

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.02.2016

Coram

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

Writ Petition No.1424 of 2016

&

W.M.P.No.1190 of 2016

Kailasam

...Petitioner

Vs.

1.The Assistant Executive Engineer
Operation & Maintenance
TANGEDCO Ulundurpet

2.The Assistant Engineer
Asanur Village
Ulundurpet

3.Kumar

...Respondents

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of certiorarified mandamus to call for the records of the 2nd respondent relating to his order dated 15.12.2015 in letter No.AE/E/Pa/Asanur/va.a/ko.vi.mi/a.No.138/2015-2016, quash the same and direct respondents 1 and 2 to restore service connection No.238 granted on 29.03.2000 in the name of the petitioner.

For Petitioner : Ms.Hema Sampath, Senior Counsel
for Ms.R.Meenal

For Respondents : Mr.M.Varukumar for R1 and 2
Mr.V.Balu for R3

O R D E R

Heard Ms.Hema Sampath, learned Senior Counsel assisted by Ms.R.Meenal, learned counsel for the petitioner and Mr.M.Varunkumar, learned standing counsel appearing for the respondents 1 and 2 and Mr.V.Balu, learned counsel for the 3rd respondent.

2. The dispute in this writ petition is, with regard to grant of electricity service connection for a well which is stated to be situated in Survey No.260/8. The petitioner's case is that they are in possession of the property and enjoying the service connection and drawing water from the said well. There is a civil dispute pending before the Principal District Court, Ulundurpet between the petitioner and the 3rd respondent in O.S.No.249 of 2015, and the Civil Court has granted an order of interim injunction in favour of the petitioner. In this writ petition, the challenge is to an order passed by the 2nd respondent dated 15.12.2015, in and by which the service connection has been cancelled/disconnected.

3. The main ground of challenge to the impugned proceedings is on the ground that without giving opportunity to the petitioner and without considering the petitioner's explanation dated 27.11.2015, the impugned order has been passed stating as if the petitioner has not given any reply to the show cause notice dated 20.11.2015. From the postal acknowledgment card produced in the typed set of papers, it is seen that the reply given by the petitioner through his counsel dated 27.11.2015, has been received in the office of the respondent on 03.12.2015. Therefore, prima facie it is clear that finding rendered by the 2nd respondent in the impugned order stating that the petitioner has not given any explanation is incorrect. The petitioner on receipt of the impugned order has also given another representation by way of legal notice dated 22.12.2015, since this also did not evoke any response, the petitioner is before this Court.

4. Learned counsel appearing for the 3rd respondent submitted that the 3rd respondent does not claim any right over the property in survey No.260/7 and the objection is with regard to connection in survey No.260/8, which according to the 3rd respondent, it is his individual property. Further, it is submitted that the 3rd respondent is in possession of FMB sketch, which shows that 3rd respondent is the rightful owner. Further more, it is submitted that Revenue Officials have conducted an inspection in which the sons of the petitioner participated and has also affixed their signatures being satisfied with the inspection conducted and the report clearly is in favour of the 3rd respondent.

5. In my view, at this stage of the matter, these issues need not be gone into for a simple reason that the 2nd respondent is yet to conduct any enquiry in the matter and proceeded to pass an ex-parte order, since stating as if the petitioner has not given any explanation.

6. Learned counsel appearing for the Board submitted that sufficient time may be granted to the 2nd respondent to conduct an enquiry into the matter, taking note of all the facts.

7. In the light of the above, the writ petition is allowed and the impugned order is quashed. The matter is remanded to the 2nd respondent for fresh consideration who shall issue notice to the petitioner and the 3rd respondent and also call for necessary report from the Revenue Officials, conduct an enquiry into the matter, examine full facts and if necessary also conduct spot inspection and thereafter pass an reasoned order on merits and in accordance with law and communicate the same to the petitioner and the 3rd respondent within a period of two weeks from the date of receipt of a copy of this order. Till orders are passed the status quo which was prevailing with regard to the service connection prior to the impugned order i.e 15.12.2015 shall be maintained. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

To

1.The Assistant Executive Engineer
Operation & Maintenance
TANGEDCO
Ulundurpet

2.The Assistant Engineer
Asanur Village
Ulundurpet

+ 1 cc to M/s.M.Varun Kumar, Advocate, SR 11586

+ 1 cc to M/s.R.Meenal, Advocate, SR 11307

+ 1 cc to M/s.V.Balu, Advocate SR 2619

ppa(co)
prk8/3

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