

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.09.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G. RAMESH
and
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

Writ Appeal No.1200 of 2016
and
CMP.Nos.15377 and 15378 of 2016

S.Sundari Appellant/Petitioner

Vs.

1. The Chairman,
Tamil Nadu Electricity Board,
Anna Salai, Chennai -2.
2. The Junior Engineer,
Operation & Maintenance,
Tamil Nadu Electricity Board,
Gopi Electricity Distribution Circle,
Bhavani - 638 301.
3. S.Periyasamy
4. The Superintendent of Police,
Erode District. ... Respondents/Respondents

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 12.09.2016 made in W.P.No.31580 of 2016 passed by the learned Single Judge of this Court.

W.P.No.31580 of 2016 : Petition under Article 226 of the Constitution of India, praying for issue of a Writ of Certiorarified Mandamus to call for the records from the 2nd respondent pertaining to the impugned order Ka. No. U. MI. PO/E PE/ME/PA/KO.CASE/No.054/2016 dated 25/26.5.2016, quash the same and consequently direct the 1st and 2nd respondents to provide electricity connection to the petitioners premises at 6/176A, OM Shakthi Nagar, Thalapaiyanur, Thottipalayam Post, Bhavani, Erode District.

For Appellant : Mr.P.Vijendran
For R1 & R2 : Mr.S.K.Rameshwar
For R4 : Mr.K.Dhananjayan,
Special Government Pleader

JUDGMENT

(Order of the Court was made by S.VAIDYANATHAN,J.)

Being aggrieved over the order of the learned Single Judge of this Court dated 12.09.2016 in W.P.No.31580 of 2016, the writ petitioner is before this Court with the present appeal.

2. Few facts, which led to filing of this writ appeal, are as follows:

Both the appellant and the third respondent are adjacent land owners of the property in S.Nos.521/1-A and 521/2. The third respondent had filed a suit in O.S. No. 60/2008 before the Sub Court, Bhavani, seeking declaration, mandatory injunction and delivery of possession against the appellant. After contest, the said suit was decreed. Aggrieved by the said decree and judgment dated 12.08.2010, the appellant had filed an appeal in A.S.No. 89 of 2010, which was dismissed on 07.04.2011. As against the same, the appellant had approached this Court with Second Appeal No.1068 of 2011, which was also dismissed on 31.10.2011. Thereafter, the appellant has filed an application to review the judgment made in S.A. No. 1068 of 2011, along with a delay condonation petition, which is pending before this Court. In the mean while, to execute the decree obtained, the third respondent is said to have filed E.P. No. 20 of 2011 and the same is also pending. In such circumstances, the appellant has requested the second respondent to provide electricity service connection to the disputed property. By order dated 25.05.2011, the second respondent rejected the appellant's request for electricity connection, citing the Civil Court's decree. The said order was challenged before this Court in W.P. No. 16196 of 2016, which was disposed of, with a direction to the appellant to appear before the first respondent therein and produce all the necessary documents and thereafter, the first respondent therein was directed to consider the same, after issuing notice to the appellant as well as to the third respondent and to pass appropriate orders. Pursuant to the same, the appellant has approached the second respondent with all relevant materials. However, the second respondent, by order dated 25/26.05.2016, rejected the request of the appellant. Challenging the same, the appellant has filed a writ petition in

W.P.No.31580 of 2016, which was dismissed by the learned single Judge of this Court, by the impugned order. Hence, this writ appeal by the writ petitioner.

3. Mr.P.Vijendran, learned counsel for the appellant submitted that the learned single Judge of this Court has exceeded his jurisdiction in granting the relief and that, this Court ought not to have gone into the issue, when the Execution Petition is pending. In support of his contentions, he relied on the following judgments:

(i) In the decision reported in (1992) 1 SCC 380 (Chandigarh Administration and others v. Manpreet Singh and others), at paragraph Nos.21 and 22, the Hon'ble Supreme Court has held as follows:

"21. While this is not the place to delve into or detail the self-constraints to be observed by the courts while exercising the jurisdiction under Article 226, one of them, which is relevant herein, is beyond dispute viz., while acting under Article 226, the High Court does not sit and/or act as an appellate authority over the orders/actions of the subordinate authorities/tribunals. Its jurisdiction is supervisory in nature. One of the main objectives of this jurisdiction is to keep the government and several other authorities and tribunals within the bounds of their respective jurisdiction. The High Court must ensure that while performing this function, it does not overstep the well recognised bounds of its own jurisdiction.

22. Though we are satisfied that the orders and directions made by the High court are totally unsupportable in law, the subsequent developments dissuade us from allowing these SLPs....."

(ii) The Apex Court in the authority reported in (1999) 6 SCC 34 (State of U.P and others v. Sunanda Prasad and another), has observed as follows:

"4. We have no doubt in our mind that the High Court exceeded its jurisdiction in entertaining a writ application when the legality of the order of transfer is a subject-matter of a pending proceeding before the Central Administrative Tribunal and the Tribunal has passed an order of status quo. If the appellant authority has violated any interim direction of the Tribunal, the appropriate remedy is to file an application for contempt and we are told that such an application has been filed, which is pending before the Tribunal. The Tribunal has also fixed up the

hearing of the matter on 16.07.1999."

(iii) In the judgment reported in (2015) 5 SCC 423 (Radhey Shyam and another v. Chhabi Nath and others and Jagdish Prasad v. Iqbal Kaur and others), the Hon'ble Supreme Court was of the view that judicial orders of civil courts are not amenable to a writ of certiorari under Article 226. We are also in agreement with the view of the referring Bench that a writ of mandamus does not lie against a private person not discharging any public duty. Scope of Article 227 is different from Article 226.

4. We have heard Mr.S.K.Rameshwar, learned standing counsel for respondents 1 and 2 and Mr.K.Dhananjayan, learned Special Government appearing for the fourth respondent, on the submissions made by the learned counsel for the petitioner and also perused the materials placed before us.

5. With the innocuous prayer, the appellant has approached this Court seeking a direction to provide electricity service connection to her premises at No.6/176A, Om Shakthi Nagar, Thalapaiyanur, Thottipalayam Post, Bhavani, Erode District. Admittedly, the third respondent has succeeded before the civil court, however, he is languishing without the Civil Court's decree being implemented.

6. It is the specific contention of the learned counsel for the appellant that the learned Single Judge of this Court has exceeded his jurisdiction, when the Execution Petition is pending before the Executing Court. If the same is accepted for the sake of argument, the relief of the appellant could not be granted in the writ petition, as the second respondent has rightly passed the order dated 25/26.5.2016, rejecting her request. Further, the Civil Court has granted some reliefs to the third respondent, as such, respondents 1 and 2 have no authority or right to grant electricity service connection to the appellant's premises. The appellant cannot blow hot and cold against the same Civil Court's order on the one side contending that the learned Single Judge has exceeded his jurisdiction pending execution proceedings and on the other side for a direction to the 2nd respondent to provide electricity connection.

7. While the order was being dictated, learned counsel appearing for the appellant raised an objection that since this Court is not inclined to hear the appellant as it has already predetermined the issue, the appellant has no trust in this Bench and, therefore, requested that this matter may be posted before some other Bench.

8. It is trite expression that for questions posed by the Bench, it is the bounden duty of the learned counsel to clarify the issues. Having failed in his endeavour to satisfy the Bench with regard to the queries raised, the aspersions thrown upon the Bench by the learned counsel for the appellant fall within the boundaries of contempt of court. After submitting the arguments and on the verge of receiving an unfavourable order at the hands of the Bench, if the request of an Advocate to list the matter before some other Bench is acceded to, it would be nothing by creating an precedent for other legal practitioners to follow, which practice would be unhealthy to the institution as a whole.

9. In Gujarat Electricity Board vs. Atmaram Sungomal Poshani, (1989) 2 SCC 602, the Apex Court, while considering the scope of the party in choosing the Bench, other than tenable grounds, held as under:

"3. This appeal came up for hearing before us on 28th January, 1988 and on that day Sh. B.K. Mehta, Advocate appearing for the appellants and Sh. Vimal Dave, Advocate, appearing for the respondent were fully heard. After hearing learned counsel for the parties we were satisfied that the learned Single Judge as well as the Division Bench both had committed error in allowing the writ petition and granting relief to the respondent. We expressed our view in the Court and suggested to Mr. Vimal Dave, counsel for the respondent, that if he agreed the original writ petition of the respondent could be dismissed without directing him to refund the amount which he had already been paid by the appellants in pursuance to the orders of the High Court and of this Court as during the pendency of the appeal, the appellants were directed by means of interim order of this Court to continue to pay salary to the respondent which was being paid to him regularly. The hearing was adjourned to enable Sh. Vimal Dave, to obtain instructions from the respondent. The appeal came up for hearing before us on 16.2.1988 when another counsel appeared to argue the appeal on behalf of the respondent on merits. We refused to hear the counsel as we had already completed hearing. Thereupon, the respondent himself appeared in person and sought permission to make his submissions personally. We refused to accede to

his request as oral hearing had already been completed and the matter had been adjourned only to enable the respondent's counsel to obtain instructions. However, in the interest of justice we permitted the respondent to file written submissions. if any, in support of his case. Thereafter, the case was listed several times but no written submissions were filed instead the respondent adopted an unusual course by sending an application by post expressing his no confidence in us with a prayer to transfer the case to some other Bench. Since this was unusual, uncalled for and unjustified request we ignored the same and reserved the order. We are constrained to note that instead of utilising the opportunity granted to him for filing written submissions the respondent has mis- used adjournments for the purposes of raising frivolous objections for getting the case transferred to some other Bench. No party is entitled to get a case transferred from one Bench to the other, unless the Bench is biased or there are some reasonable grounds for the same, but no right to get a case transferred to any other Bench, can legitimately be claimed merely because the judges express opinion on the merits of the case on the conclusion of hearing. In the instant case on the conclusion of the oral hearing we had expressed our opinion on 28.1.1988 in the open court, that we were inclined to allow the appeal and set aside the order of the High Court and dismiss the writ petition but taking a sympathetic view we requested Sh. Vimal Dave, learned counsel appearing for the respondent to obtain instructions as aforesaid. The opportunity granted to the respondent has, however, been misused by raising mischievous and frivolous objections instead of filing written submissions. The respondent's prayer is accordingly rejected and since oral hearing has already been completed, and in spite of several adjournments respondent failed to appear before the Court or to file the written submissions we proceed to decide the case on merits."

10. In Mayavaram Financial Corporation Ltd. vs. Registrar of Chits, Pondicherry, (1991) 2 L.W. 80, a Full Bench of this Court, while answering a reference with regard to permissibility

of hearing of a review petition vis-a-vis the scope of the Hon'ble Chief Justice in the matter of allotment, held as under:

"26(3). The Hon'ble The Chief Justice has the inherent power to allocate the judicial business of the High Court including who of the Judges should sit alone and who should constitute the Bench of two or more Judges. No litigant shall, upon such constitution of a Bench or allotment of a case to a particular Judge of the Court will have a right to question the jurisdiction of the Judges or the Judge hearing the case. No person can claim as a matter of right that this petition be heard by a single Judge or a Division Bench or a particular single Judge or a particular Division Bench. No Judge or a Bench of Judges will assume jurisdiction unless the case is allotted to him or them under the orders of the Hon'ble the Chief Justice."

11. In M.Ranka vs. Hon'ble Chief Justice of Tamil Nadu, (1991) 2 L.W. 98, a learned single Judge of this Court, while dealing with a matter relating to posting/non-posting of matters before a particular Judge, held as under:

"12. Looking at from another angle also, I do not think a writ can be issued as prayed for by the petitioner. Admittedly, the above mentioned writ appeals, in which only stay was granted by the Division Bench consisting of respondents 2 and 3 herein, as well as in two other items which appeared on other dates, as contended by the petitioner before me, were all disposed of by another Division Bench. No case is pending before the Division Bench consisting of respondents 2 and 3 herein, in which the petitioner appears as a party or as counsel. It is also very clear that the two matters in which admission was sought by the petitioner, were disposed of by another Division Bench of this Court. When those two matters can be put for re-hearing before another Division Bench. Taking the view, that nothing remains to be disposed of, I think that the issuance of a writ will be futile and the writ petition cannot be entertained. When it is settled law that no person in such matters can ask for the posting of his case before a Judge sitting

single or before a particular Division Bench as a matter of right, I do not think a mandamus can be issued on the facts and circumstances of the case. Simply because a writ petition is maintainable against the orders made by the first respondent herein on the administrative side, it does not mean that a writ can issue as asked for by the petitioner, in such matters.

13. In W.P.SR.No.60735 of 1990, by order dated 12.09.1990, S.Ramalingam, J., while considering the matter before him regarding its maintainability has observed as follows:

" ... when work is so assigned, it is for the learned Judges to decide whether, for some reasons, they should not hear the cases so assigned to them and if they decide so, they may direct the papers to be placed before My Lord, the Chief Justice for posting such cases before some other Bench. In the extraordinary circumstances, the counsel himself may make a special request that his case may not be heard by a particular Bench and if that request is made bonafide, the learned Judges themselves direct the papers to be placed before My Lord, the Chief Justice for orders regarding the posting of the matter before some other Bench. It is also open to a party or a counsel to make a special mention before My Lord the Chief Justice so that the cases pending before one Bench may be posted before another Bench and it is for My Lord the Chief Justice to satisfy about the reasons given for such postings..."

12. Keeping in mind the above position of law laid down, though this Court is well within its powers to direct the Bar Council to initiate action for the slanderous statement of the learned counsel for the appellant, however, keeping in mind the emotional disturbance and the future of the learned counsel in this profession and with a hope that wisdom will prevail upon him, while this Court is not initiating any action, however, makes it clear that it is open to the appellant to approach the Hon'ble the Chief Justice for posting the matter the before any other Bench, in case he feels that this Court has not heard him effectively. It is not open to the learned counsel for the appellant to adopt pressure tactics upon the Bench, to which this Bench will not succumb. The act of the learned counsel for

the appellant in leaving the Court Hall after throwing the bundle, is an act, wholly unbecoming of a legal practitioner and such an act is highly deprecated.

13. In Ranka's case cited supra, the minimum standards required of a legal practitioner in upholding the majesty of law has been dealt with and the same is extracted hereunder:

"16. ...

The majesty of law and the dignity of the courts cannot be maintained unless there is mutual respect between the Bench and the Bar and the counsel act in full realisation of their duty to the court alongside their duty to their clients when their pleas and arguments do not find acceptance with the court. I am also of the view that neither rhetoric nor tempestuous arguments can constitute the sine qua non for persuasive arguments. The counsel are expected to keep the sense of detachment and non-identification with the causes espoused by them. ..."

14. This Court, having heard the learned counsel for the appellant at length, inspite of the act of the appellant, proceeds to decide this matter on merits.

15. A reading of the impugned order reveals that the learned Single Judge of this Court has narrated the entire facts of the case and discussed the same threadbare and, thereafter, dismissed the writ petition, by passing a speaking order. For better appreciation, the relevant portion of the impugned order are extracted hereunder:

"9..... When the Civil Court, where the parties have right to raise their pleadings and adduce evidence, both oral and documentary, had already gone into the issue, and granted the relief to the 3rd respondent, thereby negating the claim of the petitioner, which was also confirmed by the Appellate Court and further by this Court, it is not open to the petitioner to re-agitate the matter by filing this writ petition under Article 226 of the Constitution of India, which is nothing but clear abuse of process of law.

10. Further, it is curious to note that, even after winning before all the Forums including the Highest Forum of the State, namely, this Court, the 3rd respondent seems to have been compelled to file another suit in O.S. No. 158 of 2012, wherein the petitioner herein was arrayed as 3rd respondent along with Superintending Engineer, Tamil Nadu Electricity Board, Gobi Electricity Distribution Circle, Gobichettipalayam and Junior Engineer, Tamil Nadu Electricity Board, Bhavani West, Junior Engineer's Office, Bhavani, seeking permanent injunction from providing electricity connection to the house of the petitioner herein. The said suit was also decreed as early as on 28.11.2014.....

.....

However, even after two rounds of litigation, the 3rd respondent is unable to enjoy the fruits of the decree obtained by him as the petitioner herein has been filing suits and writ petitions abusing the process of law. From the above extract, it is clear that having suffered adverse decisions in the earlier round of litigation, upto this Court and also having suffered another decree in O.S. No. 158 of 2012, the petitioner cannot even approach this Court. If any electricity connection is given, as prayed for, it would amount to overturning the decree granted in O.S. No. 60 of 2008, as confirmed by the Appellate Court as well as by this Court and also the decree granted in O.S. NO. 158 of 2012. If the parties, who approach the Court and are successful in getting the relief sought, are unable to enjoy the same, even after lapse of 8 years, it would only drive them to approach thugs or indulge in highhandedness so as to execute the relief granted. Courts have come into existence only to safeguard the bona fide litigants and their rights. Therefore, litigants like the petitioner should not be encouraged, which would, otherwise, amount to allowing abuse and misuse of process of law. It is apparent that the petitioner has been abusing the process of law by filing writ petitions after writ petitions thereby preventing the 3rd respondent from executing the decree obtained by him. In such view of the matter, the impugned order

passed by the 2nd respondent is sustainable and the petitioner is not entitled to any electricity connection at all, as the decrees are operating against the petitioner. Hence, the writ petition is dismissed. No costs. Connected W.M.P.s are closed.

11. Though a heavy amount has to be slapped on the petitioner as costs, due to judicial restraint, this Court is not imposing any cost on the petitioner.

12. The decrees passed by the Courts below, as confirmed by this Court, are part of justice delivery system and if any party tries to abuse it, the same should have to be viewed very seriously. This Court, has to, not only see that the orders passed by this Court are complied with, but it has also got an obligation to see that the orders passed by the Lower Courts are respected, acted upon and implemented. In this case, the decree passed by the Trial Court, in O.S. No. 60 of 2008 on 12.08.2010 as confirmed by this Court in S.A. No. 1068 of 2011 by judgment dated 31.10.2011, has not been, till date, allowed to be executed by the petitioner, in E.P. No. 20 of 2011, by filing a petition under Section 47 CPC as usual. Section 47 CPC is regularly employed by judgment debtor (s) to prevent the decree holder (s) from executing the lawful decree for years together. In this case, even after getting decree in 2010, the 3rd respondent could not get possession of the property. Hence, the Executing Court is directed to dispose of the petition filed under Section 47 CPC filed by the petitioner in the above said E.P. within four weeks from the date of receipt of a copy of this order. The Superintendent of Police, Erode District, is directed to give police protection to enable the 3rd respondent to take possession of the property in question within four weeks thereafter. After putting the 3rd respondent in possession, in due execution of the decree, the 4th respondent is directed to file a compliance report before this Court."

16. On a consideration of the entire factual matrix as also the impugned order, this Court is armed with favourable order from the Civil Court, the learned Judge, in order to give finality to the litigation, has observed in the order extracted above to the effect that 'any judgment or decree shall not be

posthumous one'. We do not find any error in such a finding. Court is a temple of justice, where relief has to be granted to a party on the basis of the genuineness of the case. In the above backdrop, considering the entire case on the basis of the records, this Court finds no reason to interfere with the order impugned.

17. In fine, the Writ Appeal is dismissed, as devoid of merits. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

rk/aeb

To :

1. The Chairman,
Tamil Nadu Electricity Board,
Anna Salai, Chennai -2.
2. The Junior Engineer,
Operation & Maintenance,
Tamil Nadu Electricity Board,
Gopi Electricity Distribution Circle,
Bhavani - 638 301.
3. The Superintendent of Police,
Erode District.

+1cc to Mr.P.Vijendran, Advocate, S.R.No.54934

W.A.No.1200 of 2016

SV(CO)
CA(29/09/2016)

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