



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 29.08.2019	Pronounced on: 04.09.2019
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Coram::

The Honourable Dr.Justice G.Jayachandran

Writ Petition No.15409 of 2019
& W.M.P.No.15364 of 2019

P.Neelaveni,
W/o.Ponnaiyan,
No.13E, New Muthu Nagar (Narikuravar Colony),
Thudiyalur Post,
Coimbatore North Taluk,
Coimbatore - 641 034. Petitioner

/versus/

1. The District Collector,
O/o.The District Collector,
Coimbatore District,
Coimbatore.
2. The Superintendent Engineer,
Coimbatore North,
TANGEDCO (Formerly TNEB)
Tatabad, Coimbatore - 641 012.
3. The Assistant Executive Engineer,
TANGEDCO (Formerly TNEB),
South, Thudiyalur,
Coimbatore Power Distribution Zone,
Coimbatore.
4. The Chairman-cum-Managing Director,
TANGEDCO (Formerly TNEB)
NPKRR Maligai,
144, Anna Salai, Chennai - 600 002.
5. N. Ravi,
S/o.Natesan,
No.353, Big Bazzar Street,
Coimbatore - 641 006. Respondents

R5 - impleaded as per Court order dated 08.08.2019 by GJJ in
W.M.P.No.21713 of 2019.

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue Writ of Mandamus, directing the 3rd respondent to provide electricity service connection to the petitioner's house situated at No.13E, New Muthu Nagar (Narikuravar Colony), Thudiyalur Post, Coimbatore North Taluk, Coimbatore - 641 034 based upon the Legal Opinion dated 06.03.2019 given by the Government Pleader addressed to the 3rd respondent herein and based upon her representation dated 15.04.2019 and pass orders.

For Petitioner : Mr.S.Kumara Devan

For R1 : Mrs.P.Rajalakshmi
Additional Government Pleader

For R2 to R4 :Mr.S.K.Rameshwar, Standing Counsel

For R5 : Mr.Vinayaga Vishnu

O R D E R

Heard the Learned Counsel for the Petitioner and the Learned Counsel for the respondents.

2. The case of the petitioner herein is that, she belongs to Narikuravar community which is classified as Most Backward Community. Nearly 70 families are residing at New Muthu Nagar also known as Narikuravar colony at Thudiyalur, Coimbatore Taluk for nearly 30 years. All these family have Family card, Voter ID card etc. The Government has provided them all freebies like TV, Grinder and fan. Their children are studying in schools and provided with free laptop. However, in spite of several request the 3rd respondent/Assistant Executive Engineer, TANGEDCO, deny them the privilege of Electricity service. They believe the land belongs to Government. It is in their possession/occupation for more than 30 years. While so when they approached the 3rd respondent/Assistant Executive Engineer, TANGEDCO, for service connection during the year 2016, without reason, they were denied access to the Office. Hence, they represented to the 1st respondent/District collector on 25.01.2016. Thereafter, the 3rd respondent/Assistant Executive Engineer, TANGEDCO, received their application for service connection on 30.01.2016, but rejected the application stating that the land in S.No.398/2 belongs to one Muthusamy Gounder S/o.Kumarasamy Gounder. Therefore, the petitioner and others are not entitled for service connection.

3. According to the learned counsel for the petitioner, as per Tamil Nadu Electricity Distribution Code, 2004, the occupier of the building is entitled for service connection even if the landlord denies consent, provided the consumer execute an indemnity bond. Courts in India had on various occasions held that right of life includes the right to live with human dignity. Life guaranteed in any civilised society implies the right of shelter and electricity, is essential for a shelter. Therefore, the petitioner and other residents of that Colony are entitled for service connection based on their long occupation. While so, the rejection of the application on the ground of disputed title is not proper. Hence, the petitioner filed W.P.13282 of 2016 to direct the 3rd respondent to accept the Nativity Certificate issued by the Government and provide electricity connection. This Writ Petition was dismissed on 11.04.2016 with following observation:-

"Accordingly, while rejecting the prayer sought for in this Writ Petition, liberty is granted to the petitioner to approach the concerned Authority of the Electricity Board with documents to support her contention that the actual owner of the land is not Muthusamy Gounder and others, and it is she, who is the owner of the property. With this liberty the Writ Petition is dismissed."

4. Then again, the petitioner relying upon their long occupation filed W.P.No.42576 of 2016, to direct the 3rd respondent/Assistant Executive Engineer, TANGEDCO, to consider their application for service connection based on Nativity Certificate. This writ petition was withdrawn by the petitioner, when the counsel for the 3rd respondent informed the Court that one N.Ravi and R.Krishnaveni had filed Civil Suit in O.S.No.652 of 2016, before the II Additional Subordinate Court, Coimbatore and obtained interim injunction in respect of the land in dispute. Knowing about the suit, the petitioner entered appearance and filed vacate injunction petition and written statement. On 28.11.2018, the Interlocutory Applications filed for interim injunction and to vacate the injunction closed recording the Suit is ripe for trial. Therefore, the petitioner has made a request for reconsidering the application. When the 3rd respondent sought opinion of the Government Pleader, he has also given a positive opinion that under Regulation 25 of the Distribution Code, 2004 and under Sections 42 and 43 of the Electricity Act, 2003, there is no embargo to give new electricity service connection in the name of the petitioner (Neelaveni) after obtaining indemnity bond.

5. The learned counsel for the petitioner referring the judgment of this Court rendered in A.Muthusamy Vs. Assistant Engineer, TNEB, Chennai reported in 2009(4) CTC 606 and in T.M.Prakash & others Vs. The District Collector, Tiruvannamalai (<http://indiankanoon.org/doc/130400037>) submitted that, the petitioner hailing from Nomadic Tribe is deprived of basic amenity on frivolous reasons. When there is no order of injunction, there is no embargo under law to give service connection to the petitioner. If the suit ends against them, they are ready to vacate the place, till then let the 3rd respondent provide them service connection.

6. In the counter affidavit filed on behalf of the 2nd & 4th respondents, the 2nd respondent/Superintendent Engineer, TANGEDCO, Coimbatore, has denied all the allegations made against 2nd and 3rd respondents. They are not aware of the opinion alleged to have been given by the Government Pleader, Principle District Court. Reiterating that service connection to the petitioner is not provided since the plaintiff in O.S.652 of 2016 have objected and the matter is sub judice. Further, in the counter the respondents has alleged that the petitioner has totally suppressed the W.P.No.21978 of 2013 filed by N.Ravi and Tmt.P.Krishnaveni to redeem the land from the encroachers and the same is pending.

7. Subsequently, the respondents filed addition counter in the nature of curative petition since the facts stated in the counter regarding the Writ Petition W.P.No.21978 of 2013 was not correct. The relevant passage is extracted below to place on record the actual fact.

4. I submit that in my earlier Counter Affidavit at Page No.7 in Para 16 by an inadvertent mistakes, I wrongly mentioned the petitioner's name of W.P.No.21978 of 2013 on the file of Hon'ble High Court of Judicature, Madras, as N.Ravi, S/o.Natesan and Smt.P.Krshnaveni, instead of A.Ayyasamy. Further in the same Para, I had mentioned that the above said W.P.No.21978 of 2013 is still pending. By mistakenly the fact was stated as the above said Writ Petition is pending. Actually on 12.03.2018 itself, the above said W.P.No.21978 of 2013 was disposed of with a direction to the 1. District Collector, Coimbatore, 2, The Thasildar, Coimbatore North Taluk and 3. The Divisional Manager, Southern Railway, Salem to

consider the request of the petitioner therein.

5. I humbly submit that on 28.06.2019, the 3rd respondent namely, the Assistant Executive Engineer has sent a letter to the petitioner herein in Letter No.254/2019 dated 28.06.2019 with regard to the petitioner's request for Electricity Service connection. In that letter, the 3rd respondent by and an inadvertent mistake wrongly mentioned that the W.P.no.11657 of 2016 and W.P.No.21978 of 2013 are pending. The actual fact is that the earlier Writ Petition filed by the same petitioner herein in W.M.P.No.11657 of 2016 in W.P.No.13282 of 2016 was dismissed by this Hon'ble Court, instead of Writ Petition by mistake I mentioned as Writ Miscellaneous Petitions number in letter dated 28.06.2019. However, the both Writ Petitions were disposed of by this Hon'ble Court. In fact the same was clearly mentioned in my earlier Counter Affidavit in Para 9 in detail. Further the W.P.No.21978 of 2013 also disposed of by this Hon'ble Court. This fact also clearly stated in Para No.2 of this Additional Counter Affidavit. Hence, the 3rd respondent herein on 15.07.2019 had sent a letter to the petitioner in this regard.

6. I humbly submit that as stated above, by oversight and by an inadvertent mistake, myself and the 3rd respondent herein mistakenly stated the above said facts and the same was now rectified by filing this Additional Counter Affidavit. I hereby tender my un-conditional apologies for informing wrong facts to this Hon'ble Court. Kindly accept this unconditional apology and not to take any further action in this regard and this Additional Counter Affidavit may be received on file.

8. The Petitioner initially filed without impleading the parties who are claiming title over the land. One Ravi filed petition to implead himself as respondent stating that he is the owner of the property and the petitioners have encroached upon his land and other neighbouring land and trying to get legalised their possession by getting service connection. Hence, this Court found that, he is proper and necessary party to the proceedings, the implead petition was allowed.

9. In the counter the 5th respondent has stated that he purchased the property in the year 2013 from one A.Ayyasamy S/o. Arunachalam Chettiar. At the time of his purchase the land was vacant. The petitioners and others suddenly encroached upon the land and put up small huts/sheds and started residing illegally. Hence, he and the other land owners have filed suit O.S.No.652 of 2016. The Suit is ripe for trial. In the said suit interim order restraining the petitioner and others from expanding their encroachment in any manner by constructing, fencing, obtaining Electricity connection was granted in I.A.No.521 of 2016. On 28.04.2016 the Interlocutory Application was allowed. This court already in W.P.No.13282 of 2016 has rejected similar prayer of the petitioner with liberty to settle the title dispute and seek for service connection. Till the suit is pending and therefore, the prayer in the Writ Petition is not maintainable.

10. The Learned Counsel for the Petitioner relying upon Regulation 27 (2) (d) of the Distribution Code and the judgements of this Court in this respect strenuously submit that the petitioner and others are living in the said land for more than 30 years. The Nativity Certificate and residential proof are in her favour. In spite of law and judgments, the Authorities are refusing to provide service connection because, the petitioner belong to Narikuravar Tribe. The objection of the 5th respondent/Ravi, is farce and to be neglected. The pendency of the suit filed by the 5th respondent/Ravi cannot stand in the way of petitioner getting electricity service connection. There is no legal or factual impediment for the 3rd respondent to provide service connection to the petitioner, subject to the outcome of the Civil Suit.

11. The judgments referred by the Petitioner counsel in support of his argument are invariable in respect of providing service connection to the encroachers on Government land. In the said factual scenario, the Courts have observed that as an interim measure, electricity service can be given after obtaining indemnity bond from the occupier. Contrarily, in this case, the land belongs to private individuals and the petitioner is an encroacher. This Court, in the writ petition W.P.No.13282 of 2016 vide order dated 11.04.2016 has passed the following order:-

"Accordingly, while rejecting the prayer sought for in this Writ Petition, liberty is granted to the petitioner to approach the concerned Authority of the Electricity Board

with documents to support her contention that the actual owner of the land is not Muthusamy Gounder and others, and it is she, who is the owner of the property. With this liberty the Writ Petition is dismissed."

12. No doubt, compassion and sympathy should be shown to downtrodden and socio-economic weaker section. But then, undue sympathy to rank trespasser or encroacher at the cost of individuals right of property may lead to anarchy. En-mass encroachment of private land and relief seeking amenities will become a prototype die-cast for land grabbers.

13. Therefore for the reasons stated above, the relief sought by the petitioner cannot be considered at present. The petitioner is at liberty to revive the request for Electricity service connection, after the disposal of the Civil Suit in O.S.652 of 2016 on the file of II Additional Sub-Judge, Coimbatore, which is ripe for trial.

14. The II Additional Sub-Judge, Coimbatore, shall take up the trial on priority basis and dispose the suit by 31st of December 2019. If the plaintiff in the suit (private respondent in this writ petition) delay the disposal of the suit unreasonably and the delay is not attributable to the writ petitioner, then the respondents 1 to 3, shall consider the request of the petitioner for service connection and provide them Electricity after obtaining indemnity bond as prescribed.

15. Accordingly, the Writ Petition is disposed with the above direction. No costs. Consequently, Connected Miscellaneous Petition is closed.

Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

bsm

To,

1. The District Collector,
O/o.The District Collector,
Coimbatore District,
Coimbatore.
2. The Superintendent Engineer,
Coimbatore North,
TANGEDCO (Formerly TNEB)
Tatabad, Coimbatore - 641 012.
3. The Assistant Executive Engineer,
TANGEDCO (Formerly TNEB),
South, Thudiyalur,
Coimbatore Power Distribution Zone,
Coimbatore.
4. The Chairman-cum-Managing Director,
TANGEDCO (Formerly TNEB)
NPKRR Maligai,
144, Anna Salai, Chennai - 600 002.

+1 cc to M/s.S.K.Rameshwar Advocate sr76984

+1 cc to Government Pleader sr77365

+1 cc to M/s.S.Kumaradevan Advocate sr76433

+1 cc t M/s.T.Anbazhagan Advocate sr 76939 dt 21/10/2019

Writ Petition No.15409 of 2019

vsnII(co)
aa15/10/2019

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