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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

CAV ON 02/12/2016

DATED: 15/12/2016

CORAM:

THE HON'BLE MR.JUSTICE K.KALYANASUNDARAM

W.P.No. (MD) .21056 of 2015

AND

M.P. (MD) No.1 of 2015

P.Karupppiah

.. Petitioner

Versus

1. The Superintendent of Police,
Sivagangai District, Sivagangai.

2. The Sub-Inspector of Police,
Velayuthapattinam Police Station,
Devakottai Taluk,
Sivagangai District.

3. The Assistant Engineer,
Rural (South),
Tamil Nadu Generation and Distribution Corporation,
(TANGEDCO), Devakottai, Sivagangai District.

4. Thiru.SP.Rajendiran

5. Tmt.Meenakshi

6. Tmt.Selvi

.. Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus to call for the records of the second respondent herein nil, dated and quash the same and consequently direct the second respondent herein to give police protection to the third respondent herein to erect electric pole in S.No.84 in Kottavayal Village, Periyakarai Post, Devakottai Taluk, Sivagangai District.

For Petitioner : Mr.K.Hema Karthikeyan for
Mr.Senguttarasan,

For Respondents : Mr.K.P.Krishnadoss
Government Advocate for R1 and R2
Mr.S.M.S.Johny Basha for R3
Mr.H.Mohammed Imran for R4
No appearance for R5 and R6

**ORDER**

The prayer in this Writ Petition is for issuance of a Writ of Certiorarified Mandamus to quash the order of the second respondent and for a direction to the second respondent to give police protection to the third respondent herein to erect electric pole in S.No.84 in Kottavayal Village, Periyakarai Post, Devakottai Taluk, Sivagangai District.

2. The case of the petitioner is that he had constructed a house in his patta land and applied for electricity service connection to the third respondent herein. After receipt of the application, the third respondent inspected the petitioner's house and also informed that they have to lay a pole in Survey No.84 to give a service connection to the petitioner's house. When the third respondent had taken steps to erect a pole in Survey No.84, which is classified as Oorani Poramboke and they had to cut and remove the standing trees therein. So, the Revenue Divisional Officer, Devakottai in his proceedings, dated 09.06.2015 granted permission to the Tahsildar, to remove the standing trees and accordingly, the trees were removed. Subsequently, when the third respondent was erecting a pole, the respondents 4 to 6 herein filed a Suit in O.S.No.58 of 2015, before the District Munsif Court, Devakottai for permanent injunction, restraining the Electricity Board from erecting a pole in the disputed land. Along with the Suit, they also filed an Application in I.A.No.477 of 2015, seeking interim injunction.

3. It is the case of the petitioner that initially, the learned Munsif granted an order of status-quo, ex-parte, but later, after hearing the petitioner, interim order was vacated and the Application was dismissed on 09.07.2015. Since the respondents 4 to 6 did not file any appeal, the order has become final.

4. Mr.Senguttarasan, learned counsel for the petitioner would submit even after dismissal of the injunction application, the respondents 4 to 6 herein came to the spot and interfered with the officials while erecting the pole. So, the petitioner sent a representation to the respondents 1 and 2 seeking police protection. After receipt of the representation, without conducting any enquiry, the third respondent rejected the request of the petitioner, citing pendency of the Suit in O.S.No.58 of 2015 before the District Munsif Court, Devakottai. It is further submitted by the learned counsel for the petitioner that the mere pendency of the Suit, cannot be a ground to reject the request of the petitioner, especially, when the interim injunction was already dismissed and it has reached finality.



5. Reliance is placed on the judgment of this Court in the case of **T.M.Prakash Vs. District Collector, Tiruvannamalai District [(2014) 1 MLJ 261]** and **G.Murugan V. Chairman, Tamil Nadu Electricity Board [(2014) 3 MLJ 851]**, to contend that this Court has directed the Electricity Board to provide electricity service connection even to the encroachers of the Government poramboke lands and non supply of electricity would be violative of fundamental right as guaranteed under Article 21 of the Constitution of India.

6. Heard Mr.K.P.Krishnadoss, learned Government Advocate appearing for the respondents 1 and 2 and Mr.S.M.S.Johny Basha, learned counsel appearing for the third respondent and Mr.H.Mohammed Imran, learned counsel appearing for the fourth respondent.

7. In **(2014) 1 MLJ 261**, this Court directed the Electricity Board to provide electricity service connection to the petitioner therein, who have occupied the Government poramboke land and in that judgment, it has been held as follows:-

" 67. When right to education upto the age of 14 years is a fundamental right, when right to health is also recognised as a right to life, under Article 21 of the Constitution of India, access to electricity supply should also be considered as a right to life, in terms of Article 21 of the Constitution of India. The respondents ought to have addressed all the issues, instead of banking on the Committee's decision, which in the humble opinion of this Court, is not in aid of human right, but inapposite to the need for, providing the basic amenity, electricity. The authorities ought to have considered, whether it would be effective enforcement of Article 21 or Article 21-A of the Constitution of India, while denying the petitioners, access to electricity supply.

68. The respondents ought to have visualised the difficulties of the women, children and aged persons, living in the huts for several years, without electricity. Electricity supply is an essential and important factor for achieving socio-economic rights, to achieve the constitutional goals with sustainable development and reduction of poverty, which encompasses lower standards of living, affects education, health, sanitation and many aspects of life. Food, shelter and clothing alone may be sufficient to have a living. But it should be a meaningful purpose. Lack of electricity denies a person to have equal opportunities in the matter of education and consequently, suitable employment,



health, sanitation and other socio-economic rights. Without providing the same, the constitutional goals, like Justice, Liberty, Equality and Fraternity cannot be achieved.

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69. Right to electricity to a person in occupation of Government poramboke lands is recognised in the Distribution Code and it is integral to the achievement of socio-economic rights. It is extricably related to amoderate poverty. Electricity is an implicit component and facet of human right. In the light of the above discussion, the respondents ought to have come forward to provide electricity supply to the petitioners, instead of opposing the relief sought for.

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87. It is the fundamental duty of the respondents to show compassion to those who are living in huts and tenements for long number of years, taking into consideration their socio-economic disabilities, without electricity supply for many years. Preamble to the Constitution of India guarantees right of every person to justice, social, economic and political. When socio and economic justice is the mandate of the Constitution of India, it is a traversity of justice to deny electricity to the petitioners. Income is one of the sources for achieving an egalitarian society and it is the fundamental right to decent living. Providing electricity to the poor, subject to the satisfying conditions, as per the electricity laws, would reduce the economic imbalance and help the under privileged. The authorities should be pragmatic and realistic to the constitutional goals. The weaker sections and under privileged do not crave, in their heart, for power in hierarchical positions, they only want electric power to have "lighting" in their house. Hut dwellers cannot expect and afford luxury. But for them, it is only a basic amenity. Electricity supply should, not only be extended to pattadars or the owners of lands, but it should also be extended to the poor and the needy, who live in government poramboke lands, when they substantiate occupation, for a considerable period."

The same view was taken by this Court in **(2014) 3 MLJ 851**.

8. In the case on hand, it is not in dispute that the petitioner has constructed a house in his patta land and the house was also assessed and the petitioner has paid the property tax on 10.07.2011. It is also not in dispute that area where the third respondent has proposed to erect a pole to provide service



connection to the petitioner is described as Oorani poramboke in the Revenue records. Standing trees therein were removed as per the order of the Revenue Divisional Officer, Devakottai, dated 09.06.2015 and the injunction application filed by the respondents 4 to 6 herein in I.A.No.447 of 2015 came to be dismissed on 09.07.2015 and the Suit is pending.

9. This Court in the above cited judgments having categorically held that the electricity supply is a basic amenity and refusal to provide electricity service connection would violate the fundamental rights guaranteed under Article 21 of the Constitution of India, directed the Electricity Board to give service connection who have constructed houses in Government poramboke lands. In the instant case, admittedly, the petitioner constructed a house in his patta land. So, applying the dictum of this Court, the petitioner is entitled for service connection to be provided by the Electricity Board.

10. It is seen that the second respondent passed the impugned order refusing to give police protection to the petitioner mainly on the ground that the Suit filed by the respondents 4 to 6 in O.S.No.58 of 2015, before the District Munsif Court, Devakottai is pending. The impugned order cannot be sustained for the reasons firstly, it came to be passed in violation of principles of natural justice, without affording an opportunity to the petitioner and mere pendency of the Suit cannot be cited to depriving the petitioner from enjoying the basic amenity i.e, supply of electricity.

11. In such view of the matter, the Writ Petition is allowed and the impugned order is set-aside and the respondents 1 and 2 are directed to provide police protection to the third respondent herein to erect electric pole in S.No.84 in Kottavayal Village, Periyakarai Post, Devakottai Taluk, Sivagangai District, as per the representation, dated 24.07.2015. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/
Assistant Registrar(RTI)

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Sub Assistant Registrar

To

1.The Superintendent of Police, Sivagangai District, Sivagangai.

<https://hcservices.ecourts.gov.in/hcservices/>

2.The Sub-Inspector of Police, Velayuthapattinam Police Station,
Devakottai Taluk, Sivagangai District.



3.The Assistant Engineer, Rural (South),
Tamil Nadu Generation and Distribution Corporation,
(TANGEDCO), Devakottai, Sivagangai District.

+1cc to M/s.K.Hema Karthikeyan, Advocate, in SR No.80916.

+1cc to M/s.Ajmal Associates, Advocate, in SR No.80444.

+1cc to Special Government Pleader in SR.No.80875.

order in
W.P.No.(MD).21056 of 2015
& M.P.(MD)No.1 of 2015
15/12/2016

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