

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.01.2016

Coram

The Honourable Mr.Justice T.S.SIVAGNANAM

W.P.Nos.17064 to 17067, 17143 to 17145 of 2014
and M.P.Nos.1 of 2014(7 Nos)

K.P.S.Mohammed Yousuff	.. Petitioner in WP.17064/14
Haja Beeve	.. Petitioner in WP.17065/14
Sheek Abdul Kadhar	.. Petitioner in WP.17066/14
Mohammed Yousuff	.. Petitioner in WP.17067/14
S.Ameena Beeve	.. Petitioner in WP.17143/14
N.Fairoja Beeve	.. Petitioner in WP.17144/14
Saleem	.. Petitioner in WP.17045/14

-vs-

1.The Assistant Engineer,
Tamil Nadu Electricity Board,
O & M/Sembakkam,
TNEB/C.E.D.C./South,
Chennai.

2.The Executive Officer,
Tamil Nadu Wakf Board,
No.17, Venkatesan Street,
Chepauk, Chennai.

3.The President,
Masjid-E-Anwari
No.18, Main Road,
Mosque Colony, Rajakilpakkam,
Chennai.

.. Respondents in all WPs.

Petitions filed under Article 226 of the Constitution of India praying for issue of (i) WP.Nos.17064 to 17067 - Writ of Mandamus to direct the 1st respondent to provide electricity supply single phase new connection to the petitioners premises No.5, 2nd Cross Street, Masjit Colony; No.1, 5th Cross Street, Masjit Colony; No.5, 3rd Usman Street, Masjit Colony; and No.14, Masjit Colony Main Road, Rajakilpakkam, East Tambaram, Chennai 600 073, without insisting upon 'No Objection Certificate' from the 2nd and 3rd respondents. (ii) W.P.Nos.17143 to 17145 to 2014 - Writ of Certiorarified Mandamus to call for the entire

records in pursuant to the impugned order bearing Ka.No.Vupo/EPa/Sem/Ko.Kattu/A.No.125/14 dated 23.01.2014; Sem/Ko.Kattu/A.No.127/14; and Sem/Ko.Kattu/A.No.126/14; on the file of the 1st respondent and quash the same and consequently direct the 1st respondent to grant Electricity Supply single phase new connection to the petitioners' premises No.18, 3rd Cross Street, Masjid Colony; No.32, 3rd Cross Street, Masjid Colony; and No.3/7, Masjid Colony Main Road, Masjid Colony, Rajakilpakkam, East Tambaram, Chennai-600 073 without insisting upon 'No Objection Certificate' from the 2nd and 3rd respondents.

For Petitioners : Mr.N.Naganathan

For Respondents : Mr.S.K.Rameshwar for R-1

: No appearance for RR 2 & 3

O R D E R

Heard Mr.N.Naganathan, learned counsel for the petitioners and Mr.S.K.Rameshwar, learned Standing Counsel for first respondent and perused the materials placed on record.

2.All the petitioners are in possession of small shops, which are owned by the third respondent / Masjid, at present under the direct control of the second respondent / Wakf Board. All the petitioners have sought for electricity service connection and some of their applications were rejected on the ground that unless and until they obtain 'No Objection Certificate' from the Wakf Board, the application for grant of electricity supply will not be entertained. In the other set of cases, their applications were not even received. Therefore, the petitioners have filed these writ petitions.

3.During the course of arguments, learned counsel for the petitioners, on instructions from the petitioners, submits that they are ready and willing to pay the rent as paid by their neighbouring shops and the 3rd respondent may be directed to give a 'No Objection Certificate' in favour of the petitioners so as to enable them to obtain electricity service connection.

4.Learned counsel appearing for the second respondent, by relying upon the counter-affidavit, submitted that the Masjid has been brought under the direct control of the Tamil Nadu Wakf Board and an Executive Officer has been appointed and therefore, it is the second respondent who has to take a decision in the

matter. Further, it is stated that the petitioners are illegal occupants of the Wakf lands and have wilfully failed to pay the rent with an ulterior motive to grab the Wakf lands. Further, it is submitted that the benefit of Clause 27 (4) of the Tamil Nadu Electricity Distribution Code, 2004, would be available only to a lawful occupant of the premises and not to an encroacher or illegal occupant.

5. Learned counsel for the first respondent / Electricity Board submitted that since the property is a wakf property, unless and until the Wakf Board or the competent authority issues a 'No Objection Certificate', the application for electricity supply will not be entertained.

6. It is seen that as of now no action has been taken to evict the petitioners from the premises in question. It appears that the Masjid has come under the control of the Wakf Board only recently and proceedings may be initiated at the discretion of the Executive Officer. In the interregnum, since the possession of the petitioners is admitted, though they have been termed as encroachers, this Court is of the view that till the action is initiated by the Wakf Board to evict the petitioners, they may be given the benefit of electricity supply. However, this benefit goes with a condition. As recorded above, the petitioners have now undertaken to pay the rent which is being paid by the other tenants of the Wakf. If that be the case, the proper procedure for the petitioners would be to approach the second respondent and make this offer and after remitting the rent including the arrears if any, the second respondent can grant 'No Objection Certificate' to enable the petitioners to secure the electricity supply. However, on account of accepting the rent and arrears and giving 'No Objection Certificate' will in no way prejudice the second respondent from initiating action for eviction of the petitioners. Likewise, the acceptance of rent, the issuance of 'No Objection Certificate' or securing the electricity supply will in no manner legalise the occupation of the petitioners since there is no document produced by the petitioners to show as to how they came into possession of the property in question. It is to be noted that the specific stand of the Wakf is that the petitioners are illegal occupants / encroachers.

7. In the light of the above observations, the writ petitions are disposed of by directing the petitioners to approach the second respondent with a definite offer to pay the rent along with arrears which shall be considered by the second respondent and on collecting the requisite amount from the petitioners, 'No Objection Certificate' can be issued, which shall be considered by the first respondent for grant of electricity supply to the petitioners subject to the fulfilment of other conditions. It is made clear that this order will not prejudice the Wakf Board

from initiating action against the petitioners for eviction nor this will in any way legalise the occupation of the petitioners. No costs. Consequently, M.P.Nos.1 of 2015 stand closed.

Sd/-
Assistant Registrar(V)

//True Copy//

Sub Assistant Registrar

sra

To

1.The Assistant Engineer,
Tamil Nadu Electricity Board,
O & M/Sembakkam,
TNEB/C.E.D.C./South,
Chennai.

2.The Executive Officer,
Tamil Nadu Wakf Board,
No.17, Venkatesan Street,
Chepauk, Chennai.

+3ccs to Mr.N. Naganathan, Advocate, S.R.No.3600
+3ccs to Mr.N.Naganathan, Advocate, S.R.No.3599
+1cc to the Government Pleader, S.R.No.3487

SR(CO)
EU(03/03/2016

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