

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.446 of 2017
and C.M.P.No.2137 of 2017

Henry Prem Anand

.. Petitioner

Vs.

1.K.Nirmala

2.M.Madhuprakash

3.The Assistant Engineer
TANGEDCO
Kilpauk, Chennai.

4.The Assistant Executive Engineer
TANGEDCO
Kilpauk, Chennai.

.. Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order dated 11.01.2017 made in I.A.No.16161 of 2016 in I.A.No.14464 of 2016 in O.S.No.5448 of 2016 partially allowing the restoration of amenities before the learned IV Assistant Judge, City Civil Court, Chennai.

For Petitioner	: Mr.D.Selvam for Mr.R.C.Paul Kanagaraj
For R1 and R2	: Mr.R.Lakshmi Narayanan
For R3 and R4	: Mr.V.Viswanathan standing counsel for TNEB

ORDER

This Civil Revision Petition is filed against the fair and decreetal order dated 11.01.2017 made in I.A.No.16161 of 2016 in I.A.No.14464 of 2016 in O.S.No.5448 of 2016 partially allowing the restoration of amenities before the learned IV Assistant Judge, City Civil Court, Chennai.

2. The petitioner is the plaintiff and the respondents 1 and 2 are the defendants in O.S.No.5448 of 2016 on the file of the learned IV Assistant Judge, City Civil Court, Chennai. Though the respondents 3 and 4 are not parties to the suit, they are arrayed as respondents 3 and 4 in I.A.No.16161 of 2016, which was filed by the petitioner. The suit is one for permanent injunction restraining the defendants from evicting the petitioner/plaintiff from the suit property except by procedure of law and for permanent injunction restraining the defendants from disrupting the amenities and facilities which includes but not limited to electricity, water consumption and access to terrace, till the plaintiff is legally evicted from the suit property by due process of law. Along with the suit, the petitioner filed I.A.No.14464 of 2016 for interim injunction

restraining the defendants/respondents 1 and 2 herein, their men, agents and servants or any other person making claim under the defendants from in any way disrupting the amenities and facilities which includes but not limited to electricity, water consumption and access to terrace pending disposal of the suit. The trial Court granted interim injunction on 01.11.2016 till 15.11.2016. Subsequently, it was extended till 01.12.2016.

3. According to the petitioner, while interim injunction was in force, the respondents disconnected the bore well connection and blocked the pathway to the common terrace. The respondents 1 and 2, through the respondents 3 and 4, shifted electricity board from the portion of the petitioner to the rear side portion of the building and converted three phase electricity connection to single phase electricity connection. Therefore, the petitioner filed I.A.No.16161 of 2016 for restoration of three phase electricity connection, bore well water supply and access to common terrace enjoyed by the petitioner at the time of passing of interim injunction dated 01.11.2016 in I.A.No.14464 of 2016 on the ground that the respondents have disobeyed the order and prayed for these amenities.

4. The first respondent entered appearance through an advocate and the second respondent appeared as party-in-person. The respondents 1 and 2 have filed a counter affidavit and submitted that from the beginning, there was only a single phase electricity connection and at no point of time, there was three phase electricity connection. The Electricity Board metre box was shifted to rear side of the portion for the sake of convenience. There was no bore well connection to the portion of the petitioner as well as the respondents 1 and 2, who are residing in the first floor of the premises and the bore well connection belongs to one Mrs.Nalini Bhaskar, who is an adjacent owner. In the petition filed for fixation of fair rent, the petitioner admitted the above said facts. Similarly, pathway mentioned by the petitioner is an exclusive pathway for adjacent property owner. The respondents also stated that the applications for restoration of amenities are not maintainable and the petitioner has to approach the learned Rent Controller by invoking Section 17 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960.

5. The learned Judge on 02.12.2016 suo motu appointed an Advocate Commissioner, who inspected the suit property and took

photographs of electricity board metre box as well as bore well connection and filed his report.

6. The learned Judge on considering the averments in the affidavit, counter affidavit and report of the Advocate Commissioner held that the photographs filed by the Advocate Commissioner show that there was three phase electricity connection for the buildings under the occupation of the petitioner as well as the respondents 1 and 2. The learned Judge also took note of the fact that there is a bore well connection in the property in Old Door No.35, New Door No.22, Ground floor, Subramaniam street, Purasaiwalkam, Chennai-7 and the pipe line to the petition premises was disconnected, pasted and blocked with white cement. After noting these facts, the learned Judge held that there is no material to show that the bore water supply is available to the petition premises. From the report, it shows that the pipe line of petition premises are recently cut down and pasted with white cement and it was not known, when it was cut down and pasted. In such circumstances, the learned Judge held that the respondents 1 and 2 cannot be blamed in the absence of oral evidence and directed the respondents 1 and 2 to supply uninterrupted metro water, whenever

the supply of metro water is given to that area. The learned Judge also noted down the fact that earlier there was three phase switch box to give electricity supply to the petitioner and the same later converted to single phase connection and in this circumstance, since the petition premises is admittedly provided with a single phase electricity connection, three phase connection cannot be restored. Thus, the learned Judge has partly allowed the application.

7. Aggrieved over the said order, the present civil revision petition is preferred by the petitioner.

8. Learned counsel for the petitioner would submit that the respondents 1 and 2 have violated the interim injunction granted by the trial Court and the respondents 3 and 4 have reduced three phase electricity connection to single phase. The Advocate Commissioner in his report categorically stated that earlier there was three phase electricity connection, bore well and there is an access to common terrace. The petitioner is paying Rs.100/- per month to the respondents 1 and 2 towards bore well water, even after filing of the suit. The Advocate Commissioner in his report has stated that pipe line given to bore well was removed recently and

blocked with white cement. The passage which the respondents are now claiming to be the property of Mrs.Nalini Bhaskar was always used as common passage by the petitioner, respondents 1 and 2 and other owners. The learned Judge having taken note of the evidence of the three phase electricity connection, bore well connection and passage to common terrace, ought to have allowed the application entirely. Therefore, he prays for allowing this revision.

9. Per contra, learned counsel for the respondents 1 and 2 submitted that the civil revision petition itself is not maintainable as per Section 115 of Civil Procedure Code and the petitioner cannot invoke Article 227 of the Constitution of India. I.A.Nos.14464 and 16161 of 2016 are not maintainable as tenant cannot claim restoration of amenities in civil suit and can approach only the Rent Controller under Section 17 of the the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. He further submitted that the learned Judge has rightly rejected the contention of the petitioner for three phase electricity connection as well as bore well water connection. To substantiate his submission, he relied on the following judgments:

(i) **(2002) 1 SCC 319 (Ouseph Mathai and others v. M.Abdul Khadir)**, in para-4, it is held as follows:

"4. It is not denied that the powers conferred upon the High Court under Articles 226 and 227 of the Constitution are extraordinary and discretionary powers as distinguished from ordinary statutory powers. No doubt Article 227 confers a right of superintendence over all courts and tribunals throughout the territories in relation to which it exercises the jurisdiction but no corresponding right is conferred upon a litigant to invoke the jurisdiction under the said Article as a matter of right. In fact power under this Article cast a duty upon the High Court to keep the inferior courts and tribunals within the limits of their authority and that they do not cross the limits, ensuring the performance of duties by such courts and tribunals in accordance with law conferring powers within the ambit of the enactments creating such courts and tribunals. Only wrong decisions may not be a ground for the exercise of jurisdiction under this Article unless the wrong is referable to grave dereliction of duty and flagrant abuse of power by the subordinate courts and tribunals resulting in grave injustice to any party."

(ii) (***Kousalya Educational Trust represented by its Chairman, Kumaran K.Pandiyar Office at 24-A, new street, Sendorkuppam, Ambur, Vellore District v. K.Vijayakumar and others***) **reported in 2003 (4) CTC 38**, wherein para-6 to 8, it is held as follows:

"6. A bare reading of the aforesaid proviso after 1999 amendment makes it clear that the High Court shall not vary or reverse any order except where the order if it had been made in favour of the party applying for revision would have finally disposed of the suit or other proceeding.

7. The intention of the Legislature seems to exclude the revisional jurisdiction of the High Court in all Interlocutory matters, which, though may have an ultimate bearing in the suit, would not have brought the suit or other proceeding to an end.

8. The above position is now clear in view of the decision of the Supreme Court reported in Shivshakthi cooperative Society, Nagpur Vs. M/s.Swaraj Developers(2003(2) CTC 564). "

Thus, prays for dismissal of the revision.

10. The learned standing counsel appearing for the respondents 3 and 4 submitted that the respondents 3 and 4 are only formal parties and prays for dismissal of the revision.

11. Heard both sides and perused the materials available on record.

12. The contention of the learned counsel for the respondents that the applications in I.A.Nos.14464 and 16161 of 2016 filed by the petitioner for injunction restraining the respondents and for restoration of amenities are not maintainable, has no force. The petitioner has filed the suit for permanent injunction restraining the defendants from evicting the petitioner/plaintiff from the suit property except by procedure of law. He has also prayed for permanent injunction restraining the defendants from disrupting the amenities and facilities, which includes but not limited to electricity, water consumption and access to terrace, till the plaintiff is legally evicted from the suit property by due process of law. Along with the suit, the petitioner has filed I.A.No.14464 of 2016 for interim injunction pending disposal of the suit. In view of the relief sought for by the petitioner in the suit, the said application is maintainable.

13. As far as I.A.No.16161 of 2016 is concerned, it has been filed to restore the amenities, which according to the petitioner, respondents 1 and 2 disconnected the amenities inspite of interim injunction granted by the learned Judge was in force. In view of the averments made in the affidavit filed in support of the application in I.A.No.16161 of 2016 and interim injunction granted by the learned Judge was in force, the said application is maintainable.

14. The learned Judge suo motu appointed the Advocate Commissioner to inspect the suit property and file his report. The Advocate Commissioner inspected the suit properties, took photographs and filed his report. From the report and photographs filed by the Advocate Commissioner, which are marked as Court documents Exs.C1 and C2, it is clear that there was three phase switch box electricity board to supply electricity to the portion under the occupation of the petitioner and there is a bore well and pipe line connections from the property at Old Door No.35, New Door No.22, Ground floor, Subramaniam street, Purasaiwalkam, Chennai-7, belonging to Mrs.Nalini Bhaskar. The bore well pipe line connection was disconnected recently and pasted with white cement. The learned Judge having found that the respondents 3 and

4 acted in violation of interim injunction granted by the trial Court and having deprecated action of the respondents 3 and 4 the official of the electricity board, erred in not directing the officials of the respondents 3 and 4 to restore three phase electricity connection to the portion occupied by the petitioner.

15. Similarly, it is seen from the report and photographs filed by the Advocate Commissioner that there was a water connection from the bore well and pipe line was disconnected recently and blocked with white cement. The learned Judge having noted these facts, photographs and report of the Advocate Commissioner, failed to direct for restoration of bore well water supply to the petition premises. The finding of the learned Judge that the respondents 1 and 2 cannot be blamed for disconnecting the bore well water pipe connection, is contrary to the report of the Advocate Commissioner. The Advocate Commissioner has stated that pipe line was disconnected recently and no objection was filed by the respondents to the report of the Advocate Commissioner. The Advocate Commissioner has also stated that there is only one single water tank for the entire premises. Therefore, it is appropriate for this Court to extract the relevant portion from the report of the Advocate

Commissioner for better appreciation of facts of the case:

“Place and existence of bore well:

The bore well is existed at North West corner of the old Door No.34, New Door No.24, and the same was referred in documents No.25(a), 25(b), 26(a), 26(b) at page No.30,31 of my typed set of documents. Nalini Bhaskar, who is in possession of the house at old Door No.34, new door No.24 and she represented that the bore well belongs to them, but the entire premises having a single water tank in the terrace, the terraced water tank is referred in the document No.43(a) and (b) of my typed set of documents.

.. ..

.. ..

Water connection:

(a) The petition premise is having the water tab in the kitchen, dining room and in the bathroom.

(b) The kitchen and dining room having one water tap each.

(c) The bath room having two water tap and one shower, and it is represented by the petitioner that from the said two tap one is for metro water supply. The water taps are referred in my document No.16(a), (b), (c), 17(a), (b), 18(a),

19(a), (b), 20(a), (b), 21(a), (b), 22(a), (b) on my typed set of documents.

(d) There is no water flow in all the above stated water taps, and the same was referred in documents No.17(b), 18(a), 21(a) and (b), of my typed set of documents.

It is represented by the petitioner that the bore well water connection is coming from the outside of the southern portion wall of the petition property and the same was recently removed and cut the same by applying the white cements.

The pipe line is recently cut down and placed by the white cement in that place and I am not know when it was cut down, but by seeing the white cements it has been done recently and I am not know that the pipe line is from the bore well or not but the pipe connection is going inside the petition property, by the same was the pipe lines cut down and placed by the white cements, in similar way in first floor and in the water tank, water pipes at terraced, and the same is referred in phonographs document No.28(a), (b), 29(a), (b), 31(a), 32(a), 32(b), 33(a), (b), 34(a), (b), 35(a), (b), (c), 36, 37(a), (b), of my typed set of documents. "

16. In these circumstances, the contention of the learned counsel for the petitioner that there is only one bore well connection with single water tank in the terrace for supply of water in the premises leading to the portion of the respondents 1 and 2, the portions under occupation of the petitioner as well as Nalini Bhaskar, has considerable force. In such circumstances, I hold that I.A.No.16161 of 2016 ought to have been allowed in full by the learned Judge.

17. As far as the contention of the learned counsel for the respondents that the civil revision petition itself is not maintainable is concerned, a reading of the proviso to Section 115 of the Civil Procedure Code makes it very clear that the revision is maintainable, if the order challenged is allowed to stand would result in violation of justice and cause irreparable injury to the party, against whom, it was made. Similarly, as far as power of this Court under Article 227 of the Constitution of India is concerned, it is a discretionary power, which can be used only sparingly and in exceptional cases. In the present case, the learned Judge has held that the respondents 3 and 4 have shifted three phase switch board to the rear side portion of the premises and converted it into a

single phase, pipe line was disconnected and blocked with white cement. In spite of such finding, the learned Judge has not granted the relief sought for by the petitioner. It clearly amounts to dereliction of duty and not exercising power conferred on him causing injustice to the petitioner. In such circumstances, it is a fit case for this Court to invoke extraordinary discretionary power under Article 227 of the Constitution of India to set right injustice caused to the petitioner.

18. In the judgment reported in **(2002) 1 SCC 319 (Ouseph Mathai and others v. M.Abdul Khadir)**, it is held that wrong decisions may not be a ground for the exercise of jurisdiction under Article 227 of the Constitution of India unless the wrong is referable to grave dereliction of duty and flagrant abuse of power by the Subordinate Courts and Tribunals resulting in grave injustice to any party. The judgment referred by the learned counsel for the respondents 1 and 2 do not advance the case of the respondents 1 and 2 that the civil revision petition is not maintainable. On the other hand, it supports the case of the petitioner who alleges that grave injustice being done to him by the impugned order.

19. In the result, the Civil Revision Petition is allowed. The application filed by the petitioner in I.A.No. 16161 of 2016 is allowed in full. The respondents 3 and 4 are directed to restore three phase electricity connection to the portion of the petitioner. The respondents 1 and 2 are directed to restore bore well water connection to the portion under occupation of the petitioner and not to block the pathway to the common terrace preventing the petitioner to use the same. No costs. Consequently, connected Miscellaneous Petition is closed.

26.04.2017

Index : Yes
kj

Note:Issue order copy on 28.04.2017

To

IV Assistant Judge, City Civil Court, Chennai.

V.M.VELUMANI, J.

kj

C.R.P.(PD)No.446 of 2017
and C.M.P.No.2137 of 2017

26.04.2017

<http://www.judis.nic.in>