

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 17.03.2020
Pronouncing orders on : 23.03.2020

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.30466 of 2019
and W.M.P.No.30491 of 2019

P.Jayapal

...Petitioner

vs.

1. The Chairman
Tamil Nadu Generation and Distribution Corporation,
Anna Salai,
Chennai - 6000 002.
2. The Executive Engineer,
(Operation and Maintenance)
Chennai Electricity Distribution Circle,
Tamilnadu Electricity Board,
Porur, Chennai - 600 116.
3. The Assistant Engineer,
Tamilnadu Electricity Board,
Chennai Electricity Distribution Circle South,
Porur Rural Division,
Chennai - 600 116.
4. M/s.W.S.Industries India Ltd.,
Rep. by its Chief Financial Officer,
108, Mount Poonamallee Road, Porur,
Chennai - 600 116.

Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the respondents 2 and 3 to grant temporary electricity service connection to the petitioner's property measuring 54 cents in S.F.No.70/2A, Porur Village, Maduravoyal Taluk, Chennai District by considering his application dated 16.09.2019 and representation dated 17.10.2019, within a period fixed by this Court.

For Petitioner : Mr.S.Parthasarathy
Senior Counsel for
Mr.K.Surendran

For Respondents : Mr.Abdul Saleem
Standing Counsel for R1 to R3

Mr.A.R.L.Sundaresan
Senior Counsel for
M/s.Ojas Law Firm for R4

O R D E R

The present writ petition has been filed for the issuance of writ of mandamus directing the 2nd and 3rd respondents to grant temporary electricity service connection to the property of the petitioner measuring 54 cents in S.F.No.70/2A, Porur Village, Maduravoyal Taluk, Chennai District.

2.The case of the petitioner is that the subject property measuring about 54 cents originally was a part of a larger extent of 5.70 acres in Survey No.70/1. This property was owned by the grandfather of the petitioner by virtue of a registered sale deed dated 17.12.1929. He died intestate leaving behind the father of the petitioner and the property devolved upon him. According to the petitioner, his father was also issued a patta for the entire property. The father of the petitioner executed a registered settlement deed dated 04.01.2016 in the name of the son of the petitioner and settled an extent of 5.16 acres out of 5.70 acres. Thereafter, he executed another registered settlement deed dated 31.03.2018 in favour of the petitioner and settled an extent of 54 cents. According to the petitioner, he has obtained a patta in his name for the said extent of property.

3.The petitioner wanted to develop the property and therefore, he submitted an application to the 3rd respondent to get temporary electricity service connection. Thereafter, the 3rd respondent was asking for several clarifications and in the mean time objections were also given by the 4th respondent. The grievance of the petitioner is that the petitioner is entitled for electricity connection under Section 43 of the Electricity Act, 2003 read with Regulations 27(4) and 27(12) of Tamil Nadu Electricity Distribution Code. In spite of the same, the 2nd and 3rd respondents did not consider the application made by the petitioner and left with no other option, the present writ petition has been filed before this Court seeking for appropriate directions.

4.Mr.S.Parthasarathy, learned Senior Counsel appearing on behalf of the petitioner submitted that, it is clear from the title deeds that originally the grandfather of the petitioner was owning 5.70 acres of land in Survey No.70/1. Thereafter, by virtue of the land acquisition proceedings initiated by the 1st respondent, an extent of 5.16 acres was acquired. The learned Senior Counsel brought to the notice of this court the A-Register in respect of the subject property and submitted that, originally 5.70 acres stood in the revenue records in the name of the grandfather. The learned senior counsel also brought to the notice of this court the assignment deed that was executed by the Government in favour of the 4th respondent and submitted that only an extent of 5.16 acres was assigned in favour of the 4th respondent in Survey No.70/1A1 and Survey No.70/1A2.

5.The learned Senior Counsel by placing reliance upon the above documents, submitted that, what was acquired and assigned in favour of the 4th respondent was only an extent of 5.16 acres and the remaining 54 cents remains intact and the petitioner has become the owner of the said extent of property by virtue of the settlement deed in his favour. Therefore, the learned Senior Counsel submitted that the 2nd and 3rd respondents ought to have granted the electricity connection to the property to enable the petitioner to carry on with his developmental activities.

6.Mr.A.R.L.Sundaresan, learned Senior Counsel appearing on behalf of the 4th respondent submitted that the petitioner is trying to reopen an issue which concluded with the judgment passed by the Hon'ble Supreme Court. The learned Senior Counsel submitted that the father of the petitioner made an application to the DRO, Thiruvallur seeking for making corrections in the revenue records for the entire extent of the property. The learned Senior Counsel submitted that the DRO, Thiruvallur passed an order dated 28.12.2015 and directed the corrections to be made in the revenue records. The learned Senior Counsel brought to the notice of this court the ultimate findings of the DRO and the same is extracted hereunder:

It is ordered that the registry in respect of the lands in S.No.73/2 measuring 0.92.0 hectares and S.No.77 measuring 2.30.0 hectares of Porur Village, Ambattur Taluk, made in the name of W.S. Insulators of India Limited during the updating registry scheme is liable to be cancelled and ordered to register in the name of the applicant Thiru R.Perumalswamy S/o (late) Thiru Rajagopal.

It is also ordered that the sub division in S.No.70/1A and 70/1B are liable to be cancelled. The land in S.No.70 is hereby ordered to sub divide as

S.No.70/1 measuring 2.30.5 hectares to be registered in the name of the applicant Thiru R.Perumalswamy S/o (late) Thiru Rajagopal and the land in the remaining extent of 0.02.5 hectares shall be classified as Burial Ground as exists prior to Updating Registry Scheme. The Tahsildar, Maduravoil is directed to make necessary corrections in Village and Taluk accounts as ordered above and report compliance.

It is also ordered that the applicant hereby informed that orders in respect of the land in S.No.71, 72 and 73/1 will be issued separately after affording opportunity to the persons in whose name they stand registered at present.

7.The learned senior counsel submitted that, aggrieved by the orders passed by the DRO, the 4th respondent filed WP No.1453 of 2016 before this court. This case was taken up finally and after hearing all the parties concerned, this court allowed the writ petition by an order dated 30.08.2016. The learned Senior Counsel placed reliance upon Paragraphs 36 to 39 of the order and the same is extracted hereunder:

36 Though the 1st respondent has exercised the powers in terms of G.O.Ms.NO.385, Revenue [General-III] Department, dated 17.08.2004, the fact remains that such a power has not been exercised Suo Motu and even for the sake of argument, such a Suo Motu revision power has been exercised, it should be within a reasonable time as held in 2015 [3] SCC 695 [cited supra]. The 6th respondent slept for years together and suddenly thought fit to invoke the jurisdiction of the 1st respondent in the form of an application dated 07/08.09.2015 and after receipt of the application, the 1st respondent called for the report of the Revenue Divisional Officer, Ambattur and by placing heavy reliance upon it, without even furnishing a copy of the same to the persons concerned/have a say, had gone into the said issue in detail and virtually decided the title to the properties in question as if he has exercised the jurisdiction as that of the Civil Court. The writ petitioner, during the course of proceedings, had also produced the certified copy of the Deed of Assignment bearing document No.495/1964 dated 26.02.1964, certified by the Section Officer, Industries Department, Secretariat, Chennai-9, and the description of the land would also disclose that the lands which are under dispute, were also included in the list of the assigned properties. As already pointed out earlier, the 1st respondent did not make

any attempt to summon a copy of the same either from the Administrative Department or from the District Revenue Officer, Chengalpattu. But, acted on surmises and conjectures and as a consequence, reached the erroneous conclusion. The procedure adopted by the 1st respondent is wholly unsustainable in law and in stead of carrying the burden of adjudicating the civil dispute, the said official ought to have directed the 6th respondent to work out his remedy before the competent Civil Forum. But, he fails to do so.

37 This Court, in the light of the above facts and circumstances and the reasons assigned above, is of the considered opinion that the impugned order/proceedings passed by the 1st respondent warrants interference.

38 In the result, the writ petition is allowed and the impugned order/proceedings of the 1st respondent dated 28.12.2015 in proceeding R.C.No. 25496/2015/B.3 are set aside. No costs. Consequently, the connected miscellaneous petitions are closed.

39 However, if the 6th respondent is so advised, he is at liberty to approach the competent Civil Forum to establish his right, title and possession in respect of the said lands / properties, subject to the law of limitation.

8.The learned Senior Counsel submitted that the father of the petitioner filed an appeal in W.A.No.1201 of 2016 and the same was allowed by an order dated 22.12.2016. Thereafter, the case was taken on appeal before the Hon'ble Supreme Court and the Hon'ble Supreme Court in Civil Appeal No.1318 of 2017, dated 06.02.2020, allowed the appeal and restored the order passed by the learned Single Judge. Paragraph 23 of the order is extracted hereunder:

23 For the reasons above, we come to the conclusion that the view taken by the Division Bench of the High Court in the writ appeal is unsustainable and we accordingly set aside the judgment and order of the Division Bench dated 22 December 2016. In consequence the order of the DRO dated 28 December 2015 is set aside and the judgment of the learned Single Judge is restored. The appeals shall

accordingly stand allowed in the above terms. We however clarify that the Court in the present proceedings has had no occasion to make any observation on the merits of the show cause notice which has been issued by the State of Tamil nadu to WSIL for resumption of the lands. We keep open all the rights and contentions of the parties in that regard.

9.The learned Senior Counsel submitted that, it is clear from the above that the father of the petitioner made a very similar plea for the entire 5.70 acres and lost his case and instead of going before a civil Court to establish the right, title and possession, has executed a settlement deed in favour of the petitioner and is trying to reopen the same issue by attempting to get electricity connection from the 2nd and 3rd respondents.

10.The learned senior counsel submitted that, pursuant to the orders passed by the Hon'ble Supreme Court, the Collector, by his proceedings dated 11.03.2020, has restored the original position in the revenue records, before the DRO passed the order and thereby, the entire 5.70 acres is now standing in the name of the 4th respondent in the revenue records. The learned Senior Counsel, therefore, submitted that there is no question of granting electricity connection to the petitioner.

11.The learned Senior Counsel further developed his arguments by submitting that the father of the petitioner had admitted at least in two documents that the 4th respondent is in possession of the property. To substantiate his submissions, the learned Senior Counsel brought to the notice of this Court, the legal notice dated 12.09.2015 and the caveat filed before the District Munsif Court, Poonamallee on 27.03.2017. The learned Senior Counsel submitted that, in both these documents, it was categorically admitted that the 4th respondent is in possession and enjoyment of the property. It is not shown as to when the petitioner took possession of the property. Therefore, the learned Senior Counsel submitted that the petitioner will not be entitled for electricity connection even without proving his possession over the property.

12.The learned Senior Counsel submitted that, when the appeal was filed before the Hon'ble Supreme Court, an order of status quo was passed by the Hon'ble Supreme Court by an order dated 27.01.2017. When this order was in force, the father of the petitioner had gone ahead and executed a settlement deed in favour of the petitioner on 31.03.2018. The learned Senior Counsel submitted that this settlement deed must be totally disregarded, since, it was executed completely in violation of the interim order passed by the Hon'ble Supreme Court. The learned Senior Counsel, therefore, urged this court to dismiss

the writ petition.

13. In reply to the above submissions, Mr. S. Parthasarathy, learned Senior Counsel appearing on behalf of the petitioner submitted that a contempt petition was filed before the Hon'ble Supreme Court on the ground that the settlement deed was executed when the order of status quo was in force and this contempt petition came to be closed by the Hon'ble Supreme Court at the time of disposing the main Civil Appeal. Therefore, the learned Senior Counsel submitted that the Hon'ble Supreme Court itself has disregarded the claim made by the 4th respondent and this Court should not take a different view in the matter.

14. Insofar as the issue of possession is concerned, the learned Senior Counsel submitted that the 4th respondent cannot have any right or title over an extent of 54 cents and therefore, they cannot claim possession for this extent of property only based on the revenue records.

15. The official respondents have filed a counter affidavit in this case. At the time when this counter affidavit was filed, final orders were not passed by the Hon'ble Supreme Court in the Civil Appeal and therefore, they took a stand that pending the appeal before the Supreme Court, electricity service connection cannot be granted in favour of the petitioner. It was also stated that the Hon'ble Supreme Court had directed the parties to maintain status quo and therefore, request made by the petitioner cannot be considered.

16. The learned counsel appearing on behalf of the respondents 1 to 3 submitted that the Hon'ble Supreme Court has now passed final orders in the Civil Appeal and restored the original position in the revenue records and thereby, the name of the 4th respondent to whom the property was assigned, now finds place in the records and therefore, the petitioner is not entitled for any service connection unless he independently establishes his right, title and possession over the property before the competent civil court. The learned counsel, therefore, sought for the dismissal of the writ petition.

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

18. The only issue that arises for consideration in this writ petition is as to whether the petitioner is entitled for an electricity service connection for the subject property. The petitioner is claiming ownership over this property by virtue of the settlement deed dated 31.03.2018 executed by his father for an extent of 54 cents. It is clear from the above facts that this settlement deed came to be executed in favour of the petitioner when an order of status quo granted by the Hon'ble

Supreme Court was in force. This order was passed by the Hon'ble Supreme Court on 27.01.2017 and it was in force till the disposal of the Civil Appeal on 06.02.2020. During the interregnum period, the settlement deed came to be executed in favour of the petitioner by his father.

19. The father of the petitioner was clearly aware of the fact that the order of status quo was in force when he executed the settlement deed in favour of his son viz., the petitioner herein. In spite of the same, he proceeded to execute the settlement deed in favour of the petitioner. This act of the father of the petitioner clearly reflects a contumacious conduct on his part. Alienation of a property in violation of a Court order clearly amounts to contempt of Court. However, the Hon'ble Supreme Court proceeded to close the contempt petition filed by the 4th respondent in view of the final orders passed in the Civil Appeal, wherein, the appeal was allowed in favour of the 4th respondent. This, by itself, cannot be construed as if the Hon'ble Supreme Court approved the execution of the settlement deed in favour of the petitioner. The Hon'ble Supreme Court did not go into the contempt petition only due to the fact that the main civil appeal itself was allowed. Therefore, the very document based on which the petitioner is claiming for title, becomes questionable and this court has to necessarily take an adverse inference against the petitioner to the effect that the said document was created in favour of the petitioner only to enable the petitioner to come up with a cause of action by applying for electricity connection on the ground that he wants to develop the property. What the father of the petitioner was not able to achieve is attempted to be indirectly achieved by the petitioner.

20. The father of the petitioner had taken a very clear stand in two of the documents by categorically admitting that the 4th respondent is in possession of the property. The first document was a legal Notice dated 12.09.2015 which was sent by the father of the petitioner to the 4th respondent. The relevant portion in the Notice is extracted hereunder:

My client states that in the year 1954, in order to dump the wastage (broken insulators etc.) from the said factory, you had approached my client's father D.Rajagopal, and sought permission to use the abutting land measuring 13.65 acres, belonged to the said D.Rajagopal, under Leaves and Licence for 50 years, and the said D.Rajagopal had just allowed you to use the same as dumping land for the following reasons:

1. The said D.Rajagopal was an illiterate person
2. An agriculturist doing agriculture in his native place at Wallajah
3. Unable to look after the above said 13.65 acres of land
4. In order to protect the said land from the encroachers.

My client states that his father D.Rajagopal had died intestate on 29.11.2004, leaving behind him his son R.Perumalswamy and his sole legal heir and after his demise the said property had been developed on my client absolutely, and thereafter my Client had allowed you to continue the premises under the same Leave and License.

Now the said Leave and License had expired by 31.12.2014, and my client had approached you to terminate the Leaves and License, but you have failed to accept the said termination on the following reasons:

1. that you have been in possession and enjoyment of the said property over 50 years, and
2. that you have obtained UDR patta in your favour for the said land.

On verification of the Revenue records, it seems that you had obtained patta bearing No.94, without any basis, and any registered documents. Further the original Sale Deed pertaining to the above said 13.65 acres of land is still with my client, and the Encumbrance certificate for the period from 01.01.1989 onwards, shows several entries of Sale Agreements and mortgages, and no sale deeds have been registered so far, because you have no right over the land in S.No.70/1, 73/2 & 77.

My client states that my client is the absolute owner of the land measuring 5.70 in S.No.70/1, 2.27 acres in S.No.73/2, and 5.68 acres in S.No.77, totally measuring 13.65 acres of land in Porur Village, and you are in occupation of the said 13.65 acres of land under Leave & Licence.

My client has hereby terminate the above said Leave & License by the end of 31.10.2015, and hence this notice of termination.

On behalf of my client: I therefore call upon you to quit and deliver vacant: possession of the land measuring 13.65 acres comprised in S.Nos. 70/1, .73/2 and 77 of Porur Village, under your occupation bearing Door No.108-part, Mount Poonamallee Road, Porur, Chennai-116, immediately after 31.10.2015, otherwise you will to pay damages to be worked out for use and occupation thereafter. Failing which my client shall initiate legal proceedings against you at your cost.

21.The next document is the caveat petition filed by the father of the petitioner before the District Munsif Court, Poonamallee, against the 4th respondent. Paragraph 4 in the caveat petition is extracted hereunder:

4.That the Expected Plaintiff is in possession of the above said property by virtue of Lease executed by the father of the Caveator.

22.It is clear from the above documents that the possession of the 4th respondent has been admitted by the father of the petitioner. While so, there is absolutely no document to show that the 4th respondent handed over the possession to the father of the petitioner. If the father of the petitioner is not in possession of the property, he could not have handed over the possession to the petitioner. If the petitioner is not in possession of the property, it is not known as to how he will develop the property. It is only for developing the property, the petitioner is seeking for electricity connection.

23.It is important to notice that the learned Single Judge, while allowing the writ petition filed by the 4th respondent, has categorically held that the father of the petitioner will be at liberty to approach the competent civil Court to establish his right, title and possession in respect of the subject property. This order was restored by the Hon'ble Supreme Court when the Civil Appeal was allowed. In the considered view of this court, the petitioner is now adopting an ingenious way to get over this finding of the learned Single Judge which has become final. It must be borne in mind that the earlier round of litigation covered the entire 5.70 acres, which includes the 54 cents claimed by the petitioner. The petitioner cannot be allowed to reopen this issue by asking for an electricity connection from the 2nd and 3rd respondents on the ground that he wants to develop the property. The petitioner, even without establishing the possession over the property, does not have any right to seek electricity connection. Even though, the request made by the petitioner looks innocuous, there is a grand plan behind the request and it will have very serious consequences on the rights of the 4th respondent. The petitioner has to necessarily go

before a competent civil Court to establish his right, title and possession over the property that was settled in his favour by his father. Without doing so, the petitioner cannot devise an indirect method to achieve his object. This court does not find any right in favour of the petitioner to claim for electricity connection and there are absolutely no merits in this writ petition.

24. In the result, this writ petition is dismissed. Consequently, connected miscellaneous petition is closed. No Costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

ssr
To

1. The Chairman
Tamil Nadu Generation and Distribution Corporation,
Anna Salai,
Chennai - 6000 002.
2. The Executive Engineer,
(Operation and Maintenance)
Chennai Electricity Distribution Circle,
Tamilnadu Electricity Board,
Porur,
Chennai - 600 116.
3. The Assistant Engineer,
Tamilnadu Electricity Board,
Chennai Electricity Distribution Circle South,
Porur Rural Division,
Chennai - 600 116.

+1 cc to Mr.K.Surendran Advocate sr24564

+3 cc to M/s.Ojas Law Firm Advocate sr24531

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and W.M.P.No.30491 of 2019

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