

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2017

CORAM

THE HON'BLE MR. JUSTICE NOOTY. RAMAMOHANA RAO
and
THE HON'BLE MR. JUSTICE M.DHANDAPANI

W.A.No.231 of 2017
and CMP No.3812 of 2017

D.Santhanam ... Appellant

Vs.

1.The Assistant Executive Engineer,
E/B/Perambur Sub Division,
33/11, K.V.Sub Station,
TANGEDGO, Periyar Nagar,
Chennai-600 082.

2.The Chairman cum Managing Director,
Electricity Board, Anna Salai,
Chennai-600 002.

3.S.Chandra ... Respondent

Writ Appeal preferred under Clause 15 of the Letters Patent
against the order dated 20.06.2016 made in W.P.No.28758 of 2015.

WP.No.28758 of 2015:Writ of Mandamus directing the 1st
respondent to dispose of the Petitioner's representation dated
22/06/2015 pending on the file of the 1st respondent in
accordance with law.

For Appellant : Mr.N.Subramanian
For Respondent : Mr.P.P.Philipkumar for R1 & R2
Mr.M.Jaikumar for R3

JUDGMENT

(Judgment of the Court was delivered by NOOTY.RAMAMOHANA RAO,J)

This writ appeal is directed against the order rendered in
W.P.No.28758 of 2015 dated 20.06.2016. Unfortunately, the
present appellant has not been impleaded as a party respondent
in W.P.No.28758 of 2015. Only the Assistant Executive Engineer

and the Chairman cum Managing Director, Electricity Board, were impleaded.

2. The case of the appellant before us is that when the third respondent herein/writ petitioner has no semblance of any right or title to the house property in question and without in any manner having any subsisting interest in the said house property, he has filed an application before the Assistant Executive Engineer through the counsel appearing for her on 22.06.2015 and short-time thereafter, approached this Court, as if the respondents have neglected to perform their duty to provide electric energy connection pursuant to her application.

3. It is contended by the learned counsel for the appellant that he is the true owner of the property and does not have the benefit of knowing the claim relating to and connected to the title of the third respondent/writ petitioner over the land on which the building is standing and when that be so, the learned single Judge allowed the writ petition. After getting the electric energy connection, the third respondent/writ petitioner moved into possession thereof. Whereas the appellant has purchased the land in question over which the so called residential house is standing long years ago and he is seeking to retrieve the possession of the land in question for a long period of time. It is also brought to our notice by the learned counsel for the appellant that the present appellant has already approached the competent Civil Court by instituting O.S.No.4490 of 2015 on the file of XVII Assistant Judge, City Civil Court at Chennai. Coming to know of the institution of the civil suit by the appellant, the third respondent/writ petitioner has also filed another civil suit bearing O.S.No.5043 of 2015 on the file of the XI Assistant Judge, City Civil Court, Chennai. Nowhere, according to the learned counsel for the appellant, an attempt has been made by the third respondent/writ petitioner in disclosing about the pendency of the civil suits filed by either of the parties, when she instituted the writ petition. When the third respondent/writ petitioner did not have the benefit of knowing the controversies surrounding the property in question, the learned single Judge has disposed of the writ petition. Now, the order passed by the learned single Judge as well as the order energizing the building in question by a public authority, is likely to come in the way of the present appellant to establish his right, title and interest over the land in question.

4. Per contra, the learned counsel for the third respondent/writ petitioner would contend that over a long period of nearly 18 years, she, her husband and her three children were in possession of the house and they have been living there ever since. It is merely eight years back the third respondent/writ petitioner lost her husband and therefore, for

securing the interest of her three young children, she purchased the land together with the superstructure thereon from Mudhusudhanan and therefore, it is the third respondent/writ petitioner, who has the necessary title to the land and the building standing thereon. There is nothing wrong in the third respondent/writ petitioner seeking electric energy connection to a building over which she has a right or interest and upon finding the loophole, the third respondent instituted the writ petition in this Court.

5. Now that both parties are at loggerheads and locked their horns in a suit, it is highly improper for this Court, in exercise of power under Article 226 of the Constitution of India, to enter upon and then render a finding on such controversial questions of fact, without first collecting the necessary evidence. The dispute between the parties is capable of being resolved, only upon collection of evidence, both oral and documentary. For, all we know, both parties may not have a valid/perfect or marketable title in question over which the structure temporarily or otherwise is standing. The land might even belong to Government or be it the poramboke land. The claim that it was a gramamatham has also got to be established with regard to appropriate record evidencing the same. Therefore, we leave the writ appellant as well as the third respondent/writ petitioner to sort out their inter se disputes by establishing their respective rights against the plot in the civil suits already instituted by them, which are fortunately transferred, clubbed together and tried in one Court alone. Let the Court collect all the necessary evidence from both sides by providing reasonable opportunity to lead such evidence and upon a careful consideration and analysis of such facts, decide upon the issue relating to the right, title and interest of either of the parties. In case the Civil Court comes to a prima facie conclusion that the land in question belongs to the Government, it shall implead the State of Tamil Nadu represented by the Collector and District Magistrate, Chennai, and then try both the suits. We are confident that the Civil Court will deal with the subject brought before it independently and uninfluenced by any of the observations made by either of us in this writ appeal or by the learned single Judge in the writ petition as well as the pleadings set up before this Court by either of the parties. The Civil Court will decide the lis brought before it by the respective parties only based upon the intrinsic merit of the claim and the supporting evidence upon which it is raised. We, however, make it clear that the order passed by this Court in this writ appeal and the order energizing the premises in question by the Electricity Board will in no manner be taken into account for consideration while deciding the dispute relating to the right, title and interest of the respective parties over the said vested immovable property. The Civil Court would, at best, dispose of both the

suits as expeditiously as possible as per their pending docket.

6. With this, the writ appeal stands disposed of. No costs. Consequently, connected civil miscellaneous petition stands closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

raa

To

1.The Assistant Executive Engineer,
E/B/Perambur Sub Division,
33/11, K.V.Sub Station,
TANGEDGO, Periyar Nagar,
Chennai-600 082.

2.The Chairman cum Managing Director,
Electricity Board, Anna Salai,
Chennai-600 002.

+1 cc to Mr.N.Subramanian Advocate sr 48902
+1 cc to Mr.M.Jaikumar Advocate sr 48914
+1 cc to Mr.P.R.Dhilipkumar Advocate sr 48688

rk(co)
aa01/08/2017

W.A.No.231 of 2017

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