

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.09.2017

Coram

THE HON'BLE MR.JUSTICE RAJIV SHAKDHER
&
THE HON'BLE MR.JUSTICE ABDUL QUDDHOSE

W.A.No.146 of 2017
and C.M.P.Nos.360 to 362 of 2017
in W.A.No.SR 71505 of 2015

K.P.C.Kandasamy

... Appellant

Vs.

1.The Assistant Executive Engineer,
Tamil Nadu Electricity Board,
Big Bazar Street, West Branch,
Coimbatore Division,
Coimbatore District.

2.V.Muthammal (deceased)

3.V.Gururaj

4.V.Shanmuga Sundaram

5.Mrs.Padmavathi

6.Mrs.Sampoornam

7.Mrs.Bhuvaeshwari

8.Mrs.Jothimani

9.Mrs.Revathi

(Respondents 5 to 9 are impleaded
as per order dated 18.09.2017)

... Respondents

Writ Appeal filed under clause 15 of the Letter Patents against the
order dated 11.06.2015 made in W.P.No.19033 of 2010.

For Appellant : Ms.Hema Sampath
for Mr.S.Gunalan

For Respondents : Mr.S.K.Raameshwar for R1
Mr.T.Balaji for R3 & R4.

JUDGMENT

(Judgment of the Court was made by RAJIV SHAKDER, J)

C.M.P.Nos.360 to 362 of 2017 in W.A.No.SR 71505 of 2015

1. These are the three petitions filed for the following reliefs:

"C.M.P.No.360 of 2017 in W.A.No.SR 71505 of 2015

"... to condone the delay of 648 days in filing the application to set aside the abatement caused due to the death of the 2nd respondent in the above appeal in M.P.No.1 of 2015 in W.A.SR No.71505 of 2015.

C.M.P.No.361 of 2017 in W.A.No.SR 71505 of 2015

"...to set aside the abatement caused due to the death of the 2nd respondent in that above appeal in M.P.No.1 of 2015 in W.A.SR.No.71505 of 2015

C.M.P.No.362 of 2017 in W.A.No.SR 71505 of 2015

".... To bring on record of the respondent 5 to 9 as legal representatives of the deceased 2nd respondent and array them as respondents 5 to 9 in M.P.No.1 of 2015 in W.A.SR.No.71505 of 2015."

2. Notice in these petitions was issued by us on 06.09.2017. Upon notice

being issued, on 13.09.2017, Mr.Silambu Selvan, appeared for respondent Nos.5 to 9, who are the other legal heirs of the deceased respondent No.2.

3. To be noted, respondent Nos.3 and 4 are represented by Mr.T.Balaji, while respondent No.1 is represented by Mr.S.K.Rameshwar. No reply has been filed in respect of these petitions. None has objected to the prayer in the aforementioned petitions.

4. For the reasons given in the affidavit accompanying the petitions, these petitions are allowed.

W.A.No.146 of 2017

5. This is an appeal filed against the judgment and order of the learned Single Judge dated 11.06.2015. By virtue of the impugned judgment, the learned Single Judge has dismissed the writ petition of the appellant herein. In the writ petition, reliefs were, in effect, sought against the first respondent, i.e., Tamil Nadu Electricity Board (In short, "TNEB").

5.1. The appellant, in substance, sought a direction to call for the records of TNEB and thereafter, quash the order dated 27.04.2010, with the consequential relief of provisioning of electricity service connection to the building located at : 607, Thadagam Road, Ponniyarajapuram, Coimbatore (in short, "the subject property").

6. The appellant assails the judgment of the learned Single Judge on the ground that the learned single Judge failed to appreciate that since a "No Objection Certificate" (in short, "NOC") was not given by the owner of the subject property, upon an Indemnity bond being furnished, he ought to have been given electricity connection on the ground that he was in possession of the same.

7. To be noted, the appellant has instituted a suit for specific performance against the deceased respondent No.2 as also respondent Nos.3 and 4. The suit stand filed in the District Court at Coimbatore and is numbered as : O.S.No.450 of 2015. The suit is, admittedly, pending adjudication. The appellant claims that since, he was in possession of the subject property, he moved respondent No.1 for grant of electricity connection.

7.1. As alluded to above, the appellant has also filed an indemnity bond with TNEB; a fact, which is not disputed before us. TNEB, however, vide the impugned order dated 27.04.2010, evidently, returned the application of the appellant, on the ground that he was merely an agreement holder and that a sale deed had not been executed in his favour.

8. Aggrieved by this decision of TNEB, the appellant moved the learned Single Judge by way of a writ petition under Article 226 of the Constitution. The learned Single Judge, as indicated above, dismissed the writ petition. The reason, for which the learned Single Judge dismissed the writ petition, is

contained in paragraph Nos.6 and 7 of the impugned judgement. For the sake of convenience, the aforementioned paragraphs are extracted hereafter:

“....6. Heard the learned counsel for the parties and also perused the materials placed on record. The legal principle which could be deduced from the decision relied on by the learned counsel for the petitioner is that the Electricity Board is empowered to give power supply to the applicant without insisting on No Objection Certificate by accepting an Indemnity Bond in terms of Clause 6.04 of the Terms and Conditions of Supply of Electricity. Further in terms of Clause 27(2)(4) of the Tamil Nadu Electricity Distribution Code it is empowered to grant electricity supply after obtaining an Indemnity Bond in the statutory format and the electricity connection could be granted to the owner or occupier. In my view, the decision cannot be applied to the facts of this case, since the question as to whether the petitioner is in occupation of the premises is subject matter of dispute and pending before the civil Court.

7. The petitioner would state that he is in possession of the property pursuant to the sale agreement and he has filed a suit in O.S.No.450 of 2005 seeking a decree for specific performance. The written statement filed by the 3rd defendant shows that they have denied the allegation made by the petitioner that they handed over the possession. Since a suit is pending in respect of the subject property, the question whether the petitioner is in possession of the property or not

should be decided only by the civil Court. Hence, by applying the decision relied upon by the learned counsel for the petitioner, the respondent Board cannot be directed to grant electricity supply on execution of indemnity bond in favour of the Board. However, the petitioner is not without any remedy. It is open to the petitioner to move an appropriate application in the pending suit, in which the Electricity Board can also be made as a party respondent and seek for appropriate relief....”

(emphasis is ours)

9. When the appeal came up for hearing on 31.08.2017, we had asked the counsel for TNEB, to place a report before us as to who was in possession of the subject property. The matter was, thereafter, re-notified on 06.09.2017. The counsel for TNEB placed a report dated 05.09.2017 before us. The relevant portion of the report is set forth hereafter”

“....2. I respectfully submit that, based on the direction of Hon'ble High Court, I inspect the property in Door No.607, Thadagam Road, Coimbatore - 641 001 on 04.09.2017 and found that Mr.K.P.C.Kandasamy is in possession of the property and running the M/s.KPR IAS Academy Coaching Center in the premises.

3. I respectfully submit that, there is no Electricity service connection in the premises located at Door No.-607, Thadagam Road, Coimbatore - 641 001.

4. I respectfully submit that, there is no generator

set in the premises. But there is a Roof Top Solar Power Plant have been installed in the premises for Electricity supply for running M/s.KPR IAS Academy Coaching Center.”

10. A perusal of the report would show that upon inspection of the subject property, it was found that the appellant was in possession of the same and was running a coaching centre under the name and style : "KPR IAS Academy". Furthermore, the subject property, as is obvious from the extract set out above, had neither an electricity connection nor, was a generator found on the subject property. The subject property, evidently, was energized by use of " Roof Top Solar Power Plant".

10.1. Therefore, what emerges, clearly, is that the appellant, presently, is in physical possession of the subject property and is, even according to TNEB, running an Academy, albeit, with a help of a solar plant.

11. Concededly, an intending consumer can apply for being given an electricity connection under Clause 27(4) of the Tamil Nadu Electricity Distribution Code (in short, "the Code")¹, if the owner of the subject property

¹ **"27.Requisitions for supply of Energy.-**

(4) An intending consumer who is not the owner of the premises shall produce a consent letter in Form 5 of Annexure III to this code from the owner of the premises for availing the supply. If the owner is not available or refuses to give consent letter, the intending consumer shall produce proof of his/her being in lawful occupation of the premises and also execute an indemnity bond in Form 6 of the Annexure III to this code indemnifying the licensee against any loss on account of disputes arising out off effecting service connection to the occupant and acceptance to pay security deposit twice the normal rate."

refuses to give consent letter, i.e., an NOC, provided the following conditions are fulfilled : (i) The intending consumer produces proof of lawful occupation of the subject property. (ii) The intending consumer executes an indemnity bond in Form 6 of the Annexure III appended to the Code. The indemnity bond would, *inter alia*, state that the intending consumer will indemnify the licensee against any loss on account of disputes arising on account of effecting service connection to the occupant. (iii) The intending consumer accepting to pay security deposit twice the normal rate.

11.1. In the instant case, the private respondents, i.e., respondent No.3 to 9, have, evidently, refused to give an NOC to the appellant. The appellant has, admittedly, furnished an indemnity bond. In so far as the acceptance of the third condition referred to above is concerned, which is, to pay security deposit twice the normal rate, no arguments were advanced as to whether or not, the said condition stood fulfilled.

12. The arguments, both before the learned Single Judge and before us, have turned on whether or not, the appellant was in "possession" of the subject property. According to us, there is a material distinction between the lawful possession and lawful occupation of the subject property. The report of the TNEB, to which, we have made a reference hereinabove, clearly, shows that the appellant is in occupation of the subject property. The fact that a suit for specific performance has been filed, in which, according to the observations of the learned Single Judge, a defence has been taken that the appellant was not

handed over possession, is an aspect, which, if material, would be adjudicated upon in the suit filed by the appellant.

12.1. Clause 27(4) of the Code incorporates the expression "lawful occupation" and not lawful possession. The purpose and object behind the use of the expression seems quite wholesome. The object and purpose seems to be that whosoever is in occupation of the subject property requires to be provided electricity connection, as any other approach would lead, perhaps, to a situation, where, TNEB would have to intercede in a disputes obtaining between the owner of the subject property and the intending consumer.

12.2. Basic facilities, such as electricity and water, in our view, cannot be denied to an occupier without due authority of law, as long as the occupier, as mandated under the Code and extant provisions of law, fulfills the conditions contained therein and pays the necessary dues. An approach such as this, in our view, would disincentivise illegal obstruction of utility services, such as, electricity. Clearly, failure to provide utility services would render the subject property decrepit; a situation, which is, best avoidable.

12.3. It is trite to say that even a trespasser in an immovable property cannot be evicted without recourse to lawful proceedings. Therefore, an occupier of the subject property, such as the appellant in the instant case, requires to be given electricity connection, as the lis between him and the respondent No.3 to 9 pending in the suit action, would have nothing to do with the issue at hand in the present proceedings.

12.4. As adverted to above, the suit, which is pending adjudication

between the appellant on one side and respondent No.2 to 9 on the other, is a suit for specific performance, which, by no stretch of imagination, can get impacted by the result of the present proceedings.

13. Thus, having regard to the provisions of the Code, and what we have stated herein above, we are of the opinion that electricity connection can be granted to the appellant, upon fulfillment of the conditions contained in Clause 27(4) of the Code. Since, the appellant has furnished, admittedly, an indemnity bond, we see no difficulty in electricity connection being provided to him, upon fulfillment of all other conditions, for grant of electricity connection.

14. The learned Single Judge's observations that the appellant could not be granted electricity connection on the ground that the issue with regard to possession of the property was still at large in the suit, according to us, fails to appreciate the scope and ambit of clause 27(4) of the Code. The expression lawful possession cannot be equated with lawful occupation. The aspect as to whether or not the appellant is in lawful possession can always be determined in the suit. In case, the appellant is unable to establish that he was in lawful possession of the suit, certainly, necessary consequences would follow, albeit, in the suit.

14.1. Ms.Hema Sampath, learned Senior Advocate, who appears for the appellant, does not contest this position.

15. Accordingly, the Writ Appeal is allowed. The impugned judgment is set aside. TNEB will grant electricity connection to the appellant upon fulfillment of necessary requirements, if any, as contained in the Code including those which are adverted to in Clause 27(4) of the Code.

16. Let the needful be done by the TNEB within two (2) weeks of receipt of a certified copy of the order. There shall, however, be no order as to costs.

(R.S.A.,J.)

(A.Q.,J.)

18.09.2017

Index : yes/no

vsm/gg

To

The Assistant Executive Engineer,
Tamil Nadu Electricity Board,
Big Bazar Street, West Branch,
Coimbatore Division,
Coimbatore District.

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RAJIV SHAKDHER, J.
and
ABDUL QUDDHOSE, J.

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W.A.No.146 of 2017

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