

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.10.2020

CORAM :

THE HON'BLE MR.A.P.SAHI, CHIEF JUSTICE

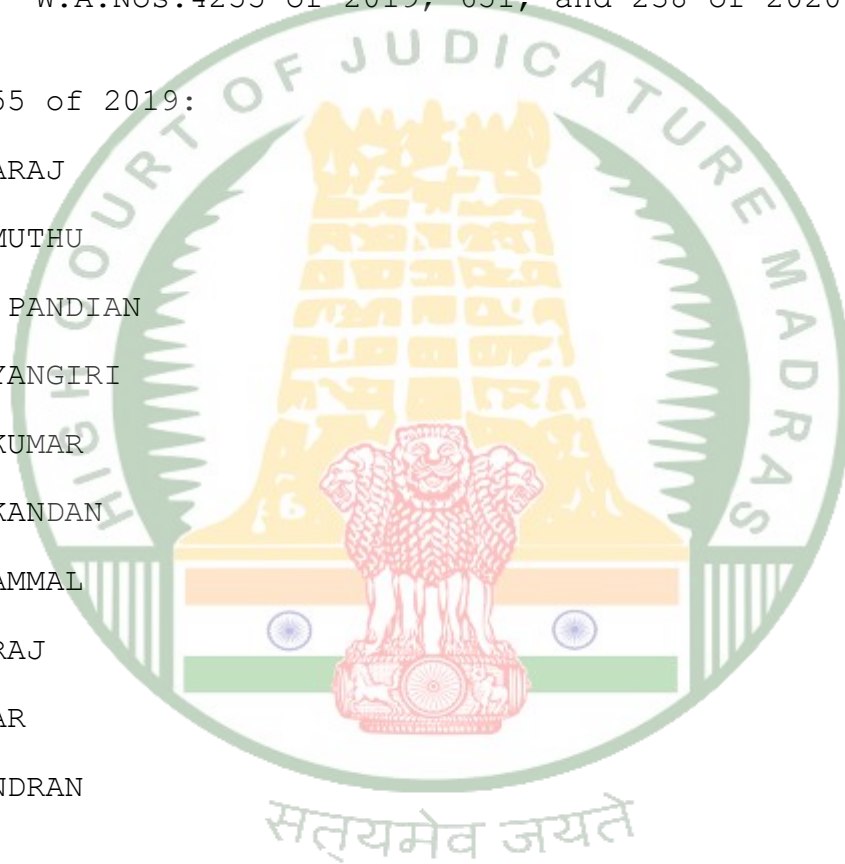
AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.A.Nos.4255 of 2019, 651, and 238 of 2020

W.A.No.4255 of 2019:

1 SELVARAJ
2 MARIMUTHU
3 POUN PANDIAN
4 VELIYANGIRI
5 SIVAKUMAR
6 MANIKANDAN
7 RANGAMMAL
8 YUVARAJ
9 SANKAR
10 MAHENDRAN



Vs

1 M.PALANISAMY
2 THE CHAIRMAN,
TAMILNADU ELECTRICITY BOARD,
ANNA SALAI,
CHENNAI.

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3 THE ASSISTANT ENGINEER,
TAMILNADU ELECTRICITY BOARD,
KOVAI POWER DISTRIBUTION DIVISION,
CHINNIYAMPALAYAM WEST,
COIMBATORE.

... Respondents

W.A.Nos.651 and 238 of 2020:

1 JAYAPANDIAN

2 BALAMANI

3 R.RAYAPPAN

4 M.EASWARI

5 KUPPATHAL

6 K.GOMATHI

7 RAMAN

8 MALLIKA

9 M.MALLIKA

10 PALANISAMY

11 POOVATHAL

12 KAMALA

13 M.FATHIMA BEGUM

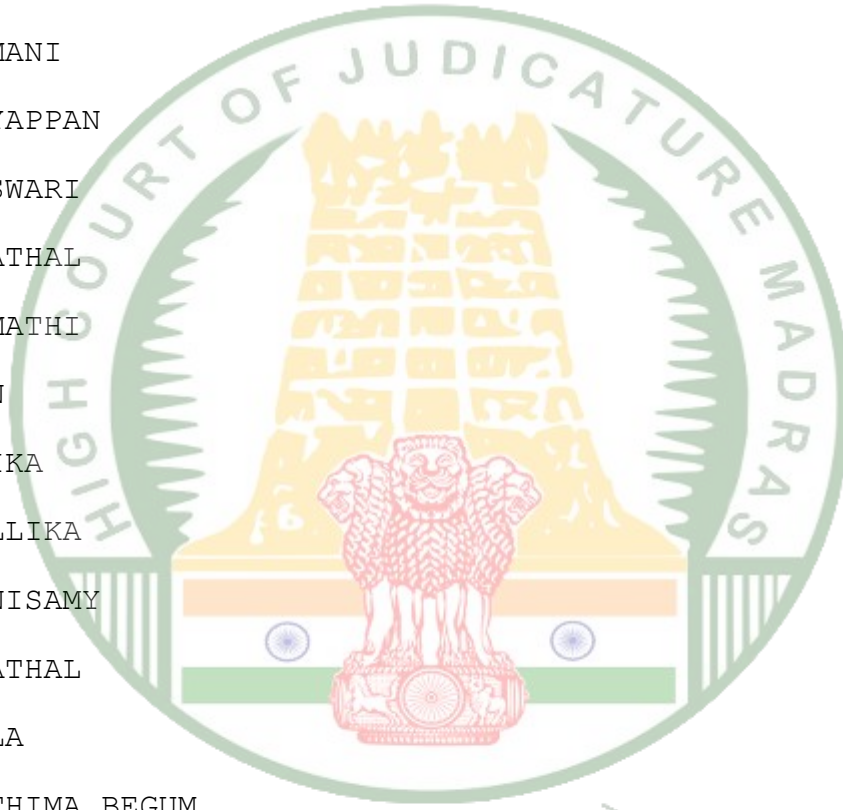
14 K.MALLIKA

15 M.ASAITHAMBI

16 MARAGATHAM

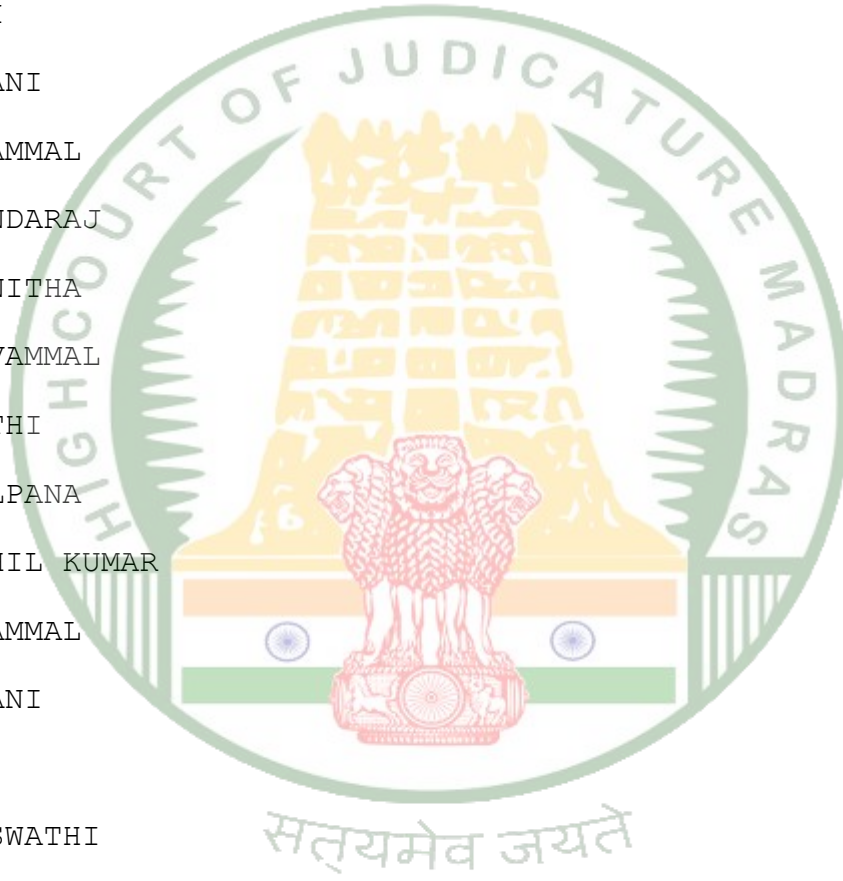
17 PECHIAMMAL

18 A.SUBRAMANIAM



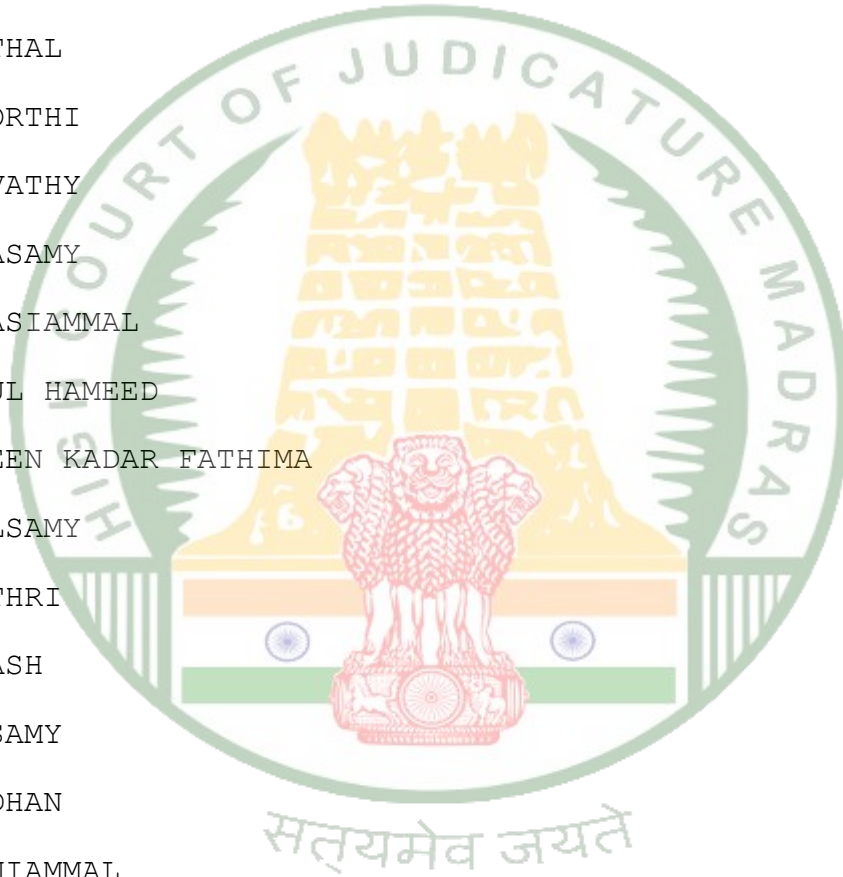
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19 BANUMATHI
20 M.VELUMANI
21 BALAMMAL
22 ARUMUGAM
23 ANNAKILI
24 THULASIAMMAL
25 JOTHI
26 RUKMANI
27 VEERAMMAL
28 GOVINDARAJ
29 K.VINITHA
30 GURUVAMMAL
31 REVATHI
32 K.KALPANA
33 SENTHIL KUMAR
34 RANGAMMAL
35 RUKMANI
36 RAJA
37 SARASWATHI
38 AYYMMAL
39 CHANDRA
40 SELVI
41 RATHNAKALA
42 SUSILA



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43 DURAISAMY
44 PUSHPA
45 THULASIMANI
46 NEELAVATHI
47 K.MANI
48 PALANTHAL
49 RAMATHAL
50 N.MOORTHY
51 M.REVATHY
52 KANDASAMY
53 THULASIAMMAL
54 SHAKUL HAMEED
55 MAIDEEN KADAR FATHIMA
56 GOPALSAMY
57 SAVITHRI
58 PRAKASH
59 RAMASAMY
60 ANANDHAN
61 PALANIAMMAL
62 P. PONNAMMAL
63 J. RAJATHI
64 MAHENDRAN
65 PARIMALA



WEB COPY

66 M.SULOCHANA

... Appellants in
W.A.No.651/2020

1 N.R.BALASUBRAMANIAN

2 P.RAVIKUMAR

3 A.PAVUNPANDI

4 V.SHANKAR

5 K.AMALA

6 PAZHANIAMMAL MURUGAN

7 M.GANESAN

8 V.RAJAMANI

9 TULASIMANI

10 KANNAMMAL

11 SYED ALI FATHIMA

12 N.MOHAN RAJ

13 P.KALAMANI

14 P.KANDASAMY

15 KUPPURAJ

16 BANNARI

17 MUTHUAMMAL

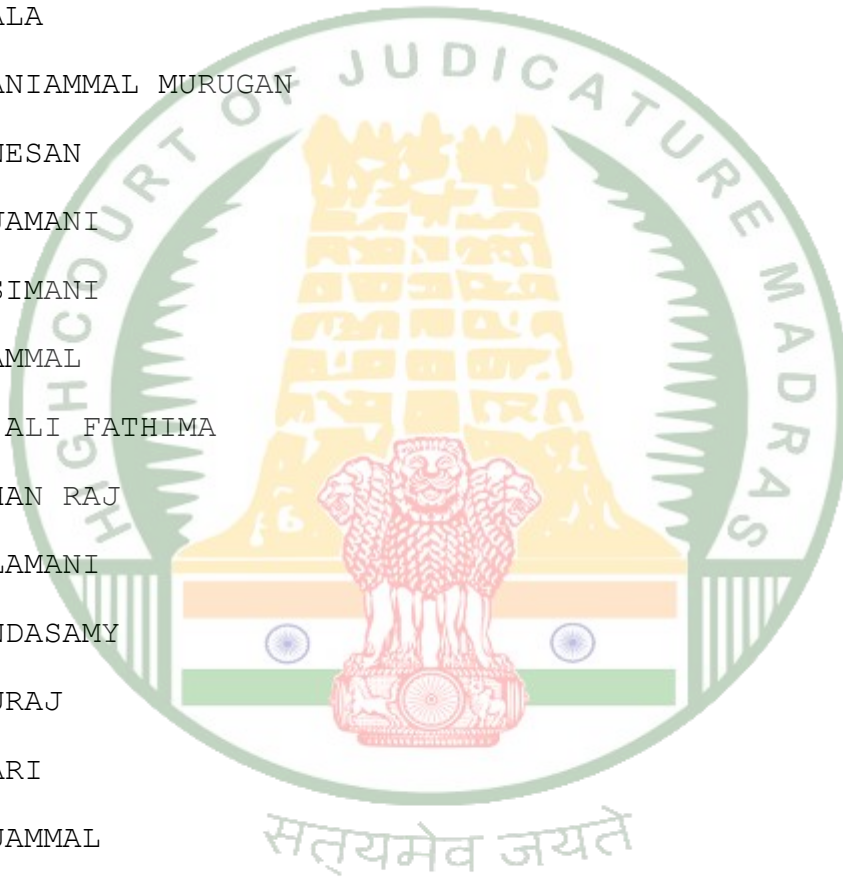
18 BAGYALAKSHMI

19 LAKSHMI

20 THULASI

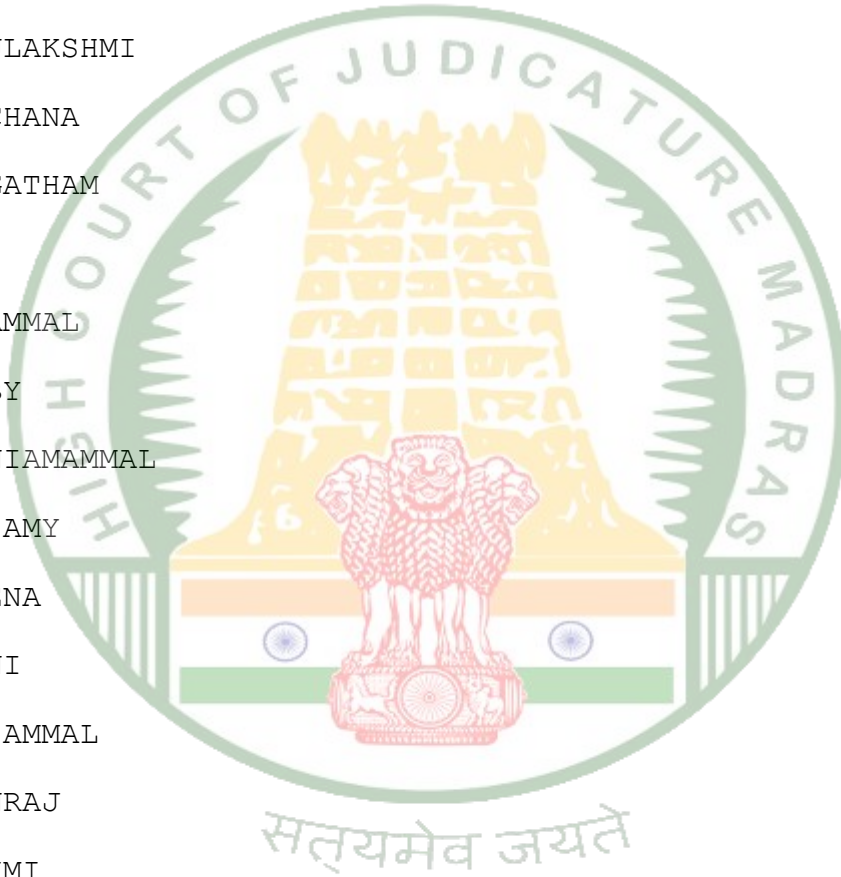
21 SIVARAJ

22 K.NITHYA



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23 VAIRAKANI
24 SANTHAMANI
25 JAYAKUMAR
26 MURUGAN
27 N.SARASWATHI
28 RAMATHAL
29 MUTHULAKSHMI
30 SULOCHANA
31 MARAGATHAM
32 JANKI
33 KUNJAMMAL
34 A.BABY
35 PALANIAMAMMAL
36 RAMASAMY
37 T.MEENA
38 G.MANI
39 PACHIAMMAL
40 CHINNRAJ
41 LAKSHMI
42 AYYASAMY
43 KUMUDHA
44 M.VIJAY
45 LAKSHMI



WEB COPY

46 SARASWATHI
47 SELVI
48 SARASWATHI
49 VIJAYALAKSHMI
50 VIJAYA
51 SAKTHIVEL
52 NAGARAJ
53 PALANISAMY
54 VELUSAMY
55 MARIMUTHU
56 MURUGATHAL
57 N.RAMATHAL
58 THULASIAMMAL
59 R.PRABHU
60 AMUTHA

... Appellants in
W.A.No.238/2020

1 PALANISAMY

2 The Chairman,
Tamil Nadu Electricity Board,
Anna Salai, Chennai.

3 The Assistant Engineer,
Tamil Nadu Electricity Board,
Power Manufacturing and Supply,
Kovai Power Distribution Division/Corporation,
Chinniyampalayam West,
Coimbatore.

4 Selvaraj
5 Marimuthu
6 Poun Pandian
7 Veliyangiri
8 Thangapandian
9 Sivakumar
10 Manikandan
11 Rangammal
12 Yuvaraj
13 Sankar
14 Mahendran

... Respondents in
W.A.Nos.651 &
238/2020

Prayer: Appeals filed under Clause 15 of the Letters Patent against the order dated 17.10.2019 made in W.P.No.10869 of 2013.

WP.No.10869 of 2013:Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus Calling for records of the 2nd respondent ending with proceedings dt. 4/3/13 in Letter No. U.Mi.Po./C.Pa West/Kattu-W.P.4773/13/ A.No.134/12-13 and quash the same and consequently direct the respondent to disconnect power supply to encroachers in S.No.709/2 3 Kalapatti Village Coimbatore District

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For Appellants : Mr.R.Bharath Kumar
in W.A.Nos.651 and
238/2020

For Appellants in : Mr.R.Neelakandan
W.A.No.4255 of 2019
and Respondent Nos.4
to 14 in W.A.Nos.651
and 238 of 2020

For Respondent No.1 : Mr.N.A.Nissar Ahmed
in all appeals

For Respondent Nos.2 : Mr.N.Damodaran
and 3 in all appeals

COMMON JUDGMENT
(Delivered by The Hon'ble Chief Justice)

The appellants in W.A.No.4255 of 2019 are respondents 3 to 6 and 8 to 13 in W.P.No.10869 of 2013, the judgment whereof dated 17.10.2019 has given rise to these appeals. The writ petition proceeded ex parte against them and other private respondents, on whom it is stated that notices were served, but they did not choose to contest the case.

2. The other two writ appeals, namely W.A.Nos.238 and 651 of 2020, have been filed by those, who were not impleaded in the writ petition and, therefore, they sought leave to appeal, which was granted by this Court, and have come up complaining that the directions issued by the learned Single Judge directly affect them, as their electricity service connections are also sought to be disconnected by virtue of the said judgment.

3. We have heard Mr.R.Neelakandan, learned counsel for the appellants in W.A.No.4255 of 2019; Mr.R.Bharat Kumar, learned counsel for the appellants in W.A.Nos.238 and 651 of 2020; Mr.N.A.Nissar Ahmed, learned counsel for the first respondent/writ petitioner; and Mr.N.Damodaran, learned counsel for the Tamil Nadu Electricity Board.

4. The ground of challenge is that the appellants, who are in actual physical possession of their properties over the land about which a dispute has been raised by the first respondent/writ petitioner, were having individual electricity connections from the Electricity Department. The first respondent/writ petitioner is contesting the claim relating to possession of the appellants, as encroachers. He claims himself to be the true owner, about which a separate civil litigation had been undertaken, and according to the first respondent/writ petitioner, he has finally succeeded in the civil litigation and the same is pending in execution proceedings.

5. It may be mentioned that the occupants of the land, namely the alleged encroachers, had been favoured with some order of the Government dated 10.6.2004. The first respondent/writ petitioner filed W.P.No.32273 of 2004, in which an interim order was passed staying all further proceedings.

6. In between W.P.No.1232 of 2006 was filed by the President of the Kalapatti Village Panchayat praying for energizing the lamp posts that have been erected in Survey Field No.709/2, and the said writ petition was allowed on 7.2.2006. The first respondent/writ petitioner on coming to know of the said order instituted W.A.No.784 of 2006, and the same was dismissed on the ground that the first respondent/writ petitioner did not have ownership over the land at that point of time and, therefore, interference was called for. The order passed in W.A.No.784 of 2006 on 25.1.2008 is extracted herein under:

"The above Writ Appeal is directed against the Order of the learned single Judge dated 07.02.2006 made in W.P.No.1232 of 2006..

2. The appellant is claiming title and ownership over the suit schedule property through a sale agreement with one late Karuppasamy, who was assigned the lands in S.F. Nos.709/2 and 709/3, Kalapatti Village, Coimbatore District. But when the said Karuppasamy purchased the above said lands from one Rangan, the Government passed an order dated 25.11.1991 ordering resumption of the lands to the Government on the basis that by selling the lands to caste Hindus, the above said late Karuppasamy had violated the mandatory conditions of the assignment. Further the Government by its order dated 10.06.2004 directed the District Collector to assign the said lands to the

occupants, who belong to Scheduled Caste. Challenging the order of the Government dated 10.06.2004, the appellant filed a writ petition in W.P.No.No.32273 of 2004 and obtained an order of interim stay of all further proceedings pursuant to the order passed by the Government dated 10.06.2004, whereas the present writ petition was filed by the President of the Kalapatti Panchayat seeking a direction to the Assistant Engineer, Coimbatore Electricity Distribution Circle to give electricity connection to the lamp posts in S.F.No.709/2 in Kalapatti Village, Coimbatore District on the ground that the electric poles were already erected. The learned single Judge allowed the writ petition by order dated 07.02.2006. When the appellant came to know the said order in the above said writ petition, he filed the present writ appeal after obtaining leave from this Court since he was not a party in the writ proceedings.

3. Now, the learned counsel for the appellant submitted that great prejudice is caused to him by virtue of the order impugned in the writ appeal.

4. After going through the records, we are of the considered view that as on today, the appellant is not having any ownership or possession over the land in question. On the other hand, more than 210 families are in occupation of the land by constructing dwelling houses and enjoying the property. Unless and until the order of the Government with regard to the resumption of the said lands is set aside, he is not entitled to claim ownership to the land in question. It is not in dispute that if the order of the learned single Judge is set aside, great prejudice will be caused to the occupants of the land, who are enjoying the land and more so, by constructing dwelling houses. We are of the opinion that there is no valid ground to interfere with the order of the learned single Judge.

Accordingly, the writ appeal fails and the same is dismissed. No costs. Consequently, connected WAMP.is closed."

7. During the pendency of the civil litigation, some of the occupants had filed W.P.No.9139 of 2003 and other connected petitions praying for a mandamus directing the revenue authorities, namely, the Tahsildar, Coimbatore and the District Collector, Coimbatore, to conduct an enquiry pertaining to the status of the Ayan Patta said to have been issued in favour of one Karuppaswamy (since deceased), and whose heirs were also brought on record in the said writ petition. The first respondent/writ petitioner - M.Palanisamy is the second respondent in the said writ petition. A learned Single Judge, on 22.4.2010, took up the matter and after discussing the facts noted that M.Palanisamy had entered into a registered sale agreement with Karuppasamy, and after tracing the entire litigative history of the property, ultimately held that Palanisamy was entitled to apply for issuance of patta in his name after he becomes the absolute owner of the property on execution of the sale deed either by the Court concerned or by his vendor Karuppasamy. It was further clarified that since he had not become the absolute owner of the subject property, he could not pray for grant of patta as on that date. Paragraph (29) of the said judgment dated 22.4.2010 is extracted herein under:

"29. The petitioner M.Palanisamy is entitled to apply for issuance of patta in his name after he becomes the absolute owner of the property on execution of the sale deed either by the court concerned or by the vendor Karuppasamy. But, it is made clear that he cannot pray for grant of patta as on date as he has not yet become the absolute owner of the subject property inasmuch as he is yet to purchase the property. In terms of the above, both the writ petitions are ordered accordingly. There is no order as to costs. The connected Miscellaneous Petitions stand closed."

8. The occupiers of the land appear to have contested the execution proceedings that were pending with regard to the execution of the sale deed in favour of the first respondent/writ petitioner and notices were issued, against which C.R.P.(PD) No.907 of 2007 was filed by the first respondent/writ petitioner, that was allowed and the applications filed by the alleged encroachers/obstructors was quashed. The order dated 27.10.2010 in C.R.P. (PD) No.907 of 2007 is extracted herein under:

"This petition has been filed against the order dated 08.03.2007 made in E.A.No.277 of 2007 in E.P.No.115 of 1999 in O.S.No.615 of 1998 on the file of II Additional Sub Judge, Coimbatore.

2. This revision petition is filed by the decree holder in O.S.No.615 of 1998 on the file of II Additional Sub Judge, Coimbatore challenging the order of notice given in E.A.No.277 of 2007 in E.P.No.115 of 1999 in O.S.No.615 of 1998.

3. The revision petitioner filed E.P.No.115 of 1999 to execute the decree granted in O.S.No.615 of 1998 and as per the decree, the defendant in the suit was directed to execute the sale deed, as per the agreement of sale. In that execution petition, the respondent/third parties filed E.A.No.277 of 2007 under Order 21 Rule 99 to 101 CPC to determine their rights as obstructors and in that application, notice was ordered and the same is challenged.

4. It is submitted by the learned counsel for the revision petitioner Mr.N.A.Nissar Ahmed that the petition was filed by the obstructors on the basis of their right by virtue of the passing of G.O.Ms.No.281 dated 10.06.2004 and in W.P.Nos.9139 of 2003 and 32273 of 2004, this Court, by order dated 22.04.2010 cancelled the said G.O.Ms.No.281/Revenue [Ni.Mu.1(2)] Department dated 10.06.2004 and therefore the third party/respondents have no right to file the objection petition objecting to the E.P. filed by the revision petitioner.

5. It is further submitted by the learned counsel for the revision petitioner that as per the order passed in the above writ petitions, it has been made clear that the revision petitioner is entitled to apply for issuance of patta in his name after he becomes the absolute owner of the property, on execution of the sale deed either by the Court or by the vendor Karuppaswamy and therefore, unless his E.P. is ordered, he cannot get the patta and obstructors have no loco standi to file the obstruction application as they have no right over the property. He also relied upon a judgment

rendered in 2004 (1) L.W. 400 [Sankaran & Others Vs. Pandyvel & Others] and 2007 (1) MLJ 80 [Shri Rajasthani Jain Samaj Educational Trust v. V.Subramanian & Others] in support of his contention.

6. On the other hand, it is submitted by the learned counsel for the respondent that the lower court has ordered only notice and it is open to the revision petitioner to raise all those objections before the lower court and as per the petition filed in E.A.No.277 of 2007, the obstructors were granted patta after the passing of G.O.Ms.No.281 dated 10.06.2004 referred to above and therefore the petitioner is not entitled to relief sought for and he has to work out his rights only in the application filed by the obstructors before the lower court.

7. It is seen from the petition filed in E.A.No.277 of 2007 that the obstructors are claiming right over the property after the Government passed G.O.Ms.No.281 dated 10.06.2004 and ordered resumption of the land. Even assuming that pattas have been granted in favour of the obstructors, having regard to the fact that G.O.Ms.No.281 dated 10.06.2004 has been cancelled by this Court in the aforesaid writ petitions, the obstructors cannot claim any right on the basis of the patta alleged to have been given in their favour. Further, the petition was filed by the obstructors in the representing capacity and they are not able to produce any patta granted in their favour.

8. It is further observed in the order passed in the writ petitions that the revision petitioner is entitled to apply for patta in his name after he becomes the absolute owner of the property on execution of the sale deed either by the Court or by the vendor Karuppaswamy. The E.P.No.115 of 1999 was filed to get the sale deed executed by its vendor and therefore the petitioner is entitled to maintain the E.P. and obstructors who filed E.A.No.277 of 2007 having no title or right over the property are not entitled to file the application under Order 21 Rule 99 to 101 CPC and

as held by this Court in the judgments referred to above, when the obstructors failed to establish their rights with regard to the properties they are not entitled to file application obstructing the execution of the decree by the decree holder. Hence, the lower court has committed error in ordering notice and the lower court ought not have entertained the application filed by the obstructors and numbered the E.A.No.277 of 2007.

9. In view of the above circumstances, the Civil Revision Petition is allowed and the application filed in E.A.No.277 of 2007 is quashed."

9. The sale deed in favour of the first respondent/petitioner is stated to have been executed on 14.2.2012. However, the first respondent/writ petitioner does not appear to have been successful in getting the actual physical possession of the property and he, therefore, explored the possibility of taking such other action that may be available in law. It appears that after the execution of the sale deed, the first respondent/writ petitioner filed an application before the Electricity Department for disconnecting the electricity connections of the appellants and such other persons who are in occupation of the said property. The said application filed by the first respondent/writ petitioner came to be rejected vide order dated 4.3.2013. The order dated 4.3.2013 is extracted herein under:

"Your petition regarding permanent electricity service disconnection in the areas in Kalipatti village K.S.No. 709/2 and 709/3.

More than around 210 families have constructed house and have been residing in the areas in Athikuttai and Anna Nagar of the said land concerned. Based on the orders in W.P.No.20152/1999 dated 8.11.2011 and W.P.No.1232/2006 dated 7.2.2006, electricity service connection have already been given and the residing are enjoyment of the same.

While the W.A.no 784/2006 filed by you has been dismissed, you have filed the Xerox copy of the sale deed dated 14.02.2012 stated to have been issued by the Sub Court. But there are no orders of the court to that fact that you are in the possession accordingly.

In the circumstance, it is hereby informed there are no provisions available in the rules and regulations of the Electricity Board Act to permanently disconnect the electricity services given to more than 210 aforesaid families situated in the Anna Nagar, Athikuttai areas in the aforesaid Kalapatti village K.S.no 709/2 and 709/3, without necessary court orders and police protection."

10. A perusal of the said order would indicate that there were some orders in a couple of writ petitions, where directions had been issued for providing electricity service connections, which were however not in relation to the present appellants and appear to have been general directions given by the High Court.

11. The order dated 4.3.2013 also mentions the order dated 25.1.2008 in the Writ Appeal No.784 of 2006 that was also made the basis for rejecting the request made by the first respondent/writ petitioner for carrying out disconnections.

12. Aggrieved by the order dated 4.3.2013, the writ petition giving rise to the present appeals came to be filed by the first respondent/writ petitioner Palanisamy.

13. The learned Single Judge while finally disposing of the writ petition did not quash the order dated 4.3.2013 and instead issued a mandamus on the presumption that the first respondent/writ petitioner is the absolute owner of the land and, therefore, the electricity disconnections could be carried out, for which necessary police help was also extended.

14. Aggrieved, the occupants of the property have filed these appeals contending that the aforesaid direction of the learned Single Judge is an improper exercise of jurisdiction, in as much as neither the order dated 4.3.2013 was quashed, nor were the appellants given an opportunity of hearing before passing such a drastic order of carrying out disconnection of their electricity service connections. The impugned judgment was, therefore, incongruous and hence the same deserves to be set aside.

15. It is urged that the appellants who are in possession having their dwelling units, are enjoying a valid electricity supply which is neither illegal nor irregular. The first respondent/petitioner has no possession over the property. The appellants cannot be deprived of their possession except in

accordance with law. An electricity connection does not confer title, but may be a proof of possession. An ownership on the basis of a deed is distinct from possession, which difference has not been appreciated by the learned Single Judge.

16. Mr.Nissar Ahmed, learned counsel for the first respondent/ writ petitioner submits that the appellants have no right over the land and they are mere encroachers, and hence they cannot claim electricity connection as a matter of right. Apart from this, he submits that the first respondent/writ petitioner has been contesting his claim throughout, for the past almost two decades, and in the background above, having succeeded as the owner, the first respondent/writ petitioner should now be presumed to be in actual lawful possession of the property and hence any electricity connection existing in the name of the appellants deserves to be disconnected.

17. He has further submitted that the appellants having neither any title over the land, nor having any indefeasible right to obtain electricity connection, should not be permitted to maintain the present appeals.

18. We had heard the matter on 6.10.2020 and after having heard Mr.Nissar Ahmed, and having pointed out that the impugned judgment has been rendered without hearing the appellants, and without even quashing the order dated 4.3.2013, which was under challenge, therefore the issuance of a mandamus may not be a proper exercise of jurisdiction, Mr.Nissar Ahmed sought time to seek instructions and then make his submissions. Yesterday (7.10.2020), Mr.Nissar Ahmed came up with a plea stating that the matter can be remitted back on these short grounds before the learned Single Judge for a decision afresh.

19. In view of the aforesaid stand taken by Mr.Nissar Ahmed, learned counsel for the first respondent/writ petitioner, we allow these appeals on the short ground that the appellants had not been heard by the learned Single Judge and the learned Single Judge had also not set aside the order dated 4.3.2013 before issuing a mandamus. This legal infirmity, therefore, deserves to be corrected.

We, therefore, allow these appeals and set aside the impugned judgment dated 17.10.2019 and restore the writ petition to its original number, leaving it open to the appellants in W.A.No.238 and 651 of 2020 to get themselves impleaded in the writ petition and to contest the same before the learned Single Judge. The writ petition may be listed before the current

roster bench dealing with such matters. No costs. Consequently, C.M.P.Nos.26564 of 2019, 3948, 5833, 9197, 9198 and 9201 of 2020 are closed.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

sasi
To

- 1 The Chairman,
Tamil Nadu Electricity Board,
Anna Salai, Chennai.
- 2 The Assistant Engineer,
Tamil Nadu Electricity Board,
Power Manufacturing and Supply,
Kovai Power Distribution Division/Corporation,
Chinniyampalayam West,
Coimbatore.

copy to
The Section Officer
Writ Section
High Court Madras-104 (for posting wps)

+1 cc to M/s.R.Bharath kumar Advocate sr33252

W.A.Nos.4255 of 2019 and
651, 238 of 2020

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