

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****RESERVED ON : 12.01.2018****DELIVERED ON : 07.02.2018****CORAM:****THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN****AND****THE HONOURABLE MRS.JUSTICE R.HEMALATHA****W.A(MD)No.1027 of 2017****and****W.P(MD)No.18098 of 2015****and****C.M.P. (MD)No.7146 of 2017****W.A(MD)No.1027 of 2017:**

Chelladurai

Rep. by his power agent,

A.Selvaraj

: Appellant

Vs.

1. The Assistant Executive Engineer,
TANGEDCO,
Tamil Nadu Electricity Board,
Devakottai - Rural North,
Devakottai, Sivagangai District.

2.Ramesh

: Respondents

PRAYER: Appeal filed under Clause 15 of the Letters Patent, praying to set aside the order passed by this Court in W.P.(MD) No.12463 of 2017 dated 05.07.2017.

Prayer in WP(MD). 12463/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of mandamus, directing the 1st respondent to restore the petitioner's electricity connection in no.416-011-611 forthwith to the petitioner's property, bearing Survey No.B1/26, situating in Kannakottai group, Devakottai taluk, Sivagangai District.

For Appellant

: Mr.T.Lajapathi Roy
for Mr.C.Lenin

For Respondent No.1

: Mrs.Parameswari
for Mr.S.M.S.Johnny Basha

For Respondent No.2

: Mr.R.Sundar Srinivasan

**W.P(MD)No.18098 of 2015:**

A.Selvaraj

: Petitioner

Vs.

1. The State represented by,
The District Collector,
Sivagangai.

2. The District Revenue Officer,
Sivagangai,
Sivagangai District.

3.S.Ramesh

: Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the second respondent in his proceedings P.Mu.P1/11361/15 dated 07.09.2015 and quash the same as of no legal consequence and direct the second respondent to grant patta for the property in S.No.B1/26 at Kannankottai Group Town Survey in Devakottai Taluk, Sivagangai District in favour of the petitioner.

For Petitioner :Mrs.P.Krishnaveni

Senior Counsel

for Mr.C.Lenin

For Respondents 1 & 2 :Mr.A.K.Baskara Pandian

Special Government Pleader

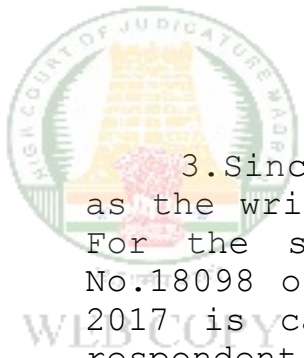
For Respondent No.3 :Mr.R.Sundar Srinivasan

COMMON JUDGMENT

(Judgment of the Court was delivered by **R. HEMALATHA, J.**)

The petitioner filed this Writ of certiorarified Mandamus calling for the records of the District Revenue Officer, Sivagangai District, the second respondent herein with regard to the proceedings in Pa.Mu.P1/11361/15 dated 07.09.2015 and quash the same and also direct him to grant patta for the property in survey No.B1/26 at Kannakottai Group Town Survey in Devakottai Taluk, Sivagangai District in favour of the petitioner.

2.The writ appeal is filed under Clause 15 of the Letters Patent, against the order dated 05.07.2017 passed by the learned Single Judge in W.P.(MD)No.12463 of 2017 in which the petitioner had prayed for issuance of a Mandamus directing the Assistant Executive Engineer, TANGEDCO, (the first respondent) to restore the electricity service connection bearing No.416-011-611 to his property in Survey No.B1/26, of Kannakottai Group, Devakottai Taluk, Sivagangai District.



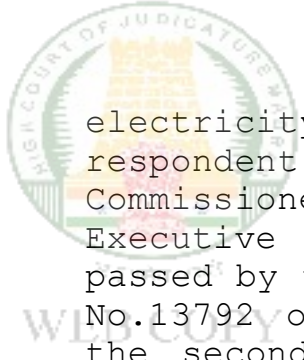
3. Since the matter in issue in both the writ petition as well as the writ appeal is one and the same, a common order is passed. For the sake of convenience, the writ petitioner in W.P.(MD) No.18098 of 2015, who is also the appellant in W.A.(MD) No.1027 of 2017 is called as the petitioner and Thiru. Ramesh, the third respondent in W.P.(MD) No.18098 of 2015 is called as the third respondent, though he is the second respondent in W.A.(MD) No.1027 of 2017.

4. The writ petition in W.P.(MD) No.12463 of 2017 was dismissed on 05.07.2017 on the ground that since a civil suit in O.S.No.135 of 2015 is pending before the learned District Munsif, Devakottai, the petitioner can seek his remedy only after the suit is disposed of. The petitioner was also given liberty to approach the Civil Court.

5. The brief facts of the case of the petitioner in W.P.(MD) No.18098 of 2015 are as follows:

5.1. The petitioner, A.Selvaraj is the power of attorney holder of one Thiru.Chelladurai, through a registered power of Attorney dated 10.06.2011. The petitioner is in possession of the property. The said Thiru.Chelladurai, got the property through a settlement deed dated 24.07.2008 executed by his father Sethuraman. It is the ancestral property of the said Sethuraman and in the settlement Register, his name is indicated. While so, Thiru.S.Ramesh (the third respondent), who has no title or interest over the property, filed a writ petition in W.P.(MD) No.3828 of 2013 on the file of this Court seeking a Certiorari to quash the grant of patta in favour of the present petitioner which was disposed of by a learned Single Judge of this Court on 16.04.2015 with a direction to the first respondent namely, the District Revenue Officer, to issue notice to the third respondent (who is the petitioner in W.P.(MD) No.3828 of 2013 as well as to the present petitioner within a period of three weeks from the date of receipt of a copy of the order and to dispose of their respective petitions in accordance with law within a further period of four weeks thereafter.

5.2. In the mean while, the petitioner herein filed a civil suit in O.S.No.135 of 2015 before the learned District Munsif, Devakottai for declaration of his title to the suit property and for a permanent injunction restraining the third respondent from interfering with his peaceful possession and enjoyment of the property. Along with the said suit, he also filed I.A.No.1116 of 2015 for an ad-interim injunction. Though initially an interim injunction was granted, it was subsequently vacated, after full contest and on merits. The petitioner, therefore filed C.M.A.No.5 of 2016 before the Subordinate Court, Devakottai against the orders passed in I.A.No.1116 of 2015 and it was also dismissed on 20.04.2017. Parallely the petitioner took steps to get



electricity service connection, which was objected to by the third respondent vide a representation dated 13.04.2016 to the Commissioner, Devakottai Municipality and to the Assistant Executive Engineer, TANGEDCO, Devakottai. Since no orders were passed by the above officials, the third respondent filed W.P.(MD) No.13792 of 2016 which was disposed of on 25.10.2016, directing the second respondent namely, the Assistant Executive Engineer, TANGEDCO, Devakottai to consider the objection filed by the third respondent.

6.In the writ petition filed before this Court, the main contention of the petitioner is that the property in question is his ancestral property which was settled by his father in his name through a settlement deed dated 24.07.2008 and his name is also registered in all the Revenue Records. His further contention is that the second respondent namely, the Revenue Divisional Officer, by his proceedings dated 07.09.2015 had not only chosen to quash the patta granted in favour of the petitioner but also directed for issuance of patta in favour of the third respondent even though the sale deed dated 15.04.1992 in favour of the third respondent is false and fictitious. According to the petitioner, the predecessor in title of the third respondent, namely, one Periyasamy Servai executed a sale deed in favour of one Amirthavalli in respect of Survey No.82/B1 who in turn executed a sale deed dated 15.04.1992 in favour of the third respondent mentioning the Survey Number of the property as B1/26 instead of B1/82.

7.In the writ appeal, the following grounds are raised by the petitioner:

i)The writ petition is dismissed on the sole ground that a civil suit is pending between the parties.

ii)The writ petitioner had only sought for a basic amenity namely, the restoration of electricity service connection. As per Section 27 (4) of the Tamil Nadu Electricity Distribution Code, 2004, even if the owner is not available or if he refuses to give a consent letter, the intending consumer can produce a proof of his being in lawful occupation of the premises and execute an indemnity bond in Form 6 of the Annexure III of the code indemnifying against any loss on account of dispute arising out of effecting service connection to the occupant.

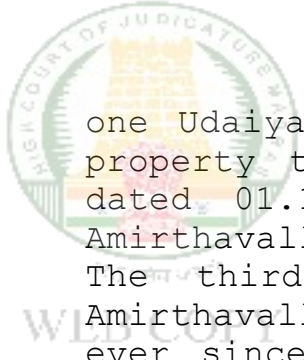
iii)The first respondent without considering the writ petitioner's explanation dated 25.06.2017 disconnected the electricity service connection on 28.06.2017. Subsequently, the rejection order was also passed on 04.07.2017 and was served on the petitioner on 07.07.2017. The first respondent's action in disconnecting the domestic electricity service connection is an abuse of process of law and also was a blatant violation of the Court's orders on the time limit set in the orders in W.P.(MD) No.13742 of 2016.



8.Mr.R.Sundar Srinivasan, learned counsel appearing for the third respondent would contend that the property had never been in possession and enjoyment of the petitioner's father Sethuraman. According to him, the property originally belonged to one Kalimuthan, son of Sornam Ambalam, and that the said Kalimuthan and his minor son sold the property to one Udaiyammai wife of Alagu Ambalam on 27.11.1935. The property in question is described as third item in the said sale deed. His specific contention is that the boundary description in the sale deed clearly shows that the property is situate South of Kulakkal, North of Vellaichamy Asari Punjai, East and West of S.Kalimuthan Punjai. The said property and other two items were subsequently sold by Udaiyammai to one Periyasamy, son of Kalimuthu Servai. In the said sale deed, the property is shown as the second item and the northern boundary is shown as "Kulakkal". In the sale deed dated 13.11.1964 executed by Periyasamy, to Amirthavalli, the northern boundary is again shown as Kulakkal and the east and southern boundaries as Kalimuthan Punjai. According to him, since the survey number is wrongly mentioned as 82/B1, the petitioner is taking advantage of the same. The property comprised by boundaries relate to Survey No.B1/26 and the patta also is in the name of Amirthavalli and she was in enjoyment of the property by paying kist receipts.

9.Mr.R.Sundar Srinivasan, learned counsel appearing for the third respondent would also contend that the subject property never belonged to Siravilikutti's son Sethuraman and wrong entries have been made in the Revenue Records. According to him, the property is still in possession of the third respondent and that all the representations of the petitioner for grant of patta was not considered by the District Revenue Officer, Sivagangai District and in fact the District Revenue Officer after verifying the documentary evidence adduced by the petitioner as well as the third respondent, has passed a detailed order on 07.09.2015 directing the registration of name of the third respondent as pattathar and also upheld the orders passed by the Revenue Divisional Officer, Devakottai. It is also contended by him that false records were created by Sethuraman as if he has gifted the property in favour of his son Chelladurai.

10.Mr.R.Sundar Srinivasan, learned counsel appearing for the third respondent, among other things, had also contended that a civil suit for declaration and injunction is filed by the petitioner in O.S.No.135 of 2015 before the learned District Munsif, Devakottai, and the suit is in part-heard stage. Therefore, the writ petition has got to be dismissed on that count alone. He had further contended that the revenue department is not competent to adjudicate upon the disputed possession between the rival claimants. According to him, the property in question originally belonged to one Kalimuthan son of Sornam Ambalam and



one Udaiyammai wife of Alagu Ambalam and they conveyed the said property to one Periyasamy by means of a registered sale deed dated 01.10.1936 who in turn conveyed the said property to Amirthavalli by means of registered sale deed dated 13.11.1964. The third respondent purchased the property from the said Amirthavalli through a registered sale deed dated 15.04.1992 and ever since the date of purchase, he has been in possession and enjoyment of the said property and he has also settled the property in favour of his daughter Nitharshana Ramesh by means of a settlement deed dated 11.01.2011. The trial Court in the injunction application in I.A.No.1116 of 2015 has also opined that there is no *prima facie* title in favour of the petitioner herein and dismissed the said application and the Subordinate Court upheld the same in C.M.A.No.5 of 2016. He has therefore prayed for the dismissal of the writ petition as well as the writ appeal.

11.Mrs.P.Krishnaveni, learned senior counsel appearing on behalf of the petitioner drew the attention of this Court to the sale deed dated 27.11.1935 executed in favour of Udaiyammai and contended that no survey numbers are indicated in the said sale deed. She would further contend that only in the mortgage deed dated 07.12.1983, executed by Amirthavalli, the vendor of third respondent, the survey number is indicated as B1/26 for the first time, even though, the property in Survey No.82/B1 alone was conveyed to her. Subsequently, the said Amirthavalli, executed a sale deed dated 15.04.1992 in favour of the third respondent mentioning the survey number as B1/26. According to Mrs.P.Krishnaveni, learned senior counsel, the third respondent's vendor cannot convey a property for which she has got no title and that the third respondent's father who was working as Deputy Director, Mines and Minerals Department, by abusing his official position, has maneuvered to register the name of the third respondent in all the Revenue Records.

12.Mr.A.K.Baskara Pandian, learned counsel appearing for the District Revenue Officer has contended that the petitioner and the third respondent are rival claimants in the property in question and that the Revenue Divisional Officer and the District Revenue Officer passed orders after giving opportunity to both sides and the entire revenue records would disclose that the land was originally in the name of Sethuraman, son of Siravilikutti in Old Survey No.377, New Survey No.B1/26 and that the Survey No.377 was subsequently changed as Survey No.B1/26 with effect from 1977. The third respondent had purchased the property on 15.04.1992 from one Amirthavalli. He had further contended that Chelladurai approached the Revenue Divisional Officer, Devakottai in Mu.Mu.A1/1946/2009 and the Revenue Divisional Officer conducted an enquiry and passed an order on 28.06.2011 rejecting the claim of Chelladurai and also directing the Tahsildar to record the name of Ramesh in the Pattathar column in the Revenue Records. The said Chelladurai did not object to the documents placed by Ramesh.



13. It is evident, from all the contentions of both the learned counsels and the various documentary evidence adduced here, that the dispute basically on the title and possession of the property leading to series of litigations between the petitioner and the third respondent. A perusal of the documents adduced on both sides would reveal many infirmities as observed below:

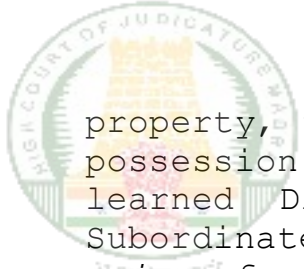
i) the sale deed dated 27.11.1934 adduced by the third respondent does not contain any Survey Number. In fact, in the series of documents relied upon by the third respondent, survey number finds a place for the first time only in the sale deed dated 13.11.1964 executed in favour of Amirthavalli by Periasamy as Survey No.82/B1, which in the mortgage deed dated 07.12.1983 executed by the said Amirthavalli is mentioned as B1/26.

ii) The copy of the Town Survey Register shows that the third respondent is in possession of the property whereas Adangal mentions Sethuraman as occupier of the property. This Sethuraman is said to be the father of the petitioner Chelladurai who has executed the settlement deed in favour of his son, the petitioner on 24.07.2008. The Survey Number in the settlement deed is indicated as B1/26.

iii) In the sale deed dated 29.10.1971 relied upon by the petitioner for the conveyance of the title mentions the names of the sons of Sethuraman as Pandi and Sornalingam. Chelladurai's name is not found in the document. This aspect assumes significance as the District Revenue Officer has consistently held that Chelladurai has not proved that he is the son of Siravilikutti Sethuraman. However, in the legal heirship certificate dated Nil/04/2009, it is seen that Sethuraman has got seven children and the name of Chelladurai also figures. Furthermore, in the sale deed dated 29.10.1971, the Survey Numbers are mentioned as B1/81 and B1/82.

14. The above observations clearly indicate that the question of title has to be carefully examined with the oral and documentary evidence by a competent Civil Court. In the light of fact, that the matter is already pending in O.S.No.135 of 2015, before the learned District Munsif, Devakottai, the prayer of the petitioner cannot be considered, since in the writ petition under Article 226 of the Constitution of India, the question of title regarding an immovable property cannot be properly gone into, because a mass of evidence is required for adjudicating the question of title. Apart from this, both the learned District Munsif, Devakottai as well as the learned Subordinate Judge, Devakottai have not found any prima facie case for grant of an interim relief of injunction in favour of the petitioner.

15. As regards the writ appeal, though Sub-Regulation 4 to Regulation 27 of the Tamil Nadu Electricity Distribution Code, 2004 allows the occupier of the property to have the electricity service connection with or without the consent of the owner of the



property, the point of contention and the dispute pertains to the possession and ownership of the property. Incidentally, both the learned District Munsif, Devakottai as well as the learned Subordinate Judge, Devakottai have also observed that there is a *prima facie* doubt on the possession of the property by the petitioner. Therefore, the order of the learned Single Judge in W.P.(MD)No.12463 of 2017 is upheld and needs no intervention.

16.In the result, the Writ Petition as well as the Writ Appeal are dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

1. The District Collector,
Sivagangai.
2. The District Revenue Officer,
Sivagangai,
Sivagangai District.
3. The Assistant Executive Engineer,
TANGEDCO,
Tamil Nadu Electricity Board,
Devakottai - Rural North,
Devakottai, Sivagangai District.

+3cc to Mr.C.Lenin, Advocate Sr.No.47190, 47189,47492
+1cc to Mr.R.Sundar Srinivasan, Advocate Sr.No.46623

MR

VB/SV/MMS/SAR4/14.02.2018/8P/8C

JUDGMENT MADE IN
W.A(MD)No.1027 of 2017
and
W.P(MD)No.18098 of 2015
07.02.2018