

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 05.11.2019

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

Writ Petition No.29118 of 2019
and
W.M.P.No.28894 of 2019

C.Subramaniam ... Petitioner

Versus

- 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,
Udumalpet - 642 126,
Tiruppur District.
 4. The District Collector,
Thiruppur District.
 5. The Block Development Officer,
Special Officer, Kannivadi 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 Certiorarified 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, Chinnatharapuram Taluk, Tiruppur District for hte Survey Nos.595, 596 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.Kanimozhi Mathi

O R D E R

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, Chinnatharapuram Taluk, Tiruppur District for hte Survey Nos.595, 596 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 situated at Kadhakottai Village, Chinnatharapuram Taluk, Tiruppur District. When the men and agent of the sixth respondent had entered upon the plan and started the preparative work for erecting electrical towers on 26.09.2019. He objected the same and refused permission. On the same day, he has also given representation to the authorities about the illegal attempt of trespass by the sixth respondent and his employees expressing apprehension that if the respondents permitted to erect the poles and towers, it will affect his agricultural activity.

4. This Court issued notice to the respondents and from the learned counsel appearing for Power Grid Corporation and TANGEDCO it came to be known that the said activities were not done by them. Thereafter, the first respondent-District Collector, Tiruppur was asked to file status report about the activity alleged to have been carried on in the lands of the petitioner.

5. The District Collector filed a status report stating that the sixth respondent/private power generator, without any consent of the land owner and permission of the Government, is carrying on the said activity and the same has been taken note of by the District administration and instructions had been given to the private operators not to enter upon private land owners without their consent.

6. In the reply affidavit filed by the District Collector, it is stated as below :-

"5. I submit that further I wish to highlight that this private concern has also filed a case before the Hon'ble High Court, Madras in W.P.No.22376 of 2019 praying that to issue a Writ of Mandamus to direct the District Administration to provide protection to execute the project work of erecting towers. In this regard status report has already been filed by the District Administration stating that the said 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 met out by the private concern on their own risk and they have no right to claim the assistance of Government maintenance for their own business. This W.P.22376/2019 is pending before this Court."

7. The sixth respondent herein has filed counter affidavit stating that the respondent is erecting towers for Government of India and the petitioner objects that the work on the ground that no notice served on him and demanding monetary compensation is not sustainable.

8. It is stated in the counter that the sixth respondent is carrying on the project with prior approval of the Government and the land owners. Therefore, their activity cannot be termed as illegal. The sixth respondent is ready and willing to pay compensation as per the guideline for payment of compensation for the damages and therefore, Writ Petition has to be dismissed.

9. It is contended by the sixth respondent that the project is done by them with prior approval of the Central Electricity Authority and the sixth respondent is the contractor under M/s.Spring Renewal Energy Private Limited and it is in the process of erecting tower by getting prior written permission from the land owner, seeking right of a way.

10. Though the sixth respondent claims itself as the contractor under the licensee, there is no material to substantiate the same. More particularly, when the District Collector has specifically stated in the reply affidavit that the petitioner is carrying on the activity on its own and he has not given any permission to enter upon.

11. When the landlord has denied permission, the sixth respondent cannot trespass into the land without proper order from the District Collector under Section 16 of the Indian Telegraph Act, 1885. In anticipation of enter upon permission, the sixth respondent has tried to trespass into the land of the petitioner under the guise of carrying on the activity on behalf of TANGEDCO.

12. In view of the reply affidavit filed by the District Collector, this Court is of the opinion that the prayer sought for in the Writ Petition is to be allowed by issuing a Writ of Mandamus forbearing the sixth respondent from carrying on any illegal activities in the lands in question of the petitioner herein.

13. Accordingly, this Writ Petition is allowed, as against the sixth respondent. There shall be no order as to costs. Consequently, connected W.M.P is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

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

+lcc to Mr.Abdul Saleem, Advocate Sr.92112
+lcc to the Government pleader Sr.91972
+lcc to Mrs.Kanimozhi mathi, Advocate Sr.91954
+lcc to M/s.Karan & Uday, Advocate Sr.91920

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pvs[col]
srg 05/12/2019



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