

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**Dated : 09.10.2018**

**Coram**

**The Honourable Ms.Justice P.T.ASHA**

**C.R.P(PD)No.2199 of 2012  
and  
M.P.No.1 of 2012**

Venugobal

...Petitioner

Versus

1.S.Paulraj

2.Vellai Goundan

3.Junior Engineer,  
(Operation & Maintenance)  
Tamilnadu Electricity Board,  
Ketticheviyur,  
Erode District.

4.Superintendent Engineer,  
(Operation and Maintenance)  
Tamilnadu Electricity Board,  
Gobi Distribution circle,  
Palaniammal Girls High School Road,  
Gobichettipalayam,  
Erode District.

5.Executive Engineer,  
(Operation and Maintenance)  
Tamilnadu Electricity Board,  
Gobi Distribution circle,  
New Hospital road,  
Gobichettipalayam,  
Erode District.

...Respondents

This Civil Revision Petition is filed under Article 227 of the Constitution of India praying to set aside the fair and final order dated 22.12.2011 passed in I.A.No.1423 of 2010 in O.S.No.302 of 2010 on the file of the District Munsif Court, Gobichettipalayam, Erode District.

For Petitioner : Mr.I.C.Vasudevan

For Respondents : No Appearance

**ORDER**

This Civil Revision Petition is filed by the fourth defendant challenging the order passed by the learned District Munsif, Gobichettipalayam in I.A.No.1423 of 2010 in O.S.No.302 of 2010 dated 22.12.2011, in and by which the learned District Munsif had dismissed the Application filed by him under the provisions of Order VII Rule 11 of C.P.C to reject the plaint in O.S.No.302 of 2010 filed by respondents 1 & 2 herein.

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2. The brief facts of the case are as follows:

The respondents 1 & 2 herein had filed a suit in O.S.No.302 of 2010 on the file of the District Munsif Court, Gobichettipalayam seeking for a perpetual injunction against

the Authorities of the Electricity Board arrayed as respondents 3 to 5 herein and the revision petitioner restraining them from drawing electric lines through the suit property. It appears that the revision petitioner had sought for electricity connection for the bore well located in his land from respondents 3 to 5 and they had proposed to take steps to draw the electric lines by erecting poles through the suit property which belong to respondents 1 & 2 herein. Opposing the said move, the suit came to be filed by the respondents 1 & 2.

3. On receipt of the summons in the above suit, the revision petitioner had not filed a written statement. However, a detailed written statement had been filed by the Authorities of the Electricity Department wherein they had contended that the respondents 1 & 2 have no *locus standi* to prevent them from drawing the electric lines through the suit property in view of the provisions of Sections 12(10) & 16(1) of Electricity Act.

4. Thereafter, the revision petitioner had come forward with an Application in I.A.No.1423 of 2010 and in the affidavit filed in support of the said Application, he had stated that as per Sections 51 of the Indian Electricity Act, 1910 and 16(1) of the Indian Telegraphic Act whenever any objection is raised in fixing electric poles or while drawing electric lines, then the remedy available is to approach the District Magistrate (District Collector) for getting necessary permission. In the instant case, the Authorities of Electricity Board have moved the District Collector for such permission. The respondents 1 & 2 could very well have moved the District Collector with their objections. However, without availing the remedy available to them under Sections 51 of the Indian Electricity Act, 1910 and 16(1) of the Indian Telegraphic Act, respondents 1 & 2 have rushed to the Court and in view of the provision of Sections 51 of the Indian Electricity Act, 1910 and 16(1) of the Indian Telegraphic Act, the suit is filed without jurisdiction. In I.A.No.1423 of 2010, respondents 1 & 2 have remained ex-parte and respondents 3 to 5 would not contest the said Application.

5. Despite the above, the learned District Munsif, Gobichettipalayam had proceeded to dismiss the Application only on the ground that the Application filed by the revision petitioner is not covered by any of the circumstances listed under Order VII Rule 11 of C.P.C. This View of the learned District Munsif, Gobichettipalayam is erroneous.

6.1. Mr.I.C.Vasudevan, learned counsel appearing for the revision petitioner would rely on the judgment of this Court in ***R.Santhana Raj & Anr. Vs. The Chief Engineer, Non-Conventional Energy Source, Anna Salai, Chennai & Ors.*** reported in **2012 1 CTC 504**. He would particularly draw the attention of this Court to paragraph Nos.58 & 63 of the aforesaid judgment. In paragraph No.58(i) & (iii) of the said judgment, this Court has held as follows:

*"58. Therefore, in the light of the foregoing discussion, the following conclusions emerge:-*

*(i) The provision of Section 12(2) of the Electricity Act, 1910 requiring the licensee to obtain consent of the owner or occupier of the land on*

*which it is proposed to carry out certain works, stands repealed, in terms of Section 185(1) and 185(2)(b) of the Electricity Act, 2003, with the issue of the Works of Licensees Rules, 2006, in exercise of the power conferred by Section 67(2) of the 2003 Act.*

*(ii) Primarily, Rule 3(1)(a) the Works of Licensees Rules, 2006 requires the licensee to obtain the prior consent of the owner or occupier of any building or land on which it is proposed to carry out certain works.*

*(iii) If the owner or occupier refuses to give consent and raises objections, the licensee may obtain permission in writing from the District Magistrate or the Commissioner of Police, in terms of the first proviso under Rule 3(1)."*

6.2. In the very same judgment, the learned Judge has also held that on the other hand, even if the mandamus sought is to be allowed, the respondents would still proceed under Section 16(1) of the Telegraphic Act, 1885 to get the permission of the District Magistrate which in fact based on the principle that the alternate remedy is available to the respondents 1 & 2 herein. The learned District Munsif,

Gobichettipalayam has totally overlooked the contentions that have been raised in the affidavit filed by the revision petitioner and the written statement filed by the respondents 3 to 5 wherein they have clearly stated the steps have been taken and the remedy that is available to the respondents 1 & 2 herein.

7. In view of the judgment cited *supra*, it is clear that the grounds raised by the revision petitioner in the impugned Application is correct and the learned District Munsif, Gobichettipalayam had erred in dismissing I.A.No.1423 of 2010 and therefore, the same is liable to be set aside.

8. In the result, this Civil Revision Petition is allowed and the plaint in suit O.S.302 of 2010 is rejected. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

**09.10.2018**

mrr  
Index: Yes/No

**P.T.ASHA, J.,**

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To

The Principal Subordinate Court,  
Gobichettipalayam.



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