

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.09.2016

CORAM:

THE HON'BLE MR.JUSTICE N. KIRUBAKARAN

W.P. 32570 of 2016
and WMP.No.28222 of 2016

R. Chandraiyan .. Petitioner

Vs

1. The District Collector,
Kancheepuram,
Kancheepuram District.

2. The Assistant Engineer,
Operation/maintenance,
TANGEDCO,
Margaral.

3. R. Srinivasan .. Respondents

Prayer: This petition filed under Article 226 of the constitution of India praying to issue a Writ of Certioarified Mandamus, to call for the records pertaining to the 2nd respondent's letter No. 310/2015 dated 27.03.2015 and quash the same and direct the 2nd respondent to shift the low tension E.B line 50 meters away from the leased out area.

For Petitioner : Mr.S.Gopinathan

For Respondents : Mr.M.Elumalai,
Government Advocate for R1

Mr.S.K.Raameshuwar,
Standing Counsel for R2

R-3 notice dispensed with

ORDER

The petitioner is a lessee of properties namely comprised in Survey Nos.659, 660, 662, 668/1, 649/3, 649/5, 663, 665, 657/2B2 and 657/4, totally to an extent of 8.38.00 hectares situated at Margaral "B" Village, Kancheepuram Taluk and District, under the

lease agreement dated 18.09.2014, under the third respondent, who is the owner of the said lands. The lands have been taken up for the purpose of quarrying rough stones from the said lands.

2. The petitioner applied for permission to start the quarry business from the first respondent District Collector, who also gave permission on 26.03.2015, however with certain conditions. The first condition imposed by the first respondent, for giving permission is to shift the Low Tension E.B line 50 meters away from the periphery of the applied area.

3. To comply with the aforesaid condition imposed by the District Collector, the petitioner applied to the Second respondent to shift the said line. Without shifting the said line, the 2nd respondent rejected the petitioner's request, based on the objection filed by the 3rd respondent on 16.03.2015. The said order is being challenged before this Court.

4. Heard Mr.S.Gopinathan, learned counsel for the petitioner, Mr.M.Elumalai, Government Advocate for the first respondent and Mr.S.K.Rameshuwar, learned Standing Counsel, who took notice on behalf of the second respondent. Since this Court is of the view that the matter has to be remanded to the 2nd respondent for fresh consideration, since the petitioner was not afforded an opportunity of personal hearing before passing the impugned order and this Court is further of the view that after hearing both the petitioner as well as the 3rd respondent only, order has to be passed on merits, notice to the third respondent is dispensed with.

5. It is seen from the records that the very purpose of the lease agreement between the petitioner and the 3rd respondent is to quarry the rough stones and as per the lease agreement, the monthly lease amount is a sum of Rs.1,00,000/- (Rupees one lakhs only). It is also evident from the records that while granting permission on 26.03.2015, the District Collector imposed certain conditions on the petitioner, and one of such is to shift the low tension E.B. line. In compliance of the said condition, the petitioner had also applied for shifting of low tension line. If an objection is received from the 3rd respondent, the proper course ought to have been adopted by the 2nd respondent is to first hear both the petitioner as well as the 3rd respondent, and then to decide the matter. In that event, both the petitioner as well as the 3rd respondent can put forth their respective stand before the 2nd respondent and thereafter, the matter could have been finalized. Merely because the objection was filed, it would not enable the second respondent to mechanically reject the petitioner's request. Therefore, this Court is of the view that the order passed by

the second respondent is unsustainable and the same is liable to be set aside and the matter has to be remanded to the 2nd respondent for fresh consideration.

6. Accordingly, the impugned order dated 27.03.2015 passed by the 2nd respondent is set aside and the matter is remanded to the 2nd respondent to issue notice to both the petitioner as well as the 3rd respondent and after hearing them together, pass orders on merits within a period of four weeks from the date of receipt of a copy of this order.

The writ petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

rg/rts

To

1. The District Collector,
Kancheepuram,
Kancheepuram District.
2. The Assistant Engineer,
Operation/maintenance,
TANGEDCO, Margaral.

1 cc to Mr.S.Gopinathan, Advocate, sr.52882
1 cc to The Government Pleader, sr.53115

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gr co
kra 17.10.2016

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