

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :09.03.2020
CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.4055 of 2012
and
M.P.No.1 of 2012

Basheera

...Petitioner

-vs-

1. The State of Tamil Nadu,
Represented by the Chairman,
Tamil Nadu Electricity Board,
Anna Salai, Chennai - 600 002.
 2. The Superintending Engineer,
Tamil Nadu Electricity Board,
Anna Salai, Chennai - 600 002.
 3. The Assistant Engineer. (O & M),
Pallavaram West, Pallavaram,
Chennai - 600 043.
 4. K. Sekaran
- ...Respondents.

Prayer : Petition under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order Ka.No. c/bgh/-,a[g-nk/gp-nfh/-0618-2012 dated 17.02.2012 passed by the 3rd respondent and to quash the same and to direct the respondents 1 to 3 not to disconnect the Electricity Connection provided to the petitioner to her property in E.B. Connection No.254-320-1183.

For Petitioner : Mr.S. Balasubramanian

For Respondents: Mr.P. Gunaraj [R1 to R3]
Mr.E.R.K. Moorrthy [R4]

O R D E R

Heard Mr.S.Balasubramanian, learned counsel for the petitioner, Mr.P.Gunaraj, learned counsel for the respondents 1 to 3 and Mr.E.R.K.Moorrthy, learned counsel for the 4th respondent.

2. With consent of learned counsel on either side, the writ petition itself is taken up for final disposal.

3. This writ petition has been filed challenging the proceedings issued by the 3rd respondent dated 17.02.2012, by which, the action was taken to disconnect the electricity service connection given in the name of the petitioner in respect of the subject property.

4. The petitioner's case is that she is the lawful owner of the property and without taking note of the same, merely based on objection raised by the 4th respondent, the impugned order has been passed. Further, the petitioner would state that a civil suit is pending before the competent Civil Court and in the mean time, if the impugned order is to be implemented, the petitioner will be put to great prejudice.

5. At the time when the writ petition was entertained an order of interim stay was granted, which continues to remain in force till date. The 3rd respondent has filed a counter affidavit inter alia contending that based on the objection given by the 4th respondent, the matter was considered by the 3rd respondent and from the documents produced by the 4th respondent, it came to light that the allotment order granted by the Tamil Nadu Slum Clearance Board in respect of the subject property stands in the name of the 4th respondent. Therefore, action was initiated and the impugned order was passed to disconnect the power supply.

6. The 4th respondent has filed a counter affidavit contending that the petitioner is neither a tenant nor the lawful owner of the premises. Under the said circumstances, the 3rd respondent has power to disconnect the service connection under the provisions of the Tamil Nadu Electricity Distribution Code, 2004, when the consumer fails to prove that he/she being in lawful of the occupation of the premises and obtained the same by furnishing false information. Further, it is submitted that the premises was allotted by the Slum Clearance Board on 02.09.2003 in favour of the 4th respondent. Further, the alleged mutation of name in favour Mr.Gajendra Babu was cancelled by the Pammal Municipality on 05.02.2010 and the property tax assessment now stands in the name of the 4th respondent, who is paying the property tax.

7. Further by referring to the decision of the Hon'ble Supreme Court in the case of Anathula Sudhakar Vs. P. Buchi Reddy & Ors. [reported in 2008 4 SCC 594], it is submitted that a person in wrongful possession is not entitled to an injunction against the rightful owner. In the counter affidavit filed by the 4th respondent, it is admitted that the petitioner has filed a suit in O.S.No.840 of 2009 on the file of the District Munsif Court, Alandur for a decree of permanent injunction, in which, in I.A.No.245 of 2012 an order of interim injunction has been granted restraining the disconnection of the electricity supply. It is further submitted that the 4th respondent has filed written statement in the said suit on 23.09.2010. Further, it is pointed out

that the Tamil Nadu Slum Clearance Board is not a party to the suit and the suit is liable to be dismissed for misjoinder of necessary parties.

8. Considering the above facts and that there has been interim order in favour of the petitioner ever since 2012, this Court is of the view at this juncture, the current position which is prevailing, need not be disturbed as the parties are before the Civil Court. It is submitted by the learned counsel for the 4th respondent that the suit filed by the petitioner has been dismissed by judgment dated 31.07.2012. The 4th respondent is at liberty to produce the judgment before the 3rd respondent, who shall take note of the same and proceed in accordance with law.

Accordingly, the Writ Petition is disposed of. No costs. Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

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To

1. The Chairman,
Tamil Nadu Electricity Board,
Anna Salai, Chennai - 600 002.
2. The Superintending Engineer,
Tamil Nadu Electricity Board,
Anna Salai, Chennai - 600 002.
3. The Assistant Engineer. (O & M),
Pallavaram West, Pallavaram,
Chennai - 600 043.

+1cc to Mr.P.Gunaraj, Advocate, S.R.No. 20882
+1cc to Mr.E.R.K.Moorthy, Advocate, S.R.No. 21109

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and M.P.No.1 of 2012

SSI (CO)
GN(06/08/2020)