

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.No. 16730 of 2019
and WMP.No.16341 of 2019

S. Venkatesh Perumal,
S/o. P.Shanmugavel

...Petitioner

Vs.

1. The Superintending Engineer,
(Operation and Maintenance),
TANGEDCO,
Pillyar Koil Street,
Paraniputhur, Chennai - 600 122.

2. The Assistant Engineer,
(Operation and Maintenance),
TANGEDCO,
Pillyar Koil Street,
Paraniputhur, Chennai - 600 122.

3. Parimala,
W/o. Suresh

... Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India, seeking Writ of Mandamus, directing the respondents 1 and 2 restore the service connection No.093190041014 for the petitioners in G1, Ground Floor, No.8/86, Vanniya Mettu Street, Ayyappanthangal, Chennai - 56.

For Petitioner : Mr.R. Rajarajam

For Respondents: Mr.P.Gunaraj
Standing Counsel

ORDER

This writ petition has been filed for the issuance of writ of mandamus directing the first and second respondents to restore the service connection in the ground floor premises.

2. The facts of the case is that the petitioner entered into a construction agreement with one Muthukumar on 13.08.2012 and thereby the builder agreed to construct a flat to an extent of 2500 sq.ft in the ground floor. The petitioner also paid sale consideration and a sale deed was also executed in favour of the petitioner for an undivided share of 205 sq.ft.

3. The further case of the petitioner is that his builder taking advantage of the absence of the petitioner had given the flat to the third respondent. The petitioner lodged a complaint and an F.I.R. came to be registered against the builder and the third respondent and others.

4. According to the petitioner, the third respondent and her husband vacated the ground floor premises in the year 2018 and the petitioner had taken possession of the property.

5. The petitioner after taking possession of the flat found that the service connection was given in the name of the petitioner with respect to a portion at the second floor which according to the petitioner is an unapproved flat. The petitioner made a representation on 04.07.2018 to the Electricity Department and requested for transferring the electricity service connection for the ground floor flat in his name. The petitioner also found that a commercial tariff was charged even though the flat was used for residential purposes. The petitioner therefore made a representation to the TANGEDCO to convert the tariff as residential and also to terminate the service connection given in the second floor in the name of the petitioner and to give the ground floor service connection in the name of the petitioner. Since this representation was not considered, the present writ petition has been filed before this Court seeking for appropriate directions.

6. The learned counsel for the petitioner submitted that the third respondent has already handedover the possession to the petitioner and the third respondent was given an alternative flat by the builder and therefore the TANGEDCO must be directed to consider the representation and make the necessary changes in the tariff and also provide the service connection in the name of the petitioner.

7. Mr.P.Gunaraj, learned Standing counsel appearing on behalf of the TANGEDCO, placed reliance upon the counter affidavit filed by the second respondent. The learned counsel submitted that it is a clear civil dispute as between the petitioner and the third respondent and till the said dispute is resolved, the first and second respondents cannot consider the representation made by the petitioner. The learned counsel submitted that service connection for the ground floor portion

stands in the name of the third respondent and the service connection in the second floor stands in the name of the petitioner. Therefore till the dispute is resolved between the petitioner and the third respondent, the respondent Department cannot side with any of the parties and the service connection will stand as it is, till the Competent Civil Court declares the rights of the parties. The learned counsel further submitted that the tariff in the ground floor was changed from residential to commercial, based on a request made by the third respondent and therefore the Department is continuing to levy the tariff on commercial basis. Therefore, the learned counsel sought for the dismissal of the writ petition.

8. Mr.Sivakumar, learned counsel appearing on behalf of the third respondent brought to the notice of this Court the counter affidavit filed by the third respondent along with all the relevant documents filed as typed set of papers. The learned counsel submitted that the builder has entered into a construction agreement with the third respondent and also had executed a sale deed through which an extent of 585 sq.ft undivided share was sold to the third respondent. The learned counsel further submitted that the third respondent has taken loan for the property and she is paying the EMI every month. It was further submitted that the ground floor flat has been assessed in the name of the third respondent for property tax and the Electricity Connection has also been given in the name of the third respondent. The learned counsel submitted that the petitioner unauthorisedly entered into the flat and a police complaint was lodged against the petitioner. The learned counsel submitted that the petitioner is trying to create records by getting the property tax and electricity connection changed into his name and thereby deprive the third respondent of her right over the property.

9. In reply to the said submission, the learned counsel for the petitioner submitted that even as per paragraph 11 and 12 of the counter affidavit filed by the third respondent, the petitioner is in possession of the ground floor flat. The learned counsel further reiterated that the builder had given an alternate flat to the third respondent elsewhere and therefore the other disputes can be resolved before the Civil Court.

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

11. A careful perusal of the documents filed both by the petitioner as well as the third respondent reveals the fact that the builder has entered into a construction agreement both with the petitioner and the third respondent and a sale deed has also been executed in their favour for the respective undivided

share. It looks like the builder had taken for a ride both the petitioner as well as the third respondent and he had put up a construction in total violation of the plan approval. It can be seen that the flat constructed in the second floor is unauthorized. According to the petitioner, what was promised to him by the builder was a flat in the ground floor and what was actually given to him was the flat in the second floor, which is unauthorized. The third respondent also was promised a flat and she has been given possession of the flat in the ground floor. The documents further reveals the fact that the property tax for the ground floor flat is assessed in the name of the third respondent and the electricity connection in connection No.1016 also stands in the name of the third respondent. The electricity connection in the name of the petitioner has been assigned Connection No.1014.

12. The petitioner has given one version as to how he took possession of the flat in the ground floor and the third respondent has given a completely different version to the effect that she was defrauded/cheated and the possession was taken by the petitioner. This is an issue, into which this Court cannot go into, since it involves appreciation of evidence, which requires adducing evidence. Curiously both the petitioner and the third respondent have not chosen to approach the Civil Court to resolve their dispute.

13. The TANGEDCO has taken a very specific stand in the counter affidavit to the effect that the service connection has been effected in the name of the petitioner under the tariff -1I (A) in connection No.1014. Similarly, the service connection had been effected in the name of the third respondent under tariff -V in service connection No.1016. The TANGEDCO does not want to alter this position till the dispute is resolved between the petitioner and the third respondent either among themselves or before the competent Civil Court.

14. This Court finds force in the submission made by the Mr.P.Gunaraj, learned counsel, to the effect that the TANGEDCO should not be dragged into the dispute between the petitioner and the third respondent. More particularly, when separate electricity connection has been provided .both to the petitioner and to the third respondent. As rightly contended by the learned counsel, if the request made by the petitioner is acceded, it will go against the rights of the third respondent. This Court does not find any illegality in the stand taken by the TANGEDCO.

15. In the considered view of this Court, the relief as claimed by the petitioner cannot be granted by this court and the petitioner and the third respondent will have to necessarily work out their grievance only before the Competent Civil Court.

The order passed in the present writ petition, will not have any bearing before the Civil Court as and when the parties approach the Civil Court to resolve the dispute.

16. In the result, this writ petition is dismissed. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Superintending Engineer,
(Operation and Maintenance),
TANGEDCO, Pillyar Koil Street,
Paraniputhur, Chennai - 600 122.
2. The Assistant Engineer,
(Operation and Maintenance),
TANGEDCO, Pillyar Koil Street,
Paraniputhur, Chennai - 600 122.

+1 cc to M/s.R.Rajarajan, Advocate Sr.No. 26315

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and WMP.No.16341 of 2019

PVS (CO)
RMP (03/09/2020)

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