

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.10.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P. No.22885 of 2016 and
W.M.P. No.19568 of 2016

A.V.Kalaiselvi

.. Petitioner

-vs-

1.The Chairman,
Tamilnadu Energy Generated and
Distributed Corporation,
(TANGEDCO),
Anna Salai, Chennai.

2.The Assistant Executive Engineer,
Maintenance & Distribution,
Tamil Nadu Energy Generated and
Distributed Corporation,
(TANGEDCO),
Chetpet, Chennai-600 031.

3.The Assistant Engineer,
Maintenance & Distribution,
Tamil Nadu Energy Generated and
Distributed Corporation,
(TANGEDCO),
Chetpet,
Chennai-600 031.

4.A.V.Namasivayam

.. Respondents

Petition is filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorari to call for the records of the culminate impugned order vide Ka.No/U.Po/E&PARA/Ko THANI/No.264/2016 dated 01.06.2016 issued by the third respondent herein and quash the same.

For Petitioner :: Mr.Dalit Tiger C.Ponnusamy
For Respondents:: Mr.P.R.Dilip Kumar,
Standing Counsel for R1 to R3
Mr.S.Kumaradevan for R4

ORDER

The writ petition has been filed challenging the impugned order dated 01.06.2016 issued by the third respondent herein refusing the request of the petitioner to give service connection to the property in question.

2.Learned counsel appearing for the petitioner would submit that the property in question has been originally allotted to the petitioner's father late R.A.Velayutham, who has got two sons, namely, A.V.Namasivayam, the fourth respondent herein and A.V.Palani and four daughters namely, A.V.Jothi @ Philomina Jothi, A.V.Visalatchi, A.V.Kalaiselvi, the petitioner herein and A.V.Jeyalakshmi. Learned counsel appearing for the petitioner would further submit that the petitioner's elder sister A.V.Jothi @ Philomina Jothi, her father, mother and second elder brother were died on 09.09.2002, 29.06.2006, 18.07.2008 and 25.11.2010 respectively. During the life time of the petitioner's father, under the instigation of the petitioner's elder brother A.V.Namasivayam, the fourth respondent herein, he constructed a small hut to an extent of 100 sq.ft. and permitted him to reside and use the electricity and other amenities. Thereafter, the fourth respondent removed the hut and converted the same to a pucca building by his own money. Due to the same, the petitioner's father executed a registered Will dated 15.07.1994 vide document No.65/1994 on the file of the Sub Registrar, Periamet, Chennai in favour of the petitioner's sisters and his brothers. Thereafter, his father cancelled the above said Will on 20.10.2005 and executed a new Will in favour of the petitioner's elder sister, A.V.Visalatchi and subsequently, he died on 29.06.2006. Since the petitioner's sister A.V.Visalatchi settled presently at South Africa, she has executed General Power of Attorney in favour of the petitioner to take care of the property in question. Therefore, the petitioner approached the electricity department seeking service connection and the same was refused on the ground that the fourth respondent has been raising objection. Such objection cannot hold water in the light of General Power of Attorney granted by A.V.Visalatchi in whose favour the property has been settled by way of Will by the petitioner's father.

3.Reiterating the averments made in the counter affidavit, learned counsel appearing for the fourth respondent would submit that although it is the claim of the petitioner that the property in question has been settled by way of Will by the petitioner's father in favour of petitioner's sister A.V.Visalatchi vide Document No.96/05 dated 20.10.2005, the same cannot be construed as a valid Will as it is sham and nominal. Moreover, the fourth respondent has filed a Suit in O.S. No.1785

of 2007 on the file of the VII Assistant Judge, City Civil Court, Chennai and also obtained permanent injunction from interfering with the plaintiff's peaceful possession and enjoyment of the schedule mentioned property on 18.07.2008. As the petitioner has to be bound by the judgment, he cannot make an application to get electricity service connection.

4.Since the judgment and decree passed by the learned VII Assistant Judge, City Civil Court, Chennai in O.S. No.1785 of 2007 has been operating against the petitioner and as against the same, no appeal has been filed, this Court is not inclined to entertain the writ petition. Accordingly, the writ petition fails and the same is dismissed. Consequently, W.M.P. No.19568 of 2016 is closed. No costs.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

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To

1.The Chairman,
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Tamil Nadu Energy Generated and
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(TANGEDCO),
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+1 CC to Mr.Dalit Tiger C.Ponnusamy, Advocate sr 86533.
+1 CC to Mr.S.Kumaradevan, Advocate sr 86378.

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MP (CO)
SP (03/12/2019)