

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.09.2020

CORAM :

The Hon'ble Mr.A.P.SAHI, THE CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.A.No.176 of 2020

K.Thangavel

.. Appellant

-VS-

1.The Assistant Engineer,
Operation & Maintenance,
TANGEDCO, Vaikuntham,
Sankari Taluk, Salem Dt.

2.The Assistant Executive Engineer,
Operation & Maintenance,
TANGEDCO, Sankari (East),
Sankari Taluk, Salem Dt.

3.The Executive Engineer,
Operation & Maintenance,
Sankari Division, Sankari,
Sankari Taluk, Salem Dt.

4.R.Selvaraj

.. Respondents

Appeal filed under Clause 15 of the Letters Patent against the order dated 19.11.2019 passed in W.P.No.20163 of 2019 on the file of this Court.

For Appellant : Mr.N.Subramaniyan

JUDGMENT

(Delivered by The Hon'ble Chief Justice)

Heard Mr.N.Subramaniyan, learned counsel for the appellant.

2.This appeal had been dismissed in open Court on 05.08.2020, but the pronouncement is being made today in view of the events disclosed in the judgment on account of the Memo having been submitted by the learned counsel for the appellant on 06.08.2020 together with written submissions, followed by a hard copy of the same that was dropped in the box on 07.08.2020.

3.The contention raised by Mr.Subramaniyan is that the insistence of the Electricity Department to get consent from the other co-owners of the land in Survey No.424/1 is absolutely erroneous and for this, learned counsel has relied on the Apex Court judgment in the case of ***Chandu Khamaru vs. Nayan Malik and Others, (2011)***

12 SCC 314, the Division Bench judgment in the case of **T.Balakrishnan vs. The Executive Engineer and Others, (W.A.No.600 of 2014)** decided on **16.11.2017** and the **judgment dated 09.10.2013 passed in W.P.No.18868 of 2013 (C.Ramasamy vs. The Assistant Engineer and Others)**, to contend that the consent of co-owner is not required at all even otherwise. It is, therefore, submitted that in the said background, the supply of electricity which is essential to the running of the borewell exclusively owned by the appellant by shifting the earlier existing electricity line does not require any such consent of the co-owners, hence, the view taken by the learned single Judge being erroneous, the same deserves to be reversed and a direction should be issued allowing the shifting of the electricity line from the present borewell to the new borewell, which has been dug by the appellant.

4.Learned counsel submits that keeping in view the documents on record, there is no denial of the fact that the appellant is the co-owner of Plot No.424/1 and according to the Field Measurement Book, copy whereof has been filed as an annexure to the typed set of papers, the shifting cannot be objected nor can the appellant be

denied the shifting of the electricity line from Point 'A' to Point 'B', that is, from the earlier borewell to the new borewell dug by the appellant.

5.It is also urged that the objector on whose stand the impugned connection was issued to the appellant by the Electricity Department already has his separate borewell with a separate service connection at Point 'C' in his share of land and therefore, the objection made by him is only with a malafide motive to somehow or the other deprive the appellant of running the borewell on the same connection that was continuing at point 'A'.

6.Learned counsel has further submitted that it is not the ownership of the land, but it is the ownership of the borewell which has to be taken into account while requisitioning a supply of energy on an application moved and as a matter of fact, the provisions thereof would not apply in the case of shifting of a service connection under Regulation 37 of the Tamil Nadu Electricity Distribution Code notified on 21.07.2004. As a matter of fact, it is urged that the shifting is only a formality on payment of certain charges, which does

not require any previous consent or any no objection from the other co-owners.

7.It is, therefore, that the learned single Judge has committed an error in reading Regulation 37 conjointly with Regulation 27 in order to deny the relief to the appellant.

8.We have considered the submissions raised. Sub-Regulation (2) of Regulation 27 is extracted hereinunder:-

"Requisitions for Supply of Energy: (1) ...

(2) Supply to Agricultural category: Application for supply to agriculture category shall be in Form 2 of Annexure III. In respect of the agricultural category, this provision shall be governed by the directives issued by the Commission from time to time, on the basis of the guidance on this matter by the National Electricity Policy (as stipulated in sub section 4 under section 86 of the Act) and the policy directions in public interest given by the State Government under sub section (1) of section 108 of the Act."

According to the said regulation, application in respect of agricultural category has to be moved in Form 2 of Appendix III. Form 2 of Appendix III is extracted hereinunder:-

FORM-2
APPLICATION FORM FOR AGRICULTURAL SERVICE
CONNECTION
(refer clause 27(2))
APPLICATION FOR SUPPLY OF POWER TO AGRICULTURAL
PUMP SETS

(Note: The application should be signed by the owner of the well, if there are partners, all must sign or consent to be given by co-owners)

To

The Designated Engineer,
(Address of the Licensee's Distribution Centre)

1. Name of owner of the well or partners
2. Full residential address of the owner or partners
3. S.F.No. in which the well is situated
4. Revenue village name, Taluk and District
5. Area and type of land to be irrigated by this well (Wet/Dry)
6. Horse Power of motor pump sets proposed to be installed
7. Type of pump set (Centrifugal/Submersible/Air compressor)
8. Consent to abide by R&C of Licensee with regard to duration of supply.

It is certified, I am the sole **owner of the well** / this application is signed by all partners.

Place:

Date:

Signature of Applicant/Partners

Note: The document such as FMB map showing the location of the well, patta, chitta, adangal et., shall be enclosed with the application.

Date of receipt in the Office of the Engineer,
Certified that the open well / bore well and lands measuring
acres and cents in S.F.No. Village of

..... Taluk is Exclusively owned by Thiru.....
s/o..... of Village.

Jointly owned by

List of owners

(1)..... s/o.....

(2)..... s/o.....

(3)..... s/o.....

Certified that Thiru..... s/o..... is small/
big farmer(s)

Village Administrative Officer.

9.A perusal of the aforesaid form would in no uncertain terms reflect that the application should be signed by the **owner of the well** and if there are partners, all must sign or consent to be given by co-owners. The connection at Point 'A', the shifting whereof has been sought by the appellant, was applied for in terms of the said regulation and it is undisputed by the appellant that the application in respect thereof is the document which has been filed at Sl.No.1 in the typed set of papers. The translated version is extracted hereinunder:-

WEB COPY
TAMIL NADU ELECTRICITY BOARD
APPLICATION TO EXTEND ELECTRICITY TO AGRICULTURAL PUMPS
WELL (or) BOREWELL

1. Name of the Applicant/s
(with name of father)

K.Thangavel, S/o.Kali Gounder

2. Full Postal Address *Vashaikkuttai, Vaikuntham Post,
Sankagiri Taluk, Salem District.*
3. Survey number of the land *SF 424/1*
4. Name of the Village *Vaikundham*
5. Taluk & District *Sankagiri, Salem*
6. Power of the Pumpset (H.P.) *7.5 HP (Borewell)*
7. Area irrigated by this Pump *10 Acres*
8. The Service no. & name of the service Connection nearby *...*
9. Crops grown in the land *Paddy, Sugarcane & Coconut*
10. Measurement of the well *600'*
11. Depth of water from ground level *300'*
12. Average height of water standing from bottom *300'*
13. Whether well dried up in the last 3 years ? *No*
14. Whether well is to be deepened further ? *No*
15. Are you willing to pay the minimum charges For ten years @ Rs.500/- per year ? *I Agree*
16. Do you agree for restriction of power and Use of power only during nights ? *I agree*
17. Do you know that if within 3 months from the Announcement of extension of power, the Board will collect Minimum charges as per Condition in para 15 above ? *I know.*
18. Date of application *-*
19. Signature of the Applicant *-*

I assure that what are all stated in reply to the queries above are known to the best of my knowledge and I affirm it to be true.

Sd/
Signature of the Applicant

Witnesses: 1.Sd/-Ramasamy S/o.Periannan, Vazaikkuttai
2.Sd/-Subramani S/o.Komara Gounder, Valzaikkuttai

I agree to contract with the Electricity Board as per the law of the Board to pay Rs.500/- per year for one Horse Power of energy for 10 years as minimum charges on sanction of Electricity connection.

Sd/
Signature of the Applicant

CERTIFICATE OF THE VILLAGE ADMINISTRATIVE OFFICER

Parent village where the borewell is situate : 36, Vaikuntham

S.No. of the land where the Borewell is situate : 424/1

S.No. : 424/1

Co-sharers of the Borewell:

1. Komara Gounder, S/o. Rasi Gounder
2. Arumugam, S/o.Rasi Gounder
3. Thangavel, S/o.Kali Gounder
4. Selvarajan, S/o.Rajamuthu

No. of Co-sharers is FOUR

Apart from the above, no other person has any right in the bore well. There is ample water available in the bore well.

Sd/-
SEAL
Village Administrative Officer

WILLINGNESS OF THE CO-SHARERS

I have no objection for the sanction of the electric service connection to the borewell in S.No.424/1 in favour of the aforesaid applicant.

APPROVAL OF THE CO-SHARERS

1. Sd/- Komara Gounder
2. Sd/- Arumugam
3. Sd/- Selvarajan

Note: The application will be rejected without notice if the signature of the

VAO not or the willingness of the Co-sharers is not found and the application is properly filled up.

10.Learned counsel for the appellant is correct that it was applied by the appellant exclusively in his name. But, the certification of the Village Administrative Officer endorsed thereon clearly indicates that S.No.424/1 has four other co-sharers. Apart from this, the document also categorically recites that there are four co-sharers of the borewell and apart from the above, no other person has right in the borewell. This certification by the Village Administrative Officer is not disputed, which has been endorsed in the application form and is clearly in relation to the borewell for which the application had been filed and which electricity connection was undisputedly running at Point 'A', the shifting whereof is now sought by the appellant.

11.On a perusal of the said documents, we are convinced that the borewell was co-owned and co-shared by the other co-owners as per the aforesaid certification, even though the learned counsel for the appellant has contended that the borewell had been dug

exclusively by him and the entire expenses of the electricity connection were being borne by him. The question of the status of the borewell *vis-a-vis* the application moved, therefore, has to be governed by the said declaration and certification, which is not under challenge. Thus, the argument advanced by the learned counsel for the appellant that the said borewell should be treated to be the exclusive borewell of the appellant is contrary to the own records as submitted and any form of a subsequent affidavit cannot be accepted without there being any challenge raised to the recital contained in the said document.

12.The next issue which has to be seen is as to the provision of shifting. Clause 37 is extracted hereinunder:-

37. Shifting of service connection

(1) The cost of shifting a new service connection

37. SHIFTING OF SERVICE CONNECTION : The cost of shifting a new service connection for which line is laid but service connection is yet to be effected shall be borne by the intending consumer. The intending consumer shall pay the above charges in advance in full. The copy of the estimate shall be given to the intending consumer. The shifting work will be taken up only after the payment is made.

The estimate will cover the following: -

- i. Materials dismantled in the old site and reusable shall be used in the new site as far as possible.*
- ii. 10% of the present value of the dismantled and reusable materials towards charges for dismantling and charges for loading, unloading, transport to the new site/store.*
- iii. Cost of the new materials required for the shifting work.*
- iv. Add 5% of the cost of new materials towards loading, unloading and transport to new site.*
- v. Add 10% of the present value of all the materials to be erected in the new site towards erection charges.*
- vi. 5% of the present value of retrievable scrap materials towards transport charges.*
- vii. Due credit shall be given to the intending consumer/ applicant as below but however limited to the total estimated cost of new work:*

(a) Book value/written down value subject to a minimum of 20% of the cost of retrievable and reusable materials but not used in the new site.

(b) Scrap value on the retrievable but not reusable materials at not less than 10% of its original value.

(2) After completion of the work, a revised estimate shall be prepared with a copy of the intending consumer based on the actual cost of materials, loading, unloading, transport and erection charges. If the original estimate cost is more than the revised estimate, the balance shall be refunded to the intending consumer

within 3 months. If the original estimate cost is less than the revised estimate, the difference shall be collected from the intending consumer.

(3) With regard to shifting of existing service connection, the consumer shall pay all the arrears due to the Licensee, apart from the above shifting charges.

The learned counsel has urged that Clause 37 does not require any further consent of the other co-sharers.

13.Before we could conclude the judgment which was being dictated as the Court was continuing with virtual hearing, the learned counsel interjected several times in order to virtually repeat his submissions to contend in effect that for the shifting of the connection, no consent of the co-owners was required. We had to withhold the dictation of the judgment on account of such unwarranted interjections leaving it to be completed in Chambers.

14.Before the judgment could be corrected and uploaded, the very next day, Mr.N.Subramaniam, in an accusing tone, sent a memo signed by him in the name of his applicant commenting upon the Court, which is to the following effect:-

"1.It is submitted that this writ appeal was taken up for hearing by this Hon'ble Court today, i.e., on 05.08.2020. When the appellant started to argue his case, this Hon'ble Court was pleased to point out that the Application, at pages 1 to 4 of Typed set of writ appeal, made by the appellant in earlier occasion seeking service connection for Bore well at location marked as "A" in the FMB sketch annexed in Additional Typed set at page 87, and the certificate of VAO, page-4, given in the said Application would reveal that the Bore well is shared by other persons and hence this Hon'ble Court was pleased to pose a question as to what is wrong for the respondents to demand the consent of the co-owners of the bore well of "A" for shifting to new location "C".

2.It is respectfully submitted that when the appellant, in response, submitted that even for the sake of argument without admitting even if the bore well is co-shared by several persons and if all others gave consent for one person to get service connection in his own name, then when the Service connection as long as stands in his name, he can seek shifting of the same and the co-sharers have no right to object against removing the service connection from the common bore well. The appellant made an attempt to refer to the statutory provisions in support of the same, this Hon'ble Court was pleased to stop him by asking to make the facts first clear. When the Appellant submitted that the application at page no.1 to 4, of the Typed set of papers would show that the service connection was obtained by him in his own name for which the co-sharers gave consent. Further, when the Appellant

submitted that even the Statute permits even an occupier of premises to get service connection without the consent of the owner and attempted to refer to the relevant provisions under the Regulations, this Hon'ble Court was pleased to observe that the writ appeal would be dismissed and started pronouncing the orders. In the interest of justice and to perform the duty of an advocate to assist this Hon'ble Court to ensure purity of justice, the appellant requested the Hon'ble Court to permit the appellants to refer to Regulation 5(6)(3) of the Tamilnadu Electricity Supply Code 2004 to establish that the shifting of existing service connection within the same survey number is not a new service connection to insist Form-2 application. But, this Hon'ble Court was pleased to observe that the counsel is intervening during the dictation and observed "whatever you want to say, put in a paper" and stopped the dictation and closed the hearing. Accordingly, the appellant left with no other way, makes his legal submissions as written one which is annexed herewith.

3.It is respectfully submitted that the appellant is forced to forgo the cultivation of his lands for years together which is his source of livelihood affecting his entire family, it is just and necessary for this Hon'ble Court to consider all the points raised by the appellant before passing orders in this writ appeal. The appellant hopes that if all the relevant points the appellant raises in his legal submissions are taken into consideration, there is every chance for the appellant to succeed in this writ appeal. Therefore, it is just and necessary for this Hon'ble Court to take on record the written submissions annexed herewith and consider the same for

adjudication.

Therefore, for the reasons stated above, it is prayed that this Hon'ble Court may be pleased to take on record, and to take into consideration the written submissions dated 05.08.2020 annexed to this Memo for deciding the issues raised in this writ appeal and thus render justice."

Along with the memo, he has also filed written submissions which is as follows:-

" The Appellant respectfully submits his written submissions as hereunder:

1..It is submitted that this writ appeal was taken up for hearing by this Hon'ble Court today, i.e., on 05.08.2020. When the appellant started to argue his case, this Hon'ble Court was pleased to point out that the Application, at pages 1 to 4 of Typed set of writ appeal, made by the appellant in the earlier occasion seeking service connection for Bore well at location marked as "A" in the FMB Sketch annexed in Additional Typed set at page 87, and the certificate of VAO, page-4 of main typed set, given in the said Application would reveal that the Bore well is shared by other persons and hence this Hon'ble Court was pleased to pose a question as to what is wrong for the respondents to demand the consent of the co-owners of the bore well of "A" for shifting to new location "C". When the appellant submitted that even for the sake of argument without admitting even if the bore well is co-shared by other persons and if all others gave consent for one person to get service connection in his own name, then when the Service connection as long as stands in the said person's name, he can seek shifting of the same and the co-sharers have no right to object against removing the service connection from the common bore well. The appellant made an attempt to refer to the statutory provisions in support of the same, this Hon'ble Court was pleased to stop him by asking to make the facts first clear. When the

Appellant submitted that the application at page no.1 to 4, of the Typed set of papers would show that the service connection was obtained by him in his own name for which the co-sharers gave consent. Further, when the Appellant submitted that even the Statute permits even an occupier of premises to get service connection without the consent of the owner and attempted to refer to the relevant provisions under the Regulations, this Hon'ble Court was pleased to observe that the writ appeal would be dismissed and started pronouncing the orders. In the interest of justice and to perform the duty of an advocate to assist this Hon'ble Court to ensure purity of justice, the appellant requested the Hon'ble Court to permit the appellants to refer to Regulation 5(6)(3) of the Tamilnadu Electricity Supply Code 2004 to establish that the shifting of existing service connection within the same survey number is not a new service connection to insist Form-2 application. But, this Hon'ble Court was pleased to observe that the counsel is intervening during the dictation and observed "whatever you want to say, put in a paper" and stopped the dictation and closed the hearing. Accordingly, the appellant left with no other choice, makes his legal submissions as written one as hereunder for kind consideration before passing orders:

2. Legal submissions:

(1) As to the requirement of making application in Form -2 under Annexure-III of Tamilnadu Electricity Distribution Code'2004 even for shifting of agricultural service connection within the same survey no. as insisted by the 1st respondent and approved by the learned single judge:

(i) Regulation 27(2) of Tamilnadu Electricity Distribution Code'2004 mandates to make application in the said Form-2 to seek service connection for agricultural purposes and does not stipulate therein anything with regard shifting of service connection. A plain meaning of this regulation would show that it is applicable for new service connection only and not for shifting of service connection. In the absence of any such stipulation, it is impermissible to interpret the said provision as if it also applies for shifting of service connection. It is well settled law that while interpreting a provision of law, nothing could be added nor anything is to be omitted but only the meaning of the sentence stated alone is to be

taken into consideration.

(ii) Further, the Regulation 29(7) of Tamilnadu Electricity Distribution Code'2004 stipulates that service line once laid shall not be transferred or interfered or shifted (naturally it would occur in shifting of service connection) without permission of the engineer engineer. It is pertinent to note that herein, the regulation does not stipulate to make application afresh. On the other hand while dealing with the procedure for name change in the service connection, Regulation 5(7) of the Taminadu Electricity Supply code mandates under sub-clause (1) and (ii) thereunder, that a fresh application is to be filed for name change. But, no such stipulation has been made for shifting of service connection within the same survey number/door no.

(iii) Regulation 5(6) (1) of Taminadu Electricity Supply Code'2004 stipulates that cost of shifting of service/line shall be paid as estimated in advance; Regulation 5(6)(2) of the Supply code stipulates that when temporary dismantling and re-erection or shifting of service connection within the same premises necessitated due to remodeling, shifting the lines or equipment will be paid carried out on payment of charges; Regulation 5(6) (3) of Tamilnadu Electricity Supply Code'2004 stipulate that shifting of service connection involving change in Door no. or sub-door no. or field number shall be considered as new connection, corollary of which makes it clear that shifting of service connection within the same field number shall not be considered as new connection and hence the question of applying the provisions under regulation 27(2) and the Form 2 referred to therein for shifting of service connection does not arise.

Thus, the entire provisions under Regulation 5(6) of Supply Code if r/w Regulation 29(7) Tamilnadu Electricity Distribution Code'2004 would make it clear that only prior permission and payment of charges for the cost of shifting are the conditions to be complied with for seeking shifting of service connection within the same survey field number.

Therefore, the finding of the learned single judge that the said Reg.27(2) of Distribution Code would be applicable also for shifting of service connection within the same field number is apparently

erroneous and is liable to be set aside.

(iv) Further, even viewing on rational basis, shifting of service connection within the same survey no. by the same owner does not require any change in the contents of the said application in Form-2, i.e., no new entry/information is going to be made, and hence re-filing the same Application, which is already available with the authorities, filled up with the same particulars for the same survey no., (herein same sub-division alone is involved), would be a futile and purposeless exercise. It is pertinent to note that, that is why, the frames of the regulation do not stipulate to require to make fresh application for shifting of service connection whereas they stipulate so for the name change. Therefore, prudence also does not warrant to make fresh application repeating the same earlier application, otherwise, it would be a futile and wasteful exercise. Only to prevent such purposeless demand from the officials, the rules and regulations are framed and this Hon'ble Court and Hon'ble Supreme Court in catena of decisions have categorically held that the authorities should act within the four corners of the rules/regulations. It is pertinent to note that an authority demanding something without quoting the provision of law under which he is demanding so is an abuse of powers and hence Hon'ble Court should take cognizance of the same and admonish the official respondents.

Therefore, the finding of the learned single judge in the impugned judgment that the regulation 27(2) of Tamilnadu Electricity Distribution Code is applicable also for shifting of Service Connection is erroneous and liable to be set aside.

(2) As to the obtaining of consent of co-pattadars for shifting of existing service connection from a common bore well in this case as insisted by the 1st respondent and approved by the learned single judge.

It is submitted that even though the lands situated in Survey No.424/1 is having common patta for 5 persons including the appellant, the lands therein were partitioned long long ago and are being enjoyed by them separately and the joint patta continue to be there without getting the same split into individually. It is no

body's case, nor the case of the 4th respondent that the lands marked in the FMB sketch by the VAO stating to be enjoyed by the appellant is in dispute nor his objection letter states so. The Adangal certified by the VAO also filed at page 9 of the Typed set would show that the 0.97.5 hectares, i.e., about 2.40 acres of lands are under the appellant's enjoyment and possession and in that land bore well has been dugged at "C" by the appellant and hence no one could object to have service connection by the Appellant for bore well at "C". The 4th respondent and others are neighbouring land owners, may be co-pattadars. Therefore, the issue is as to whether consent of co-pattadars/adjoining land owners are required. The appellant submits that no such consent is required either under the Act or under the regulations made thereunder, which are substantiated as hereunder:

(i) As the service has been obtained by the Appellant for bore well "A" in his own name, presuming without admitting (even though the bore was dug by the appellant in the land of 4th respondent), that the bore well at 'A' is co-shared by others also, the co-sharers having given consent to allow the appellant to have his own and separate service connection in the common bore well in his own name, the service connection having been owned by the appellant absolutely, enjoyed by him all along independently and exclusively, the co-sharers are estopped from making any objection in this regard thereafter. Further, the co-sharers of Bore well at "A" cannot have any grievance against either shifting away of the existing service connection standing in the name of the Appellant or closure of the same by the appellant from the common bore well "A". Therefore, insisting the consent of the co-sharers by the 1st respondent to shift away his service own connection from out of bore well "A" defies logic. The appellant illustrates the same with the following example. If four persons are living in a room and all of them permitted one person, say, X to have internet connection for him in the room. When subsequently the "X" on having a separate room at some other location and wants to shift his internet connection to his new room at some other place, it is respectfully submitted that the other roommates cannot oppose his shifting of internet connection. On the same analogy, the Co-sharers of the bore well at "A" cannot oppose removal of the service connection from the common bore well owned by the

appellant. There may be some meaning in seeking consent to get a service connection by any one owner to a common well co-owned by others. Therefore, no one can insist consent of co-owners for shifting away or closing down of the service connection fully owned by one person from the common well co-shared by them.

(ii) It is submitted that the Lands in which the new Bore well "B" has been dug belongs to the appellant and is exclusively owned and enjoyed by him. The certificate of VAO at page 9 /10 of the Typed set and the FMB sketch duly signed by the VAO showing the purple coloured portion is under the cultivation of the appellant. The 1st respondent insisted in the order impugned in the writ petition, at page 19 of the typed set of the writ appeal, that the Computer patta for Survey No. 424/1 shows the existence of co-sharers and hence NOC is to be obtained. Therefore, the objection of the 1st respondent is based on the ownership of the land and not on that of bore well. The appellant makes his legal submissions as to the requirement of consent of the co-pattadars, not co-owners as stated in the impugned order in writ petition, i.e., adjoining land owners for shifting of service connection as hereunder:

(a) Regulation 27(4) of Tamilnadu Electricity Distribution Code'2004 permits service connection to a premises even if the owner of the premises refuses to give consent by executing an indemnity bond. When the appellant makes this submission before this Hon'ble Court, this Hon'ble Court was pleased to reject the same observing that premises are different from agricultural lands. But this Hon'ble Court did not give opportunity to the appellant to substantiate his submission. Now the same is substantiated hereinafter. The Sec.2(51) defines the word "premises" (which is an inclusive definition), as any land, building or structure. Therefore, the phrase "any" land" includes within it the agricultural lands also. Therefore, the above Regulation 27(4) is squarely applicable to agricultural lands also and hence the appellant is entitled to get shifting of service connection without consent of co-pattadar/adjoining owners.

(b) Further, Reg.27(6) of the Distribution Code, mandates a consumer to permit the licensee, herein 1st respondent, to take electric supply lines through the lands of other consumers also. The Sec.2(15) defines "consumer" as one who is supplied with electricity; and also includes any person whose premises for the

time being connected for the purpose of receiving electricity. Herein, the 4th respondent, who is claimed to be objecting shifting of service connection is having electricity service connection for his bore well at "C" as well as to his house and hence he comes within the definition of the consumer. Therefore, he cannot object to shifting of service connection or laying service lines over his lands. However, this issue does not arise herein. The lands coloured in purple colour is exclusively enjoyed by the appellant and exclusively cultivating the lands and that is why the 4th respondent did not question the digging of bore well at "C". Therefore, entire service line is going to run only within the lands of the appellant. That is why the 4th respondent did not contest the writ petition despite service of notice. When the 4th respondent is not contesting the writ petition, the presumption could be that he has no objection. Therefore, the question of seeking consent from him does not arise. The 1st respondent has no right to go into the issue of ownership. If at all the co-owners have any grievance, they could approach the Civil court and establish their right and get relief accordingly. The 1st respondent cannot refuse to give Electricity supply or shifting of service connections under the guise of the objection from co-pattadars/adjoining land owners, otherwise, the same would be nothing but abuse of powers with mala fide intention. It is pertinent to note that the supply of service connection could be denied by the licensee only for the reasons that are beyond its control as mandated u/s 44 of Act.

c) Further, it is submitted that after traversing various provisions of the Act and the regulations framed thereunder, this Hon'ble Court in their orders dt 09.10 2013 passed in W.P.No.18868 of 2013 was pleased to hold, para 66 and 67, that objection of the adjoining owners against running a service line on their lands is untenable and held that it is the duty of the authorities to obtain way leave and the consumers should only liable to pay the cost/compensation and finally directed the authorities to give service connection if necessary with police force. The said judgment was implemented by the official respondents. In another case, subsequently, the said finding has also been approved by the Hon'ble Division Bench of this Hon'ble Court in W.A.No.600 of 2014, in their judgment dated 16.11.2017. The Hon'ble Supreme Court in their judgment in Chandru Khamaru Vs. Nayan Malik and Ors, (2011) 12 SCC 314 was also pleased to hold that the consent of neighbours through

whose lands service lines are to be taken up is not required to supply electricity. If the consent is refused by the neighbours, the Hon'ble Supreme Court was pleased to direct the authorities to resort to Sec.67 of the Act. As the rules were not framed u/s 67 of the Act in Tamilnadu, by virtue of the Sec.185(2) of the Act, till rules are framed u/s 67, the provisions u/s 12 to 18 of the Electricity Act'1910 are permitted to be applied. Accordingly, the provisions under the Proviso to Sec. 12(2) of the 1910 Act, permits the Licensee to erect struts in any body's lands to take the overhead service lines through his lands without consent after getting the orders of Executive Magistrate, if required on payment of compensation. All the judgments referred to above and the provisions of Sec.12 to 18 of the 1910 Act has already been filed and is available before this Hon'ble Court. Therefore, the order of the 1st respondent impugned in the writ petition is without legal sanction but is the result of the abuse of powers by the 1st respondent with mala fide intention to harass the appellant for obvious reasons.

Therefore, it is submitted that consent of the adjacent land owners is not at all required to give electricity connection and hence the insistence of consent of the owners of adjoining owners/co-pattadars by the 1st respondent for shifting of my service connection is illegal and hence the writ appeal is entitled to be allowed.

Prayer: Therefore, for the reasons stated above, it is prayed that this Hon'ble Court may be pleased to allow the writ appeal as prayed for with exemplary costs and thus render justice."

15. Even though there is nothing new in the written submissions, yet, we have taken care to go through the same, though we deprecate this practice of the learned counsel in attempting to interfere with the dictation of the judgment which was being done in open Court during virtual hearing and we hope and trust that the learned counsel will exercise restraint in future. We need not remind that there are certain

courtesies that should be observed and we had given enough reasonable time to the learned counsel to make his submissions. The counsel may have found himself in an uncomfortable position when we pointed out the impact of the documentary disclosure about the co-sharers of the borewell already extracted hereinabove. But, that by itself should not be a reason to irk the counsel by responding in this fashion. A counsel is expected to conclude submissions within some time frame and not to insist for repetitive hearing if the result of the litigation goes against his expectations. There are remedies provided suitably in law, but that should not be an excuse to detain the Court from catering to other cases on the docket or to keep on insisting unless the result goes in favour of the litigant. We are deeply concerned and distressed about such an opinion being expressed by the counsel in writing in spite of patient hearing being extended during these trying times. Nonetheless, to see that justice should not only be done, but seen to have been done, we are taking notice of whatever has been written in the written submissions tendered on 06.08.2020.

16.The entire arguments seem to be based on the premise that

once the connection has been granted in the name of the appellant, he is under no obligation to seek any further consent for shifting and the authorities are not required to undertake this exercise once again, for which reliance has been placed on the provisions that have been referred to in the written submissions filed by the appellant's counsel. In our opinion, the said arguments are patently misconceived as they failed to recognise the distinction between taking consent from the co-owners / co-sharers of the borewell and the co-ownership of the land where the borewell is situate. It is in order to avoid any dispute between the co-sharers of the borewell that an application is entertained with their consent. This document is sought to be avoided by the appellant by offering explanations and contending that the borewell was dug by the appellant alone. This presumption is clearly rebuttable as the co-sharers of the borewell can come forward and say that they have also contributed towards the construction of the borewell. It is in order to avoid any dispute of this nature, when the connection is for a particular borewell, that a consent may be necessary and therefore, the learned single Judge has not committed any error in coming to the conclusion.

17.The appellant's counsel has taken recourse to the definition of the word 'premises' and Regulation 27(4) to advance his submission as indicated in the written submissions hereinabove. In our considered opinion, the same has to be read in conjunction with the clause pertaining to shifting as contained in Clause 37 extracted hereinabove, inasmuch as the appellant is now asking the connection to be shifted for his exclusive borewell on the land which he is exclusively occupying to the exclusion of all other recorded co-sharers of the borewell where the connection exists. We find no arbitrariness or violation of any rule as it is open to the appellant to seek consent, or otherwise he can take a new connection. The appellant himself has, therefore, compounded his entire dispute of refusing to comply with the request of the authorities and we, therefore, find no force in the written submission tendered on behalf of the appellant.

18.Mr.Subramaniyan has also cited decisions in his written submissions. We find that the said decisions are in relation to laying down of lines and not of exclusive shifting of connections where the facts were different from the facts involved in the present case. He has also furnished another judgment by a Division Bench dated

16.11.2017 in W.A.No.600 of 2014 referred supra, which also does not come to his aid on the facts of the present case. We, therefore, find no merit in the submissions at all.

The Writ Appeal is, accordingly, dismissed.

(A.P.S., CJ.) (S.K.R., J.)
15.09.2020

Index : Yes/No

sra

To

- 1.The Assistant Engineer,
Operation & Maintenance,
TANGEDCO, Vaikuntham,
Sankari Taluk, Salem Dt.
- 2.The Assistant Executive Engineer,
Operation & Maintenance,
TANGEDCO, Sankari (East),
Sankari Taluk, Salem Dt.
- 3.The Executive Engineer,
Operation & Maintenance,
Sankari Division, Sankari,
Sankari Taluk, Salem Dt.

WA.No.176 of 2020

The Hon'ble Chief Justice
and
Senthilkumar Ramamoorthy, J.

(sra)



W.A.No.176 of 2020

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