

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.06.2015

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.19033 of 2010

and

M.P.No.1 of 2011

K.P.C.Kandasamy
S/o.K.K.Chenniappa Gounder ... Petitioner

vs.

1.The Assistant Executive Engineer,
Tamil Nadu Electricity Board,
Big Bazar Street,
West Branch,
Coimbatore Division,
Coimbatore District.

2.V.Muthammal,
W/o.Vellingiri

3.V.Gururaj,
S/o.Vellingiri

4.V.Shanmuga Sundaram,
S/o.Vellingiri Respondents

PRAYER: Writ 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 from the file of the first respondent made in Reference Ka.No.A.E.E./Kadai Veethi/West/Kovai/Ka.Koppu/A.No: /10 dated .04.2010 signed on 27.04.2010 and quash the same and direct the first respondent to provide electricity service connection to the petitioner's building located in 607, Thadagam Road, Ponniyarajapuram, Coimbatore - 641 001 within the stipulated period of two weeks.

For Petitioner : Mr.S.Gunalan

For Respondents: Mr.S.K.Rameeshwar [R1]
Mr.Ananda Gomathy Sivakumar for R2toR4

O R D E R

The petitioner has filed this Writ Petition seeking for issuance of a Writ of Certiorarified Mandamus to quash the order passed by the 1st respondent dated 27.04.2010.

2. The petitioner submitted an application to the 1st respondent for grant of Electricity Connection for the premises at Door No.607, Thadagam Road, Ponniyarajapuram, Coimbatore. The said application was taken into consideration by the 1st respondent by order dated 27.04.2010, the 1st respondent has stated that the petitioner has entered into a sale agreement in respect of the said property and there is no sale deed in his favour and therefore, the respondent cannot grant electricity connection to the petitioner in his name. The said order dated 27.04.2010 is impugned in this writ petition.

3. The learned counsel for the petitioner has referred to recital in the sale agreement and also the endorsement made on the reverse of the second page of the sale agreement to demonstrate that specific amount of money has been paid to the private respondents they acknowledged that they handed over the possession. The learned counsel for the petitioner also relies upon the decisions of this Court in the case of A.Muthusamy Vs. The Assistant Engineer, TNEB reported in 2009(4) CTC 606 and in the case of P.Arumugam Vs. Government of Tamil Nadu, etc & others reported in 2003 Writ L.R. 248. The learned counsel further submitted that the petitioner has also executed a Deed of Indemnity Bond in favour of the Electricity Board and based on the said Deed of Indemnity Bond electricity connection could be granted.

4. The learned counsel for the 1st respondent by referring to the counter affidavit filed by the 1st respondent submits that the petitioner has filed a suit in O.S.No.450 of 2005 on the file of the District Court, Coimbatore for a decree of specific performance against the private respondents 2 to 4 and the suit is pending and on the strength of the sale agreement, they cannot grant electricity connection to the petitioner, since the owners of the property viz., the respondents 2 to 4 have refused to give consent for providing electricity connection in the petitioner's name.

5. The private respondents 2 to 4 has not filed any counter affidavit.

6. Heard the learned counsel for the parties and also perused the materials placed on record. The legal principle which could be deduced from the decision relied on by the learned counsel for the petitioner is that the Electricity Board is empowered to give power supply to the applicant without insisting on No Objection Certificate by accepting an Indemnity Bond in terms of Clause 6.04 of the Terms and Conditions of Supply of Electricity. Further in terms of Clause 27(2)(4) of the Tamil Nadu Electricity Distribution Code it is

empowered to grant electricity supply after obtaining an Indemnity Bond in the statutory format and the electricity connection could be granted to the owner or occupier. In my view, the decision cannot be applied to the facts of this case, since the question as to whether the petitioner is in occupation of the premises is subject matter of dispute and pending before the civil Court.

7. The petitioner would state that he is in possession of the property pursuant to the sale agreement and he has filed a suit in O.S.No.450 of 2005 seeking a decree for specific performance. The written statement filed by the 3rd defendant shows that they have denied the allegation made by the petitioner that they handed over the possession. Since a suit is pending in respect of the subject property, the question whether the petitioner is in possession of the property or not should be decided only by the civil Court. Hence, by applying the decision relied upon by the learned counsel for the petitioner, the respondent Board cannot be directed to grant electricity supply on execution of indemnity bond in favour of the Board. However, the petitioner is not without any remedy. It is open to the petitioner to move an appropriate application in the pending suit, in which the Electricity Board can also be made as a party respondent and seek for appropriate relief.

8. In the light of the above, the relief sought for in the writ petition cannot be granted. Hence, this Writ Petition is dismissed and liberty is given to the petitioner to move the civil Court for appropriate relief impleading the Electricity Board as a necessary party. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

The Assistant Executive Engineer,
Tamil Nadu Electricity Board,
Big Bazar Street,
West Branch,
Coimbatore Division,
Coimbatore District.

+1 cc to Mr.S.K.Raameshuwar, Advocate,SR.28837

+1 cc to Mr.M.Parthasarathy, Advocate,SR.28401.

Ad(Co)
krd 24/6

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