

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.08.2019

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.11350 of 2011
and
M.P.No.1 of 2013

P.Subbiah

...Petitioner

Vs.

The Assistant Engineer,
Tamilnadu Electricity Board,
Chinnamalai,
Chennai-600 036.

... Respondent

Prayer:

The writ petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, to call for the records of the respondent communicating letter dated 16.03.2011 in respect of supply of electricity to the petitioner's building and quash the same and direct the respondent to give electricity connection to the petitioner's building at No.69, L.D.G.Road, Chennai-15.

For Petitioner : Mr.C.P.Sasikumar
for Mr.G.Ramachandran

For Respondents : Mr.S.K.Rameshwar

सत्यमेव जयते
O R D E R

The petitioner has filed this writ petition seeking for the following relief:

"To issue a writ of Certiorarified Mandamus to call for the records of the respondent communicating letter dated 16.03.2011 in respect of supply of electricity to the petitioner's building and quash the same and direct the respondent to give electricity connection to the petitioner's building at No.69, L.D.G.Road, Chennai-600 015."

2.The case of the petitioner is that he was working as Watchman cum Supervisor under one Mr.A.S.Dwargan, who was a building contractor, has constructed 16 Flats in the premises at No.69, L.D.G. Road, Chinnamalai Saidapet, Chennai-600 015. The said Mr.A.S.Dwaragan purchased vacant land from Mrs.Benjamin Gonzaga, wife of Mr.Benjamin, residing at No.74, L.D.G.Road, Chennai-600 0015 measuring about 144 sq. ft. and registered the same as document No.390/1989 dated 15.12.1989. Even before the construction of the flat, the said Dwargan had put up an office-cum-residential structure in the said 144 sq. ft. of vacant land and that the petitioner and his family members were residing there and the front side room was used by him as office room. In the middle of the year 1989 onwards, the petitioner and his family members were residing there. As the petitioner worked for more than 30 years, the said Dwargan promised to execute a Sale Deed in respect of the said 144 sq. ft. of land so as to enable the petitioner to continue to reside in the said building. It is further stated that the petitioner has entered into an agreement with the said Dwargan and the total sale consideration was fixed at Rs.75,000/- and that the petitioner has paid a sum of Rs.50,000/- as advance and also promised to pay the balance amount of Rs.25,000/- at the time of execution of the sale deed. The said Dwargan died without executing the sale deed.

3.While that being so, taking advantage of the death of the said Dwargan, the Flat Owners' Association attempted to dispossess from the building and accordingly, the petitioner filed a suit in O.S.No.3857 of 2007 for a permanent injunction against the Flat Owners' Association. The said suit was dismissed by the XI Assistant Judge, City Civil Court, Chennai. As against the judgment of the suit, the petitioner preferred an appeal in A.S.No.356 of 2009 and subsequently the same was also dismissed. It is further stated that the builder started to make demand that the said portion was not a part of the flat property after registration proceedings of the flats and the builder filed a suit in respect of the disputed property in O.S.No.13668 of 1996 on the file of the learned Assistant Judge, City Civil Court, Chennai, seeking for permanent injunction restraining the Flat Owners' Association from interfering into the said 144 sq.ft. of the premises and the same was decreed in favour of the builder. The Flat Owners' Association filed a suit in O.S.No.13430 of 1996 against the builder and the same was decreed in favour of the Flat Owner's Association. Therefore, the petitioner made an application to the Electricity Department for electricity service connection in the said property. However, the said application was rejected by the second respondent Board on the ground that the petitioner had not obtained 'No objection Certificate' from the Vishwasanthi Apartment Association and further, the judgments cited above

reveal that the petitioner has no right or title in respect of the disputed property, against which, the present writ petition has been filed.

4.The learned Standing Counsel appearing for the respondent would submit that the petitioner has to prove the title of the property and also the petitioner has to get 'No Objection Certificate' from the legal heirs of the deceased Dwaragan. If any such document has been submitted by the petitioner, the second respondent Electricity Board may consider the application filed by the petitioner and pass appropriate orders.

5.Considering the facts and circumstances of the case and that the petitioner has come forward to submit the proof before the Electricity Board to prove his ownership or residence, if any, this Court directs the petitioner to produce 'No Objection Certificate' from the legal heirs of the owner or owners Association to prove his title and on such production, the second respondent Electricity Board is directed to consider the application filed by the petitioner on merits and in accordance with law as expeditiously as possible.

6.With the above direction, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Assistant Engineer,
Tamilnadu Electricity Board,
Chinnamalai, Chennai-600 036.

+2cc to Mr.G.Ramachandran, Advocate, S.R.No.68014
+1cc to Mr.S.K.Rameshwar, Advocate, S.R.No.67899

W.P.No.11350 of 2011
and
M.P.No.1 of 2013

PPA(CO)
CS/10/09/2019