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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 11.01.2018

DELIVERED ON : 22.01.2018

CORAM:

**THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MRS.JUSTICE R.HEMALATHA**

W.A(MD)No.1458 of 2017
and
C.M.P(MD)No.11227 of 2017

V.Geetha

... Appellant/
Writ Petitioner

Vs.

1.The Superintending Engineer,
Thanjavur Sub-Division Office,
Thanjavur Electricity Board,
Thanjavur District.

2.The Junior Assistant Engineer,
Direction & Maintenance,
Town/East Part,
Kumbakonam.

3.Sudharshana
4.A.Vashika

... Respondents/
Respondents

PRAYER: Appeal filed under Clause 15 of the Letters Patent against the order dated 14.11.2017 passed in W.P(MD)No.16461 of 2017.

Prayer in WP(MD). 16461/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order of the 2nd respondent in Ka.No.Me.Po/Tha.mi.pa.va/Thaj/U.Se Po/Valarchi/Ko.Valakku/A.No.144 dated 18.08.2017, and quash the same and consequently direct the respondents to restore the electricity connection to E.B.No.064210010437 for the Padmavathy Bhavan situated at no.7, ESS-VEE towers ground floor Nageswaran 7th street kumbakonam, Thanjavur District.



For Appellant : Mr.M.Ajmal Khan
Senior Counsel
for Mr.S.Chellapandian

For Respondents : Mrs.Parameshwari
for Mr.S.M.S.Johnny Basha for R.1 & R.2
Mr.N.Dilipkumar for R.3 & R.4

JUDGMENT

M.SATHYANARAYANAN, J.

By consent, the writ appeal is taken up for final disposal.

2. The appellant in this writ appeal is the petitioner in W.P (MD)No.16461 of 2017 and she made a challenge to the impugned order of the second respondent dated 18.08.2017, in and by which, the request made by her for re-connection of electricity supply in S.C.No.421-001-437, came to be rejected, with a further request to get refund of a sum of Rs.41,146/- (Rupees Forty One Thousand One Hundred and Forty Six only) deposited by her in compliance of the judgment dated 18.07.2017 passed in W.A.(MD)No.975 of 2017 [*Sudharshana and another v. V.Geetha and others*]. The writ petition came to be dismissed on 14.11.2017 and challenging the legality of the said order, the appellant/writ petitioner has filed this writ appeal.

3. Facts leading to the filing of this appeal, briefly narrated, are as follows:

3.1. The appellant/writ petitioner in the affidavit filed in support of the writ petition, would aver, among other things, that she is an young woman entrepreneur and exhibited interest for business and while so, one V.S.Elumalai and his brother, V.S.Krishnamoorthy had approached her with a request to join as a partner in their newly established restaurant under the name and style 'Padmavathy Bhavan', situated at No.7, ESS-VEE Towers, Ground Floor, Nageswaran South Street, Kumbakonam Town, as they are in need of more investment to continue the said business. They also disclosed that the premises in which the hotel business is being run, belongs to the respondents 3 and 4. Accordingly, she joined the said partnership firm as well as in hotel business and a registered partnership deed came to be executed on 23.10.2014.

3.2. The appellant/writ petitioner was also aware of the fact that other partners, namely, V.S.Elumalai and V.S.Krishnamoorthy had also entered into an unregistered sale deed dated 22.07.2013, wherein they agreed to lease out the property admeasuring to an extent of 1,500 sq. ft. in the above said premises for a period of 48 months commencing from 22.07.2013 ending with 21.07.2017 with an option for renewal. The initial rent was fixed at Rs.50,000/- (Rupees Fifty Thousand only) per month and it was agreed that 10% of the amount will be enhanced in every two years and an advance sum of

Rs.2,00,000/- (Rupees Two Lakhs only) was also paid to the respondents 3 and 4.

3.3. The appellant/writ petitioner would further state that the fact that she joined as a partner in the business run by V.S.Elumalai and V.S.Krishnamoorthy was also brought to the knowledge of the third respondent. However, in the year 2016, a dispute arose between the above said two persons with the landlady and the respondents 3 and 4 and they have handed over the administration of the hotel to the appellant on 20.04.2016 and she had settled all the dues payable to the erstwhile partners and further that, she is in possession from May 2016 onwards and from now, she took over the entire control of the business of the hotel, namely, 'Padmavathy Bhavan'.

3.4. It is also stated by the appellant/writ petitioner that she became aware that on account of non-payment of electricity consumption charges by the erstwhile partners, the connection given to S.C.No.064210010437, stood in the name of 'Padmavathy Bhavan' was disconnected on 23.08.2016 and immediately, she approached the second respondent to pay the arrears and she was directed by the second respondent to get the consent from the owners for the reason that the connection was disconnected. The service connection was under disconnection for over six months.

3.5. The husband of the third respondent has also given an undated representation to the second respondent for restoring the electricity service connection to the premises and accordingly, the second respondent permitted the appellant/writ petitioner to pay the electricity arrears and penal charges and she had also paid the same.

3.6. The appellant/writ petitioner was under the genuine hope that the electricity service connection will be restored and since it was not done, she submitted a representation dated 09.06.2017 to restore the electricity connection and though the respondents 3 and 4 initially expressed their inclination to do so, started submitting objections to the second respondent. The second respondent, vide proceedings dated 20.06.2017, has rejected the request made by the appellant/writ petitioner for restoration of electricity supply and it was challenged by filing W.P(MD)No.12299 of 2017 without impleading the landlords and it was allowed on 03.07.2017 with a positive direction and once again, the said order has not been complied with.

3.7. The appellant/writ petitioner would further state that the respondents 3 and 4 alleged that the appellant/writ petitioner has got the above order without impleading them, got leave to file the writ appeal in W.A(MD)No.975 of 2017. The Division Bench of this Court, vide judgment dated 18.07.2017, has remanded the matter with a direction to consider the matter afresh after hearing both the



parties and accordingly, the hearing was concluded. However, to the shock and surprise of the appellant/writ petitioner, her request for restoration of electricity supply came to be rejected, vide impugned order dated 18.08.2017 and challenging the legality of the same, the present writ petition came to be filed.

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3.8. The private respondents had filed a detailed counter affidavit and took a stand that the appellant/writ petitioner is a rank trespasser and as such, she is not entitled for restoration of electricity supply and would further add that her husband is working as a Deputy Tahsildar and the appellant/writ petitioner is merely a name-lender.

3.9. The respondents 3 and 4 would admit the tenancy between them and V.S.Elumalai and further took a stand that he had defaulted to the tune of Rs.10,00,000/- (Rupees Ten Lakhs only) upto March 2016 and got TIN No.33713962442 and it was also cancelled on 29.06.2016 by the authority concerned and so also, the licence issued by the local authority to run the hotel under the name and style 'Padmavathy Bhavan'. The respondents 3 and 4 further contended that the appellant/writ petitioner without adding them as parties, filed W.P(MD)No.12299 of 2017 and got an order and on appeal by granting leave, the Division Bench of this Court allowed and remanded the matter to the official concerned for fresh consideration and after due and application of mind, the request made by the appellant/writ petitioner for restoration of power supply has rightly been rejected.

3.10. Further, the respondents 3 and 4 took a stand that the document dated 24.05.2017 relied on by the appellant/writ petitioner is nothing but a false document and the signatures found in the said document had also been forged and with regard to the same, a criminal proceedings had also been initiated against the appellant/writ petitioner.

3.11. The respondents 3 and 4 also took a stand that the documents dated 05.07.2017 and 28.06.2017 said to have been obtained by the appellant/writ petitioner as to the trade licence under the Food Safety and Standards Act and trade licence fee, are of very recent origin and it cannot be taken cognizance.

3.12. The respondents 3 and 4, on the legal plea, would submit that by virtue of the amendment to the Regulation 27 of the Tamil Nadu Electricity Distribution Code, 2004, the appellant/writ petitioner is not entitled to electricity service connection and though she was very well aware of the same, omitted to amend the said Regulation. Insofar as R.C.O.P.No.5 of 2017 filed by the appellant/writ petitioner before the Court of Principal District Munsif - cum - Rent Controller, Kumbakonam, for deposit of rent, it is not maintainable and prayed for the dismissal of the writ



3.13. The learned Judge, after taking into consideration the materials placed and the rival submissions, opined that the insistence of 'No Objection Certificate' from the respondents 3 and 4 for restoration is in order in the light of the stand taken by the respondents 3 and 4 in their counter affidavit and citing the said reason, dismissed the writ petition, with a direction directing the official respondents concerned to refund a sum of Rs.41,146/- (Rupees Forty One Thousand One Hundred and Forty Six only) deposited by the appellant/writ petitioner.

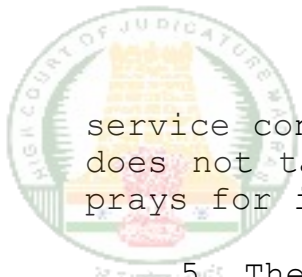
3.14. The appellant/writ petitioner, aggrieved by the above said order dismissing the writ petition, came forward to file this writ appeal.

4. Mr.M.Ajmal Khan, learned Senior Counsel, assisted by Mr.S.Chellapandian, learned Counsel for the appellant/writ petitioner, made the following submissions:

4.1. The respondents 3 and 4 are very well aware of the partnership between V.S.Elumalai and V.S.Krishnamoorthy and also acquiesced the said fact and also very well aware of the possession of the premises as well as running of the hotel by the appellant/writ petitioner and as such, the appellant/writ petitioner is in lawful possession of the premises and therefore, the official respondents ought to have restored the electricity supply.

4.2. The learned Senior Counsel appearing for the appellant/writ petitioner referring to Section 43 of the Tamil Nadu Electricity Act, 2003, would submit that the electricity is a basic necessity and it is obligatory on the part of the respondents to restore the power connection and further invited the attention of this Court to Regulation 27(4) in Chapter 6 of the Tamil Nadu Electricity Distribution Code, 2004 and would submit that if the owner refuses to give consent letter, on production of being in lawful occupation of the premises and subject to indemnity bond in Form 6 of Annexure III to the said Code, the electricity supply is to be restored and in the light of the legal position that the appellant/writ petitioner is in lawful possession of the premises in question, the official respondents are under statutory obligation to restore the power supply forthwith.

4.3. It is also contended by the learned Senior Counsel appearing for the appellant/writ petitioner that since the private respondents had failed to accept the rent, she had also filed R.C.O.P.No.5 of 2017 under Section 8(5) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, on the file of the Court of the Principal District Munsif - cum - Rent Controller, Kumbakonam and started depositing the rent and having exercised the possession and that the appellant/writ petitioner continues to be in possession of the premises, the official respondents ought to have considered her possession as a lawful possession and restored the electricity



service connection and would further contend that the impugned order does not take into consideration the said legal position and hence, prays for interference.

5. The learned Standing Counsel appearing for the respondents 1 and 2 has drawn the attention of this Court to the counter affidavit filed in the writ petition and would submit that in the light of the fact that the lease entered into between them and V.S.Elumalai came to end on 21.07.2017 and that it has not been renewed and in the absence of any lease agreement between the appellant/writ petitioner and the respondents 3 and 4, the possession cannot be construed as a lawful. Therefore, in the light of Regulation 27(4) of the Tamil Nadu Electricity Distribution Code, 2004, the request made by the appellant/writ petitioner for restoration of electricity service connection came to be rightly rejected and prays for the dismissal of this writ appeal.

6. The learned Counsel appearing for the respondents 3 and 4 has invited the attention of this Court to the counter affidavit filed in this writ appeal and would contend that the present legal proceedings are nothing but abuse of process of law for the reason that without her written or express consent, the appellant/writ petitioner said to have entered into a partnership with V.S.Elumalai and V.S.Krishnamoorthy and after they left the partnership, claimed to be in possession and enjoyment of the premises in question and it cannot be construed as a lawful possession.

7. The learned Counsel for the respondents 3 and 4 would further contend that R.C.O.P.No.5 of 2017 is *per se* is not maintainable for the reason that the premises in question came to be completed in the year 2013 and as per Section 30 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, the said Act has no application in respect of the buildings which are less than five years old and the period of five years would expire only in the year 2018 and as such, the said R.C.O.P. is liable to be rejected *in limine*.

8. The learned Counsel for the respondents 3 and 4 would further contend that the original tenant V.S.Elumalai is in arrears of rent from May 2017 and by practising fraud, the alleged partnership agreement came into being and the appellant/writ petitioner is also guilty of adopting the unfair means for filing W.P(MD)No.12299 of 2017 filed for quashing the order of the second respondent, dated 20.06.2017, with a consequential direction to restore the electricity service connection, without impleading the private respondents deliberately and though a positive order was passed, it was set aside and on appeal filed by them with a leave and on remand, the legal aspect has been rightly taken note of and the request made by the appellant/writ petitioner for restoration of power supply has rightly been rejected and hence, prays for the dismissal of this writ appeal.



9. This Court has considered the rival submissions and perused the materials placed before it.

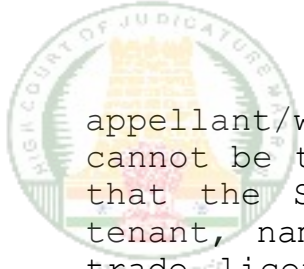
10. The primordial question that arises for consideration is, Whether the appellant/writ petitioner is deemed to be in lawful possession of the premises for which she prays for restoration of electricity service connection?

11. The admitted facts are as follows:

- An unregistered lease deed dated 22.07.2013 came into being between the respondents 3 and 4 and one V.S.Elumalai, son of Venkateshan Swaminathan, in respect of a portion of a ground floor measuring about 1,500 sq. ft. of carpet area and the land and building in Ground Floor No.7, ESS-VEE Towers, Nageswaran South Street, Kumbakonam Town, for a period of four years.
- The unregistered deed of partnership dated 23.10.2014 was entered into between the appellant/writ petitioner and one V.S.Krishnamoorthy, son of V.Saminathan and V.S.Elumalai, son of V.Saminathan, to commence and run the business under the name and style of 'Padmavathy Bhavan'.
- The power supply given to the said premises came to be disconnected on account of default committed in payment of electricity consumption charges by V.S.Elumalai.
- The appellant/writ petitioner, on factual aspects, placed reliance upon the letter dated 24.05.2017 said to have been given by the respondents 3 and 4 to the second respondent stating that except for V.S.Elumalai, the electricity service connection cannot be given.

12. It is also contended by the learned Senior Counsel appearing for the appellant/writ petitioner that though she is prepared to pay the rental arrears as well as the lease amount, it was refused to be received and therefore, she filed R.C.O.P.No.5 of 2017 on the file of the Court of the Principal District Munsif - cum - Rent Controller, Kumbakonam, for deposit of rent and it has also been ordered and the amount is being deposited and as such, she is in lawful possession and occupation of the premises in question and in the light of Regulation 27(4) of the Tamil Nadu Electricity Distribution Code, 2004, the second respondent is bound to restore the electricity service connection forthwith.

13. The learned Counsel for the respondents 3 and 4, on the legal plea, would submit that the reliance placed upon Regulation 27 (4) of the Code, has gone for substitution and as per the substituted clause, which came into being vide Tamil Nadu Electricity Regulatory Commission's Notification No.TNERC/DC/8-21, dated 07.10.2014, in the event of refusal on the part of the landlord to give consent, the intending consumer shall produce valid proof for being in occupation and also execute an indemnity bond in Form 6 of the Annexure III to the said Code and would further contend that the possession of the alleged claim made by the



appellant/writ petitioner that she is in possession of the premises cannot be taken as a valid proof or lawful possession for the reason that the Sales Tax TIN Number granted in favour of the original tenant, namely, V.S.Elumalai came to be cancelled and so also, his trade licence and the documents, namely, licence issued under the Food Safety and Standards Act as well as trade licence issued by Kumbakonam Municipality are dated 28.06.2017 and 05.07.2017 respectively, i.e., after the commencement of the litigation and in the absence of the valid and tenable proof regarding lawful possession and occupation of the premises, the electricity service connection cannot be restored.

14. The learned Senior Counsel appearing for the appellant/writ petitioner, by way of reply, has placed heavy reliance on the decision of the Full Bench of Calcutta High Court in *Abimanyu Mazumdar v. Superintending Engineer* reported in AIR 2011 CALCUTTA 64 and would submit that as per the said decision, an encroacher was directed to provide with electricity service connection on the ground that occupation of a person on a property is lawful or not can only be decided by a competent forum prescribed by law and the electricity being the basic facility, the second respondent is bound to restore the electricity service connection forthwith subject to relevant norms.

15. Let this Court consider some of the provisions of the Tamil Nadu Electricity Act, 2003 and the Tamil Nadu Electricity Distribution Code, 2004.

16. Section 2(15) of the Tamil Nadu Electricity Act, 2003, defines 'consumer' and it is relevant to extract the same as under:
Section 2(15):

"Consumer" means any person who is supplied with electricity for his own use by a licensee or the Government or by any other person engaged in the business of supplying electricity to the public under this Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee, the Government or such other person, as the case may be."

Section 43:

"43. Duty to supply on request.- (1) Save as otherwise provided in this Act, every distribution licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring such supply:

Provided that where such supply requires extension of distribution mains, or commissioning of new sub-stations, the distribution licensee shall supply the electricity to such premises immediately after such extension or commissioning or within such period as may be specified by



the Appropriate Commission:

Provided further that in case of a village or hamlet or area wherein no provision for supply of electricity exists, the Appropriate Commission may extend the said period as it may consider necessary for electrification of such village or hamlet or area.

Explanation.- For the purposes of this sub-section, "application" means the application complete in all respects in the appropriate form, as required by the distribution licensee, along with documents showing payment of necessary charges and other compliances:

(2) It shall be the duty of every distribution licensee to provide, if required, electric plant or electric line for giving electric supply to the premises specified in sub-section (1):

Provided that no person shall be entitled to demand, or to continue to receive, from a licensee a supply of electricity for any premises having a separate supply unless he has agreed with the licensee to pay to him such price as determined by the Appropriate Commission.

(3) If a distribution licensee fails to supply the electricity within the period specified in sub-section (1), he shall be liable to a penalty which may extend to one thousand rupees for each day of default."

17. Regulation 2(x) of the Tamil Nadu Electricity Distribution Code, 2004, defines 'occupier' and it is relevant to extract the same as under:

Regulation 2(x):

"Occupier" means the person in occupation (whether as owner or otherwise) of the premises where electricity is used or intended to be used."

18. Regulation 27(4) of the Tamil Nadu Electricity Distribution Code, 2004, relied on by the learned Senior Counsel appearing for the appellant/writ petitioner as available in 'A Hand Book of Tamil Nadu Electricity Laws' authored by S.Sambamdhani, District and Sessions Judge (Retired) and V.S.Rajaram, Advocate, High Court of Madras - 2011 Edition, is also extracted as under:

"27. Requisitions for Supply of Energy.- (1) The provision regarding the duty of Licensee as detailed in section 43 of the Act to supply electricity on request is reproduced below:

(1) **** *

(2) **** *

(3) **** *

(4) An intending consumer who is not the owner of the premises shall produce a consent letter in Form 5 of Annexure III to this code from the owner of the premises for availing the supply. If the owner is not available or refuses to give consent letter, the intending



consumer shall produce proof of his/her being in lawful occupation of the premises and also execute an indemnity bond in Form 6 of the Annexure III to this code indemnifying the licensee against any loss on account of disputes arising out of effecting service connection to the occupant and acceptance to pay security deposit twice the normal rate."

19. It is very pertinent and relevant to point out at this juncture that in paragraph 19 of the counter affidavit of the respondents 3 and 4, dated 25.09.2017, the substitution made to the said Regulation has specifically been pointed out and despite that, reliance is once again placed upon the said unamended Regulation.

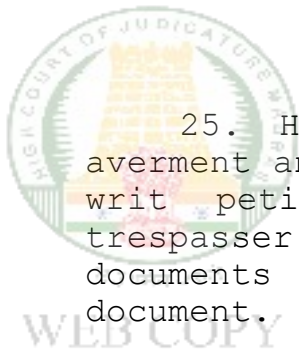
20. Be that as it may, the entitlement for the appellant/writ petitioner to get reconnection of the power supply depends upon whether she is under lawful possession of the premises in question.

21. The appellant/writ petitioner was not a party to the unregistered lease agreement dated 22.07.2013 entered into between the respondents 3 and 4 and V.S.Elumalai. The appellant/writ petitioner claims that the unregistered partnership deed came into being on 23.10.2014 between her, V.S.Krishnamoorthy and V.S.Elumalai (tenant), in and by which, the appellant/writ petitioner claims that she became the partner in the hotel business.

22. The appellant/writ petitioner made a challenge to the order of the second respondent dated 20.06.2017 by which, her request for reconnection of electricity service connection came to be rejected.

23. In paragraph 5 of the said affidavit, she would state that in the year 2016, a dispute arose between the partners and other two partners, namely, V.S.Elumalai and V.S.Krishnamoorthy had handed over the administration of the hotel to her and she had settled all the dues of her erstwhile partners including rental dues and that it is an admitted fact that she was in occupation of the premises from May 2016.

24. In paragraph 6, she would aver that she became aware of the fact that the erstwhile partners failed to pay the electricity consumption charges for the electricity service connection stood in the name of 'Padmavathy Bhavan' and due to the same, the second respondent has disconnected the power supply and on coming to know of the same, she expressed her intention to clear the dues and she was informed by the second respondent that since the power supply was disconnected for over the period of six months, she has to obtain the consent from the landlord and accordingly, the landlord submitted a representation dated 24.05.2017 for restoration of the electricity service connection and thereafter, the second respondent permitted the appellant/writ petitioner to pay the electricity bills and it was also paid.



25. However, the respondents 3 and 4 had denied the said averment and also took a stand in the counter affidavit filed in the writ petition that the appellant/writ petitioner is a rank trespasser and the signatures found in page 18 of the typed set of documents did not belong to them and it is a fabricated and false document.

26. This Court, keeping in mind the said factual aspect also, has considered the following decisions:

26.1. In *Kuppuswamy v. Commissioner of Police, Greater Chennai* reported in 1998 (I) CTC 601, the issue relating to lawful possession for the purpose of granting licence to run a cinema theatre came up for consideration. The learned Single Bench of this Court, after taking into consideration the pronouncements made by the Honourable Supreme Court as well as other decisions, observed in paragraph 8 that "We cannot expect a lawful owner of the property, to represent before a Court of law that he would smash the gates of his building and forcibly dispossess a person in wrongful occupation for the reason that he had trespassed into his property. Every citizen is expected to follow the procedures laid down by the statute for any remedy and he cannot take the law in his own hands" The learned Judge in the said decision placed reliance upon the decision of the Honourable Supreme Court in *M.C.Chockalingam v. V.Manickavasagam* reported in AIR 1974 SC 104 and in paragraph 8 observed that "However, that undertaking will not in any way confer right on the second respondent to clothe him lawful possession, because, the Apex Court in the decision mentioned above in *M.C.Chockalingam v. V.Manickavasagam*, AIR 1974 SC 104 has found that the possession at sufferance is unlawful as that of trespasser."

26.2. The facts of the said case would also disclose that the petitioners therein are the owners of a cinema theatre and the lease was given by the landlords and the renewal of 'C' Form licence was challenged on the ground that the first respondent had no power to renew the licence beyond the period of licence. The learned Judge also noted the decision in *Lallu Yeshwant Singh v. Rao Jagdish Singh* reported in AIR 1968 SC 620 and it was observed that "juridical possession is possession protected by law against wrongful dispossession but cannot per se always be equated with lawful possession."

26.3. It is also relevant to extract hereunder paragraph 14 of the decision in *M.C.Chockalingam v. V.Manickavasagam* reported in AIR 1974 SC 104:

"14. Mr.Gupte strenuously submits that 'lawful possession' cannot be divorced from an affirmative, positive legal right to possess the property and since the lease had expired by efflux of time the tenant in this case had no legal right to continue in possession. In the context of R.13, we are clearly of opinion that a tenant on the expiry of the lease cannot be said to



continue in 'lawful possession' of the property against the wishes of the landlord if such a possession is not otherwise statutorily protected under the law against even lawful eviction through court process, such as under the Rent Control Act. Section 6 of the Specific Relief Act does not offer such protection, but only, as stated earlier, forbids forcible dispossession, even with the best of title."

26.4. The decision relied on by the learned Senior Counsel appearing for the appellant/writ petitioner also laid down the proposition, 'Whether the occupation of a person on a property is lawful or not can only be decided by a competent forum prescribed by law and the possession which a trespasser is entitled to defend against the right owner must be settled possession, extending over a sufficiently long period of time and acquiesced to by the true owner.

26.5. In the said decision, reliance was also placed upon the decision of the Honourable Supreme Court in *Rame Gowda v. M.Varadappa Naidu* reported in AIR 2004 SUPREME COURT 4609, which also refers to the decision in *M.C.Chockalingam v. V.Manickavasagam* reported in AIR 1974 SC 104.

26.6. The said two decisions lay down the proposition that even if a person is lawful owner, it will not permit any person to take the law in his own hands and to dispossess a person in actual possession without having recourse to a Court. The said legal position stood test of times and therefore, it cannot be disputed.

26.7. In *Rame Gowda v. M.Varadappa Naidu* reported in AIR 2004 SUPREME COURT 4609, the Court has also laid down some tests as a working rule for determining the attributes of settled possession and it is relevant to extract the said portion in paragraph 9 as under:

"(i) that the trespasser must be in actual physical possession of the property over a sufficiently long period;

(ii) that the possession must be to the knowledge (either express or implied) of the owner or without any attempt at concealment by the trespasser and which contains an element of animus possidendi. The nature of possession of the trespasser would however, be a matter to be decided on the facts and circumstances of each case.

(iii) the process of dispossession of the true owner by the trespasser must be complete and final and must be acquiesced to by the true owner; and

(iv) that one of the usual tests to determine the quality of settled possession, in the case of culturable land, would be whether or not the trespasser, after



having taken possession, had grown any crop. If the crop had been grown by the trespasser, then even the true owner has no right to destroy the crop grown by the trespasser and take forcible possession."

27. In the light of the said test as a working rule for determining the attributes of settled possession, this Court is of the considered view that the appellant/writ petitioner has failed to establish that she is in lawful possession of the premises in question. It is a categorical stand of the respondents 3 and 4 in the counter affidavit filed in W.P(MD)No.16461 of 2017 that TIN number registration, obtained by V.S.Elumalai, who is the original tenant, had been cancelled on 29.06.2016 and similarly, the licence issued by the local body, namely, Kumbakonam Municipality under the Food Safety and Standards Act had also been cancelled and took a stand that the appellant/writ petitioner did not produce any Registration Certificate or licence in her name for 'Padmavathy Bhavan'.

28. It is also relevant to point out at this juncture that the issue relating to restoration of power supply commences in the form of W.P(MD)No.11886 of 2016 filed by the appellant/writ petitioner herein, which came to be disposed of on 17.04.2017 along with W.P (MD)No.6266 of 2017 and even prior to the said order, the appellant/writ petitioner filed W.P(MD)No.11522 of 2016 against the Superintendent of Police, Thanjavur District and the Inspector of Police, Kumbakonam West Police Station, praying for a writ of Mandamus directing to give police protection for her hotel business, namely, 'Padmavathy Bhavan' and the appellant/writ petitioner after commencement of the said litigation, got the trade licence issued by Kumbakonam Municipality only on 28.06.2017 and the licence under the Food Safety and Standards Act on 05.07.2017 and therefore, for the purpose of finding out whether the appellant/writ petitioner is in lawful possession of the premises in question, those documents would not come to her aid.

29. The conduct of the appellant/writ petitioner in not impleading the private respondents in the earlier round of litigations in W.P(MD)No.11522 of 2016, W.P(MD)No.11886 of 2016 W.P (MD)No.6226 of 2017, W.P(MD)No.12299 of 2017 as well as in the present writ petition in W.P(MD)No.16461 of 2017, would also not amount to fair conduct on her part.

30. The appellant/writ petitioner adding a feather on crown to her conduct, had placed reliance upon the unsubstituted and unamended Regulation 27(4) of the Tamil Nadu Electricity Distribution Code, 2004.

31. It is very important to note at this juncture that as per the Notification No.TNERC/DC/8-21, dated 07.10.2014, the Tamil Nadu Electricity Regulatory Commission, Chennai, in exercise of the powers under Section 181 read with Section 46 of the Electricity

Act, 2003 (Central Act 36 of 2003), made certain amendments to the Tamil Nadu Electricity Distribution Code and it is relevant to extract hereunder Sub-Regulation 4 to Regulation 27 of the Tamil Nadu Electricity Distribution Code, 2004:

"(4) An intending consumer who is not the owner of the premises shall produce a consent letter in FORM-5 of ANNEXURE III to this code from the owner of the premises for availing the supply. If the owner is not available or refuses to give consent letter, the intending consumer shall produce valid proof of his being in occupation of the premises and also execute an indemnity bond in FORM-6 of ANNEXURE III to this code indemnifying the licensee against any loss on account of disputes arising out of effecting service connection to the occupant and acceptance to pay security deposit twice the normal rate."

32. As per the substituted Regulation, the intending consumer shall produce valid proof of his being in occupation of the premises and also execute an indemnity bond.

33. This Court in the earlier paragraphs has extracted the legal position that even a trespasser of the premises without recourse to law, cannot be dispossessed and also taken note of the decision rendered by the Honourable Supreme Court in *M.C.Chockalingam v. V.Manickavasagam* reported in AIR 1974 SC 104, which laid down the proposition that the lawful possession is not litigious possession, wherein it is observed in paragraph 15 that '*lawful possession is not litigious possession and must have some foundation in a legal right to possess the property which cannot be equated with a temporary right to enforce recovery of the property in case a person is wrongfully or forcibly dispossessed from it. Juridical possession is possession protected by law against wrongful dispossession but cannot per se always be equated with lawful possession.*'

34. The private respondents had approached the second respondent for restoration of power supply and the dues were also remitted by them vide receipt bearing No.6039907 on 22.08.2017 and they also made a request to temporarily disconnect the power supply.

35. The respondents 3 and 4 had also launched a criminal prosecution and according to the learned Counsel for them, despite a direction, the F.I.R is yet to be registered.

36. Though the appellant/writ petitioner is entitled to get protection with regard to forcible dispossession, in the considered opinion of this Court, the said possession cannot be equated with the lawful possession. Even as per the unsubstituted Code and as per the amendment/substitution made to the said Code, she shall also produce the valid proof of being in occupation and the documents



relied on by the appellant/writ petitioner, as already pointed out, came into being after the commencement of the dispute/litigation.

37. This Court, in the light of the reasons assigned above, is of the considered view that the writ appeal lacks merit. Therefore, this writ appeal is dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs. Consequently, the connected civil miscellaneous petition is also dismissed.

After the pronouncement of the judgment, the learned Counsel for the appellant/writ petitioner prays for liberty to approach the competent civil forum by invoking the common law remedy.

2. This Court heard the submissions of the respective learned Counsel for the respondents also. .

3. If the appellant/writ petitioner is so advised and if it is open to her under law, she may avail the appropriate remedy before the competent forum.

Sd/-

Assistant Registrar (C.O)

/True Copy/

Sub-Assistant Registrar

To

1. The Superintending Engineer,
Thanjavur Sub-Division Office,
Thanjavur Electricity Board,
Thanjavur District.

2. The Junior Assistant Engineer,
Direction & Maintenance,
Town/East Part,
Kumbakonam.

+2ccs to Mr.N.Dilipkumar, Advocate, SR.No.43225
+One cc to Mr.S.Chellapandian, Advocate, SR.No.43035

rsb

RL/6C/15P/KK/SAR1/25/1/2018

JUDGMENT MADE IN
W.A (MD) No.1458 of 2017
and
C.M.P (MD) No.11227 of 2017

22.01.2018