman,
TANGEDCO, 10th floor, NPKRR Maaligai,
144, Anna Salai, Chennai - 600 002.
- 2.Executive Engineer,
TANGEDCO, Operation and Maintenance,
Palladam, Thiruppur - 641641
- 3.The Assistant Executive Engineer,
TamilNadu Electricity Board,
Kethanur - 641 671.Tiruppur District.
- 4.The Assistant Engineer,
Operation and Maintenance
TANGEDCO,Tiruppur Electricity Distribution Circle,
Kethanur - 641 671, Thiruppur District.

+2 CC to MR.S.Suresh Advocate. SR.NO. 69537, 69538

+1 CC to MR.N.Manokaran Advocate. SR.NO.69531

+1 CC to MR.S.K.Rameshwar Advocate. SR.NO. 69747

+1 CC to MR.A.Thiyagarajan Advocate. SR.NO.69556

Pre-Delivery O r d e r in
W.P.No.32266 of 2015
& W.P.No.21372 of 2014

CO-PUR
JD 11/01/2016