

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.11.2017

CORAM

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
And
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.A.No.600 of 2014
And
M.P.No.1 of 2014

T.Balakrishnan

... Appellant

Vs.

1.The Executive Engineer
Tamilnadu Electricity Board
Erode South Distribution Circle
Erode.

2.The Assistant Electrical Engineer,
Tamilnadu Electricity Board,
Maintenance Division,
Mullamparappu,
Erode District.

3.K.Thulasimani Gounder (Deceased)

4.Palaniammal

5.T.Shanmugam

(RR4 and 5 substituted as LRs of
deceased R3 vide order of court
dated 18.7.2014 made in
M.P.3/2014 in W.A.600/14)

6.C.Vasanthakumar

(R6 impleaded as party respondent
vide order of Court dated 18.7.2014
made in M.P.2/2014 in W.A.600/2014)

... Respondents

Prayer:

Writ appeal filed under Clause 15 of Letters Patent praying
to set aside the order passed in W.P.No.7540 of 2013 dated
18.12.2013.

WP.NO.7540/2013

Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus Forbearing the respondents from erecting electrical poles and carrying on the installation work of electrical lines in the petitioner's property comprised in Survey No.361, 372/11 12,13,14 and 16 Pudhur Village, Avalpoondurai Taluk, Erode District pursuant to the petitioners representation dated 07.03.2013.

For Appellant : Mr.V.Pavel
For Respondents : Mr.S.Dhanasekaran for R1
Mr.S.K.Raameshuwar for R2

J U D G M E N T

(Judgment of the Court was delivered by K.K.SASIDHARAN,J.)

The writ petition filed by the appellant to restrain the Electricity Board from giving service connection to the third respondent in the writ petition in W.P.No.7540 of 2013 was dismissed by the learned Single Judge on the ground that even as per the Electricity Code, connection could be given by the Department notwithstanding the objection raised by the neighbouring land owners. The order is under challenge at the instance of the son who originally filed the writ petition against the father.

2.According to the appellant, the land in S.Nos.361, 372/11, 12, 13, 14 and 16 at Pudhur village, Avalpoondurai Taluk, Erode District, was settled in his favour by his father, who was arrayed as the third respondent in the writ petition. The Tamil Nadu Electricity Board made preparation for giving a domestic connection and at that point of time the appellant filed the writ petition to restrain the Officials of the Board from erecting poles and carrying on installation works through his property. The learned Single Judge having found that the plots are contiguous and there is no other way to take the line, dismissed the writ petition. Feeling aggrieved, the appellant has come up with this intra court appeal.

3.The learned counsel for the appellant submitted that there is a civil suit pending before the learned District Munsif, Erode, in O.S.No.367 of 2013, with respect to the disputed property on account of the settlement made by the father in favour of the local body to lay a road. According to the learned counsel, there is an alternative route and therefore, line ought to have been taken though that route.

4.The land which is the subject matter of the writ petition is also the subject matter of the civil suit in O.S.No.367 of 2013. In fact in the said suit, the appellant has claimed a decree of declaration with regard to the land settled by his father for forming a road. It is only through the said road, the electricity line is sought to be taken to the residence of the third respondent in W.P.No.7540 of 2013, whose legal heirs are impleaded as respondents 4 to 6 in the present appeal.

5.The learned Single Judge while dismissing the writ petition filed by the appellant referred to the provisions of the Electricity Code and the Electricity Act. The following paragraphs of the order passed by the learned Single Judge make the position clear.

"35.In a given case, if the lands are adjacent or contiguous, and if existing consumers due to any estranged relationship or for any other ulterior motive, object to the service connection being given to the adjacent land owner or occupier or whose lands are adjacent or contiguous, then the licensee cannot shirk his responsibility to provide electricity connection to the applicant. Further, in a given case, if the overhead lines have to be drawn from the licensee system through some posts, and if any objection is made by a third party, then in such cases, the intending consumer would never get domestic supply or agricultural connection. Usage of the words 'licence' or 'sanction' in the Code, and in the absence of any rule, made in furtherance of Section 67 (2) of the Act or any procedure, in the form of guidelines or instructions, placed before this Court by the Board, the inference that could be made is that it is the distribution licensee who has to issue the licence, or sanction, before the supply is effected and the intending consumer cannot be compelled to get a way leave from the adjacent or contiguous owners, when they are objecting. The provision enabling way leave or licence or sanction to be issued by the competent authority can be with reference only to the cost to be borne by the applicant, for providing electricity supply line, to an intending consumer. As stated supra, if the lines of a consumer and an intending consumer are located parallelly, or diagonally or in any other direction for that matter and if

the existing consumer objects to the supply being given to the intending consumer, then no supply can be effected.

36. When Electricity supply under Section 43 of the Electricity Code, is intended to be provided to the owner or occupier of the premises, morefully elaborated, as lawful occupant in the Distribution Code, then, it is imperative on the part of the authorities under the Tamil Nadu Distribution Code to provide electricity service connection to the intending consumer, by collecting necessary costs, including the cost for availing way leave."

6. The civil dispute relating to the subject property is pending before the civil court. It is always open to the appellant to take up all the contentions before the civil court in O.S.No.367 of 2013. In any case, we do not find any reason to interfere in the order passed by the learned Single Judge.

7. In the result, the intra court appeal is dismissed. No costs. Consequently, the connected miscellaneous petition is also closed.

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

To

1. The Executive Engineer
Tamilnadu Electricity Board
Erode South Distribution Circle
Erode.

2. The Assistant Electrical Engineer,
Tamilnadu Electricity Board,
Maintenance Division,
Mullamparappu,
Erode District.

+1cc to M/s.V.Regunathan, Advocate in sr.no.81352

W.A.No.600 of 2014

And

M.P.No.1 of 2014

NR 12/12/2017