



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Special Original Jurisdiction)

Friday, the Fifth day of April Two Thousand Nineteen

PRESENT

The Hon`ble Mr.Justice N.ANAND VENKATESH

The AT PRINCIPAL SEAT
The THROUGH VIDEO CONFERENCE

WMP(MD) No.20902 of 2018
IN WP(MD) No.8177 of 2018

1 KASIMAYAN

2 OCHAPPAN ... PETITIONERS/RESPONDENTS 5 AND 6

Vs

1 S. VASUKI, ..1ST RESPONDENT/PETITIONER

2 THE SUPERINTENDENT OF POLICE,
MADURAI, MADURAI DISTRICT,

3 THE DEPUTY SUPERINTENDENT OF POLICE,
O/O DEPUTY SUPERINTENDENT OF POLICE,
USILAMPATTI TALUK, MADURAI DISTRICT.

4 THE SUB INSPECTOR OF POLICE,
UTHAPPANAICKANUR POLICE STATION,
UTHAPPANAICKANUR, USILAMPATTI TALUK, MADURAI DISTRICT.

5 THE ASSISTANT ENGINEER,
O/O.ASSISTANT ENGINEER, GENERATION AND DISTRIBUTION,
TANGEDCO, USILAMPATTI ELECTRICITY DISTRIBUTION CIRCLE,
USILAMPATTI TALUK, MADURAI DISTRICT.

... RESPONDENTS/RESPONDENTS/COMPLAINANT

PRAYER IN WMP(MD)No.20902 OF 2018:

Petition filed under Article 226 of the Constitution of India, praying to recall the order dated 26.09.2018 and to restore the writ petition for fresh hearing.

Prayer in WP(MD). 8177/ 2018 : Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus directing the Respondent Nos.1 to 3 to provide adequate police protection for the purpose of erecting electric pole in the Uthappanaickanur - Koppiliyapatti Road and for providing electricity connection to the Petitioners House in an extent of 5 Cents situated in Survey No.204-2, Door No.5/34, Suliochanpatti hamlet, Thimanatham Village, Usilampatti Taluk, Madurai District and to the petitioners



Bore well located in Survey No.235-7A to an extent of 0.71 ares., Thirmanatham Village, Usilampatti Taluk, Madurai District within the time frame stipulated by this Court.

ORDER : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S.T.R.JEYAPALAM, Advocate for the petitioner and of MRS. S. SRIMATHY, FOR S.M.S.JOHNNY BASHA FOR Advocate for the Respondents 2 to 4, the court made the following order:-

This petition has been filed seeking to recall the orders passed by this Court in the main writ petition granting police protection to the writ petitioner.

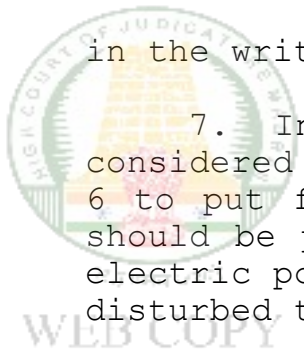
2. The learned counsel appearing for the petitioners who are the respondents 5 & 6 in the main writ petition submitted that the order was passed in the writ petition without hearing the counsel representing the petitioners. The learned counsel submitted that on the date when the case was posted for hearing on 26.09.2018, even though, the vakalat was filed, the name of the counsel was not mentioned in the cause list. The learned counsel further submitted that taking advantage of the order passed by this Court, the electric pole has already been erected by the Electricity Board. The learned counsel urged that an opportunity must be given to these petitioners to put forth their contention in the main writ petition and that the petitioners have a fair chance of success in the writ petition.

3. Per contra, the learned counsel appearing on behalf of the writ petitioner submitted that in view of the subsequent development, the writ petition has become infructuous and therefore, no further orders can be passed in the petitions filed for recalling the order, by the respondents 5 & 6.

4. The learned Standing counsel appearing on behalf of the TANGEDCO submitted that the electric pole has already been erected by the Board. For this purpose, a counter affidavit has been filed before this Court and paragraph 5 and 6 of the Counter affidavit explains the manner in which, opportunity was given to the concerned parties and the erection of pole.

5. This Court has carefully considered the submissions made on either side.

6. The mere fact that the electric pole has been erected with the assistance of the police, pursuant to the order passed by this Court in the writ petition, will not make this petition infructuous, since the order was passed without affording an opportunity to respondents 5 and 6 to put forth their contentions. The materials placed on record and the arguments advanced by the learned counsel for respondents 5 & 6 clearly shows that there is an inter se dispute between the parties which requires to be considered



in the writ petition before final orders are passed.

7. In order to strike a balance, this Court is of the considered view that an opportunity must be given to respondents 5 & 6 to put forth their contentions and only thereafter, final order should be passed in the writ petition. At the same time, since the electric pole has already been erected, the status quo should not be disturbed till the disposal of the main writ petition.

8. In view of the above, the order passed by this Court dated 26.09.2018 is hereby recalled. The parties to the writ petition are entitled to put forth all their contentions in the writ petition in order to enable the writ petition to be disposed of on merits. The status quo as on date shall be continued and depending upon the result of the writ petition, appropriate orders can be passed regarding the restitution or otherwise of the electric pole which has already been erected.

9. This writ miscellaneous petition is disposed of accordingly. The main writ petition shall be posted before the appropriate Court dealing with the roster.

10. The Registry is directed to print the name of Mr.T.R.Jeyapalam, learned counsel for respondents 5 and 6 in the writ petition.

Sd/-

Assistant Registrar (CS III)

// True Copy //

Sub Assistant Registrar(CS)

TO

1 THE SUPERINTENDENT OF POLICE,
MADURAI, MADURAI DISTRICT,

2 THE DEPUTY SUPERINTENDENT OF POLICE,
O/O DEPUTY SUPERINTENDENT OF POLICE,
USILAMPATTI TALUK, MADURAI DISTRICT.

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UTHAPPANAICKANUR POLICE STATION,
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O/O.ASSISTANT ENGINEER, GENERATION AND DISTRIBUTION,
TANGEDCO, USILAMPATTI ELECTRICITY DISTRIBUTION CIRCLE,
USILAMPATTI TALUK, MADURAI DISTRICT.

COPY TO:

THE SECTION OFFICER, WRIT SECTION,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

Order Date :05/04/2019

ORDER

WMP(MD) No.20902 of 2018
IN
WP(MD) No.8177 of 2018

Giving direction and etc as
stated within.

DS
23/04/2019
4P 6C