

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.07.2019

PRONOUNCED ON : 17.07.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Writ Petition No.15414 of 2019

G.Sasikala

... Petitioner

Vs

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.P.Nagraj

(R5 impleadd as per order dated 08.07.2019)

made in WMP.NO.19036/19

... Respondents

Prayer :- This Writ Petition is filed under Article 226 of the Constitution of India for a writ of Mandamus directing the third respondent herein to accept the petitioner's application and provide Electricity Service Connection to her house situated at No.79, Dhanalakhmi Nagar, Kannampalayam Village, Sulur Taluk, Coimbatore District based upon the order of this Court passed in W.P.No.14706 of 2013 dated 05.12.2013.

For petitioner :Mr.S.Kumara Devan

For 1st Respondent :Mrs.P.Rajalakshmi,
Additional Government Pleader

For Respondents 2 to 4 :Mr.S.K.Rameshwar, Standing Counsel

For 5th Respondent :Mr.R.Srinivas, for
Mr.Sithirai Anandam

ORDER

The writ petitioner herein is a resident of Dhanalakshmi Nagar, Kannampalayam Village, Sulur Taluk, Coimbatore District. She has filed this writ petition for mandamus to direct the third respondent to receive her application and to provide electricity service connection to her house based on the order in W.P.No.14706 of 2013 dated 05.12.2013 by this Court.

2.According to the petitioner, she is residing in the above address for more than 25 years. Nearly 50 families are residing in that area. Though, they are provided with family card, voter Identity Card, they do not have access to electricity in their settlement. The residents came to know that one P.Nagaraj has obtained licence to quarry in S.No.39/2(P), 106/1B(P) and 106/1D (P) of Kannampalayam Village for 5 years from 08.05.2010 to 17.05.2015. He has filed W.P.No.14706 of 2013 for a relief not to give E.B service connection to the residences within 300 meter radius of his quarry site. This writ petition was dismissed with the following observations:-

"14.From the material on record, it could be deduced that there are many people living in Dhanalakshmi Nagar, for the past 5 to 10 years, without basic amenities, though they have constructed houses. Poultry shed is within 220 meters. Thus it could be seen that the people who are in an affordable position, have access to electricity, but the poor people are living in darkness, for years together. It is unfortunate that the Assistant Engineer, Tamil Nadu General and Distribution Corporation Ltd., CEDC/METRO, Kannampalayam, Coimbatore - 2, who is the competent authority to provide electricity under the Electricity Act, has failed to take note of the fact that if the quarry labourers shed and crushing unit falling within a distance of 57 metres from the boundary of the area leased out to the

petitioner and the poultry shed and an approved house located at a distance of 220 metres away from the boundary of the area leased out, could be given electricity connection, it is not known as to how, he could reject the application of one Mr.Ayyaswamy and 2 others on the ground that their respective houses are within a distance of 300 metres from the quarry site. In the humble opinion of this Court, in so far as providing basic amenities, there is no question of discrimination between rich or raff.

15. In the light of the above discussions, this Court is not inclined to issue a mandamus as sought for by the petitioner. Accordingly, the writ petition is dismissed. No costs. Connected miscellaneous petition is closed."

3.In the second writ petition in W.P.No.14170/2013 the said Mr.P.Nagaraj without disclosing the dismissal of the earlier writ petition (W.P.No.14706 of 2013 dated 05.12.2013) sought for same relief and obtained order from the Court that the authorities to consider his representation and pass orders within 6 weeks.

4.The petitioner gave representation on 13.05.2019 to the second respondent to provide electricity service connection in compliance of the order of this Court in W.P.No.14710 of 2013 dated 17.11.2016. The petitioner is ready to execute indemnity bond as per clause 27(4) of the Tamil Nadu Electricity Distribution Code, 2004. The respondents are duty bound to receive the application and give electricity service connection as per Section 43 of the Electricity Act, 2003 and as per the direction of this Court in W.P.No.14710 of 2013 dated 17.11.2016, since, the respondents have failed to discharge the statutory duty, the present writ petition for mandamus filed.

5.The second respondent on behalf of TANGEDCO, filed counter. P.Nagaraj was impleaded as per order of this Court in W.M.P.No.19036/2019 dated 08.07.2019 and he entered appearance through counsel and heard. As per the counter of the second respondent, "Dhanalakshmi Nagar" is located near the quarry site of P.Nagaraj (5th respondent) approved by the Government is within 300 meters from the quarry. The lease period of the quarry is in force and expires on 23.11.2023. As per the direction of the Hon'ble Supreme Court in Special Leave Petition in Civil Appeal No.6742/2001, no habitation, layout or construction of buildings should be permitted, within the radius

of 300 meters of quarry. The petitioner's residence is unapproved layout within 300 meter of authorised quarry. They can give power connection only if they produce clearance certificate from the Director of Geology and Mines of Tamil Nadu Government.

6.The learned counsel for the impleaded fifth respondent, produced the copy of the quarry lease renewal upto 23.11.2023 issued by the first respondent vide proceedings dated 24.11.2018 and would submit that, as per the Tamil Nadu Minor Minerals Concession Rules, 1959, there shall be no quarrying of stone within a radial distance of 300 meters from any inhabited site. In this connection, the Hon'ble Supreme Court in Tamil Nadu Building Material Manufacturers and Transport Association vs. State of Tamil Nadu and others (Civil Appeal No.6742 of 2001) has clarified that this embargo shall not come in the way of grant of quarrying licence if the habitant is unauthorised.

7.As far as the petitioner herein like residents of Dhanalakshmi Nagar, Kannampalayam Village, Sulur Taluk, Coimbatore District are occupying the land unauthorisedly without approval of layout. In such circumstances, they are not entitled for electricity service connection. In this regard, from the facts stated by the parties before this Court, it is clear that under Rule 36(1-A) (a) of the Tamil Nadu Minor Minerals Concession Rules, 1959 (In short, "the Rules") imposes general restriction in respect of quarrying operation as under:-

"36. General restrictions in respect of quarrying operations :-

(1)

(1-A) (a) No lease shall be granted for quarrying stone within 300 metres (three hundred metres) from any inhabited site:

Provided that the exiting quarries which are subsisting under current leases shall be entitled for continuance till the expiry of the lease period. The lessees whose quarries lie within a radius of 300 metres from the inhabited site shall undertake blasting operations only after getting permission of the Director of Mines Safety, Oorgaum.

Provided further that the new and existing units of quarries shall also be required to comply with the Pollution Control Measures (i.e) dust control measures) besides complying with the other conditions in regard to Pollution Control Measures.

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Explanation:- For the purpose of sub rule (1) and (1-A)

(i) "public road" shall mean a road which has been constructed byartificially surfaced as distinct from a track resulting from repeated use.

(ii) "Village road" shall mean and include any track shown in the revenue record as village road.]2

3[(ii-a) 'stone' shall mean rough stones including khandas, boulders, sizedreduced (broken or crushed) materials including metal jelly, ballasts, mill stones, hand chakais and building and road construction stones other than black, red, pink, grey, green, white or other coloured or multi coloured granites or any other rocks suitable for use as ornamental and decorative stones.

(iii) 'inhabited site' shall mean a village site or town site or a house site as referred to in the revenue records or a house site or layout approved by a Local Body or Town or Country or Metropolitan Planning Authority, where the said Body or Authority is created under a statute and empowered to approve such an area as a house site or layout area."

8.The Hon'ble Supreme Court in Tamil Nadu Building Material Manufacturers and Transport Association vs. State of Tamil Nadu and others (cited supra) has held that, unapproved layout will not fall under the inhabitant site. Therefore, it is for the Department of Geology and Mines who has given the quarry lease to the fifth respondent. To decide, 'whether the residence of the petitioner is within 300 meters' and 'whether the layout is an approved layout or not', the second respondent cannot unilaterally give service connection to the petitioner without clearance from the Department of Geology & Mining.

9.In this regard, it is useful to extract Rule 36(1-A) (c) of the Rules, which reads as follows:-

(c) No new layout, building plans falling within 300 metres from any quarry should be given approval by any agency

unless prior clearance of the Director of Geology and Mining is obtained. On receipt of proposals for according clearance, the Director of Geology and Mining shall decide upon the continuance or closure, as the case may be of any quarry which is situated within 300 metres from the now layout, building sought for such "clearance".

10. In such circumstances, when the conflict between one citizen's 'right to live with dignity' and other citizen's 'right of trade' arise, the authorities are bound to weigh their claims based on Rules without any extraneous consideration. As on date, in this case, the fifth respondent is a valid lease holder to quarry. Whereas, the petitioner is inhabitant of unapproval settlement. The relief sought for in this writ petition runs contrary to Rule 36(1-A) and Explanation III thereunder, further also, contrary to the dictum of the Hon'ble Supreme Court. If the petitioner wants electricity service connection, she has to get clearance from the Director of Geology and Mining of Tamil Nadu Government as per Rule 36(1-A) (C) of the Rules. In the absence of clearance from Department of Geology and Mining, TANGEDCO is barred by statute to give electricity service connection to the petitioner.

11. In the result, the writ petition is dismissed. No costs.

Sd/-

Assistant Registrar (insp cell)

//True Copy//

Sub Assistant Registrar

jbm

To

1. The District Collector,
O/o the District Collector, सत्यमेव जयते
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144, Anna Salai,
Chennai - 600 002.

+1cc to Mr.Sithirai Anandam, Advocate SR.No. 60678
+1 cc to Government Pleader Sr.No. 61195
+1cc to Mr.S.KUmara , Advocate SR.No. 60632
+1cc to Mr.S.K.Rameshwar , Advocate SR.No. 61447

W.P.No.15414 of 2019

A.SK(13/08/2019)



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