

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.08.2019

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

W.P.No.37296 of 2007  
and  
M.P.No.1 of 2007

S.Thiyagarajan

..Petitioner

Vs

1.The Revenue Divisional Officer,  
Tiruchengode, Namakkal District.

2.The Tahsildar,  
Tiruchengode, Namakkal District.

3.The Deputy Tahsildar,  
Tiruchengode, Namakkal District.

4.The Assistant Engineer,  
(Operation and Maintenance),  
Tamil Nadu Electricity Board,  
Chittalandur, Tiruchengode Taluk,  
Namakkal District.

5.S.Balakrishnan

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, seeking issuance of a Writ of Certiorari, calling for the records pertaining to the order dated 04.12.2007 made in Na.Ka.No.3784/2006/B passed by the 1<sup>st</sup> respondent herein, quash the same.

For Petitioner : Mr.N.Manokaran

For Respondents : Mr.D.Suriyanarayanan  
Additional Government Pleader  
for R1 to R3

Mr.V.Ayyadurai for R5

Mr.S.K.Rameshuwar for R4

O R D E R

This writ petition has been filed for issuance of a writ of certiorari, to quash the order of the first respondent dated 04.12.2007 made in Na.Ka.No.3784/2006/B.

2. According to the petitioner, he is the absolute owner of the property comprised in S.Nos.89/1 and 89/2 of Pirithi Elayampalayam Village, Tiruchengode Taluk. The said lands were originally owned by his forefathers namely i) A.Saminathan Pillai, ii) R.Ponnusamy, iii) R.Kumarasamy and iv) A.Sundaram Pillai. The petitioner is the son of A.Sundaram Pillai.

3. The petitioner would further state that in the year 1884, his forefathers had dug a Well in S.F.No.98, which has been classified as 'poromboke land' and enjoying the said Well as their own property. The family properties were partitioned on 27.09.1985, through a registered deed of partition, in which, 'C' schedule property was allotted to the petitioner's father and thereafter, his father applied for electricity service connection in his name in respect of the Well in S.No.98. However, before getting electricity connection, he died on 29.6.1993. After, the demise of the petitioner's father, the petitioner obtained a consent from his brother and mother to get electricity service connection in his name in respect of the Well in S.No.98. It is further stated that the respondents 2 and 3 have issued 'No Objection Certificate' to the petitioner for taking water from the Well in S.No.98, to irrigate his lands situated in S.Nos.89/1 and 89/2 and a service connection was provided to the Well in the year 2000.

4. Mr.N.Manokaran, learned counsel for the petitioner would submit that since there is no water in the said Well, the petitioner had dug a Bore Well in his patta land in S.No.89/2C and shifted the electricity service connection from S.No.98 to S.No.89/2C. While so, due to the objections raised by his cousin brother/the fifth respondent herein, the first respondent cancelled the 'No Objection Certificate' issued by the respondents 2 and 3 on the ground that the petitioner has obtained 'No Objection Certificate', without getting consent from the other co-owners.

5. It is the submission of the learned counsel for the petitioner that the Well in S.No.98 was closed long back and the local body has already laid a panchayat road in that place. The fifth respondent, who has no right over the property in S.No.89/2C, raised objections for usage of the service connection obtained in S.C.No.803 of Perunkurichi Distribution and the first respondent ordered cancellation of the 'No Objection Certificate', without providing personal hearing to the petitioner and the dispute between the petitioner and the

fifth respondent has already been settled and hence, the order impugned in this writ petition is liable to be set aside.

6. Per contra, learned Additional Government Pleader appearing for the respondents 1 to 3 would argue that the respondents 2 and 3 have issued 'No Objection Certificate', without getting consent from the other co-owners and if the Well in S.No.98 has been closed, there will not be any difficulty for the petitioner to use the service connection in S.C.No.803, which is being used for the Bore Well situated in S.No.89/2C.

7. The fourth respondent filed a counter affidavit stating that the petitioner has applied for service connection in S.F.No.98, Iteeri Poromboke of Preethi Elayampalayam Village, Tiruchengode Taluk and the supply was effected based on the 'No Objection Certificate' issued by the Revenue Authorities in S.C.No.233-006-803 TF IV 5 HP in Perunkurichi Distribution. Subsequently, due to the non availability of water in the Well in S.F.No.98, the service connection was shifted to the near by Bore Well situated in S.No.89/2C. The service connection was disconnected based on the order of the District Collector. However, as per the interim direction of this Court made in M.P.No.1 of 2008 in W.P.No.37296 of 2007, the service connection in S.No.803 was restored on 30.04.2008 and the same is in live condition till date.

8. In the instant case, it is not in dispute that a open Well was dug in the year 1884 by the forefathers of the petitioner in S.No.98, which was classified as 'poromboke land' in the Revenue documents. However, the petitioner and his ancestors were permitted to use the open Well and the petitioner's father had applied for service connection, after the property was allotted to him in the partition deed dated 27.9.1985. Since the petitioner's father died even before effecting service connection, the petitioner with the consent of his brother and mother had applied for service connection in his name in S.No.98. Though the application was made in the year 1990, but, the fact remains that the service connection was effected only in the year 2000.

9. It is also not disputed that the service connection was already shifted to the Bore Well dug in the petitioner's patta land in S.No.89/2C in the year 2003. It is pertinent to note that the respondents 2 and 3 have issued 'No Objection Certificate' to the petitioner for taking water from the Well in S.No.98, to irrigate his lands situated in S.Nos.89/1 and 89/2. Admittedly, the Well in S.No.98 has been closed and the local body has laid a road for usage of the general public. Since there is no dispute that the land in S.Nos.89/1 and 89/2 absolutely belong to the petitioner and service connection was

obtained in the name of the petitioner and it has been used in the Bore Well in S.No.89/2C, the fourth respondent has no authority to disconnect the service connection based on the cancellation of the 'No Objection Certificate' issued by the respondents 2 and 3. It is to be noted that the petitioner could not take water from the Well in S.No.98, as it was admittedly closed. Therefore the 'No Objection Certificate' issued by the respondents 2 and 3 has become irrelevant and hence no need arises to quash the order cancellation of 'No Objection Certificate'.

10. In the light of the above facts, the writ petition is disposed of as no further adjudication is required in this writ petition. It is made clear that the respondent Electricity Board is at liberty to initiate action against the petitioner, if any of the provisions of law is violated by him in future. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

ms

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1.The Revenue Divisional Officer,  
Tiruchengode, Namakkal District.

2.The Tahsildar,  
Tiruchengode, Namakkal District.

3.The Deputy Tahsildar,  
Tiruchengode, Namakkal District.

4.The Assistant Engineer,  
(Operation and Maintenance),  
Tamil Nadu Electricity Board,  
Chittalandur, Tiruchengode Taluk,  
Namakkal District.

+1cc to Mr.N.Manokaran, Advocate, SR.No.71024  
+1cc to the Govt.Pleader, Vide Sr.No.71228

W.P.No.37296 of 2007  
and

M.P.No.1 of 2007

Kak(03.10.2019)