

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **07.03.2018**

CORAM:

THE HON'BLE MR.JUSTICE **K.K.SASIDHARAN**
AND
THE HON'BLE MR.JUSTICE **P.VELMURUGAN**

W.A.No.1164 of 2014
and M.P.No.1 of 2014

1.The Superintending Engineer,
Mettur Electricity Distribution Circle,
TANGEDCO,
Mettur Dam-1, Salem District.

2.The Assistant Engineer,
Operation and Maintenance,
TANGEDCO, Sampalli,
Mettur Dam-1, Salem District.

Vs

...Appellants

K.Savithri

...Respondent

Prayer:- Writ Appeal filed under Clause 15 of Letters Patent Act, to set aside the order passed in W.P.No.9811 of 2013 dated 10.06.2014.

For Appellants : Mr.S.K.Raameshuwar

For Respondent : Mr.P.Mani

J U D G M E N T

(Judgment of the Court was delivered by
K.K.SASIDHARAN, J.)

The respondent purchased 12 cents of lands in Nalla Goundanpatti Village, Mettur Taluk, as per Sale Deed dated 10 May 2010 knowing fully well that there was a transformer already erected on 9 November 1989. The request made by the respondent for shifting the transformer was favourably considered by the appellants subject to the condition that the cost for shifting should be borne by her. When a challenge was made to the said order, the learned single Judge directed the appellants to shift the transformer without any liability to pay the cost. The order is under challenge at the instance of the respondents in W.P.No.9811 of 2013.

2. The Superintending Engineer, Mettur Electricity Distribution Circle, erected the transformer at the premises owned by the predecessor-in-interest of the respondent on 9 November 1989. There was no objection from the erstwhile land owner while erecting the transformer. The respondent purchased the land by way of a registered Sale Deed dated 10 May 2010. Thereafter, the respondent submitted

representation on 17 November 2012 to remove the transformer. The respondent along with her representation submitted an undertaking that she would pay the necessary cost for shifting the transformer. The Electricity Department based on the said representation inspected the transformer and assessed the cost for shifting at Rs.1,73,350/-. When a demand was made to pay the said amount, the respondent filed the writ petition.

3. The core issue is as to whether there is any right accrued to the subsequent purchaser to direct the Electricity Board for shifting the transformer without liability to pay the cost.

4. The respondent has no case that erection of transformer was opposed by her predecessor-in-interest and inspite of such opposition, it was erected by the appellants. The transformer was erected way back on 9 November 1989. There was no action taken for shifting the transformer by the erstwhile land owner till the land was sold to the respondent. The respondent purchased the land with her eyes open. She was aware of the erection of the transformer. There was no recital in the document to the effect that the vendor wanted to take action for shifting the transformer. The respondent purchased the land knowing

fully well that there is a transformer. There was no legal obligation on the part of the appellants to shift the transformer to a different place. Even then, the appellants agreed to shift the transformer subject to payment of cost.

5. The learned counsel for the respondent placed reliance on a decision of this Court in **Superintending Engineer, Tamil Nadu Electricity Board and another v. M.Sengu Vijay and another [(2011) 3 MLJ 625]**, in support of his contention that in case consent was not obtained from the erstwhile owner of the property and compensation was not paid, even the subsequent purchaser is entitled to call upon the Electricity Board to shift the transformer without cost.

6. There is no dispute that Section 10 of the Indian Telegraph Act permits the authority to place and maintain a telegraph line under, over, along, or across, and posts in or upon, any immovable property. Sub-clause (d) of Section 10 of the Indian Telegraph Act provides that in case the authority has exercised powers in respect of any property other than that referred to in clause (c), it shall pay full compensation to all persons interested for any damage sustained by them by reason of the exercise of those powers.

7. Section 12(2) of the Indian Electricity Act provides that the Electricity Board is obliged to take consent from the owner of the property before laying electrical poles and lines.

8. The Division Bench (**M.Sengu Vijay case**) was of the view that in the absence of any consent from the erstwhile owner or in the absence of payment of compensation by the Board, mere silence on the part of the erstwhile owner of the subject property cannot be construed as implied consent. The judgment in **M.Sengu Vijay** (cited supra) was referred to by a Division Bench in its judgment in **Superintending Engineer, Tamil Nadu Electricity Board and others v. I.Shanmugadurai** [2016 8 MLJ 249] .

9. The Division Bench in **I.Shanmugadurai** (cited supra) distinguished the facts of the case in **M.Sengu Vijay** and observed that in the absence of materials produced by the parties with regard to payment of compensation or otherwise and considering the fact that the property in question was purchased, wherein, the electrical poles were already erected long ago, the subsequent purchaser cannot avoid the liability to pay the shifting charges.

10. The decision in **M.Sengu Vijay** is not applicable to the facts of the present case as the facts herein are entirely different.

11. The transformer was erected on 9 November 1989. The respondent purchased the property on 10 May 2010. There is no recital in the Sale Deed dated 10 May 2010 to the effect that transformer was erected against the wishes of the land owner. Similarly, there is no statement that compensation was not paid. The respondent would be justified in her contention that she is not liable to pay the cost for shifting, in case, it is proved that transformer was erected inspite of the objection made by the erstwhile land owner and that his request for compensation was also not paid and in such case, the vendor must authorise the subsequent purchaser to take action for removal of transformer.

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12. The respondent purchased the land knowing fully well that there was a transformer. The transformer was there for a period of 20 years. It was long after the erection the respondent purchased the property. The appellants are not contending that they would not shift

the transformer. The demand is only to pay the actual costs. The issue is therefore covered by the judgment of the Division Bench in **I.Shanmugadurai** (cited supra)

13. We are therefore of the view that the appellants must succeed. The order dated 10 June 2014 is set aside. The writ petition in W.P.No.9811 of 2013 is dismissed. We give liberty to the respondent to pay the amount as indicated in the order dated 2 January 2013 for shifting. In case, the amount is paid within a period of three months from the date of receipt of a copy of this judgment, the appellants shall shift the transformer without revising the cost for such shifting.

14. The intra court appeal is allowed subject to the direction as indicated above. No costs. Consequently, connected miscellaneous petition is closed.

(K.K.SASIDHARAN,J.) (P.VELMURUGAN, J.)

7 March 2018

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(svki)



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