

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.12.2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.6463 of 2014

Order Reserved on **18.12.2014** Judgment Pronounced on **10.12.2015**

Gurushath

... Petitioner

vs.

1.The Assistant Engineer
Tamil Nadu Electricity Generation and
Distribution Corporation (I & M)
Mangadu Division, Se.Mi.Pa.Taluk (South)
TANGEDCO, Mangadu
Chennai-600 112

2.The Tamil Nadu Wakf Board
Represented by its Chief Executive Officer
No.1, Jaffer Syrang Street
Vallal Seethakathi Nagar
Chennai-600 001

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for a Writ of Mandamus, directing the first respondent to provide the electricity connection to the petitioners property situated at Plot No.642, Syed Sadik Nagar, Mangadu, Chennai-112, without insisting on No objection Certificate from the second respondent.

For Petitioner : Mr.K.Sasindran
for M/s.achari and Antoni Associates

For Respondents : Mr.P.Gunaraj (for R1)
Mr.Mohammed Fayaz Ali (for R2)

ORDER

The short facts of the case are as follows:

The petitioner has submitted that he has constructed a residential building in Plot No.642, Syed Sadik Nagar, Mangadu, Chennai-600 112, and he applied for electricity connection for the above said building to the first respondent vide application dated 05.02.2014. Along with the application, he submitted the certificate issued by the Managing Trustee of the above said Trust certifying that he is the lawful tenant and power connection could be granted to him. He has submitted that when he approached the first respondent for the electricity connection, the first respondent orally informed him that they received objection from the second respondent and directed him to get "No Objection Certificate" from the second respondent for the purpose of providing the electricity connection. He has submitted that the second respondent is claiming title over the said property. However, the documents would show the above said Trust is the real owner of the property. Further, the Managing Trustee of the Trust, namely the owner for the property has granted No Objection Certificate certifying that he is a lawful tenant. He

submits that the Wakf is being administrated by the Managing Committee and the second respondent has only a supervisory authority and does not grant any No Objection Certificate to tenants for power connection. However, the first respondent is insisting upon the No Objection Certificate from the second respondent. Therefore, the above writ petition has been filed.

2. The first respondent has filed counter affidavit stating that the petitioner had filed the above writ petition praying for a writ of Madamus or any other writ or order or direction in the nature of writ, directing the first respondent herein to provide the electricity connection to the petitioner's properties situated at Plot Nos.285, 449, 359, 642, 175 and 450, Syed Sadik Nagar, Mangadu, Chennai 600 112 without insisting on the No Objection Certificate from the second respondent.

3. The first respondent has further stated that the writ petitioner herein had submitted his application to the first respondent requesting for single phase service connection to his plot along with indemnity bond and the No Objection Certificates dated 10.01.2014 issued by the Hazarath Syed Sadik Valiyllah Darga and Mosque Trust, Chennai-600 122 for a new service connection to the above said plot number. He further has stated that the application was received and while taking steps to effect the service connection

to the writ petitioner, the second respondent objected to effect service connection to the plot of the petitioner herein and hence he could not examine as per the existing law and code and effect the service connections to the plot of the writ petitioner herein. He has further stated that if the second respondent allows to effect the service connections to the said plot of the writ petitioner, the first respondent has no objection to examine and effect the service connection to the said petition premises in accordance with the existing law and code and hence there is no merit in the above writ petition and the same is liable to be dismissed in limini. Hence, it was prayed that this Court may be pleased to dismiss the above writ petition No.6463 of 2014 as devoid of merits.

4. The second respondent has filed a counter affidavit stating that he is the Chief Executive Officer of the Tamil Nadu Wakf Board, the second respondent in the present writ petition. He has submitted that the Hazrath Syed Sadiq Dargah and Mosque, Mangadu, Kancheepuram District is a surveyed and notified Wakf bearing G.S.No.223/Cgt. He has submitted that the aforesaid Wakf consist of vast extent of land including a Mosque. He has submitted that the aforesaid Wakf was surveyed and registered way back in the year 1959 itself and the said Wakf was notified in the Government Gazette on 17.12.1958. While this being so, some unscrupulous elements illegally

started leasing out the Wakf lands on its own claiming it to be a Trust registered as No.13./4/1995.

5. He has submitted that an inquiry was instituted under Sections 70 and 71 of the Wakf Act, 1995 with respect to the mismanagement of the Wakf properties by the illegal trustees and the same is pending before the Tamil Nadu Wakf Board. In the meanwhile in order to safeguard the Wakf properties, a 11 member committee was constituted by the second respondent under its order dated 02.12.2009 wherein one Mr.Z.Jamaludeen was appointed as the President. Unfortunately the aforesaid Z.Jamaludeen, instead of administering the Wakf, abandoned his position of Presidentship and colluded with the illegal Trust and appointed himself as the Finance Trustee of the alleged Trust and executed a lease in favour of the petitioner dated 17.10.2010 for a sum of Rs.50/- per month for an extent of 600 sq.ft. of land.

6. He has submitted that the second respondent issued a letter to the first respondent requesting him to refrain from providing electricity supply without production of a No Objection letter from the second respondent as the applicants were illegal occupants of the Wakf lands and that a self styled trust was issuing No Objection Certificate unauthorisedly to the illegal occupants.

He has submitted that the benefit of Rule 27(4) of the Tamil Nadu Electricity Distribution Code, 2004 would be available only to the lawful occupant of the premises and not to an encroacher or illegal occupant. He has submitted that admittedly the premises is a Wakf property and the petitioner is nothing but an encroacher as defined under Section 3(ee) of the Wakf Act, 1995. He has submitted that the petitioner does not have a subsisting lease agreement with the Mutawalli of the Wakf or the Wakf Board and the petitioner being an encroacher does not deserve any indulgence of this Court. For all the reasons stated above, it was therefore humbly prayed that this Court may be pleased to dismiss the present petition.

7. The learned counsel appearing for the petitioner has submitted that the petitioner is the lawful tenant of the subject matter of the land under Hazrath Syed Sadiq Dargah and Mosque Trust. He had constructed a residential building on the said land and he made an application to the first respondent on 05.02.2014 along with a certificate issued by the Managing Trustee / Landlord. On receipt of the same, the first respondent had informed him that they had received objection from the second respondent and hence the first respondent instructed the petitioner to obtain no objection certificate from the second respondent for the purpose of providing electricity service connection to the subject matter of property. Actually, the Managing Trustee

/ Landlord had granted no objection certificate certifying that the petitioner is a lawful tenant. However, the first respondent has insisted upon the no objection certificate from the second respondent. The second respondent had not objected for the construction of residential building in the subject matter of land in the petitioner's name. The electricity service connection is a basic amenity and hence the learned counsel has prayed this Court to allow the writ petition.

8. The learned counsel appearing for the first respondent has submitted that the petitioner had submitted an application to the first respondent for single phase electricity service connection for the subject matter of property along with indemnity bond and no objection certificate from the Managing Trustee / Landlord. Subsequently, when the first respondent was taking steps to provide electricity service connection, the second respondent had raised an objection and hence the first respondent cannot proceed further. If the second respondent has no objection, the first respondent will provide electricity service connection for the subject matter of property. Therefore, the learned counsel has prayed this Court to dismiss the writ petition.

9. The learned counsel appearing for the second respondent has submitted that some unscrupulous elements had illegally started leasing out

the land belongs to Wakf Board claiming them as Trustees. Hence, an enquiry was conducted under the Wakf Act and the said proceedings are pending before the Tamil Nadu Wakf Board. In the meantime, in order to safeguard the wakf properties, a Committee consists of 11 members has been constituted. One Jamaludeen, who has been appointed as President of the said Committee, colluded with the illegal Trustees, entered into a Lease Agreement with the petitioner. Hence, the second respondent had raised an objection and requested the first respondent to refrain from providing electricity service connection without production of no objection certificate from him. The occupation of the petitioner is illegal and hence the petitioner is not entitled to obtain electricity service connection. Therefore, the learned counsel has prayed this Court to dismiss the writ petition. In support of his contentions, the learned counsel has produced the proceedings issued by the Secretary, attached to the Tamil Nadu Wakf Board.

10. On considering the facts and circumstances of the case, arguments advanced by the learned counsel on either side and on perusing the typed set of papers, this Court is of the view that the subject matter of the property is under the care and maintenance of the second respondent. The second respondent has strongly objected to provide new service connection in favour of the petitioner. As such, there is a civil dispute over the subject matter of

property. Hence, the writ petition does not have sufficient force to allow it and the same is liable to be dismissed.

11. In the result, the writ petition fails and it is dismissed. No costs.

10.12.2015

(4/6)

Index : Yes/No

Internet : Yes/No

vs / krk

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2.The Chief Executive Officer,
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C.S.KARNAN, J.

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