

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.08.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.12321 of 2016

R.Venkatesan

.. Petitioner

Vs.

- 1) The Managing Director,
Tamil Nadu Slum Clearance Board,
No.5, Kamarajar Salai,
Chepauk, Chennai 600 005
 - 2) The Executive Engineer,
Tamil Nadu Slum Clearance Board,
Perumbakkam, Chennai 600 126
 - 3) The Managing Director,
Tamil Nadu Arasu Cable TV
Corporation Limited,
"Dugar Towers", 6th Floor,
Old No.34, New No.123,
Marshalls Road,
Egmore, Chennai 600 008
- .. Respondents

(R3 is suo-motu impleaded as per the order of this Court, dated 02.06.2016 in W.P.12321/2016)

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of certiorarified mandamus to call for the records on the file of the 1st respondent pertaining to the order dated 01.11.2016 bearing Na.Ka.No.B5/5460/2016 and quash the same as illegal and unconstitutional and consequently direct the 1st and 2nd respondents to grant permission to the petitioner herein to provide cable TV service in the name and style of M/s.Sree Venkat Cable vision at Tamil Nadu Slum Clearance Board Tenements at Ezhil Nagar, Perumbakkam, Chennai 600 126, pursuant to the petitioner's application dated 08.07.2016 within the time stipulated by this Court, without reference to 3rd respondent and pay damages of Rs.10,00,000/- to the petitioner.

(Prayer amended vide order dated 18.08.2017 made in W.M.P.No.743 of 2017)

For Petitioner : M/s R.Kishore Kumar
For RR1 & 2 : Mr.S.Prabhu

For R3 : Mr.Abdul Saleem

O R D E R

The petitioner has come forward with this Writ Petition seeking to quash the order dated 01.11.2016 passed by the 1st respondent and for a consequential direction to the 1st and 2nd respondents to grant him permission to provide cable TV service in the name and style of M/s.Sree Venkat Cable vision at Tamil Nadu Slum Clearance Board Tenements at Ezhil Nagar, Perumbakkam, Chennai 600 126, pursuant to his application dated 08.07.2016, without reference to the 3rd respondent and pay damages of Rs.10,00,000/- to him.

2. According to the petitioner, he was residing in Surya Nagar, Kottur, Saidapet Taluk, on the banks of Adyar River for more than 30 years and he is a licensed cable TV operator in that area, providing cable TV connection to the residents of Surya Nagar in the name of 'M/s Sree Venkat Cable Vision'.

3. During the floods in 2015, the entire locality of Surya Nagar, Kottur Saidapet Taluk was submerged in floods and the petitioner and his family lost their house and livelihood. However, the Government of Tamil Nadu allotted houses at Ezhil Nagar-Slum Clearance Board Quarters at Perumbakkam to the entire residents of Surya Nagar. According to the petitioner, his entire livelihood is based only upon the provision of cable TV services to the residents of Surya Nagar and that he is holding a valid license for running such cable TV operations for the period between 25.02.2016 and 24.02.2017 and he had also invested a sum of Rs.7,00,000/- for installing necessary equipments for the extension of cable connections to various residents in Perumbakkam & Ezhil Nagar.

4. Suddenly, the petitioner was threatened by the 2nd respondent officials to disconnect the cables on the ground that approval should be obtained from them. Hence, the petitioner submitted a representation to the 1st respondent on 01.02.2016 to the 1st respondent through the office of the 2nd respondent seeking permission to provide Cable TV services to the residents of Ezhil Nagar, Housing Board, Perumbakkam by issuing a 'No Objection Certificate'. But, the 2nd respondent refused to acknowledge the receipt of the petitioner's aforesaid communication, however, he did not pass any orders on his representation till date.

5. Later, the petitioner learnt that there is no such procedure for obtaining approval from the respondents and the parent statute, i.e. the Tamil Nadu Slum Areas (Improvement and Clearance) Act, 1971, does not contain any provision mandating any requirement for seeking permission from the 1st and 2nd respondents for effecting cable TV connections to the residents and that there are several other operators of Direct to Home service providers (DTH) who have given connection to several residents without any approval from the respondents. As the respondents are threatening him to stop the Cable TV business, which is essential for his livelihood, the petitioner, having no other effective alternative remedy, is before this Court by way of the present Writ Petition.

6. The 3rd respondent/Tamil Nadu Arasu Cable TV Corporation Ltd., has filed a counter affidavit. After going through the counter filed by the 3rd respondent, the petitioner has filed a petition seeking to amend the prayer in the writ petition, as the request of the petitioner has been rejected by the 1st respondent on the ground that several persons have applied for effecting Cable Television connections and 10% of applications have already been collected.

7. Learned counsel for the petitioner submitted that the 3rd respondent herein is the competitor and the provisions of the Cable Television Networks (Regulation) Act 1995, does not bar any number of cable operators effecting cable Television connections to the residents of any area, unless it is prohibited by law or it can be prevented, if there is any violation of the guidelines or norms prescribed by the first and second respondents. Hence, he pleaded amendment of the prayer in the Writ Petition.

8. Learned Standing Counsel appearing for the 1st and 2nd respondents/Tamil Nadu Slum Clearance Board, submitted that the entire work with regard to Cable Television operation has been conferred upon the 3rd respondent and that there is a scheme prescribed, based on which, if any cable network is installed in a public building, then, the permission for the same needs to be routed through the 3rd respondent and accordingly, an application has to be submitted by the petitioner to the 3rd respondent and after scrutinizing the same, it will be forwarded to the 1st respondent and the request of the petitioner would be then considered in accordance with law, depending upon the demand.

9. It is further submitted by the learned counsel appearing for respondents 1 and 2 that in view of the reason that the petitioner is not a resident of Ezhil Nagar and that two other Cable Operators in the name and style of 'Nethaji

Cable Vision' and 'Annai Cable TV', are already providing cable television connections to the residents of Ezhil Nagar and Perumbakkam, the request of the petitioner could not be considered. It is his contention that the petitioner, without obtaining any permission or entering into any agreement with the respondents, has laid underground cables and had also installed poles to effect cable television connections, thereby caused damages to public property. Learned counsel also submitted that the petitioner has given an undertaking before this Court that he will make an application before the 3rd respondent and in pursuance of the same, an application has been made by the petitioner to the respondents and hence, contended that the relief sought by the petitioner is not maintainable.

10. For the sake of convenience, Sections (4-B), (5) and (6) of the Cable Television Networks (Regulation) Act 1995, are extracted hereunder:

"4. Registration as cable operator:

4-B. Right of way for cable operators and permission by public authority -

(1) Subject to the provisions of this Act, any cable operator entitled for providing cable services may, from time to time, lay and establish cables and erect post under, over, along, across, in or upon any immovable property vested in or under the control or management of a public authority.

(2) Any public authority under whose control or management any immovable property is vested may, on receipt of a request from a cable operator permit the cable operator to do all or any of the following acts, namely:-

(a) to place and maintain underground cables or posts; and

(b) to enter on the property, from time to time, in order to place, examine, repair, alter or remove such cables or posts.

(3) The facility of right of way under this section for laying underground cables, and erecting posts, shall be available to all cable operators subject to the obligation of reinstatement or restoration of the property or payment of

reinstatement or restoration charges in respect thereof at the option of the public authority.

(4) When a public authority in public interest considers it necessary and expedient that the underground cable or post placed by any cable operator under the provisions of this section should be removed or shifted or its position altered, it may require the cable operator to remove it or shift it or alter its position, as the case may be, at its own cost in the time frame indicated by the public authority.

(5) The Central Government may lay down appropriate guidelines to enable the State Governments to put in place an appropriate mechanism for speedy clearance of requests from cable operators for laying cables or erecting posts on any property vested in, or under the control or management of, any public authority and for settlement of disputes, including refusal of permission by the public authority.

(6) Any permission granted by a public authority under this section may be given subject to such reasonable conditions as that public authority thinks fit to impose as to the payment of any expenses, or time or mode of execution of any work, or as to any other matter connected with or related to any work undertaken by the cable operator in exercise of those rights.

(7) Nothing in this section shall confer any right upon any cable operator other than of user for the purpose only of laying underground cable or erecting posts or maintaining them.

5. Programme Code - No person shall transmit or re-transmit through a cable service any programme unless such programme is in conformity with the prescribed programme code.

* Proviso omitted by Act 36 of 2000, S.3 (w.e.f.1.09.2000)

6. Advertisement Court - No person shall transmit or re-transmit through a cable service any advertisement unless such advertisement is in conformity with the prescribed advertisement code.

* Proviso omitted by Act 36 of 2000, S.4
(w.e.f.1.09.2000) "

11. According to the learned counsel appearing for 1st and 2nd respondents, in view of Sections (4-B), (5) & (6) of Cable Television Networks (Regulation) Act, 1995 (cited supra), cable television connections can be effected through any operator only with the consent of the 3rd respondent and that the petitioner will have to satisfy the guidelines or conditions and the entire discretion is vested with the public authority for refusing permission sought by any person muchless the petitioner. He submitted that the 1st and 2nd respondents have entered into an agreement with the 3rd respondent and that the petitioner can effect cable TV connection in the dwellings belonging to the Tamil Nadu Slum Clearance Board only with prior permission and any action done without the permission is not valid in the eye of law. He further submitted that it is open to the residents either to choose DTH service or cable TV services and as per the provisions of the Cable Television Networks (Regulation) Act, 1995, cable television operators alone need to take permission for effecting cable TV services either through underground or by erecting poles, as DTH operations does not require any such provision, since signals are transmitted directly to the residence.

12. While so, learned counsel appearing for the 3rd respondent/Manging Director, Tamil Nadu Arasu Cable TV Corporation Limited, submitted that as per Section 4-B of the Cable Television Networks (Regulation) Act, 1995, prior permission has to be obtained before entering into a property in control and management under any public authority. He further submitted that the petitioner has made an application seeking permission to enter the Tamil Nadu Slum Clearance Board tenements at Ezhil Nagar and Perumbakkam to carry out the business of providing cable television services to the residents therein and the 1st respondent, by an order dated 15.06.2015 has permitted the 3rd respondent to handover the cable television network connections of Tamil Nadu Slum Clearance Board's tenements to its Local Cable Operators and finally furnish the list of Local Cable Operators and corresponding blocks allotted to them for Tamil Nadu Slum Clearance Board's reference.

13. In reply, learned counsel appearing for respondents 1 and 2 submitted that if any application is routed to the 3rd respondent and permission is obtained, the charges fixed by the 3rd respondent alone can be collected because, if the petitioner is allowed to operate, there is a possibility of collecting exemplary charges.

14. Heard both parties and perused the material documents available on record.

15. For better appreciation of the case, the orders dated 28.06.2016 and 12.07.2016 passed by this Court in the above Writ Petition, are extracted hereunder:

Order dated 28.06.2016:

"The learned counsel for the petitioner would submit that he is ready to submit the application, in accordance with the Cable Television Networks (Regulation) Act, 1995 and the Rules framed thereunder, to the R-1, who may process the said application without reference to R-3. The R1, as and when receives the application submitted by the petitioner, in accordance with the above cited Act and Rules framed thereunder, shall process the same.

The R3 or his counsel is directed to produce records with regard to the grant of local cable T.V. licence granted in favour of Tvl.Mohammed Ismail and Mr.Peter Solomon, bearing Nos.102466 and 100626, respectively, on the next hearing date. List the case on 12.07.2016."

Order Dated 12.07.2016:

"Files have been produced to show that Tvl.Mohammed Ismail and Mr.Peter Solomon have been registered with Tamil Nadu Arasu Cable TV Corporation Limited vide M.C.No.102466 and 100626 respectively.

The learned counsel appearing for the petitioner would submit that he also filed an application to the third respondent seeking necessary permission and the said respondent may process the said application in accordance with law if the papers are otherwise in order.

Call on 29.08.2016."

16. It is seen that the petitioner has made representations dated 01.02.2016 and 17.02.2016 to the 1st and 2nd respondents to carry out Cable TV services in Ezhil Nagar and Perumbakkam. But, by a communication dated 15.06.2015, the 1st respondent permitted the 3rd respondent to provide cable television service in the said tenements through various cable TV operators. Pursuant to the agreement entered into between TACTV (Tamil Nadu Arasu Cable Television) and TNSCB (Tamil Nadu Slum Clearance Board) on 21.03.2016, the 3rd respondent has informed the local cable operators regarding the conditions to be fulfilled before

providing signals to the tenements of that area. The 3rd respondent contended that as the conditions stated in the aforementioned agreement have been fulfilled (considering Section 4-B of Cable Television Networks Regulations Act 1995) and since Perumbakkam Housing Board tenements are extended cable television services from Nethaji Cable Vision and Annai Cable Network, and in order to provide Tamil Nadu Arasu cable TV signals and as the petitioner is not a local resident, the Writ Petition may be dismissed as devoid of merits. It is the further case of the 3rd respondent that the petitioner will have to take prior permission from the first respondent (under Section 4-B of the Cable Television Networks Regulations Act 1995) for effecting cable signals to the residents of Perumbakkam and Ezhil Nagar area, but, no permission has been obtained. Even going by the amended prayer, the 1st respondent has rejected the request of the petitioner, which clearly shows that the 3rd respondent has no say in the decision of permitting the local cable operator to effect cable TV connection.

17. Facts mentioned supra are not in dispute. The only ground taken by the respondents is that the petitioner being a non-resident of Ezhil Nagar and Perumbakkam, has not obtained any permission from the 3rd respondent to run the business of providing cable television network in that area, when already two Cable TV Operators are operating in that area. Furthermore, the petitioner has effected cable television network connections in that area by installing poles and digging underground cables without proper permission.

18. A reading of Section 4-B of Cable Television Networks (Regulation) Act, 1995, would make it clear that any person either being a resident of that area or not, is entitled to make underground cables or erect poles for effecting cable television connection. Though the petitioner relied on Section 4-B(4) of the Act in support of his stand, a reading of Section 4-B(4) of the Act makes it clear that if the public authority feels in public interest that the underground cable or poles erected by the cable operator has to be removed or repaired, they can ask the cable operator concerned to remove the same. This provision speaks about prior permission of laying of cables or installing poles.

19. However, a reading of Section 4-B(5) & (6) of Cable Television Networks (Regulation) Act, 1995 makes it clear that the public authority is empowered to grant permission to operate cable television service with certain conditions by entering into an agreement and they are also empowered to refuse permission on a reasonable ground. The respondents were unable to establish through any document that a non-resident of an area cannot run cable TV business in that area. The 3rd respondent

submitted that the 1st respondent will have to take a decision in this case, as, based on the permission given by respondents 1 and 2, two persons are already running cable operations in the tenements of Perumbakkam and Ezhil Nagar. While so, it is the contention of respondents 1 and 2 that the 3rd respondent alone is empowered to grant permission to run cable television network service, in the light of Section 4-B of the Act. The relief sought in W.M.P.No.743 of 2017 seeking to amend the prayer in the Writ Petition is very clear that the 1st respondent has passed an order rejecting the request of the petitioner. The overall circumstances explains that the 1st respondent, being the owner of the tenements, is the competent authority to decide whether any cable connection can be effected by means of a third party. At the most, the application can be routed to the 3rd respondent through the 1st respondent, but the 3rd respondent cannot decide any issue, since they are also one among the cable operators under the control of law. Thus, the Miscellaneous Petition in W.M.P.No.743 of 2017 seeking to amend the prayer in the Writ Petition is allowed.

20. The 1st respondent is therefore directed to consider the request of the petitioner, provided he files a fresh application routed through the 3rd respondent. Once the petitioner submits an application to the 3rd respondent, the same shall be forwarded to the 1st respondent within a period of 15 days and a decision shall be taken by the 1st respondent within a period of one month thereafter, without rejecting the same on technical grounds.

21. Before parting with the judgment, this Court makes it clear that if any damage is caused to the public property, the same shall be assessed by the Government authority and the same needs to be repaired by the petitioner, apart from paying compensation, if any. If the petitioner is granted permission to carry on cable TV network service in the area in question, it shall be subject to the same terms and conditions as granted to the other two Cable TV Operators.

The Writ Petition is allowed to the extent indicated above. No costs. Consequently, connected W.M.P.No.10652 of 2016 is closed.

Sd/-

Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

sts/aeb

To:

- 1) The Managing Director,
Tamil Nadu Slum Clearance Board,
No.5, Kamarajar Salai,
Chepauk, Chennai 600 005.
 - 2) The Executive Engineer,
Tamil Nadu Slum Clearance Board,
Perumbakkam, Chennai 600 126.
 - 3) The Managing Director,
Tamil Nadu Arasu Cable TV Corporation Limited,
"Dugar Towers", 6th Floor,
Old No.34, New No.123,
Marshalls Road,
Egmore, Chennai 600 008.
- + 1 cc to Mr. S. Prabhu, Advocate Sr.59422
+ 1 cc to Mr. R. Kishore Kumar, Advocate SR.59694

W.P.No.12321 of 2016

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