

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 05.11.2019

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Writ Petition No.28579 of 2019

and

W.M.P.No.28322 of 2019

C.Ponnathal

... Petitioner

Vs.

- 1.The Chairman and Managing Director,
Tamil Nadu Generation and Distribution Corporation Limited,
10th Floor, NPKRR Maligai,
144, Anna Salai,
Chennai - 600 002.
2. The Chief Engineer,
Non-Conventional Energy Sources,
TANGEDCO, 2nd Floor, Eastern Wing,
Chennai - 600 002.
3. The Superintending Engineer,
Non-Conventional Energy Sources,
TANGEDCO, Kolumam Road,
Udaumalapet - 642 126.
Tiruppur District.
4. The District Collector,
Tiruppur District.
5. The Block Development Officer,
Special Officer, Kannivaadi Panchayat Union,
Kannivadi Village, Dharapuram Taluk,
Tiruppur District.
6. The General Manager,
K.S.Infrastructure, Balakumar Nagar,
Nanchaithalaiyur Post,
Dharapuram Taluk, Tiruppur District.... Respondents

PRAYER:-Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the 1 to 5 respondents forbearing the 6th respondent from erecting poles to draw 230 KV Low Tension wire over the petitioner patta lands situated at Kadhakkottai Village,

Dharapuram Taluk, Tiruppur District for the Survey No.618/2, 615, 616, 600/2, 611/B, without giving any notice or seeking consent from the petitioner for such usage of petitioner patta lands.

For Petitioner .. Mr.S.Udayakumar,
For M/s.Karan and Uday

For R1 to R3 .. Mr.Abdul Saleem,
Standing Counsel

For R4 and R5 .. Mr.N.Inbanathan
For R6 .. M/s.Kanimozhimathi

ORDER

The petitioner herein has filed this Writ Petition seeking for issuance of a Writ of Mandamus, directing the 1 to 5 respondents forbearing the 6th respondent from erecting poles to draw 230 KV Low Tension wire over the petitioner patta lands situated at Kadhakkottai Village, Dharapuram Taluk, Tiruppur District for the Survey No.618/2, 615, 616, 600/2, 611/B, without giving any notice or seeking consent from the petitioner for such usage of petitioner patta lands.

2. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents.

3. The petitioner herein is the owner of the land to an extent of 2.21 acres in S.Nos.618/2, 615, 616, 600/2, 611/B at at Kadhakottai Village, Dharapuram Taluk, Tiruppur District. Alleging that the sixth respondent, his men and agent are trying to erect electrical line and poles in his land contrary to the provision of Indian Telegraph Act, 1885 and without following the procedures contemplated under the Act and Electricity Act 2003, representation was given to the fourth respondent to forbear the sixth respondent from carrying on the activity in his land has entered in tower. Since, no action taken, the present Writ Petition is filed.

4. After notice, the learned Standing Counsel appearing for the TANGEDCO report to this Court that the said project has not carried by TANGEDCO. A private operator for his private business, the tower erection is done. To ascertain whether the District Collector has granted any permission for enter upon the petitioner lands, the Government Advocate was directed to get instructions from the District Collector and filed a status report.

5. From the report of the District Collector, this Court found that the tower erection activities is carried on by the sixth respondent without the District Collector knowledge and consent of the land owner. Contrarily, the sixth respondent in the counter contended that they are carrying on the erection of tower lines with the approved by the Government of India and the petitioner will be duly compensated for the damages.

6. In reply affidavit filed by the District Collector, it is stated that,

"5.....private concern carrying out the tower erection work for its own business not for service to the public, being thus, any obstacles in erecting tower should be meet out by the private concern on their own risk and they have no right to claim the assistance of Government machineries for their own business. This W.P 22376/2019 is pending before this Court.

6. I submit that no high tension tower or tower lines have been formed in the petitioner's land. However the said private concern was strictly instructed that not to commence the tower line erection works in the petitioner's land and also any other private land without getting consent from the land owners. Further the field level Revenue Officials are strictly instructed to keep vigilance in this regard."

7. There is no piece of evidence to show that the sixth respondent herein authorized to enter upon private lands for erection of tower line. The Standing Counsel appearing for the TANGEDCO would submit that only the licensee can carry on the erection work. The sixth respondent-a Sub-Contractor cannot indulge in execution of high teas on power line. In any event, to enter upon a private land, the land owner has to give consent. If the land owner object, then the licensee should approach the District Collector under Section 16 of the Indian Telegraph Act and seeks removal of obstruction.

8. In this case, the sixth respondent has neither got the consent of the land owner nor the permission of the District Collector to enter upon. In such circumstances, the sixth respondent cannot forcible trespass into the land of the petitioner and erect tower line.

9. Therefore, this Writ Petition is allowed and the sixth respondent is restrained from entering upon the petitioner without following due process of law. There shall be no order as to costs. Consequently, connected W.M.P is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Chairman and Managing Director,
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4. The District Collector,
Tiruppur District.
5. The Block Development Officer,
Special Officer, Kannivaadi Panchayat Union,
Kannivadi Village, Dharapuram Taluk, Tiruppur District.

+1 cc to M/s.Karan & Uday, Advocate Sr.No. 91921
+1 cc to M/s.Abdul Saleem, Advocate Sr.No. 92113
+1 cc to M/s.Kanimozhi Mathi, Advocate Sr.No. 91955
+1 cc to The Government Pleader Sr.No. 91971

AKM/05.12.19/4P- 10C /

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