



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated :17.09.2018

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**THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA
AND
THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI**

W.A. (MD) No.1472 of 2015
and
M.P (MD) No.3 of 2015

Govindarasu

...Appellant/3rd party

Vs.

1.The Assistant Engineer,
O/o.The Assistant Engineer,
Tamil Nadu Electricity Board,
Malayur,
Pudukkottai District.

...1st Respondent/Respondent

2.P.Chinnathampi

...2nd Respondent/Writ Petitioner

Prayer : Writ Appeal filed under Clause 15 of Letters Patent, to allow the writ appeal and set aside the order passed in W.P(MD) No.9324 of 2014 dated 15.07.2014 on the file of this Court.

Prayer in WP(MD) . 9324/ 2014 :

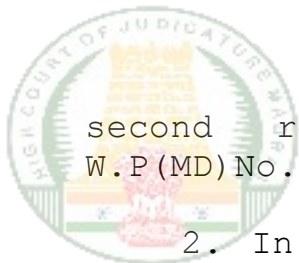
Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus directing the Respondent to remove the pole, which was erected in the Petitioner's patta land, Comprised in Survey No. 323/5G within a time frame.

For Appellant: Mr.T.Lajapathi Roy
For R-1 : Mrs.S.Srimathy for
Mr.S.M.S.Johny Basha
For R-2 : No Appearance

JUDGMENT

[Judgment of the Court was delivered by
PUSHPA SATHYANARAYANA, J.]

This writ appeal is filed by the appellant, who is a third party to the writ petition filed by one Chinnathampi, who is the



second respondent herein, against the order passed in W.P(MD)No.9324 of 2014, dated 15.07.2014.

2. In the said writ petition, a Writ of Mandamus was sought for directing the Tamil Nadu Electricity Board, to remove the electricity pole, which was erected in the writ petitioner's patta land, comprised in Survey No.323/5G, within a stipulated time.

3. The learned single Judge while passing orders, has rightly mentioned that the appellant herein has not made as a party in the writ petition as the pole sought to be shifted was erected only for the purpose of drawing electricity to the appellant's land. Further, it is stated that earlier, when the electricity pole was erected, both the parties did not have objections and the subsequent misunderstanding between them has led to the filing of the writ petition and directed that there shall be an enquiry by the official respondent and in the event of the electricity pole being shifted, the expenditure would be borne equally by the writ petitioner and the appellant herein.

4. Subsequent to the order passed by the learned single Judge, a notice dated 07.03.2015, was issued to the appellant, by the Electricity Board, assessing the expenditure that would be involved in shifting the electricity pole and what would be the 50% amount payable by the appellant.

5. The objection of the learned counsel appearing for the appellant is that the order in the writ petition was passed in the absence of the appellant and further, the electricity pole was not erected in the second respondent's / writ petitioner's land. The pole is only outside of his land and it is only the wires are crossing over his land. Therefore, the question of shifting the electricity pole will not at all arise.

6. We have heard the submissions made on either side and perused the materials placed before us.

7. A perusal of the order passed by the learned single Judge shows that the first respondent / Electricity Board was only directed to first consider the matter and resolve the issue amicably. The Electricity Board has not given a finding as to whether the pole is outside the second respondent's / writ petitioner's, namely, Chinnathampi's land or it is erected inside his land. If it is outside his land, the question of shifting the electricity pole will not arise as the second respondent / writ petitioner cannot have any objection. Even before doing that exercise, the Electricity Board only raised the valuation of the expenditure and sent a notice to the appellant.

<https://hcservices.ecourts.gov.in/hcservices/>

8. Therefore, we are of the view that the Electricity Board has to necessarily find out whether the electricity pole in



dispute is erected within the land of the second respondent / writ petitioner or not and whether shifting of electricity pole is required or not. If there is necessity for shifting the electricity pole, then the expenditure has to be borne equally by the parties.

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9. Therefore, the order passed by the learned single Judge is modified adding a point that the first respondent / Electricity Board is to first give a finding whether the electricity pole is inside the second respondent's / writ petitioner's land or not. Thereafter, the first respondent / Electricity Board shall follow the direction as given by the learned single Judge.

10. With the above modification, the writ appeal is disposed of. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (AS)

// True Copy //

Sub Assistant Registrar (CS-I)

To

The Assistant Engineer,
O/o. The Assistant Engineer,
Tamil Nadu Electricity Board,
Malayur,
Pudukkottai District.

PM

BU/PM/SAR-1 : 10.10.2018 : 3P/2C

Judgment made in
W.A (MD) No. 1472 of 2015
17.09.2018