

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.5040 of 2019

S.Mala .. Petitioner

-vs-

1. The Chairman cum Managing Director
TANGEDCO, NPKRR Maaligai
144, Anna Salai
Chennai 600 002
2. The Assistant Executive Engineer
Operation & Maintenance
Tamil Nadu Electricity Board
Arumbakkam, Chennai
3. The Assistant Engineer
Operation & Maintenance
Tamil Nadu Electricity Board (West)
Nerkundram East
Koyambedu
Chennai 600 107
4. G.V.H.Prasad ... Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the production of the records relating to the proceedings of the third respondent dated 23.3.2018 made in Ka.No.U.PO/E and Pa/Ne.Ki/Kattur new electricity connection No.186/2018, quash the same and direct the third respondent to provide electricity connection to the house of the petitioner at No.1176/42, Thiruvalluvar Street, Mettukulam, P.H.Road, Koyambedu, Chennai 600 107.

For Petitioner :: Mr.S.Senthilnathan

For Respondents :: Mr.P.R.Dhilipkumar
Standing Counsel for R1 to 3

ORDER

This writ petition has been directed against the correctness of the impugned order dated 23.3.2018 passed by the Assistant Engineer, Operation & Maintenance, Tamil Nadu Electricity Board, CEDC/West, Chennai, the third respondent herein refusing the request of the petitioner to give electricity service connection, citing a reason of pendency of the suit in O.S.No.6004 of 2016 in respect of the same Survey No.149 claimed by the petitioner.

2. Learned counsel for the petitioner, referring to the judgment made in O.S.Nos.6563 of 1986 and 5330 of 1988 dated 29.10.2010 passed by the learned VIII Assistant Judge, City Civil Court, Chennai, giving a finding that the plaintiff proved that they are in possession of the suit property and they are trespassers, submitted that although the petitioner is an encroacher, she can be evicted only by following due process of law, as she is in possession of the land in question. Hence, a direction has to be issued to provide the electricity service connection, as it is the basic right of the petitioner to have the electricity service connection. Apart from the judgment and decree passed in O.S.Nos.6563 of 1986 and 5330 of 1988, as the suit filed by Mr.G.V.H.Prasad, the fourth respondent herein is pending against the petitioner on the file of the learned IV Assistant Judge, City Civil Court, Chennai in O.S.No.6004 of 2016 seeking permanent injunction restraining the defendants from trespassing into the plaintiff's vacant land in Survey No.149/3, Patta No.1435 measuring an extent of Acre 1.00 cent situated at Koyambedu Village, Chennai, the third respondent has refused the electricity service connection. Again referring to the judgment of this Court in A.Muthusamy and others v. The Assistant Engineer, Tamil Nadu Electricity Board, K.T.C.Nagar, V.M.Chathiram, Tirunelveli, 2009 (4) CTC 606, the learned counsel submitted that Clause 27(2)(12) of the Tamil Nadu Electricity Distribution Code states that supply shall be given in poromboke land on production of necessary documents as per the directive from the Government from time to time. Therefore, when the petitioner has been in possession and enjoyment, the electricity department should accept the request of the petitioner for giving the electricity service connection.

3. The learned standing counsel for the respondents 1 to 3, disputing the contention made by the petitioner on the basis of the judgment reported in 2009 (4) CTC 606 cited supra that as per clause 27(2)(12) of the Tamil Nadu Electricity Distribution Code supply should be given in poromboke land on production of necessary documents, stated that since there has been a clear finding against the petitioner that she is only a trespasser in

the land covered in Survey No.149, she should also, as per clause 27(2)(12) of the Tamil Nadu Electricity Distribution Code, produce a No Objection Certificate from the Officer not below the rank of Deputy Tahsildar. In the present case, when there is a suit pending in O.S.No.6004 of 2016 on the file of the learned IV Assistant Judge, City Civil Court, Chennai seeking injunction against the petitioner, she cannot come to this Court challenging the impugned order without even producing the No Objection Certificate.

4. I also find merits on the reply given by the learned standing counsel for the respondents 1 to 3. A perusal of clause 27(2)(12) of the Tamil Nadu Electricity Distribution Code, which reads thus,

"(12) Supply shall be given in poromboke land on production of ---

(i) No Objection Certificate obtained from the Officer (not below the rank of Deputy Tahsildar)"

clearly shows that the petitioner should produce the No Objection Certificate from the Officer not below the rank of Deputy Tahsildar, which has not been produced. Secondly, there has been a dispute pending in O.S.No.6004 of 2016 on the file of the learned IV Assistant Judge, City Civil Court, Chennai seeking injunction against the petitioner. Thirdly, when a suit was already filed in O.S.No.6563 of 1986, there has been a finding recorded against the petitioner that she is a trespasser. For all these reasons, without producing the No Objection Certificate from the Officer not below the rank of Deputy Tahsildar and until the pending suit is disposed of, I do not find any justification to interfere with the impugned order passed by the third respondent. Accordingly, the writ petition fails and it is dismissed. Consequently, W.M.P.No.5744 of 2019 is also dismissed. No costs.

Sd/-

Assistant Registrar

//True copy//

Sub Assistant Registrar

ss

To

1. The Chairman cum Managing Director
TANGEDCO
NPKRR Maaligai
144, Anna Salai
Chennai 600 002

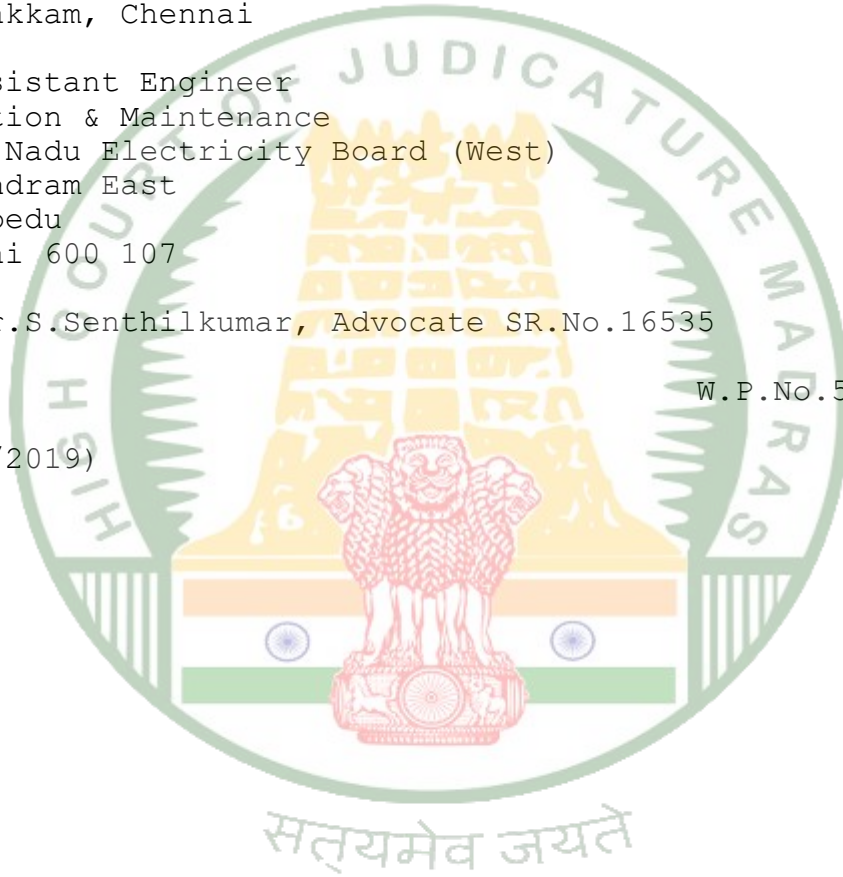
2. The Assistant Executive Engineer
Operation & Maintenance
Tamil Nadu Electricity Board
Arumbakkam, Chennai

3. The Assistant Engineer
Operation & Maintenance
Tamil Nadu Electricity Board (West)
Nerkundram East
Koyambedu
Chennai 600 107

+1cc to Mr.S.Senthilkumar, Advocate SR.No.16535

W.P.No.5040 of 2019

PP(CO)
GMY(23/03/2019)



WEB COPY