

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2017

CORAM :

THE HON'BLE MR. JUSTICE T.RAJA

W.P.Nos.27742 and 27743 of 2016

A.Murugan ... Petitioner in W.P.No.27742/2016
N.Sridhar ... Petitioner in W.P.No.27743/2016

vs.

1. The Divisional Engineer
TANGEDCO
Vzahapadi, Salem District.
2. The Assistant Engineer, TANGEDCO
Vazhapadi South,
Salem District.
3. B.Suresh .. Respondents in both the WPs

W.P.No.27742 of 2016 : Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of mandamus, directing the respondents 1 and 2 to register the two applications and to give two fresh electricity service connection to the petitioner premises at S.No.65/3 and 273/2, Cuddalore Main Road, S.Vazhapadi, Vazhapadi (Post) & Taluk, Salem District in petitioner name on the basis of petitioner's applications submitted by petitioner on 28.06.2016 on getting necessary charges within a time frame stipulated by this Court.

W.P.No.27743 of 2016 : Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of mandamus, directing the respondents 1 and 2 to register the two applications and to give two fresh electricity service connection to the petitioner premises at S.No.271/35, Cuddalore Main Road, S.Vazhapadi, Vazhapadi (Post) & Taluk, Salem District in petitioner name on the basis of petitioner's applications submitted by petitioner on 28.06.2016 on getting necessary charges within a time frame stipulated by this Court.

For petitioner : Mr.S.R.Singaravelan, Senior counsel
for Ms.M.Srividhya in both WPs

For respondents : Mr.S.K.Raameshuwar for R1 and R2
in both WPs
Mr.R.Neelakandan for R3 in both WPs

COMMON ORDER

The writ petition in W.P.No.27742 of 2016 was filed by A.Murugan, seeking an order for issuance of writ of mandamus directing the respondents 1 and 2 to register two applications and to give two free electricity service connection to the petitioner's premises at S.No.65/3 and 273/2, Cuddalore Main Road, S.Vazhapadi, Vazhapadi (Post) & Taluk, Salem District in petitioner name on the basis of petitioner's applications submitted by petitioner on 28.06.2016 on getting necessary charges.

2. W.P.No.27743 of 2016 was filed by N.Sridhar, seeking an order for issuance of writ of mandamus directing the respondents 1 and 2 to register two applications to give two free electricity service connections to the petitioner's premises at S.No.271/35, Cuddalore Main Road, S.Vazhapadi, Vazhapadi (Post) & Taluk, Salem District in petitioner name on the basis of petitioner's applications submitted by petitioner on 28.06.2016 on getting necessary charges within a time frame stipulated by this Court.

3. Learned Senior counsel appearing for the petitioner in both the writ petitions would submit that Mr.A.Murugan is the owner of the property comprised in S.No.65/3 and 273/2 and N.Sridhar is the owner of the property comprised in S.No.271/35, both of which are situated at Cuddalore Main Road, S.Vazhapadi, Salem District. Mr.A.Murugan claims to have purchased the same by way of sale deed, dated 26.07.2006 from one Mr.R.Rajamaickam and registered the same as Doc.No.1518/2006 in the office of the SRO, Vazhapadi. Similarly Mr.N.Sridhar also after purchasing the same on 30.03.2011 from one A.Sivasubramanian was registered as Doc.No.1407/2011 in the office of the SRO, Vazhapadi. As a result, both are in lawful and peaceful possession of the respective properties.

4. Mr.A.Arumugam, who has put up a shed for opening a TVS cycle stand near the bus stand and Mr.N.Sridhar, who has put up a shed for opening a small readymade shop near the bus stand, have approached the second respondent for fresh two electricity service connections each for the said premises.

5. Since the respondents 1 and 2 are not taking any action on the applications, the petitioners are put to grave problem. Adding further, it is stated that the third respondent Mr.B.Suresh along with four others have filed a Civil Suit in O.S.No.208 of 2015 on the file of the I Additional District Judge, Salem, claiming to be the surviving Co-Parceners of a Hindu Joint family against 81 defendants to declare the probate dated 07.12.1982 granted in O.P.No.73 of 1982 on the file of the II Additional District Court, Salem and its consequential

transactions are null and void and with further direction to declare the third respondent herein along with 4 others as Co-Parceners to the suit property and also to declare the sale deeds as null and void from the year 1997 itself. The petitioners are also arrayed as one of the defendants. The third respondent's intention is only to protract the legal proceedings. The Divisional Engineer, TNEB has also been made as the 6th defendants in the said suit. In view of the same, the respondents 1 and 2 are not taking any action even for allowing the registration of the applications submitted by the petitioners on 28.06.2016. The petitioners are also entitled to get fresh electricity service connections in their name as per the existing regulations of Tamil Nadu Electricity Distribution Code 2004 and the Tamil Nadu Electricity Supply Code and the respondents 1 and 2 are bound to give fresh electricity connections on the petitioners' premises in the name of the petitioners, since they are the lawful owners for the reason that the sale deed questioned by the third respondent and others have not been decided till date by the Civil Court.

6. Adding further, it is contended that when the probate proceedings came to be passed in O.P.No.73 of 1982 by the learned II Additional District Judge, Salem on 07.12.1982, after 33 long years, the present suit has been filed, that itself clearly shows that they have almost delayed more than three decades seeking any lawful relief. Therefore, the third respondent neither object the grant of electricity service connection, when he has filed the civil suit after 33 years from the date of Probate proceedings nor the electricity department can deny the supply of electricity citing the pendency of a civil suit relating to the suit property.

7. Placing on record, Judgment of the Apex Court in the case of Chandu Khamaru v. Nayan Malik reported in (2011) 12 SCC 314, it is contended that pendency of the Civil Suit on the file of the Civil Court, the parties cannot be denied the supply of electricity service connection to his house. On this basis, a direction was sought for to the electricity department to supply electricity to the house of the petitioner.

8. Again taking support from another Judgment of this Court in the case of A.Muthusamy v. The Assistant Engineer, TNEB, reported in 2009 (4) CTC 606, it is submitted that electricity service connection can be given to persons who are in occupation of the premises even if their ownership is under dispute provided they furnish indemnity bond and pay necessary fee etc.

9. Although the learned Senior counsel appearing for the petitioner has cited many Judgments, this Court is not inclined to refer to all of them as the ratio is the same in all cases. However, learned Senior counsel appearing for the petitioner would submit that the supply of electricity service connection by the respondents 1 and 2 would not be cited as a defence to get his right conferred before the Civil Court where the suit is pending. He also preferred to give an undertaking that if any loss is going to be caused to the Electricity Department by providing electricity service connection to the petitioner, such a loss also would be made good. Adding further, it is stated that as per Clause 27(4) of the Tamil Nadu Electricity Distribution Code, the petitioners will execute an indemnity form 6 of the Annexure III, indemnifying the licensee against any loss on account of disputes arising out of effecting service connection to the occupant and agreeing to pay security deposit twice the normal rate and the suit also can be disposed of without reference to the order passed by this Court giving direction to Electricity Department to give electricity supply to the petitioners. Since 81 defendants are arrayed, taking notice to them would unnecessarily prolong the time to get the electricity service connection, therefore, as the petitioners are in lawful possession of the shop in question, there cannot be any objection either from the third respondent or from the Electricity Department.

10. A counter affidavit has been filed by the second respondent. Another detailed counter affidavit also has been filed by the third respondent objecting the above prayer. Learned counsel for the third respondent argued that when a suit for declaration relating to the title of the petitioners is pending for adjudication, the petitioners are not entitled to get electricity service connection. Secondly, although the petitioners claimed to have purchased the property earlier, now attempting to modify the nature of the property to get electricity connection to the same, therefore, the applications filed before the Electricity Department cannot be directed to be considered in their favour. Thirdly, the petitioners by getting electricity service connection for commercial purpose is intending to create third party's right over the suit property, which would complicate the pending civil proceedings. In view thereof, providing electricity connection to the petitioners would lead to multiplicity of litigation. Adding further, he would submit that when there are Judgments of this Court holding that if a Civil Suit is pending with regard to the title, no direction to the Electricity Department to give electricity service connection is maintainable, the prayer sought for by the petitioners is liable to be rejected.

11. In support of his submissions, the learned counsel

appearing for the third respondent also pressed into service, the following two unreported Judgments :

1. Order in W.P.No.23576 of 2016, dated 17.08.2016
2. Order in W.P.(MD).No.11080 of 2016, dated 23.06.2016.

12. But this Court hardly finds any merit in any one of the submissions. The reason is admittedly the probate proceedings in O.P.No.73 of 1982 on the file of the II Additional District Court, Salem concluded on 07.12.1982 took place about 33 years ago. After a huge delay when the third respondent has filed the suit questioning the correctness of the proceeding took place on 07.12.1982 in O.P.No.73 of 1982 his objections cannot be taken as a ground to refuse the request of the petitioners. Inasmuch as, when the petitioners are able to show that they are in lawful possession and peaceful enjoyment of the suit property, in the absence of any order passed by the competent forum with regard to their possession or ownership or title, it has to be presumed that they are the lawful owners of the property in question hence they are entitled to get the electricity service connection from the respondents 1 and 2.

13. In this context, it is relevant to refer to the Judgment of the Apex Court in Chandu Khamaru v. Nayan Malik reported in (2011) 12 SCC 314, wherein paragraph 12 thereof is given as under:

" The case of the appellant, on the other hand, is that this passage is not a private passage of Respondents 1 to 3 but is a common passage and therefore an electric line can be drawn through this common passage. This dispute will have to be resolved in Civil Suit No.83 of 2004 pending in the Court of the Civil Judge (Junior Division), Howrah, or in any other suit, but pending resolution of this dispute between the parties, the appellant cannot be denied the supply of electricity to his house."

14. A reading of the above observation clearly shows that even if there is any dispute pending on the file of the Civil Court, the dispute will have to be resolved only by the competent Civil Court, but the pendency of resolution of the said dispute between the parties, before the Civil Court cannot be put against the person seeking electricity service connection. On this basis when the Apex Court has laid down the law that the lawful owner is entitled to get electricity service connection from the Electricity Board, the petitioners being lawful owners of the suit property purchased by a sale deed dated 26.07.2006 and registered as Doc.No.1518 of 2006 on the file of the SRO, Vazhapadi, another Sale Deed dated 30.03.2011 and registered as Doc.No.1407 of 2011 on the office of the SRO,

Vazhapadi, they have made applications for electricity service connection from respondents No.1 and 2. As I mentioned above, the petitioners have become the lawful owners, pursuant to the Probate proceeding took place on 07.12.1982 in O.P.No.73 of 1982 passed by the II Additional District Court, Salem and purchased the property as mentioned above. Secondly, Clause 27(4) of the Tamil Nadu Electricity Distribution Code, 2004 also says that an intending consumer, shall produce proof of his / her being in lawful occupation of the premises and also execute an indemnity bond in Form 6 of the Annexure III, indemnifying the licensee against any loss on account of disputes arising out of effecting service connection to the occupant and acceptance to pay security deposit twice the normal rate. Both petitioners has agreed to comply clause 27[4] of the Tamil Nadu Electricity Distribution Code 2004 by executing an indemnity bond, therefore, in the light of the above settled legal position, the submission of the learned counsel appearing for the third respondent, taking support from the order passed by me in W.P. (MD).No.11080 of 2016, dated 23.06.2016 to dismiss the prayer on the ground that the pendency of Civil Suit will be an impediment for the petitioner to approach the Court has to be brushed aside, for, in the above said case, the Electricity Department, by declining the request of the petitioner therein, cited a reason that the Civil Suit filed by the third respondent on the file of the District Munsif Court, Trichy, is pending with regard to declaration of 'B' schedule property with a further direction to remove the encroachment over the property in question. Since there was a direct fight with regard to title and ownership of the property in the said case, I have declined to interfere with the impugned order of refusal by the Electricity Department to effect the electricity service connection. Thus, the above said case relied on by the third respondent cannot be applicable to the case on hand, for, the writ petitioners herein are able to show that they are in lawful possession of the property by virtue of the sale deed as mentioned above. It is to be noted further both the third respondent has filed a suit questioning the correctness of the probate proceedings ended about 33 years ago. Secondly the petitioners also have asserted their property right in question on the basis of the purchase made by them through their sale deeds, pursuant to the probate proceedings ended 33 years ago.

15. Therefore, following various decisions of this Court that a lawful owner can apply for electricity service connection and the Electricity Board is being bound by Clause 27(4) of the Tamil Nadu Electricity Distribution Code, this Court finds no impediment to accept the prayer made by the petitioners. Accordingly, the respondents 1 and 2 are hereby directed to consider the applications of the petitioners, dated 28.06.2016 along with a bond contemplated under Clause 27(4) of the Tamil Nadu Electricity Distribution Code, 2004. It is made clear that

on executing bond by both the petitioners as per Clause 27(4), the respondents 1 and 2 are hereby directed to consider the request of the petitioners for giving electricity service connection. The said exercise as mentioned above shall be completed within a period of four weeks from the date of receipt of a copy of this order. It is needless to mention that the petitioners may not be in a position to take this order as their defence to get their property right confirmed.

16. With the above observations, both these writ petitions are allowed. However, there is no order as to costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

tsvn
To

1. The Divisional Engineer
TANGEDCO
Vazhapadi, Salem District.
2. The Assistant Engineer, TANGEDCO
Vazhapadi South,
Salem District.

+1 cc to Mr.R.Neelakandan Advocate sr 11743

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