

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:24.01.2018

Coram

THE HONOURABLE Mr. JUSTICE M.VENUGOPAL
AND
THE HONOURABLE Mr. JUSTICE S.VAIDYANATHAN

W.A.No.56 of 2018 and
C.M.P.No.382 of 2018

K.Murugeshan

.. Appellant/3rd Party

Vs.

- 1.The Junior Engineer/South
Tamil Nadu Generation &
Distribution Corporation Ltd.,
Tiruppur Electricity Distribution Circles,
Perumanallur - 641 666
Tiruppur District.
- 2.The Assistant Executive Engineer,
Anupparpalayam, Tiruppur District.
- 3.The Executive Engineer,
Tamil Nadu Generation &
Distribution Corporation Ltd.,
Distribution Circles, Avinashi,
Tiruppur District. ..Respondent 1 to 3/Respondent
- 4.P.Williams ..4th Respondents/ Petitioner

Prayer: Appeal under Clause 15 of the Letters Patent, to set aside the order in W.P.No.27762 of 2017 dated 31.10.2017 passed by this Court.

Writ Petition filed under Article 226 of India Praying for issuance of Writ of Mandamus directing the 1st respondent to consider the petitioner representation dated 11.7.2017 consequently give Electricity Service Connection to site No.8 No.15/1 Meenakashi Nagar Venkateshawara Nagar Kanakkampalayam Village and Post Perumanallur Road Tiruppur District.

For Petitioner : Mr.P.Tamilavel

For RR 1 to 3 : Mr.S.K.Raameshuwar

JUDGMENT

[Judgment of the Court was delivered by M.VENUGOPAL, J.]

Heard the Learned Counsel for the Appellant/3rd party. Mr.S.K.Raameshuwar, Learned Standing Counsel takes notice for Respondents 1 to 3. Since this Court is disposing of the present Writ Appeal, at the admission stage itself, notice is not ordered to the 4th Respondent.

2.According to the Appellant/3rd party, he preferred a complaint on 04.02.2015 against the 4th Respondent in regard to illegal construction made in the residential plot allotted to him. Further, on 20.02.2015, the Appellant and others gave representation to the Executive Officer of Kannakampalayam Panchayat in regard to the fact as to whether any approval was given to construct a Christian Community Hall. As a matter of fact, the Authority had replied to the effect that no approval was granted to the 4th Respondent and if any Community Hall is to be constructed, he is to obtain an approval from the District Collector. Apart from that, on 29.08.2016, the representation was given by the Appellant before the District Collector to stop the illegal construction put up by the 4th Respondent.

3.The Learned Counsel for the Appellant submits that the Appellant, on earlier occasion i.e. on 07.11.2016 in W.P.No.40088 of 2016 seeking necessary direction to direct the 1st Respondent to consider his representation dated 29.08.2016 and to prevent the construction work of the 4th Respondent for running a Christian communal prayer house in the residential area in site No.8 in Venkateswara Nagar, Kanakkampalayam Village, Perumanallur Road, Tiruppur District and the said writ petition is pending. Furthermore, in the said writ petition, the 4th Respondent herein is arrayed as one of the Respondents.

4.The grievance of the Appellant is that this Court, while disposing of the W.P.No.27762 of 2017 filed by the 4th Respondent (P.Williams), had passed orders on 31.10.2017, wherein at paragraph 4, it is observed as under:

"Considering the above stated facts and circumstances, without expressing any view on the claim made by the petitioner, this writ petition is disposed of, by directing the respondents to consider the claim of the petitioner and pass orders on the same on merits and in accordance with law, after hearing the rival claimants, if any. Such exercise shall be done by the respondents within a period of eight weeks from the date of receipt of a copy of this order."

5.The core contention advanced on behalf of the Appellant is that the 4th Respondent herein had suppressed the factum of earlier pending W.P.No.40098 of 2016 filed by the present Appellant/Writ Petitioner and had obtained an order behind the back of the Appellant. Therefore, the Appellant is performed to file the present Writ Appeal, since he is an aggrieved person and got prejudiced in regard to the order passed by this Court in W.P.No.27762 of 2017 filed by the present 4th Respondent.

6.This Court, on going through the contents of the order passed by the Learned Single Judge in W.P.No.27762 of 2017 filed by the 4th Respondent as Writ Petitioner, is of the considered view that the Learned Single Judge had only disposed of the said Writ Petition, by only directing the Respondents to consider the claim of the 4th Respondent/Writ Petitioner and pass orders on the same on merits and in accordance with law, after hearing the rival claimants, if any and fixed a time frame within a period of eight weeks from the date of receipt of a copy of this order.

7.From the aforestated order passed by this Court in W.P.No.27762 of 2017, this Court is of the considered view that the Appellant cannot be in any manner prejudiced by way of the Learned Single Judge passing the orders in W.P.No.27762 of 2017.

8.At this stage, this Court worth recalls and recollects the decision of the Learned Single Judge [which was delivered by one of us S.V.N., J.] in W.P.33929 of 2013 dated 20.10.2017 [between P.Abdul Azeez and another V. The Executive Officer, Muthupettai Town Panchayat, Thiruvarur District and another] wherein at paragraph 10, it is, inter alia, observed as under:

"10. When there is specific plan accorded for construction of residential house, the petitioners cannot construct the said Jamath/prayer hall/Madrassa, and hence, the first respondent is right in issuing the stop work notice and thereafter passing the impugned order of cancellation of planning approval. If any construction is subsequently made after obtaining the interim order from this Court, and thereafter contending that the huge amount has been invested, the same cannot be a ground to permit the construction of the superstructure to stand there, when admittedly the planning permission has been sought for and approval has also been given only for construction of residential house, and hence, the construction of prayer hall/Jamath/ Madrassa is not permissible."

9.It is relevant for this Court to make a pertinent mention that at this stage, the Learned Counsel for the Appellant points out that the Respondents 1 to 3 are not considering the request of the Appellant/3rd Party to be heard in regard to the orders passed by this Court in W.P.No.27762 of 2017 and the Appellant will be further satisfied, if this Court permits the Appellant to put forth his objections/representation before the Respondents 1 to 3, who shall take into account of the orders passed in W.P.No.27762 of 2017 and to pass orders within a period of three weeks from the date of receipt of a copy of this order. The Appellant/3rd party is granted one week time from today to submit his representation before the concerned Respondents and it is needless for this Court to make a significant mention that the authorities shall take note of the objections/representation of the Appellant and to dealt with the same on merits, by meeting out each and every averments made by the Appellant, in his representation and the final orders shall be passed in a speaking terms, in an objective, qualitative and quantitative manner and that too in a dispassionate manner, after hearing all the interested parties, by scrupulously adhering to the principles of natural Justice. Further, the authority should take the communication of the President, Kannakampalayam Panchayat addressed to the Appellant as to whether the building is meant for Residence or for Religious purpose.

10.With the aforesaid observations and directions, the Writ Appeal is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

sgl

To

1.The Junior Engineer/South
Tamil Nadu Generation &
Distribution Corporation Ltd.,
Tiruppur Electricity Distribution Circles,
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Tiruppur District.

2.The Assistant Executive Engineer,
Anupparpalayam, Tiruppur District.

3.The Executive Engineer,
Tamil Nadu Generation &
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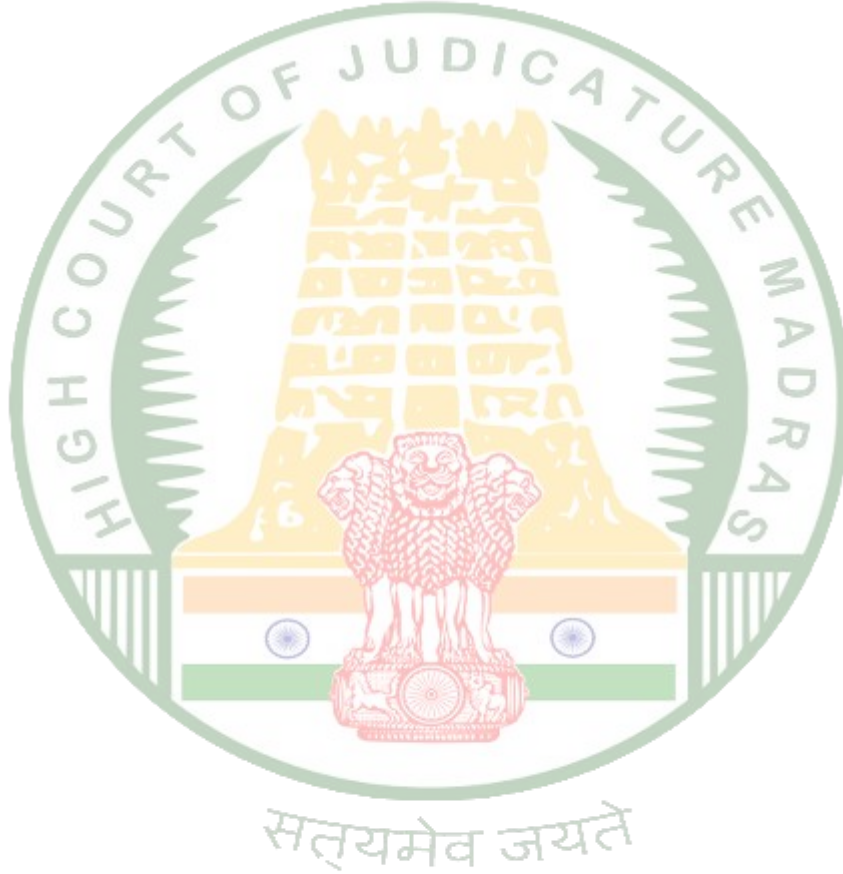
+1cc to Mr.P.Tamilavel, Advocate, S.R.No.5168

+1cc to Mr.S.K.Ramesh Kumar, Advocate, S.R.No.5943

W.A.No.56 of 2018

CNR(CO)

RRK(12/02/2018)



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