

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:04.09.2020

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

W.P.No.11957 of 2020
and
WMP Nos.14681 and 14683 of 2020

K.Palanimuthu
S/o. Late KandasamyGounder

...Petitioner

Vs.

- 1 The Assistant Engineer (O & M)
Tamil Nadu Electricity Board
Sathapadi
Attur Taluk
Salem District.
- 2 The Assistant Executive Engineer (O & M)
Tamil Nadu Electricity Board
Attur
Salem District.
- 3 The Executive Engineer (O & M)
Tamil Nadu Electricity Board
Attur
Salem District.
- 4 The Superintending Engineer (O & M)
Tamil Nadu Electricity Board
Salem
Salem District.

- 5 Chinnasamy
S/o. Arumugha Gounder

...Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records pertaining to order passed by the 1st respondent in his proceedings Ka No.U.Po/E & Pa/Saa.Padi/va. AA/Nee.Ma/No. 108/2020 dated 18.08.2020 and quash the same, and direct the respondents to issue notice to the petitioner and call for reply and decide on merits regarding the service connection No. 557-004-368.

For Petitioner :Mr.T.Selvaraj
for
M/s.C.S.Associates

For Respondents 1 to 4:Mr.N.Damodharan
Standing Counsel

ORDER

This Writ Petition has been filed praying to quash the order of the 1st respondent dated 18.08.2020 and direct the respondents to issue notice to the petitioner and call for reply and decide on merits regarding the service connection No. 557-004-368.

2. On consent given by either side, the main Writ Petition itself is taken up for final hearing.

3. The electricity service connection originally stood in the name of the father of the petitioner. A show cause notice was issued on 04.05.1995 to the father of the petitioner calling upon him to explain as to why the service connection should not be disconnected. Aggrieved by the same, the father of the petitioner filed a suit in O.S.No.96 of 1985 and the same came to be decreed. An Appeal was filed in A.S.No.22 of 1999 to the Sub Court, Attur and this Appeal was allowed by judgment and decree dated 27.02.2004 reversing the decree passed by the trial Court.

4. Aggrieved by the above judgment and decree passed by the appellate Court, S.A.No.1252 of 2004 was filed by the father of the petitioner. He died during the pendency of the Second Appeal and his legal representatives were brought on record by an order dated 03.06.2019. Ultimately, the Second Appeal was taken up for final hearing and it was dismissed by judgment dated 14.08.2019. The relevant portions in the judgment are extracted hereunder:-

"7. The learned counsel for the first respondent argued that earlier O.S.No.96/1985 was laid for declaration of his title to three Survey Numbers, which includes property in S.No.23/10 and S.No.23/12 and also a share in the well in S.No.23/11. The present appellants 1 to 4 were arrayed as defendants in O.S.No.96/1985 and he had relied on a sale deed, dated 11.09.1968, under which he claims to have purchased 1/3rd share of his brother Marutha Muthu in the property in S.No.23/11 and S.No.23/12. This document, he had produced as Ex.B1 in the earlier suit (O.S.No.96/1985). Later,

after the disposal of the appeal (A.S.No.77/1989) preferred against the decree in O.S.No.96/1985, this respondent became aware of certain interlineation or correction in the plaintiff's sale deed, which according to him rendered the sale deed fraudulent. And, it constituted a fraud on court as well. Reliance was placed on A. John Vs Vasanthi and Others [(2018 (6) CTC 365)]. It is on this footing, he had alerted the officials of the TNEB, based on which, a show cause notice was issued.

8.1 Replying the same, the learned counsel for the appellants would argue that the sale deed is of the year 1968, which the first respondent now impugns as having some interlineation etc., cannot be considered at this point of time, since it has already been produced before the Court in O.S.No.96/1985. Secondly, he has no locus standi to challenge the said document as it was executed not by his vendor, but by first appellant's brother. Thirdly, in the worst case scenario, the said sale deed constituted only a fraud on the party, and not any fraud on court. When the first respondent herein had all the opportunity to attack the same in the earlier suit, he had conveniently chosen to remain silent. What he has lost cannot be revived now as he is barred from raising it by virtue of doctrine of constructive res judicata.

8.2 The learned counsel for the appellants further submitted that pursuant to the judgment of the first appellate Court, the first appellant herein did in fact offered his explanations, but the same is yet to be disposed of by the authorities, due to the pendency of the present appeal.

9. Though much arguments were advanced on title and res judicata and constructive res judicata, it has to be underscored that to consider them would be beyond the scope of this case. The present suit is all about a challenge to a show cause notice, which pose no threat of

invasion or injury to plaintiff's right. All that the show cause notice seeks is an answer to clarify certain facts. What may perhaps affect the right of the plaintiff is an adverse decision of the officials, but that eventuality has not happened yet. This perhaps is the underlying reason of the first appellate court.

10. For the present, this Court dismisses this appeal, and the judgment and decree in A.S.No.22 of 1999 on the file of Subordinate Judge, Attur, dated 27.02.2004, is confirmed. It is made clear that TANGEDCO, the successor of TNEB, shall not decide any disputed question of title to any immovable property. No costs."

5. This Court while dismissing the Second Appeal felt that a reply should have been given to the show cause notice and the plaintiff need not have straight away approach the Civil Court by filing the suit. Pursuant to the order passed by this Court, the petitioners therein were expecting a notice to be served on them along with all relevant materials. However, the impugned order came to be passed by the first respondent by proceedings dated 18.08.2020. Aggrieved by the same, the present Writ Petition has been filed before this Court.

6. Mr.T.Selvaraj, learned Senior Counsel appearing on behalf of the petitioner submitted that the impugned order passed by the first respondent is liable to be interfered since it was passed even without giving an opportunity to the petitioner. The learned Senior Counsel further submitted that the petitioners were expecting for a notice from the respondents and all of a sudden the impugned order came to be passed, as a result of the same, an attempt is being made to disconnect the service connection permanently from 18.08.2020. The learned Senior Counsel, therefore, submitted that the impugned proceedings of the first respondent is liable to be interfered with and the respondents must be directed to issue a fresh notice along with all relevant documents.

7. Mr.N.Damodharan, learned Standing Counsel appearing on behalf of the respondents 1 to 4 submitted that the first respondent will issue a fresh notice to the petitioner and thereafter take a decision in accordance with law.

8. This Court has carefully considered the submissions made on either side and the materials available on record.

9. The dismissal of the Second Appeal is not automatically result in the first respondent passing an order of disconnection of the service connection. This Court never intended the same when the judgment was passed in the Second Appeal. This Court felt that a reply should have been given to the show cause notice and the show cause notice ought not to have been put under challenge. But, the first respondent went wrong in interpreting the order passed by this Court as if it authorised the first respondent to straightaway disconnect the electricity connection. This is a wrong reading of the order passed by this Court.

10. In view of the above, this Court has no hesitation to interfere with the impugned order passed by the first respondent on 18.08.2020. The first respondent is directed to immediately restore the electricity connection. The first respondent is also directed to issue a fresh show cause notice to the petitioner along with all materials relied upon in the show cause notice and the petitioner, on receipt of the notice, shall give his reply and the same shall be considered and orders shall be passed strictly in accordance with law.

11. This Writ Petition is allowed with the above direction. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

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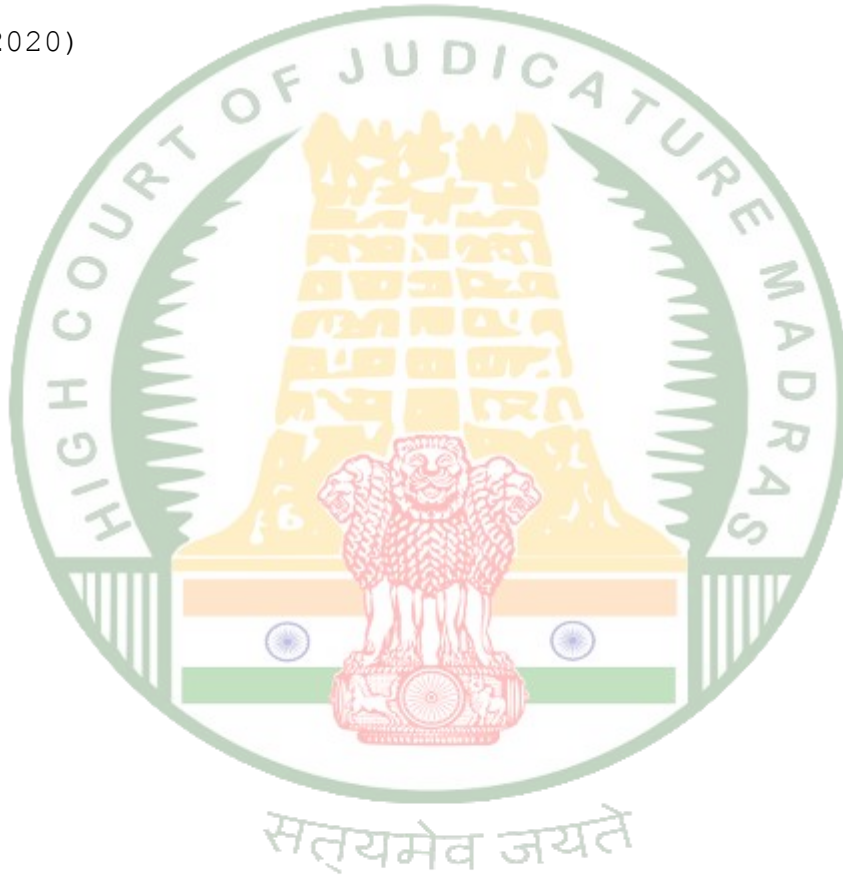
+1cc to M/s.C.S.Associates, Advocate SR.29072

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MR (CO)
CB (15/09/2020)



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