



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.08.2020

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.17753 of 2018 and

W.M.P.(MD)Nos.15643 & 15644 of 2018

Dr.N.S.Prasad

... Petitioner

Vs.

1. The Assistant Executive Engineer,
C&M/Sempattu/TANGEDCO,
Trichy - 620 007.

2. K.Subramani,
Managing Trustee/Chairman,
Arulmigu Thonthi Vinayagar Temple,
No.5/151, Thiruvallarchipatti,
Gundur Village, Airport Post,
Thiruverumbur Taluk,
Trichy.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the first respondent in his proceedings Nil dated 09.07.2018 and quash the same as illegal and consequently directing the first respondent to restore the electricity supply in S.C.No.225-005-729.

For Petitioner	: Mr.B.Saravanan
For R-1	: Mrs.M.Rajeswari, for Mr.S.M.S.Johny Basha
For R-2	: Mr.C.M.Arumugam

O R D E R

Heard the learned counsel on either side.

2. The petitioner had purchased the property in question vide sale deeds dated 17.06.2010 and 29.10.2010. The land and building is located in survey Nos.37/1 and 37/2. A company is being run in the said site for last several years. In order to access the said property from the main road, the petitioner's vendor had entered into a rental agreement dated 03.09.1997 with the trustees of the second respondent temple. After the



petitioner purchased the property, the petitioner claims that he entered into a fresh rental agreement dated 03.08.2011 in which two of the trustees had signed.

3. There is a serious controversy regarding the genuineness of the rental agreement. The learned counsel appearing for the second respondent would point out that even though the executants are said to be four in number, only two of them have signed the documents and he strongly asserts that the said rental agreement is not genuine.

4. Be that as it may, the lessee company which was drawing its power supply from the execution of transformer was in need of additional power supply. The existing transformer had reached its capacity limit and that therefore a fresh line had to be drawn for the purpose of supplying electricity. Therefore, based on the application of the petitioner herein a fresh service connection was given on 22.03.2018. This gave rise to a serious law and order issue at the local level. Therefore, the first respondent in order to tide over the situation, resorted to disconnection.

5. Seeking re-connection and for quashing the order passed by the first respondent in this regard, this writ petition came to be filed.

6. The petitioner's counsel primarily raised two contentions.

7. The first respondent having given service connection ought not to have disconnected the same, merely because of the law and order issues. He drew my attention to the counter filed by the Tamil Nadu Electricity Board authority in which it has been stated that because of the kidnapping of the TANGEDCO employee and the conducting of dharna, they resorted to disconnection in order to defuse the situation.

8. This according to the petitioner's counsel is clearly impermissible. He would also point out that the path way in question has been used as such for the last several years. Even as on date, it is being used as a pathway. Therefore, no real or substantial prejudice can be said to have happened to the second respondent temple.

9. The learned standing counsel appearing for the electricity board would point out that the transformer as well as the pole have been erected only on the road side which belongs to the Highways. Only the overhead line runs across the pathway that belongs to the temple.



10. I have to concur with the contention of the petitioner's counsel that the first respondent ought not to have resorted to disconnection merely because there was an exhibition of muscle power. I am of the view that when the pathway is being used as such and there is a rental agreement dated 03.09.1997 to sustain the pathway rights, no real or substantial prejudice has been caused to the second respondent by merely drawing the overhead lines. It is not in dispute that no transformer has been erected in the land belonging to the temple. Likewise no pole has also been erected. The pathway is being used as such even as on date. Therefore there is considerable merit in the prayer sought for by the petitioner. But at the same time, I cannot ignore or brush aside the contention of the learned counsel appearing for the temple. He rightly pointed out that the first rental agreement dated 03.09.1997 had worked out itself. In the second rental agreement dated 03.08.2011, all the trustees have not signed. In fact the second respondent K.Subramani who is said to be the present trustee has not affixed his signature, even though his name appears in the document. It is also seen that the petitioner has only paid a meagre sum of Rs.500/- per annum for the pathway right. We are now in 2020. It is obviously not sufficient.

11. The learned counsel appearing for the second respondent also alleged that the petitioner had committed encroachment on a water body as well as the land that belongs to the temple.

12. Therefore, taking note of these submissions, I am of the view that the issue can be resolved by issuing the following directions:-

i) The petitioner's counsel initially submitted that the petitioner would offer a sum of Rs.10,000/- as monthly rent for using the pathway rights. Thereupon, Shri.C.M.Arumugam, learned counsel appearing for the second respondent submitted that this can be enhanced to Rs.15,000/-. The petitioner's counsel expressed his consent for the same. Therefore, from the month of September 2020 onwards, the petitioner shall pay a sum of Rs.15,000/- as monthly rent for using the pathway. This amount will be deposited in the bank account of the second respondent temple before 5th of every month. This figure has to be revised and enhanced once in three years.

ii) The civil rights of the second respondent temple are left open.

iii) The order impugned in the writ petition stands quashed. The first respondent is directed to restore the service connection that was originally given on



take police aid for effecting re-connection.

iv) Shri.C.M.Arumugam, learned counsel appearing for the second respondent pointed out that 80 cents of the land belonging to the temple is used as a garden by the company. Shri.B.Saravanan, learned counsel appearing for the petitioner would contend that this is part of the rental agreement. I am of the view that this 80 cents of the land that is referred to by both the counsel shall always be maintained as 'Nandhavanam'. The petitioner shall not put it to any other use. Flowers shall be grown and it can be used by the second respondent trustee for offering it to the deity daily.

13. With these directions, this writ petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(AS)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

pmu

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 Assistant Executive Engineer,
C&M/Sempattu/TANGEDCO, Trichy - 620 007.
2. K.Subramani,
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Arulmigu Thonthi Vinayagar Temple,
No.5/151, Thiruvallarchipatti,
Gundur Village, Airport Post,
Thiruverumbur Taluk, Trichy.

+1 CC to M/s.B. SARAVANAN, Advocate (SR-14730[F] dated 24/08/2020
W.P.(MD)No.17753 of 2018
20.08.2020

NS (CO)

TR(28.08.2020) 4P 4C

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