

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2017

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THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

W.P.No.38422 of 2003
& WPMP.Nos.46639 & 46640 of 2003

Arulmighu Sri Mariamman Thirukoil
rep. by Dharmakartha
T.Kalimuthu

...Petitioner

-Vs-

1.The Assistant Engineer
Tamil Nadu Electricity Board,
Pothanur South,
Coimbatore 641 023.

2.Stella
C/o Parvathi

...Respondents

Writ Petition filed under Article 226 of the Constitution of India
praying for issuance of a Writ of Mandamus forbearing the first
respondent from granting new electricity service connections to the
other occupants of the temple land in S.F.No.248/6A and 250, Kuruchi
Poosari Street, 3rd Ward Gandhiji Road, Coimbatore 641 024.

For Petitioner : Mr.R.T.Doraisamy
For Respondent-1 : Mr.S.K.Rameshwar,
Standing counsel

ORDER

The prayer sought for in this writ petition is for a writ of Mandamus forbearing the first respondent from granting new electricity service connections to the other occupants of the temple land in S.F.No.248/6A and 250, Kuruchi Poosari Street, 3rd Ward Gandhiji Road, Coimbatore 641 024.

2. The short facts required to be noticed for the disposal of the writ petition is that the petitioner is a private temple and the person namely, one T.Kalimuthu claiming to be the Dharmakarthha of the temple, has filed this writ petition with the aforesaid prayer.

3. The temple is situated in an extent of 50 cents of village natham. It was considered to be a community temple for Adi Dravidar people. Some years back, the temple committee was converted into a trust called Kuruchi Arulmighu Sri Mariammal Thirukoil Seva Trust and the said Trust was also registered in the year 2003. About 40 years ago, the temple constructed 32 small houses and permitted the

community people to occupy the houses and collected nominal rent from them. The said nominal rent was Rs.1/-per month and subsequently, it was increased to Rs.8/-per month.

4. The petitioner claims that it has already approached the District Collector and Tahsildar for grant of patta in favour of the temple with reference to the land in S.No.248/6A and the concerned Village Panchayat also, by resolution dated 10.07.2002, resolved that the patta may be granted in favour of the temple. In spite of all these developments, the Collector and Tahsildar instead of granting patta in favour of the temple have tried to give patta to the individual tenants, who have been in occupation of the houses constructed by the petitioner temple which forced the petitioner to approach this Court by filing a writ petition in W.P.No.9536 of 2003, for forbearing the District Collector and Tahsildar from granting patta to individual occupants. In the above said writ petition, an interim order was passed on 27.03.2003. In spite of said order having been passed by this court, the Revenue Authorities were trying to give patta to the individual occupants.

5. It is the further case of the petitioner that, for each of the houses, electricity service charge had been paid in the name of the temple, whileso, the occupants on the strength of their occupancy in the houses constructed by the petitioner temple, had tried to get individual service connection from the respondent Electricity Board. In so far as the second respondent is concerned, such electricity service connection has been separately effected by the respondent Board and therefore, in respect of other occupants, since there was a move from the occupants to get individual service connection in their names from the respondent electricity Board, the petitioner having no other remedy, has approached this Court by filing the present writ petition.

6. I have heard Mr.R.T.Doraisamy, learned counsel for the petitioner and Mr.S.K.Rameshwar, learned Standing Counsel for the respondent Board.

7. In so far as the second respondent is concerned, the learned Standing counsel appearing for the respondent Board would submit that the service connection had already been effected in her name. Therefore, in respect of the second respondent, the prayer

sought for in the nature of any prohibitory order cannot be granted by this court at this moment.

8. In so far as the other occupants are concerned, though they are not parties before this writ petition, learned counsel for the petitioner submits that the said occupants have no title whatsoever to claim electricity service connection in their names and if it is moved, the issuance of the patta in their favour or to the petitioner temple is a matter to be decided by the authorities. Therefore, the further move of giving electricity service connection would not be justifiable and therefore, the prohibitory order sought for may be granted.

9. Per Contra, Mr.S.K.Rameshwar, learned Standing Counsel appearing for the respondent Board would submit that, in so far as providing domestic electricity service connection is concerned, it shall be made only to the owners of the property concerned, ofcourse after fulfilling the terms and conditions of the Tamil Nadu Electricity Board's tariff orders.

10. Here in the case on hand, where the occupants allegedly claiming service connection as claimed by the petitioner

temple whether or not they are owners of the property or tenants of the property claiming to be the property of the petitioner's temple, are to be decided only after having enquiry with them. Without which, it cannot be decided whether the temple or occupants would be entitled to claim service connection in their respective names.

11. I have considered the said rival submissions made on either sides.

12. Since the other occupants as claimed by the petitioner are not parties before this court, no prohibitory order by way of mandamus can be issued by this court at this moment against unknown persons.

13. Further, since it is the definite case of the petitioner temple that the 32 houses were constructed only by the petitioner's trust, which is a registered Trust wherein, only the so called occupants are put in possession by way of tenancy, however, subsequently, they claim ownership by seeking patta from Revenue Authorities and on that strength they also approached the respondent Electricity Board authority to get service connection. In this regard, whether the

petitioner is the lawful owner of the property or the occupants are the owners of the property cannot be decided by this court, as all these issues, whether patta has been granted to the petitioner for the entire land or for individual patta had been given to the so called occupants are also not known as none of them are parties before this court in this writ petition.

14. In the aforesaid circumstances, the prayer sought for by the petitioner cannot be granted. However, considering the facts and circumstances of the case, I am inclined to pass the following order:

(i) That the respondent Electricity Board is directed to issue notice to the petitioner temple trust as well as the other occupants, who are residing or occupying the land or building, which is in question claimed by the petitioner and in the notice, fix a date of hearing and on the date of hearing, after hearing both, the petitioner temple trust as well as the occupants, the first respondent can take a decision as to whether the petitioner temple trust or occupants would be entitled to get service connection on their fulfilling the terms and conditions of the first respondent Board.

R.SURESH KUMAR, J.

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(ii) On such a decision, if the service connection is to be effected to any of the parties, it is open to the first respondent to effect the same ofcourse, within the terms and conditions of the first respondent.

15. With these directions and observations, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Index: Yes/No

22.12.2017Speaking Order/Non-speaking order
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To

1.The Assistant Engineer
Tamil Nadu Electricity Board,
Pothanur South,
Coimbatore 641 023.

W.P.No.38422 of 2003