

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.29076 of 2015

1.V.S.Krishna

2.V.Ratna Kumari

both are rep.by Power of Attorney

Holder, K.Prabhakar Naidu

.. Petitioners

V.

1.The Chairman cum Managing Director,
Tamil Nadu Generation and
Distribution Corporation Ltd.,
NPKRR Maaligai, 144, Anna Salai,
Chennai - 600 002.

2.The Director, (Distribution)
Tamil Nadu Generation and
Distribution Corporation Ltd.,
NPKRR Maaligai, 144, Anna Salai,
Chennai - 600 002.

3.The Vigilance Officer,
Tamil Nadu Electricity Board,
NPKRR Maaligai, 144, Anna Salai,
Chennai - 600 002.

4.The Executive Engineer/O&M/Adyar,
C.E.D.C./South,
110KV Tidel Park SS Complex,
Tharamani Road, Chennai 600 113.

5.Assistant Executive Engineer/O&M/Adyar,
C.E.D.C./South,
110KV Tidel Park SS Complex,
Tharamani Road, Chennai 600 113.

6.J.Amsaveni

7.A.Sangeetha

.. Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Mandamus to direct the 1st to 5th respondents to remove the illegal electrical service connections i.e., (1)328-002-703, (2)328-002-1753 and (3)328-002-995 which are in the name of 6th & 7th respondents and used for shops Fab India Shop and Niveda Real Estate illegally put-up on the petitioners land Plot No.27, in Survey No.2/1B3A part 1 (new survey No.2/40), East Coast Road, Panaiyur Village, Sholiganallur Taluk, Chennai - 600 119 within a time fixed by this Court.

For Petitioners .. Mr.T.Karunakaran
For Respondents 1 to 5 ... Mr.S.K.Rameshuwar
For 6th Respondent .. Mr.R.Thiagarajan
For 7th Respondent ... Mr.K.C.Vinoth

ORDER

Heard the learned counsel for the petitioners and the learned counsel for the respondents.

2.The petitioners have filed this writ petition praying for issuance of a writ of mandamus to direct the respondents 1 to 5 to remove the illegal electrical service connections i.e., (1) 328-002-703, (2)328-002-1753 and (3)328-002-995 which are granted in the names of respondents 6 and 7 in which two are in existence.

3.The case of the petitioners is that they have purchased the property by Sale Deed in 1993 registered as Document No.3124 of 1993 and they are sated to be the absolute owners of the property and in possession. Further, on account of the interference by the 6th respondent, the petitioners have filed O.S.No.179 of 2003 on the file of the Additional District Munsif, Alandur and obtained an order of interim injunction in I.A.No.898 of 2003 from in any manner interfering with the suit property. Further, the petitioners have also filed another suit in O.S.No.89 of 2004 on the file of the Additional District Munsif, Alandur and obtained an order of interim injunction in I.A.Nos.461 and 464 of 2004 restraining the 6th respondent from in any manner alienating or encumbering the suit property. Ultimately, the suit in O.S.No.89 of 2004 was decreed and the Appeal filed before the Sub Court, Tambaram in A.S.No.1 of 2012 was also dismissed. It is stated that second appeal has been preferred and the same is pending and there are no interim orders. In the meantime, the petitioners came to know that the 6th respondent unauthorisedly has put up construction in the

property, apart from fraudulently creating transaction in favour of the 7th respondent and this has led to filing of a criminal complaint before the police in which FIR has been stated to be registered. Further, the petitioners moved this Court by way of a writ petition in W.P.No.28448 of 2015 praying for issuance of a writ of mandamus to direct the respondent/Corporation of Chennai to demolish the unauthorised construction put up in Plot No.27. In the said writ petition, the petitioners 6 and 7 herein were the respondents 4 and 5. The said writ petition was disposed of by the Hon'ble Division Bench by order dated 10.09.2015 by issuing the following direction.

"4.Insofar as the alleged illegal construction made by respondents 4 and 5, it is for the authorities to examine the same and take consequential action. However, the question, which still remains, is as to whether the authorities can enter into the property belonging to the petitioners, which is in dispute. This will not stand in the way of the authorities in taking appropriate action as provided under the provisions of law."

4.It appears that the Corporation of Chennai has taken action and the counsel for the petitioners has also been intimated by communication dated 16.12.2015 informing him about the notice issued to the 6th respondent dated 04.11.2015 and copy of such notice was also been enclosed along with the letter and communicated to the counsel. In the said notice issued by the Corporation of Chennai, the 6th respondent has been informed as follows:

"The building at the site under reference was inspected. No approved plan has been exhibited or produced when called for. Therefore, you are requested to produce a copy of the approved plan in original for verification and if no approved plan is available or the construction is in deviation to the approved plan, you are requested to confirm it in writing the fact of having done so, within 3 days from the date of receipt of this notice.

It is to be noted that, if the building has been constructed without any permission/plan approval, you are requested to restore the building to its original condition before the said development took place within a period of one month and if the building has been constructed is in contravention to any planning permission granted, you are requested to secure the

building in compliance with the permission granted within a period of one month.

You may also note that once the building is sealed, it is the responsibility of the owner / occupier to provide security for such sealed premises, as per the provisions of the said Act."

5. From the above, it is seen that action has been initiated by the Corporation of Chennai against illegal construction and proceedings are now going on. In the meantime, the petitioners now seek for a direction to disconnect the electricity supply, which has been illegally obtained. Unfortunately, in the counter affidavit filed by the Assistant Executive Engineer/O & M/Adyar, it is not stated as to on what basis, the electricity connection was granted in favour of the 6th and 7th respondents. The 5th respondent is bound to state the full facts, but unfortunately, the 5th respondent has not stated on what basis the electricity connection has been granted. However, it is admitted that the connections have been effected during 2003, 2010 and 2006 respectively.

6. Be that as it may, it has to be seen as to whether the construction is an authorised construction in accordance with the building planning permission and then alone, electricity service connection could have been given and however, this fact has not been verified. Be that as it may, the representation given by the petitioners is now pending consideration of the respondent authorities and along with the representation, the petitioners have enclosed the copies of the documents as well as state full facts as to the basis of their claims. Therefore, it would be appropriate for the authority to consider the representation. However, in view of the observations made in this order, this Court is of the view that the Executive Engineer/O & M/Adyar (4th respondent) should consider the representation on merits and in accordance with law, after notice to the petitioners as well as the respondents 6 and 7. It is also bound to the 4th respondent to verify from the Corporation of Chennai as regards the action taken by them pursuant to the notice issued to the 6th respondent dated 04.11.2015 (referred supra). After hearing the parties in person and after considering the entire documents, the 4th respondent shall pass a reasoned order on merits and in accordance with law. The above exercise shall be completed within a period of four weeks from the date of receipt of a copy of this order.

7.The Writ Petition is disposed of, with the above observations. No costs.

-s/d-
Assistant Registrar (CCC)
dt:22/01/2016

True Copy

Sub-Assistant Registrar

Sgl

To

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+5 ccs to Mr.T.Karunakaran Advocate sr.1341
+1 cc to Mr.S.K.Rameshwar, Advocate sr.1333
+1 cc to M/s.N.R.Jasmine Padma Advocate sr.1767

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