

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 10.01.2019

CORAM

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE P.RAJAMANICKAM

WA.No.2442 of 2018
and C.M.P.No.19691 of 2018

N.Balamani ...Appellant / 4th
respondent

Vs

- 1.The Superintending Engineer,
Tamil Nadu Electricity Board, (TANGEDCO)
Tatabad, Coimbatore - 641 010.
- 2.The Executive Engineer,
Tamil Nadu Electricity Board, (TANGEDCO)
Somanur, Coimbatore-641 659/
- 3.The Assistant Engineer,
Tamil Nadu Electricity Board, (TANGEDCO)
Somanur Rural,
Coimbatore - 641 659. ... Respondents
- 4.N.Pusphalatha ...Respondents / Writ Petitioner

PRAYER:- Writ Appeal filed under clause 15 of the Letter Patents prays to set aside the order of this Court in W.P.No.17034 of 2018, dated 03.09.2018 filed for the relief of Writ of Mandamus, directing the respondents 1 to 3 to Provide electric wire connection to underground cable laid at Petitioner's property situated at Ka Sa.Pu.no.566 Kaalai Measuring to an extent 3231 sqft, Kaniyur village, Sulur Taluk, Coimbatore District.

For Appellant : Mr.M.R.Thangavel

For Respondents : Mr.S.K.Raamesuhwar for TANGEDCO

Mr.P.Valliappan rep for Mr.N.Ponraj for R4

JUDGMENT

[Judgment of the Court was delivered by M.SATHYANARAYANAN, J.,]

The 4th respondent in W.P.No.17034 of 2017 is the appellant herein. The 4th respondent in this writ appeal / writ petitioner filed the said writ petition praying for issuance of a writ of Mandamus directing the official respondents 1 to 3 / officials of TANGEDCO to provide electricity wire connection to the underground cable laid at writ petitioner's property situated at Ka.Sa.Pu.No.566, Kaalai, measuring to an extent of 3231 sq.ft Kaniyar Village, Suler Taluk, Coimbatore District.

2.The learned Single Judge vide impugned order dated 03.09.2018, observed that without going into the merits of the case of the either side, had directed the 3rd respondent in the writ petition to provide electricity connection to the said petitioner's property pending disposal of the suit in O.S.No.905 of 2017 filed by the appellant herein on the file of the Court of District Munsif, Suler. Aggrieved by the said order, the appellant/ 4th respondent came forward to file this writ appeal.

3.Mr.M.R.Thangavel, learned counsel appearing for the appellant / 4th respondent in the writ petition has drawn attention of this Court to the communication of the 1st respondent dated 21.02.2017, addressed to the 4th respondent herein / writ petitioner and would submit that as per the said communication, it was observed by the said official that it was wholly unsafe to lay underground pipeline for the purpose of effecting electricity service connection and alternative route has to be found after informing the Executive Engineer of Suler and further pointed out that the appellant herein has also filed the comprehensive suit in O.S.No.905 of 2017 on the file of District Munsif, against the 4th respondent / writ petitioner and 6 others which include officials of TANGEDCO praying for permanent injunction restraining them from bringing the low tension electricity wire under the ground to the suit property and the 4th respondent / writ petitioner who was arrayed as 2nd defendant, was set exparte on 13.09.2017, since she was not diligent in prosecuting the said application. The said application came to be dismissed twice for default and it is yet to be restored and further pointed out that the Superintendent Engineer who was arrayed as 1st respondent, was also guilty of taking contradict stand in the counter affidavit and additional affidavit filed in the writ petition and he would urge that till the finality is

reached in the pending civil litigation, the TANGEDCO can be restrained from digging the ground and laying underground cables for the purpose of providing electricity service connection to the 4th respondent / writ petitioner.

4.Per contra, Mr.S.K.Rameshuwar, learned Standing Counsel appearing for TANGEDCO would submit that no doubt the 1st respondent in the writ petition took contra stand in the counter affidavit and additional affidavit filed in the writ petition and drawn attention of this Court to the counter affidavit filed on behalf of the respondents 1 to 3 dated 24.10.2018, and would submit that the extension of electricity supply through underground cable will be undertaken with statutory safety measures and unless there is any willful damage, there is no reason as to the apprehension expressed by the appellant as to the electrical accidents.

5.Mr.Valliappan, learned counsel appearing for the 4th respondent / writ petitioner would submit that since the learned counsel appearing for the 4th respondent / writ petitioner / 2nd defendant in the suit suffered mishap and the suit was not prosecuted diligently. However, an application has been filed for setting aside the exparte order and the said application will be prosecuted diligently.

6.The learned counsel appearing for the 4th respondent on merits of the case would submit that though the appellant would claim that she is also running a shop over the land through which underground pipeline sought to be laid, she did not seek for declaration ; but, filed a suit for permanent injunction and even in the suit, no interim orders are in operation and in the light of the stand taken by the respondents 1 and 2 in the counter affidavit filed in this writ appeal, this Court may pass appropriate orders.

7.This Court has considered the rival submissions and also perused the materials placed before it.

8.No doubt, the 1st respondent, pendency of the writ petition took contradictory stand as to the digging of the cable through underground for the purpose of effecting service connection to the 4th respondent / writ petitioner. It is also to be pointed out at this juncture that the suit filed by the appellant herein is also for permanent injunction restraining the official respondents from effecting service connection to the 4th respondent / 2nd defendant and in the suit, no interim orders are in operation.

9.The 2nd defendant was set exparte and to restore the same, she filed I.A.No.421 of 2017 and the said application came to be dismissed twice for default and CRP.NO.129 of 2019 has been filed for restoration and the same is pending. At this juncture, the learned counsel appearing for the appellant on instructions would submit that the appellant herein, who is the plaintiff in the suit in O.S.No.905 of 2017 pending on the file of the Court of District Munsif, Sulur, has no objection for restoration of the suit and prays for appropriate direction to expedite the same.

10.This Court has also taken note of the materials placed especially the stand of the respondents 1 to 3 in their counter affidavit dated 24.10.2018 and is of the considered view that in the event of grant of the service connection through underground pipeline, no hazard would be in place and it is also the submission of the learned counsel for the 4th respondent / writ petitioner that the premises put up by him is strictly in accordance with the sanctioned plan without any deviation and the said submission on instructions is also placed on record.

11.The learned Judge has also taken note of the said aspect and directed the provision of the electricity service connection by laying underground pipeline without prejudice to the rights of the either parties in the pending suit in O.S.No.905 of 2017.

12.However, it is once again made clear that effecting of the service connection to the premises of the 4th respondent / writ petitioner by laying cable through underground is subject to the result of the suit in O.S.No.905 of 2017 filed by the appellant on the file of the Court of District Munsif, Sulur.

13.In the result, the writ appeal is dismissed confirming the order dated 03.09.2018 passed in WP.No.17034 of 2017. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Superintending Engineer,
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- 2.The Executive Engineer,
Tamil Nadu Electricity Board, (TANGEDCO)
Somanur, Coimbatore-641 659.
- 3.The Assistant Engineer,
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Somanur Rural,
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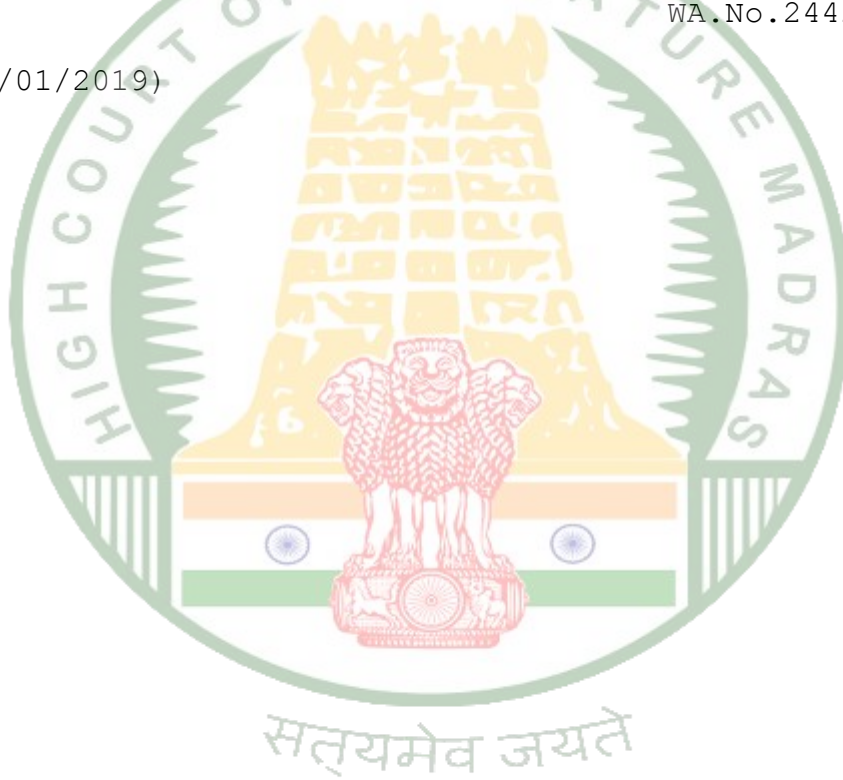
+lcc to Mr.C.Anbu , Advocate SR.No. 2626

+lcc to Mr.S.K.Raamesuhwar , Advocate SR.No. 3418

+lcc to Mr. N.Ponraj, Advocate SR.No. 3038

WA.No.2442 of 2018

A.SK(24/01/2019)



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