

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 23.10.2019

Coram:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

Writ Petition No.27650 of 2019
and

W.M.P.No.27163 of 2019

Mrs.R.Thatchayani ... Petitioner

/versus/

1.The Assistant Electricity Engineer,
(Operation and Maintenance),
Tamil Nadu Generation and
Distribution corporation Ltd.,
Kovalam 603 112.

2.K.Udayakumar

3.S.Suresh ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records of the 1st respondent relating to his proceedings dated 27.08.2019 and made in Letter No.Vu.Po/EPa/Kovalam/Ko-Thani/A.No.102/1191 and quash the same as illegal and without jurisdiction and further direct the 1st respondent to issue Electricity Service Connection in respect of the petitioner's three houses put up in Old Survey No.50/1B1A1, now New Survey No.93/9, situated at Kailasanathar Koil Street, No.44, Kovalam Village, Tirupporur Taluk, Kancheepuram District.

For Petitioner :Mr.G.Nagarajan
For Respondents :Mr.S.K.Rameshwar,
Standing Counsel for R1
Mr.S.Udhaya Kumar
for R2 and R3

O R D E R

The prayer in the writ petition is to issue a Writ of Certiorarified Mandamus calling for the records of the 1st respondent relating to his proceedings dated 27.08.2019 and made in Letter No.Vu.Po/EPa/Kovalam/Ko-Thani/A.No.102/1191

and quash the same as illegal and without jurisdiction and further direct the 1st respondent to issue Electricity Service Connection in respect of the petitioner's three houses put up in Old Survey No.50/1B1A1, now New Survey No.93/9, situated at Kailasanathar Koil Street, No.44, Kovalam Village, Tirupporur Taluk, Kancheepuram District.

2. Heard the learned counsel appearing for the petitioner and the learned Standing Counsel appearing for the 1st respondent and the learned counsel appearing for respondents 2 and 3.

3. The case of the petitioner is that she has constructed a house in Old S.No.50/1B1A1 (now new S.No.93/9) situated at Kailasanathar Koil Street, No.44, Kovalam Village, Tirupporur Taluk, Kancheepuram District. When she sought for electricity service connection, her request was rejected by the first respondent vide letter dated 27.08.2019 citing the objection made by the neighbouring land owners, namely, respondents 2 and 3. The said communication is impugned in this writ petition.

4. The learned counsel appearing for the petitioner would submit that respondents 2 and 3 have filed a suit in O.S.No.3 of 2015 on the file of the Principal Sub Court, Chengalpattu alleging that the petitioner has encroached upon a portion of land of respondents 2 and 3 and sought for declaration of title in respect of portion measuring to an extent of 889 sq.ft and consequential relief to deliver the vacant possession of the same. The said suit is contested and pending. No interim order is passed. In such circumstances, respondents 2 and 3 cannot object providing electricity service connection to the petitioner's land measuring to an extent of 12325 sq.ft in S.No.50/1B/1A1 and the first respondent cannot deny electricity for the frivolous objection raised by the 2nd and 3rd respondents.

5. The learned standing counsel appearing for the 1st respondent would submit that Clause 27(6) of the Tamil Nadu Electricity Distribution Code 2004 mandates that if there is any objection, the service connection cannot be granted.

6. Clause 27(6) of the Tamil Nadu Electricity Distribution Code, 2004, reads as under:

27(6) Requisitions for Supply of Energy: Where the intending consumer's premises has not frontage on a street and the supply line from the Licensee's mains has to go upon, over or under the adjoining premises of any other person (whether or not the adjoining premises

is owned jointly by the intending consumer and such other person), the intending consumer shall arrange at his/her own expense for any necessary way leave, licence or sanction before the supply is effected. Even when the frontage is available, but objections are raised for laying lines/cables/poles through a route proposed by the Licensee involving minimum cost and in accordance with the technical norms, to extend supply to the intending consumer, the intending consumer shall arrange at his/her own expense necessary way leave licence or sanction before the supply is effected. Any extra expense to be incurred by the Licensee in placing the supply line in accordance with the terms of the way leave, licence or sanction shall be borne by the intending consumer. In the event of way leave, licence or sanction being cancelled or withdrawn, the intending consumer shall at his/her own cost arrange for any diversion of the service line or the provision of any new service line thus rendered necessary.

7. Learned counsel appearing for respondents 2 and 3/objectors would submit that the petitioner herein has encroached upon the land of respondents 2 and 3 and has put up construction, for which the service connection is sought. Since there is a civil dispute pending regarding the title, if service connection is provided to the petitioner, the right of respondents 2 and 3 will be highly prejudiced, more so, when the title is under dispute and the suit is before the competent civil Court, for the land in dispute service connection cannot be granted.

8. The Tamil Nadu Electricity Distribution Code, 2004 provides for supply of energy to the consumers on certain conditions and if the consumer's premises has no frontage on the street and the supply line has to go upon, over or under the adjoining premises of any other person, the intending consumer should arrange on his own expense, necessary way leave licence or sanction before the supply is effected.

9. In this case, it is not the inability of the consumer to provide way leave, but it is the objection of

respondents 2 and 3 who have filed the suit in respect of the small portion of the land to an extent of 889 sq.ft. The said suit cannot give any right or authority to respondents 2 and 3 to object providing electricity service connection to the petitioner, who is holding a larger extent of land nearly 12000 sq.ft.

10. Therefore, the impugned communication of the first respondent dated 27.08.2019 is to be set aside. Accordingly, the impugned communication of the first respondent is hereby quashed and the first respondent is hereby directed to provide electricity service connection to the petitioner's building on collecting necessary installation charges and other incidental charges. This order shall no way prejudice the rights of respondents 2 and 3, who are agitating the title over the land measuring 889 sq.ft in O.S.No.3 of 2015 on the file of the Principal Sub Court, Chengalpattu.

11. Accordingly, this writ petition is disposed of. No costs. Consequently Connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

ari

To

The Assistant Electricity Engineer,
(Operation and Maintenance),
Tamil Nadu Generation and
Distribution corporation Ltd.,
Kovalam 603 112.

+1cc to Mr.G.Nagarajan , Advocate SR.No. 88844
+1cc to Mr.S.Udhaya kumar , Advocate SR.No. 88631
+1cc to Mr.Rameshwar , Advocate SR.No. 88940

Writ Petition No.27650 of 2019
and

W.M.P.No.27163 of 2019

A.SK(24/10/2019)