

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30/11/2015

C O R AM

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

W.P.No.3309 of 2013

V.Doss Naidu

...

Petitioner

Vs

1. The Assistant Engineer
South Perumpeadu
Sholavaram Post
Chennai 600 067.
 2. The Divisional Engineer (DE)
Revenue Division/Avadi
No.229 N.M.Road
Avadi
Chennai 600 054.
 3. The Assistant Account Office
Revenue Division/Avadi
No.229 N.M.Road
Avadi
Chennai 600 054.
 4. V.Mohan Rao
- Respondents.

(Impleaded as per order dated 25/9/2013
by SMKJ in M.P.No.3/2013 in
W.P.No.3309 of 2013)

Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records of the respondents in this proceeding Letter No.Che.Po.E and Pa/U.Ka.Aa.Vape/Ka.Ma.Ko. Transfer/Ka.No.58/2013 dated 29/1/2013 and quash the same and consequently direct the third respondent to restore electricity connection in Survey No.8/2A, No.12/24, Aathus Village, Cholavaram.

For petitioner ... Mr.V.Chandrakanthan

For respondents ... Mr.P.R.Dhilip Kumaar
for R.R.1 to 3.

For respondent R4 ... Mr.B.S.Jothiraman

O R D E R

With the consent of the learned counsel appearing for the parties, this writ petition is taken up for final disposal.

2. Heard Mr.V.Chandrakanthan, learned counsel appearing for the petitioner and Mr.P.R.Dhilip Kumar for the respondents 1 to 3.

3. This writ petition has been filed praying to quash the order passed by the third respondent dated 29/1/2013 and consequently direct the third respondent to restore electricity connection in Survey No.8/2A, No.12/24, Aathur Village, Cholavaram.

4. The petitioner is said to have purchased the property in question on 14/2/1996. The fourth respondent is the son of one Ramakrishna Naidu and it appears that initially the service connection question stood in the name of the fourth respondent's father. In 2012 - 2013, it appears that the petitioner submitted a representation and the service connection stood transferred in the name of the writ petitioner. On coming to know of the same, the fourth respondent has given a representation and in the said representation, certain factual details have been pointed out as to how the fourth respondent is entitled to the property etc. Based on the representation, now the third respondent has cancelled the transfer of the service connection to the name of the petitioner and restored it to the original position. This order is impugned in the instant writ petition.

5. At the time when the writ petition was entertained, an interim order was granted on 13/2/2013 and the said order is still in force.

6. The learned counsel appearing for the petitioner has drawn the attention of this Court to the following:-

(i). the judgment and decree passed in O.S.No.6/1972 on the file of the District Munsif, Tiruvallur dated 5/2/1973;

(ii). the judgment and decree passed in A.S.No.164 of 1977 on the file of the Sub-Court, Chengalpeta dated 10/1/1979;

(iii). the judgment in S.A.SR.No.81026/1979 dated 16/4/1981;

(iv). the judgment and decree made in O.S.No.224 of 1998 on the file of the District Munsif, Ponneri dated 29/12/2009;

(v). the judgment in A.S.No.11 of 2010 on the file of

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

the Sub-Court, Ponneri dated 26/4/2013 and

(vi). the judgment and decree of this Court in S.A.No.846 of 2013 dated 22/4/2013, which was confirmed by the Honourable Supreme Court in SLP No.16152 of 2014 dated 13/10/2014.

7. The learned counsel appearing for the petitioner would contend that the father of the fourth respondent, viz., Ramakrishna Naidu is none other than the brother of the third defendant in the suit and as such, the decisions clearly bind the parties and the petitioner has succeeded before the Honourable Supreme Court and therefore, the petitioner was justified in seeking for transfer of the service connection in his name.

8. Per contra, the learned counsel appearing for the fourth respondent submitted that the judgments of the Civil Court have no impact on the transfer of the service connection which stood in the name of the petitioner's father for all these years and the third respondent could not have transferred the service connection based on the representations made by the petitioner.

9. The third respondent filed a counter affidavit stating that on 21/9/2012, the petitioner applied for name transfer of the agricultural service connection, which stood in the name of the father of the fourth respondent, based on the decree passed in O.S.No.224 of 1998 dated 29/12/2009. The petitioner is also stated to have produced the chitta and adangal. Based on the same, transfer was effected on 22/9/2012. Thereafter, the fourth respondent objected to the name transfer since the matter is still pending in I.A.No.60 of 2010 in O.S.No.224 of 1998 and the name transfer order was cancelled.

10. Further, it is stated that the agricultural service connection is still live and it has not been disconnected. The third respondent is not concerned with the dispute between the petitioner and the fourth respondent, however will abide by the directions issued by this Court.

11. After hearing the learned counsel for the parties and the materials placed on record, it is seen that the entire controversy arose on account of the mistake committed by the third respondent in entertaining an application, at the instance of the petitioner, based on certain judgments of the Civil Court in which the Electricity Board was not a party.

12. It is not known under what circumstances, the electricity service connection was transferred in the name of the petitioner by deleting the name of the fourth respondent's

father. It is also not known as to whether any enquiry was conducted prior to such transfer whether the legal heirs of Ramakrishna Naidu were put on notice.

13. Since the counter affidavit of the third respondent is silent on the aforesaid aspects, prima facie it is clear that the impugned transfer of name in favour of the petitioner was without notice to the fourth respondent or the other legal heirs of Ramakrishna Naidu and appears to have been done without conducting enquiry. When this mistake came to the notice of the fourth respondent, he has objected to the same. However, at least, the third respondent should have considered the objections of the fourth respondent, by conducting an enquiry and put the parties on notice. However, without conducting any proper enquiry, proceeded to cancel the name transfer. Thus, the issue would be as to who is the original owner of the property. Admittedly, in none of the suits, the Electricity Board is a defendant.

14. Further, there is a serious dispute raised by the fourth respondent stating that in none of the suits, service connection has been shown as one of the items in the suit schedule and therefore, nor any decree passed by the Civil Court. However, this serious disputed questions of facts cannot be resolved by an Assistant Engineer of the Electricity Board and the matter has to be resolved only by the Civil Court. Therefore, if the petitioner is entitled to the property in question and he has a decree to the said effect, then it is always open to the petitioner to implead the Board as a party and seek appropriate relief.

15. In the light of the above, the parties have to approach the Civil Court by way of appropriate proceedings in which the Board should also be made as a party and in such litigation, the legal heirs of Ramakrishna Naidu should be made as a party.

16. In the light of the above, the writ petition is disposed of, by directing the third respondent to restore the service connection in the name of Ramakrishna Naidu and the same would not be disconnected till either of the parties viz., the petitioner or the fourth respondent obtain appropriate orders from the Civil Court.

17. One more disputed question is as to who is in possession of the property. The petitioner asserts that he is in possession of the property and the fourth respondent asserts that he is in possession of the property. This disputed question cannot be resolved in the writ petition. Till the dispute is resolved, the position regarding the possession shall continue to be maintained and whoever is in possession of the property shall be entitled to utilise the service connection.

No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

mvs.

To

1. The Assistant Engineer
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Revenue Division/Avadi
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Avadi
Chennai 600 054.

- 1 CC to Mr.V.Chandrakanthan, Advocate SR.No.65042
1 cc to Mr.P.R.Dhilipkumar, Advocate, sr.65115
1 CC to Mr.B.S.Jothiraman, Advocate, sr.65407

pa (CO)
kra 16.12.2015

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