

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.12.2018

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THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.18767 of 2004

and

W.P.M.P.Nos.22471 & 26283 of 2004

A.Subramaniya Naidu

..Petitioner

vs

1.The Executive Engineer(O&M)
Tamilnadu Electricity Board
Tiruttani, Tiruvallur District.

2.The Accounts Officer(O&M)
Tamil Nadu Electricity Board
Tiruttani, Tiruvallur District.

3.The Assistant Executive Engineer(O&M)
Tamil Nadu Electricity Board
Rural West, Tiruttani
Tiruttani, Tiruvallur District.

4.Mr.Desu Naidu, The President,
Thadur Panchayat, Thadur Village,
Tiruttani Taluk, Thiruvallur District.

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the 3rd respondent in Lr.No.Asst.E.E./Rural/Trl/F.Ma.Tha/V.No/2004 dated 19-5-2004 and Lr.No.Asst.E.E./Rural/Trl/F.Ma.Tha.No./93 dated 22.05.2004 and quash the same and to direct the respondents to accept the petitioner's application for shifting S.C.No.150 L.N.Kandigai since returned to the petitioner and to consider the same as per the Terms and Condition of supply.

For Petitioner : Mr.G.Jeremiah

For Respondents : Mr.S.K.Raameshwar, Standing counsel for EB
for R1 to R3

Mr.A.Paneerselvam for R4

O R D E R

The order dated 19.05.2004 issued by the Assistant Executive Engineer and the order dated 22.05.2004 are under challenge in the present writ petition.

2.The learned counsel appearing on behalf of the writ petitioner states that the writ petitioner made an application seeking Transfer of Electricity service connection from one address to another. The petitioner is the owner of an extent of more than 7 Acres of land in Survey No.279/3 and 279/11. The petitioner was having a electric service connection bearing S.C.No.150 L.N.Kandigai. He dugged a well in S.No.279/11 and installed a 5 HP Motor, for his agricultural purposes. The service connection had been obtained and in usage for more than 16 years. The writ petitioner sank a borewell about 200 feet away from his patta lands. The writ petitioner submitted an application before the 1st respondent for shifting of his existing electric service connection in S.C.No.150 to the new Bore well. The respondents refused to accept the application submitted by the writ petitioner on the ground that there was an objection from the President, Panchayat Union. Challenging the said decision, the present writ petition is filed.

3.The learned counsel relying on the counter affidavit filed by the 4th respondent, who was the President, Thadur Panchayat and village, informed this Court that the 4th respondent himself has admitted in Paragraph 2 of the counter that Thadur Village Panchayat consists of Thadur Village, Thadur Colony, E.N.Kandigai, L.N.Kandigai, Irulur Colony, L.N.Kandigai oodar Colony and E.N.K.Sathya Nagar, it is submitted that, in the land in Survey No.278/1 in E.N.Kandigai Village of Thadur Panchayat, there is a common public cremation cum Burial Ground, under the control of Thadur Village Panchayat. In the said land, comprised in Survey No.278/1, in E.N.Kandigai Village, there is a borewell, installed by the Thadur Village Panchayat and fitted with an Electric Motor with service connection from the TNEB. The said borewell, is used for supply of water, to the villages comprising Thadur Village Panchayat. The people in the Villages comprising Thadur Village Panchayat are totally dependent on this source of water supply, from the above said borewell situated in Survey No.278/1, E.N.Kandigai Village.

4.Relying on the above statements of the 4th respondent, the learned counsel for the writ petitioner states that when there is a common public Cremation cum Burial ground is available, how the the President can file a counter, stating that drinking water is supplied from that locality? Thus, the very statement and the objections raised by the President, Panchayat Union was untenable and relying on the said objections, the said

Electricity Board ought not to have been rejected the application submitted by the writ petitioner.

5.The learned counsel appearing on behalf of the respondents 1 to 3 relying on the counter affidavit filed by the Assistant Executive Engineer, (Construction), Tiruttani said that certain procedures are to be followed under clause 23 of the terms and conditions of supply, which are statutory in character. Further, under the guise of the Interim order of this Hon'ble Court the petitioner has unblatently and unauthorisedly shifted the S.C.No.150 from lands in S.No.279/11 to S.No.279/3 which is just 30 metres from the existing panchayat bore well and hence violative of Memo No.SE/R.E. and I(D) D/C.No.629/82-1-(Tech.Branch), dated 13.02.1992. In fact, the Board will insist for No Objection Certificate from the local panchayat so that minimum distance of 100 metres is maintained so as to grant shifting of service connection. Hence, Interim injunction granted by this Court considerable hardship to the local villagers who are using the Panchayat Bore well for drinking water purpose. Therefore, the Public Interest, will have to prevail over.

6.Considering the rival submissions made by the respective learned counsels appearing on behalf of the writ petitioner as well as the respondents 1 to 3, this Court is of an opinion that the facts stated in the counter filed by the Panchayat President as well as the reasons stipulated in the counter filed by the Assistant Executive Engineer are contrary and certain disputed facts and circumstances are raised by the learned counsel for the petitioner also. The distance between the drinking water bore well as well as a common public Cremation ground has not been correctly stated in the counter affidavit filed by the 4th respondent. These all are the factors to be find out by way of an inspection and enquiry. By conducting a field inspection, the authorities can arrived a conclusion in respect of the disputed facts narrated by the President, Panchayat Union and the reasons stipulated in the counter affidavit filed by the Tamil Nadu Electricity Board officials, this Court is of the considered opinion that such complex and disputed facts can never be adjudicated in a writ proceedings under Article 226 of the Constitution of India. All such factual disputes are to be adjudicated by conducting an enquiry and by taking a field inspection in this case as the 4th respondent, who was holding the Post of President has stated with a common Cremation and Burial ground is there in that locality.

7.In view of this, this Court is of an opinion that the respondents 1 to 3 has to conduct a field inspection and an enquiry and accordingly, consider the application submitted by the writ petitioner for transfer of electric service connection

in the new address and by following the procedures as contemplated under law. The writ petitioner shall be provided with an opportunity of personal hearing at the conducting the time of enquiry. Such an exercise shall be done by the respondents 1 to 3 within a period of 8 weeks from the date of receipt of a copy of this order.

8. With these observations, the writ petition stands disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Deputy Registrar

//True copy//

Sub Assistant Registrar

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To

1. The Executive Engineer (O&M)
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Tiruttani, Tiruvallur District.
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Tamil Nadu Electricity Board
Rural West, Tiruttani
Tiruttani, Tiruvallur District.

+1cc to Mr.G.Jeremiah, Advocate SR.No.87767

+1cc to Mr.S.K.Rameshuwar, Advocate SR.No.87594

W.P.No.18767 of 2004

GMV (07/01/2019)