

**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI**

Writ Appeal No.269 of 2018

JUDGMENT: (Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)

This appeal, under Clause 15 of the Letters Patent, is preferred against the order passed by the Learned Single Judge in W.P.No.691 of 2018 dated 06.02.2018. The appellant herein filed the Writ Petition seeking a mandamus to declare the action of respondents 2 to 5 in suddenly disconnecting electricity supply to petitioner's house bearing No.8-2-296, Kattarampu Locality, Bhagathnagar, Karimnagar Town, Karimnagar District on 01.01.2018, without issuing any notice or proceedings, as illegal, arbitrary and in violation of principles of natural justice. A consequential direction is sought to respondents 2 to 5 to restore electricity supply to the service connection of the petitioner's house.

In the order under appeal, the Learned Single Judge observed that the relief of the nature, which the petitioner sought in the writ petition, could also be obtained in the pending Suit; as the service connection stands in the name of the 6th respondent, as a consumer as defined under the Regulations of the Electricity Department, he made an application to the respondent-authorities, and the respondent-authorities disconnected power supply to the subject property; though the petitioner complains that inconvenience is likely to be caused if the power connection is disconnected, but the 6th respondent, being the consumer, had every right to seek disconnection of the power supply; and the Writ

Petition is not a proper remedy for the relief which the petitioner sought. The Writ Petition was dismissed with liberty to the petitioner to avail his other remedies under law. The Learned Single Judge made it clear that the observations made in the order in the Writ Petition shall not be construed as the Court having expressed any opinion on merits, and the observations were limited only for the purpose of maintainability of the Writ Petition.

Before us Sri M.Rajamalla Reddy, Learned Counsel appearing on behalf of the appellant-writ petitioner, would submit that the appellant and his sister live in the subject house; the 6th respondent is their brother; though the house is a joint family property, it was registered in the name of the 6th respondent; as the 6th respondent denied them their rightful share, they had filed O.S.No.137 of 2014 on the file of the District Judge, Karimnagar against the 6th respondent and others for partition of suit schedule property; the subject house was included as Item No.2 of the E-Schedule property; the said Suit is still pending; there are other tenants in the property, for which electricity connection was obtained; electricity connection stood in the name of the 6th respondent who, with a malafide intention and to force the petitioner to settle the civil disputes, had approached respondents 2 to 5 seeking disconnection of power supply; and, in such circumstances, the Writ Petition came to be filed.

On the other hand Sri V.Ravi Kiran Rao, Learned Counsel appearing on behalf of the 6th respondent, would submit that the 6th respondent, a retired employee of the APSRTC, had obtained a loan from the Corporation for developing the subject property; as he suffered an amputation in his leg, he intends to devolve his self-

acquired property in the name of his sons; the house was constructed, and the electricity supply connection was obtained, by him; the petitioner had entered the house in the year 2013 under the guise of managing its affairs; trusting the petitioner, the 6th respondent had permitted him to stay in the house; the mere fact that he was staying in the house did not confer any right on the petitioner to claim that the electricity supply, for the house, should not be disconnected; and the 6th respondent was justified in seeking disconnection of power supply to avoid pilferage of energy by the petitioner, and his failure to pay the electricity dues.

Sri Zakir Ali Danish, Learned Standing Counsel for respondents 2 to 5, would submit that at the request of the 6th respondent, in whose name the electricity supply connection stands, the power supply was disconnected; and there are no arrears due and payable with regards the subject electricity connection.

The fact that the petitioner has been residing in the subject house ever since 2013 is admitted in the counter-affidavit and has not been denied before us by Sri V.Ravikiran Rao, Learning Counsel for the 6th respondent. The question whether the subject house property is a joint family property or the self-acquired property of the 6th respondent is the subject matter of the Suit in O.S.No.137 of 2014 on the file of the District Judge, Karimnagar. The submission urged before us by Sri V. Ravikiran Rao, Learned Counsel for the 6th respondent, for seeking disconnection of power supply is that the 6th respondent seeks to develop the property. As the petitioner has been residing in the said house for the past four years, accepting the aforesaid submission would result in a new

mode of eviction, as disconnection of power supply can be sought to have persons, residing in the premises, evicted even without following the procedure prescribed by law for eviction of such persons. It would be impossible for any person living in a house or a flat in a city or town, to continue living thereat without electricity supply. Disconnection of electricity supply by respondents 2 to 5, on the mere asking of the 6th respondent without even putting the petitioner on notice and without giving him an opportunity of being heard is, in our view, an arbitrary exercise of power. Accepting the contention urged on behalf of the 6th respondent that it is open to any consumer, who has secured an electricity connection in his name, to seek disconnection of power supply for the mere asking would only mean that any tenant can be evicted by this surreptitious process, without having to follow the procedure prescribed by law. While the petitioner can, no doubt, seek an injunction restraining the respondents from evicting him from the subject premises, it is also open to the 6th respondent to file appropriate proceedings before the competent Civil Court and seek eviction, of the petitioner from the subject premises, in accordance with law.

Suffice it to hold that respondents 2 to 5 could not have disconnected electricity supply without putting the occupants of the house on notice, and without giving them an opportunity of being heard. The order under appeal is set aside. Respondents 2 to 5 shall forthwith restore electricity supply to the subject premises. The petitioner shall continue to pay electricity charges, as and when due, promptly. This order shall not disable the official respondents from putting the petitioner on notice, give him

an opportunity of being heard and, thereafter, take action in accordance with law. It is also made clear that we have not expressed any opinion on the rival claims over the subject property, as these are the subject matters of the pending Civil Suit.

The Writ Appeal is, accordingly, disposed of. The miscellaneous petitions pending, if any, shall stand disposed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(KONGARA VIJAYA LAKSHMI, J)

Date: 22nd February, 2018.

Note:
Issue C.C. by tomorrow.
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