

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.02.2017

CORAM :

THE HON'BLE MR. JUSTICE T.RAJA

W.P.No.30281 of 2016

S.Vedhamuthu

... Petitioner

vs.

1. The Assistant Executive Engineer (O&M)
Tamil Nadu Electricity Board,
Gobi Electricity Distribution Circle,
Nambiyur (West)
Nambiyur - 638 458, Erode District.

2. The Tahsildar
Gobichettipalayam Taluk,
Gobichettipalayam,
Erode District.

3. S.Devasahayam

... Respondents

(R3 is suo-motu impleaded as
per order, dated 31.08.2016
by NKKJ in W.P.No.30281 of 2016)

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of mandamus, directing the first respondent to issue Electricity service connection to the residential house at Door No.70/59 (S.F.No.1296/29) in C.S.I Street, Nambiyur Village, Gobichettipalayam Taluk, Erode District within the time limit.

For petitioner : Mr.V.Chandrasekaran

For respondents: Mr.S.K.Raameshwur for R1
Mr.R.Govindasamy, Spl.G.P for R2
Mr.K.Govi Ganesan for R3

ORDER

This writ petition has been filed by Mr.S.Vedhamuthu, S/o. Sadaiah, seeking writ of mandamus directing the Assistant Executive Engineer (O&M), Tamil Nadu Electricity Board, Gobi Electricity Distribution Circle, Nambiyur (West), the first

respondent herein to issue Electricity service connection to the residential house at Door No.70/59 (S.F.No.1296/29) in C.S.I Street, Nambiyur Village, Gobichettipalayam Taluk, Erode District.

2. In support of his submission, the learned counsel appearing for the petitioner would submit that the petitioner's mother, Kuppayaal was in possession and enjoyment of the land in question bearing Natham Old S.No.399 and New No.1296/29 situated in Nambiyur village, that was assigned to the petitioner by the Assignment Order, dated 17.11.1976. His mother has also paid house tax in her name since 1963. Only in the assigned land, which is a house site, the petitioner has put up the construction. Since the old building was in a dilapidated condition, the petitioner wanted to demolish the old house and proposed to construct new house in the same plot. Therefore, he has submitted an application seeking for a proper planning approval from the local authority. After getting the approval, construction work is almost over by 90% and the remaining 10% of the construction is going to be carried out.

3. Moreover the transfer of the name of the owner of the property was also ordered in Na.K.No.588/2010, dated 07.09.2010 issued by the Executive Officer, Nambiyur Town Panchayat and the same also effected in the revenue and local body records. In the meanwhile, the petitioner has also applied for provision of temporary Electricity service connection in prescribed format to the first respondent on 30.10.2015. But the first respondent refused to receive the same. On the other hand first respondent asked the petitioner to produce the ownership certificate along with the application. Once again, the petitioner submitted a representation to the second respondent to issue ownership certificate in respect of residential house and site. But in spite of the repeated request made by the petitioner, the Tahsildar, Gobichettipalayam, the second respondent herein has not come forward to issue the same.

4. In the meanwhile, the third respondent raising objections has also filed Civil Suit in O.S.No.186 of 2015 on the file of the District Munsif Court, Gobichettipalayam, seeking decree for declaration of title. In the said suit, he has also moved two Interlocutory Applications, one in I.A.No.1178 of 2015 filed under Order 26 Rule 9 of CPC to appoint an Advocate-Commissioner to inspect the property and note down the physical features and to file his report. Another application in I.A.No.1179 of 2015 has also been filed seeking interim injunction not to put up any construction in the disputed place.

5. Citing the pendency of the suit in O.S.No.186 of 2015, seeking decree for declaration of title to the suit property, the first respondent is not willing to consider the prayer for giving electricity service connection.

6. Learned counsel appearing for the petitioner submitted that when the petitioner has asked for only temporary service connection, the pendency of the suit filed by the third respondent cannot be put against the petitioner. Adding he would further submit that the petitioner would also bind by the order passed by the competent Civil Court in O.S.No.186 of 2015 and for any reason, the Court comes to the conclusion that the third respondent is entitled for the decree in the said suit, the petitioner is prepared to disconnect the electricity service connection from the disputed site and therefore, giving temporary electricity service connection would not put the third respondent to any grave prejudice.

7. On the other hand, the learned counsel appearing for the third respondent would submit that the petitioner is indeed entitled to have the house site only to the extent of 622.26 sq.ft as per the Assignment Order, dated 17.11.1976 given in his favour by his mother, Kuppayal. While so, the petitioner has gone beyond the extent of the land covered under the Assignment, namely to the extent of 955.26 sq.ft, almost 333 sq.ft of the land belonging to the third respondent has been encroached by the petitioner. Therefore, the third respondent has filed Civil Suit in O.S.No.186 of 2015 before the District Munsif Court, Gobichettipalayam and he has also filed two Interlocutory Applications, I.A.Nos.1178 and 1179 of 2015. I.A.No.1178 of 2015 has been filed under Order 26 Rule 9 CPC, seeking for appointment of Advocate-Commissioner to inspect the property and note down the physical features and to file his report and the second Application in I.A.No.1179 of 2015 has been filed seeking for interim injunction not to put up construction by the petitioner. Both the Interlocutory Applications have been heard by the District Munsif, Gobichettipalayam and no orders were passed thereon.

8. Under this background, when the petitioner has been accused of encroachment of 333 sq.ft of land belonging to the third respondent, the first respondent is perfectly right in not entertaining the request of the petitioner for giving electricity service connection. If the request made by the petitioner to grant temporary electricity service connection is considered and in the meanwhile, the learned District Munsif passed an order granting the interim injunction not to put up construction, that would create further problem to both the

petitioner and the third respondent. Therefore, the present writ petition raising complex question of law should not be entertained. I find merits on the submission made by the learned counsel appearing for the third respondent.

9. When the third respondent has filed Civil Suit in O.S.No.186 of 2015 seeking decree for declaration, taking a specific ground that about 333 sq.ft of land belonging to the third respondent has been encroached into by the petitioner and in addition thereto, he has also moved two Interlocutory Applications, one in I.A.No.1178 of 2015 filed under Order 26 Rule 9 CPC, seeking for appointment of Advocate-Commissioner to inspect the property and note down the physical features and to file his report and the second Application in I.A.No.1179 of 2015 has been filed seeking for interim injunction not to put up construction by the petitioner, I am of the considered view that the petitioner should await the order of the Civil Court. Therefore, the writ petition is liable to be dismissed.

10. In fine this writ petition is dismissed. No costs. Keeping in mind that both the petitioner and the third respondent are awaiting for the verdict of the Civil Court, the learned District Munsif, Gobichettipalayam is hereby directed to either pass orders on the pending Interlocutory Applications in I.A.No.1178 of 2015 and I.A.No.1179 of 2015 or to dispose of the suit in O.S.No.186 of 2015 within a period of three months from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

सत्यमेव जयते

To

1. The District Munsif,
Gobichettipalayam.
2. The Assistant Executive Engineer (O&M)
Tamil Nadu Electricity Board,
Gobi Electricity Distribution Circle,
Nambiyur (West)
Nambiyur - 638 458, Erode District.

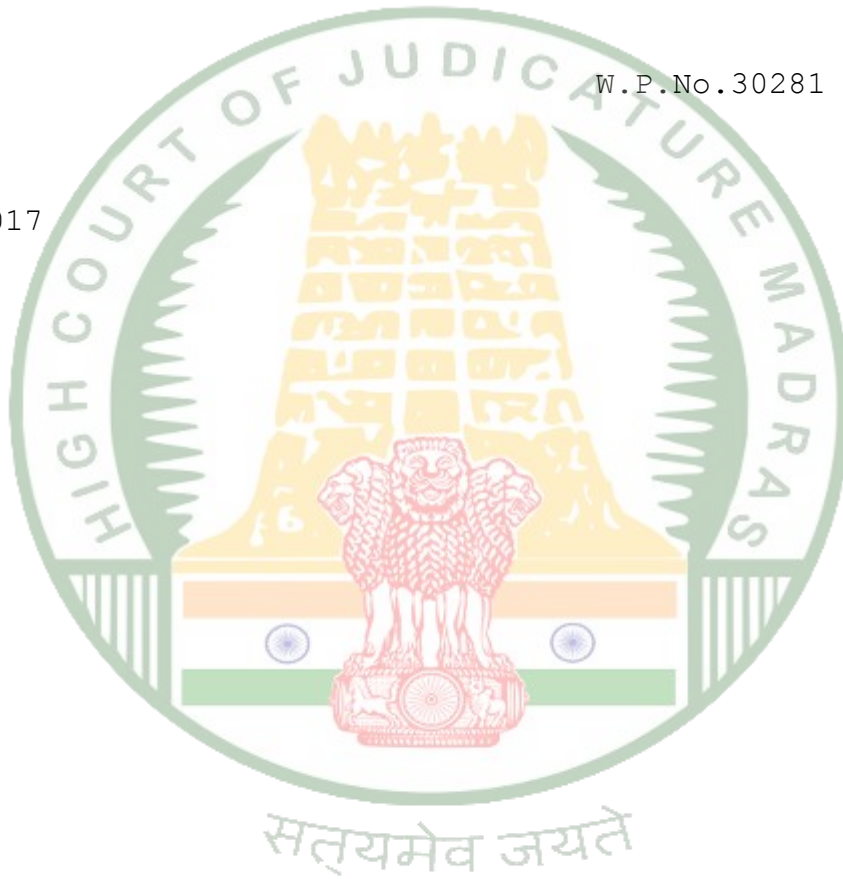
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3. The Tahsildar
Gobichettipalayam Taluk,
Gobichettipalayam,
Erode District.

+1cc to the Government Pleader Sr.8934
+1cc to M/S.K.GoviGanesan, Advocates Sr.8595
+1cc to M/S.S.K.Raameshuwar, Advocate Sr.8451
+1cc to M/S.V.Chandrasekaran, Advocate Sr.8369

W.P.No.30281 of 2016

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