

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.06.2017

CORAM

THE HON'BLE Mr. JUSTICE M.M.SUNDRESH

W.P.No.2971 of 2017
and
W.M.P.No.2858 of 2017

M/s.Golden Homes Private Limited
rep. by its Authorised Signatory
S.Rekha Rani ... Petitioner

Vs.

1.The Chairman,
Tamil Nadu Generation and
Distribution Corporation
Limited, 10th Floor,
NPKRR Maligai,
144, Anna Salai, Chennai - 6.

2.Superintending Engineer,
Chennai Electricity Distribution
Circle/South I,
110 Kilo Watt, SS Complex,
K.K.Nagar, Chennai - 78.

3.The Executive Engineer,
Tamil Nadu Electricity Board,
Chettiyar Agaram Road,
Porur, Chennai - 116.

4.The Member Secretary,
Chennai Metropolitan Development
Authority,
Thalamuthu Natarajan Building,
No.1, Gandhi Erwin Road,
Egmore, Chennai - 8.

.. Respondents

Writ Petition filed under Article 226 of The Constitution of India praying to issue a writ of mandamus to direct the respondents 1 to 3 to install the power station in the place earmarked for establishing electricity transformers as provided in the approved plan without insisting on conveying and gifting the land in favour of Electricity Board.

For Petitioner .. Mr.S.Sundaresan
For Respondents .. Mr.Manishankar,
Addl . Advocate General assisted by
Mr.S.K.Rameshwar for R1 to R3
Mr.C.Johnson for R4

ORDER

Seeking a direction to respondents 1 to 3 to install the power station in the place earmarked for establishing electricity transformers as provided in the approved plan without insisting on conveying and gifting the land in favour of Electricity Board, the petitioner has come up with the present writ petition.

2.The writ petition lies in a narrow compass. The petitioner has obtained the requisite permission/approval from the fourth respondent for putting up multi storied residential complex. For the aforesaid purpose, the petitioner sought for establishment of sub station. The request of the petitioner is yet to be acceded to by respondents 1 to 3 presumably on the premise that he has to execute a gift deed for an extent of 225 sq.m. for the purpose of putting up a sub station. Thus the dispute is only with respect to the execution of the gift deed as there is an agreement from the petitioner that the aforesaid extent would be provided for sans such execution. It is also borne out by the affidavit of undertaking filed by the petitioner. It also incidentally states that the said extent would not be used or encumbered for any other purpose as long as the sub station is in existence.

3.Learned counsel appearing for the petitioner would contend that there is no law which mandates compulsory execution of the gift deed.

4.Learned Additional Advocate General would submit that the said extent is required for the benefit of the petitioner as the same would be utilised for construction of sub station alone.

5. On a perusal of the Distribution Code, it is clear that the execution of the gift deed is not mandatory. On the contrary, it mainly provides for a specific extent, which in this case, is 225 sq.m. to be provided by the petitioner in favour of respondents 1 to 3 for the purpose of establishing a sub station being the land requirement. There is no quibble over the said issue. Therefore, in law, respondents 1 to 3 cannot insist the petitioner to execute a gift deed. The effect of the gift deed is a transfer of property. Such a requirement has to be with the approval of law, which is lacking in the case on hand. It is one thing to state that the petitioner once part with the land required for the establishment of sub station, cannot deal with it as long as it stands, it cannot also be stated that such a transfer will have to be made by way of a gift. The permission is different from a gift. Such a permission would continue so long as the other party performs its right. Therefore, it is co-related to the existence of sub station. To put it differently, when there is no sub station, then there is no right over the land that can be claimed by respondents 1 to 3.

6. In such view of the matter, the affidavit of undertaking filed by the petitioner is recorded. The writ petition stands disposed of by directing the petitioner to provide an extent of 225 sq.m. in favour of respondents 1 to 3 for the purpose of establishing the sub station. So long as the said sub station is in existence, the petitioner cannot claim any right over it. The right of respondents 1 to 3 over the said extent during the existence of sub station is qualified, meaning thereby when once the sub station is no longer in existence, then such right would get vanished automatically. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1.The Chairman,
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Thalamuthu Natarajan Building,
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Egmore, Chennai - 8.

+1 cc to M/s.C.Johnson Advocate sr 39368

+1 cc to M/s.S.K.Rameshwar Advocate sr 38252

+1 cc to M/s.S.Sundaresan Advocate sr 39327

सत्यमेव जयते

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