

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.11.2018

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.27241 of 2018
and
W.M.P.No.31685 of 2018

G.Shanmugam

... Petitioner

Vs.

1.Tamil Nadu Generation and
Distribution Company, rep.by its
Chairman,
800, Anna Salai, Chennai-600 002.

2.The Executive Engineer,
TANGEDCO, Tambaram,
Chennai- 600 045.

3.The Assistant Engineer, (O & M)
TANGEDCO, Madambakkam,
Chennai-600 126.

4.K.Sakthivel

.... Respondents

PRAYER: Writ Petition filed under Article 226 of the
Constitution of India praying for issuance of a Writ of
Mandamus, to direct the respondents 1 to 3 herein to provide
electricity service connection to the hut house of the
petitioner bearing New Door No.9/55, Nalla Thaneer Kulam
Street, Agaramthen, Chennai- 600 126 - vide Receipt No. 4258675
dated 22.06.2011.

For Petitioner : Mr.K.Premkumar

For Respondents: Mr.S.K.Rameshvar

Standing Counsel (TNEB)
for R1 to R3

Mr.Chinasamy for R4

O R D E R

The prayer sought for in the writ petition is a writ of
mandamus, to direct the respondents 1 to 3 herein, to provide
electricity service connection to the hut house of the
petitioner bearing New Door No.9/55, Nalla Thaneer Kulam

Street, Agaramthen, Chennai- 600 126, vide Receipt No.4258675 dated 22.06.2011, within a time frame to be fixed by this Court.

2.Heard Mr.K.Premkumar, learned counsel for the petitioner, Mr.S.K.Rameshvar, learned standing counsel for the respondents 1 to 3 and Mr.Chinasamy for the 4th respondent.

3.The petitioner claims ownership of the property in Punjai Survey No.225, Agaramthen Village, Tambaram Taluk, Kancheepuram District, measuring to an extent of 0.18 cent, which originally belonged to one T.V.Jeyachandan, from whom, the grand-mother of the petitioner, one K.Muniyammal, purchased the said property by sale deed dated 07.06.1982, which was registered as Document No.4153/1982 at S.R.O.Tambaram. Therefore, the said K.Muniyammal became the absolute owner of the property. The said K.Muniyammal, by settlement deed dated 25.02.1991, registered as Document No.881/1991 at S.R.O.Tambaram, settled the property to and in favour of her three grand children, namely, (1) Shanmugam (writ petitioner herein) (2) Palani @ Palanisamy and (3) Dhanasekaran @ Raja. Therefore, as on date, the petitioner and other two persons, who are brothers of the petitioner, have been in possession and enjoyment of the property by virtue of the settlement made by their grand mother K.Muniyammal.

4.However, the 4th respondent, who is the son of the said K.Muniyammal and paternal uncle of the petitioner, had claimed ownership of the property and in order to establish his ownership, he already approached the competent Civil Court, by filling a suit in O.S.No.58 of 2011. It seems that, after some time, the said suit was dismissed for default. Even prior to that, the petitioner, who is also residing in the subject land, after putting up a small house, sought for electricity service connection from the respondents 1 to 3 and in this regard, he had paid the entire amount on 26.02.2011. However, electricity service connection was not restored to him, because of the alleged objection made by the 4th respondent.

5.In this context, it was the stand of the TANGEDCO to get "No Objection Certificate" (for brevity "NOC") from the 4th respondent, since, the issue had already been engaged by the competent Civil Court by entertaining a civil suit filed by the 4th respondent.

6.However, since, the said suit was dismissed for default, the petitioner sent a further request on 28.12.2017, requesting the 3rd respondent to extend electricity service connection. However, the 3rd respondent, in response to the said request dated 28.12.2017 of the petitioner, has given reply on 03.01.2018, stating that, the suit though was originally dismissed, subsequently got restored vide I.A.No.444/2011 and

since it was restored, it is still pending, and therefore, unless the issue is decided or NOC is given, the electricity service connection cannot be extended to the petitioner.

7. In this context, the learned counsel for the petitioner would submit that, the petitioner is the joint owner along with the two brothers in whose favour the property was settled by his grand mother K.Muniyammal, who was the absolute owner of the property. In spite of these factors, when the petitioner made application for effecting electricity service connection, it was turned out on the alleged reason that, the 4th respondent had made an objection and unless the objection is withdrawn or NOC is produced, the request of the petitioner cannot be considered.

8. In this context, the learned counsel for the petitioner would also submit that, in clause 27 of the Tamil Nadu Electricity Distribution Code, 2004, the TANGEDCO need not insist upon NOC from the 4th respondent, who is not at all or no way connected to the property in question.

9. However, Mr.S.K.Rameshvar, learned Standing Counsel, appearing for the respondent TANGEDCO would submit that, with regard to the dispute over the title of the property in question, already civil suit was filed and pending between the petitioner and the 4th respondent. Even though, the suit was filed by the 4th respondent, unless it is resolved by the competent Civil Court, the issue as to whether the petitioner or the 4th respondent is the owner of the property in question, cannot be resolved. Therefore, during the interregnum, if the petitioner wants electricity service connection necessarily, he has to get NOC from the 4th respondent.

10. In this context, the learned standing counsel relied upon the order passed by this Court in earlier writ petition in W.P.No.25548 of 2014 filed by the 4th respondent, wherein, he sought for similar prayer for effecting electricity service connection to the 4th respondent, who was the petitioner in that writ petition.

11. After having considered the rival claim of the 4th respondent, this Court passed the following order:-

"5. Admittedly, as per clause 27 (4), when the petitioner produces No Objection Certificate from the objectors, the service connection could be effected. Since in this case, the petitioner himself has stated that the objectors, who are parties in the partition suit, have no objection, it is for him to get No Objection Certificate from the said objectors and produce the same to the Department. On such No Objection

Certificate is being produced by the petitioner, the electricity Board shall consider the same and pass orders on merits and in accordance with law and by invoking section 27 (4) of the Act.

The writ petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed."

12. Pursuant to the said order passed by this Court, it is the claim of the standing counsel for the TANGEDCO that, on receipt of NOC from the objectors, i.e. the petitioner herein and others, the electricity service connection was extended to the 4th respondent herein, who was the petitioner in that writ petition.

13. By relying upon this order, the learned standing counsel would submit that, if such NOC is obtained by the petitioner herein from the 4th respondent and the same is produced, the respondents would certainly act upon and effect the electricity service connection.

14. I have heard the learned counsel for the 4th respondent, who also would submit that, pursuant to the order passed by this Court dated 19.09.2014 in W.P.No.25548 of 2014, NOC was obtained from the objectors, including the petitioner herein, and only on that stand, the 4th respondent herein, was able to get electricity service connection and he is enjoying the same at present. He would submit that, even though, the suit was dismissed earlier for default, subsequently, it was restored and it is pending before the competent Civil Court. Unless and until the civil Court decides the issue, the petitioner cannot claim any exclusive right over the property. Therefore, in this regard, if at all service connection is to be effected to the petitioner, NOC from the 4th respondent is a must, of course, if the same was requested from the 4th respondent to give NOC for getting electricity service connection.

15. I have considered the rival submissions made by the learned counsel for the parties and have perused the materials placed before this Court.

16. When there is a dispute with regard to the ownership of the property between the petitioner and the 4th respondent and in this regard, a civil suit is also pending, this Court cannot go into the merits of the claim of ownership of the property of either the petitioner or the 4th respondent.

17. However, the fact remains that, the 4th respondent already approached this Court, and got an order, as referred

above. By virtue of that, NOC was obtained from the objectors, including the petitioner, and on the strength of the NOC, he was able to get the electricity service connection. In a similar fashion, if the petitioner also seeks for NOC from the objectors, i.e. the 4th respondent, he should give the same, as the issue of ownership of the property is yet to be decided. It is the stand of the TANGEDCO through their standing counsel that, if NOC is obtained from the 4th respondent and produced, certainly TANGEDCO would have no other impediment and immediately, they will effect service connection, for which, necessary charges have already been collected from the petitioner.

18. In view of the said factual position that the claim of the petitioner about the ownership is yet to be decided by the competent civil court and even though, the petitioner counsel submits that, such a NOC need not be obtained from the 4th respondent, only for the purpose of getting electricity service connection as an interim measure, since electricity is one of the essential amenities and requirements, NOC is also inevitable from the point of view of the TANGEDCO. If expressly some dispute arises with regard to the ownership of the property, certainly, the petitioner has to get the NOC from the 4th respondent and produce the same.

19. In this context, the learned counsel appearing for the 4th respondent would submit that, the 4th respondent obtained electricity service connection, only pursuant to production of NOC from the objectors, including the petitioner and therefore, in the same manner, the 4th respondent would also give NOC to the petitioner. The said stand taken by the 4th respondent is to be appreciated and is hereby recorded.

20. In the result, this writ petition is disposed of with the following orders.

(1) That the 4th respondent is hereby directed to issue NOC to the petitioner for getting electricity service connection from the respondents 1 to 3 for his building or house, constructed at Punjai Survey No.225, Agaramthen Village, Tambaram Taluk, Kancheepuram District, within one week from the date of receipt of a copy of this order.

(2) On receipt of such NOC, the same shall be produced by the petitioner to the official respondents, especially to the 3rd respondent, who, on receipt of such NOC, after verifying the claim of the petitioner that he has already paid the necessary charges, shall effect the electricity service connection to the property of the petitioner, as he claims.

(3) It is made clear that, the said exercise shall be undertaken by the official respondents within a period of two weeks from the date of receipt or production of NOC.

(4) It is also made clear that, since, both the 4th respondent and the petitioner have to resolve the issue over

title of the property, for which, they have already approached the Civil Court, effecting the electricity service connection to both the petitioner as well as the 4th respondent would no way make them entitled to make any claim for title over the property.

With these directions this petition is disposed of. Consequently, connected miscellaneous petition is closed. No costs.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

tta

To

- 1.The Chairman,
Tamil Nadu Generation and Distribution Company,
800, Anna Salai, Chennai-600 002.
- 2.The Executive Engineer,
TANGEDCO, Tambaram,
Chennai- 600 045.
- 3.The Assistant Engineer, (O & M)
TANGEDCO, Madambakkam,
Chennai-600 126.

+1 CC to Mr.V. Chinnasamy, Advocate sr 78581.

+1 CC to Mr.S.K.Rameshvar, Advocate sr 78863.

+1 CC to Mr.K.Premkumar, Advocate sr 78820.

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