



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:07.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P. (MD)No.5526 of 2010

and

M.P(MD)No.1 of 2010

(Through Video Conference)

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Shree Venkateswara Grama Abiviruthi Sangam,
Registration No.138/2009,
Dhimmarajapuram,
Palayamkottai Taluk,
Tirunelveli District,
Represented by its President,
K.Chellappa

... Petitioner

Vs

1.The Superintending Engineer,
TNEB(O & M),
Tamil Nadu Electricity Distribution Circle,
Tirunelveli.

2.The Assistant Engineer(Distribution),
Tamil Nadu Electricity Board,
Santhi Nagar,
Tirunelveli.

3.Arulmighu Venkatachalapathy Temple,
Dhimmarajapuram,
Palayamkottai,
Tirunelveli Taluk and District,
Represented by its Executive Officer.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records comprised in Letter No.AE/V/Sanathi Nagar/Ko.A/A No.022/10 dated 02.02.2010 on the file of the second respondent, quash the same and consequently direct the second respondent to issue electricity connections for the members of the petitioner Association in Survey Nos.161, 162, 163, 164, 165, 166, 168/2 170, 390/1 and 390/3 of Dhimmarajapuram, Palayamkottai Taluk, Tirunelveli District.

For Petitioner : Mr.S.P.Maharajan for
Mr.R.Karthikeyan

For R-1 & R-2 : Mr.S.M.S.Johny Basha, Standing Counsel

For R-3 : Mr.H.Arumugam, Standing Counsel



O R D E R

This writ petition has been filed challenging the order dated 02.02.2010 passed by the second respondent rejecting the petitioner Association's application for grant of electricity service connection to their members for the property at Survey Nos.161, 162, 163, 164, 165, 166, 168/2, 170, 390/1, 390/3 of Dhimmaraipuram, Palayamkottai Taluk, Tirunelveli District, on the ground that the subject property belongs to third respondent temple and the third respondent temple has also obtained an order of injunction restraining the Electricity Board from granting electricity service connection to any third party.

2. It is the case of the petitioner Association that their members have put up constructions in the aforementioned survey numbers and the same are in existence from the year 1965 onwards. According to them, their members are entitled for grant of electricity service connection for their respective housing units. The petitioner Association submitted an application seeking for electricity service connection to their members, which has been rejected under the impugned order passed by the second respondent. Aggrieved by the same, this writ petition has been filed.

3. A counter-affidavit has been filed by the third respondent wherein it is stated that the subject property belongs to third respondent temple and in O.S.No.745 of 1965 on the file of the District Munsif Court, Tirunelveli, a mandatory injunction was granted against the encroachers and the suit was decreed and according to them, the members of the petitioner Association, are also encroachers.

4. In the counter-affidavit, the third respondent temple has also stated that they have filed a suit in O.S.No.122 of 2003 on the file of the I Additional District Munsif Court, Tirunelveli, against the Electricity Board, seeking for permanent injunction restraining them from issuing new electricity service connection to any third party without the consent of the temple and the said suit was decreed on 11.04.2005. According to the third respondent, when there is a permanent injunction granted in O.S.No.122 of 2003, the respondents 1 and 2, do not have any authority to grant fresh electricity service connection to any third party. According to them, the second respondent has rightly rejected the petitioner Association's application for grant of electricity service connection to their members.

5. Heard Mr.S.P.Maharajan for Mr.R.Karthikeyan, learned counsel for the petitioner, Mr.S.M.S.Johny Basha, learned standing counsel for respondents 1 and 2 and Mr.H.Arumugam, learned counsel for the third respondent.



6. The learned counsel for the petitioner would contend that since the members of the petitioner Association are in occupation of their respective properties ever since 1965, they are entitled for grant of electricity service connection. According to him, the impugned order is not passed in accordance with Rule 27 of the Tamil Nadu Electricity Distribution Code and there is no necessity for the petitioner Association to obtain 'No objection Certificate' from the third respondent temple for grant of electricity service connection since the members of the petitioner Association are in occupation of the properties ever since 1965.

7. Per contra, the learned counsel for the third respondent temple would submit that the judgment and decree passed in O.S.No.122 of 2003 on the file of the I Additional District Munsif Court, Tirunelveli, as well as the judgment and decree passed in O.S.No.745 of 1965 on the file of the District Munsif Court, Tirunelveli, has permanently injuncted the Electricity Board from granting electricity service connection to any third party without the consent of the third respondent temple. Therefore, according to him, the second respondent has rightly rejected the petitioner Association's application for grant of electricity service connection to their members.

8. The learned standing counsel for the respondents 1 and 2 would reiterate the submissions made by the learned counsel for the third respondent.

9. Admittedly, the judgment and decree passed in O.S.No.745 of 1965 on the file of the District Munsif Court, Tirunelveli and the judgment and decree passed in O.S.No.122 of 2003 on the file of the I Additional District Munsif Court, Tirunelveli, have attained finality as no appeal has been preferred against the said judgment and decrees.

10. Even though the petitioner Association or its members were not a party in the said suits, when a judgment and decree has attained finality, the respondents 1 and 2, will have to necessarily abide by the judgment and decree passed in O.S.No.122 of 2003 as well as the judgment and decree passed in O.S.No.745 of 1965. The petitioner Association or its members have not made any effort to implead themselves as party respondents either in O.S.No.122 of 2003 or in O.S.No.745 of 1965 and under the impugned order, the second respondent has only abided by the decision of the I Additional District Munsif Court, Tirunelveli in its judgment and decree passed in O.S.No.122 of 2003 wherein they have been permanently injuncted from granting any electricity service connection to any third party.



11. Therefore, this Court is of the considered view that the application for grant of electricity service connection to the members of the petitioner's Association has been rightly rejected by the second respondent under the impugned order.

12. For the foregoing reasons, there is no merit in this writ petition. Accordingly, this writ petition is dismissed. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

pm

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate / litigant concerned.

To

1.The Superintending Engineer,
TNEB(O & M),
Tamil Nadu Electricity Distribution Circle,
Tirunelveli.

2.The Assistant Engineer(Distribution),
Tamil Nadu Electricity Board,
Santhi Nagar,
Tirunelveli.

+1 CC to Mr.H.ARUMUGAM, Advocate (SR-24574[F] dated 09/12/2020)

Order made in
W.P. (MD)No.5526 of 2010

Dated:
07.12.2020

PK(CO)
KM (16.12.2020) 4P 4C