



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:26.04.2017

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.A. (MD) No.444 of 2017

P.Muthurakel

... Appellant/Petitioner

Vs.

1. Junior Engineer,
Distribution/Urban
TANGEDCO, Shanthi Nagar,
Palayamkottai,
Tirunelveli District.

2. The Executive Officer,
Arulmigu Venkatachalapathi Temple,
Thimmarajapuram,
Tirunelveli District.

... Respondents/ Respondents

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent Act against the order 03.10.2016 in W.P.No.18864 of 2016.

Prayer in WP(MD). 18864/ 2016 :

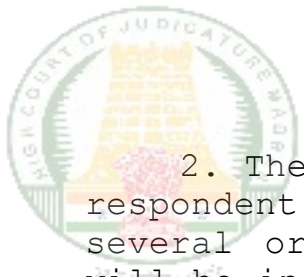
Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus directing the 1st Respondent to give electricity supply to the Petitioners house in Door No. 6/69A, Rajamannar Street, Thimmarajapuram, Tirunelveli - 627 753, without insisting NOC to be obtained from the 2nd Respondent.

For Appellant : Mr.K.Saravanan
For Respondents : Mr.H.Arumugam for R2

JUDGMENT

[Judgment of the Court was delivered by **T.S.SIVAGNANAM, J**]

The appellant is the writ petitioner and he filed the writ petition for a direction to the Junior Engineer of the TNGEDCO to grant electricity supply to the house constructed by the writ petitioner in the land in question without insisting upon No Objection Certificate from the second respondent temple.



2. The undisputed fact is that the land is owned by the second respondent temple and the appellant is an encroacher. There are several orders passed by this Court where the Electricity Board will be indemnified by executing an indemnify bond and based on the same electricity supply has been given. However, there is no universal rule that on furnishing an indemnified bond electricity supply has to be given to the encroacher on a Government land or temple land. The concept of executing indemnify bond in favour of the electricity board for getting electricity supply would arise when a party is in lawful occupation, which is not the case of the appellant. We found that more often the procedure under the relevant regulation providing for furnishing an indemnify bond for obtaining electricity supply is misused probably with the connivance of the officials.

3. The learned counsel appearing for the second respondent temple would submit that land in question is a valuable piece of land in Tirunelveli Town and the appellant/writ petitioner is continuing to encroach and attempting to usurp the temple land. Further, because of the influence the appellant has in that area, a police complaint given by the Executive Officer of the second respondent temple has not been entertained and no case has been registered.

4. The learned counsel for the appellant would submit that there are several similarly placed persons as that appellant who are residing there for several decades. We are not inclined to accept the submissions for the simple reason even continued enjoyment of the temple property cannot confer any right on the appellant as he is an encroacher.

5. The submission of the appellant that the rights enshrined under Article 21 of the Constitution of India will be defeated, if electricity is not provided, has to be rejected as a person who is an encroacher cannot state that equity is in his favour when his conduct is not equitable. Therefore, the learned Single Judge was fully justified in rejecting the relief sought for by the appellant. We find no grounds to take a different view and the writ appeal fails and the same is dismissed.

6. We deem it fit to observe that it is open to the second respondent temple to take appropriate action for removal of the encroachments and if criminal complaints are not entertained, the Executive Officer of the second respondent temple is directed to present a petition before the Commissioner of Police, Tirunelveli City, along with a copy of this order, so that appropriate directions may be issued to the concerned police for taking necessary action against the encroachers/land grabbers of temple properties. If in case any difficulty in prosecuting the complaint before the police, it is open to the second respondent



temple to approach the jurisdictional Magistrate by way of a private complaint.

7. With the above observations, the writ appeal is dismissed.
No costs.

WEB COPY

Sd/-

Assistant Registrar(AD-II)

/True Copy/

Sub Assistant Registrar

To

1. Junior Engineer,
Distribution/Urban
TANGEDCO, Shanthi Nagar,
Palayamkottai,
Tirunelveli District.
2. The Executive Officer,
Arulmigu Venkatachalapathi Temple,
Thimmarajapuram,
Tirunelveli District.

+1cc to Mr.H.Arumugam, Advocate Sr.No.54412

jikr

vb/mms/sar3/10.05.2017/3p/4c

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