



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 01.09.2021

Pronouncing orders on : 03.09.2021

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CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.10869 of 2013
and W.M.P.No.2 of 2013

M.Palanisamy

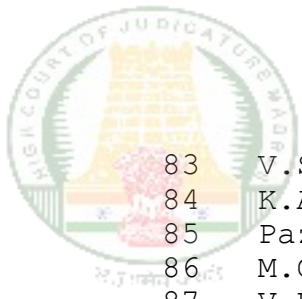
... Petitioner

vs.

1. The Chairman,
Tamil Nadu Electricity Board,
Anna Salai, Chennai.
2. The Assistant Engineer,
Tamil Nadu Electricity Board,
Power Manufacturing & Supply
Kovai Power Distribution Division/
Corp, Chinniyampalayam West,
Coimbatore.
- 3 Selvaraj
- 4 Marimuthu
- 5 Poun Pandian
- 6 Veliangiri
- 7 Thangapandian
- 8 Sivakumar
- 9 Manikandan
- 10 Rangammal
- 11 Yuvaraj
- 12 Sankar
- 13 Mahendran
- 14 Jayapandian
- 15 Balamani
- 16 R.Rayappan
- 17 M.Eswari
- 18 Kuppathal
- 19 K.Gomathi
- 20 Raman
- 21 Mallika
- 22 M.Mallika
- 23 Palanisamy
- 24 Poovathal
- 25 Kamala
- 26 M.Fathima Begum
- 27 K.Mallika
- 28 M.Asathchambi



- 29 Maragatham
30 Pechiammal
31 A.Subramaniam
32 Banumathi
33 M.Velumani
34 Balammal
35 Arumugam
36 Annakili
37 Thulsiammal
38 Jothi
39 Rukmani
40 Veerammal
41 Govindaraj
42 K.Vinitha
43 Guruvammal
44 Revathi
45 K.Kalpana
46 Senthil Kumar
47 Rangammal
48 Rukmani
49 Raja
50 Saraswathi
51 Ayyammal
52 Chandra
53 Selvi
54 Rathnakala
55 Susila
56 Duraisamy
57 S.Puspha
58 Thulasimani
59 Neelavathi
60 M.Mani
61 Palanthai
62 Ramathal
63 N.Moorthi
64 M.Revathy
65 Kandasamy
66 Thulasiammal
67 Shakul Hameed
68 Maideen Kadar Fathima
69 Gopalsamy
70 Savithri
71 Prakash
72 Ramasamy
73 Anandhan
74 Palaniammal
75 P.Ponnammal
76 J.Rajathi
77 Mahendran
78 Parimala
79 M.Sulochana
80 N.R.Balasubramanian
81 P.Ravikumar
82 A.Pavunpandi



83 V.Shankar
84 K.Amala
85 Pazhaniammal Murugan
86 M.Ganesan
87 V.Rajamani
88 Tulasimani
89 Kannammal
90 Syed Ali Fathima
91 N.Mohanraj
92 P.Kalamani
93 P.Kandasamy
94 Kuppuraj
95 Bannari
96 Muthammal
97 Bagyalakshmi
98 Lakshmi
99 Thulasi
100 Sivaraj
101 K.Nithya
102 Vairakani
103 Santhamani
104 Jayakumar
105 Murugan
106 N.Saraswathi
107 Ramathal
108 Muthulakshmi
109 Sulochana
110 Maragatham
111 Janaki
112 Kunjammal
113 A.Baby
114 Palaniammal
115 Ramasamy
116 T.Meena
117 G.Mani
118 Pachiammal
119 Chinnraj
120 Lakshmi
121 Ayyasamy
122 Kumudha
123 M.Vijay
124 Lakshmi
125 Saraswathi
126 Selvi
127 Saraswathi
128 Vijayalakshmi
129 S.Vijaya
130 Sakthivel
131 Nagaraj
132 Palanisamy
133 Velusamy
134 Marimuthu
135 Murugathal
136 N.Ramathal



137 R.Prabhu

... Respondents

[Respondents 3 to 13 are impleaded as per order in W.M.P.No.16876 of 2018 in W.P.No.10869 of 2013 dated 18.06.2018]

[Respondents 14 to 137 are impleaded as per order in W.M.P.No.2766 of 2021 in W.P.No.10869 of 2013 dated 15.02.2021]

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of 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.

For Petitioner : Mr.N.A.Nissar Ahmed

For Respondents : Mr.M.Abul Kalam
Standing Counsel for R1 & R2

Mr.N.Sridhar for
M/s.R.Bharath Kumar
S.A.Sayed Shuhaibb
for R14 to R137

O R D E R

This writ petition has been filed challenging the proceedings of the 2nd respondent dated 04.03.2013 and for a consequential direction to the respondent to disconnect the power supply that has been given to the encroachers who are in illegal possession of the subject property.

2.This case has a chequered history and the same is briefly captured hereunder:

2.1.Kitta Madari and Chinnasami Madari got assignment of land from the Government of Tamil Nadu measuring 6.14 acres out of 7.42 acres in S.Nos.709/2 and 709/3 of Kallapatti Village, Coimbatore. Both of them sold their respective shares in favour of one Rangan son of Raman under two documents dated 5.7.1956. Rangan son of Raman, in turn, sold the entire extent of 6.14 acres in favour of Karuppasamy son of Marutha Madhavi under a registered sale deed dated 19.7.1967. After lapse of 30 years from the date of original assignment, the Additional Collector directed the Tahsildar, Coimbatore to issue ayan patta in favour of



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Karuppasamy. Accordingly, ayan patta was granted in favour of Karuppasamy. A part of the property was sold by Karuppasamy in favour of Kumarasamy Gounder, Chandrammal and the joint purchasers Pappannan, Chinnappan and Selvaraj. The District Collector issued proceedings dated 9.7.1990 cancelling the ayan patta issued in favour of Karuppasamy. The said order was quashed by the High Court in W.P.No.6131 of 1991 filed by Karuppasamy.

2.2.Civil proceedings were initiated by Karuppasamy as against the encroachers in O.S.No.884 of 1979 on the Elie of the District Munsif, Coimbatore to evict the encroachers from the property. Police protection and Revenue protection were accorded to the Advocate Commissioner who was appointed to evict the encroacher in E.P.No.256 of 1983 in O.S.No.804 of 1979. A direction also was issued by this court in W.P.No.11752 of 1990 to accord police and revenue protection to the Advocate Commissioner to execute the warrant of delivery of possession. A direction was issued in W.P.No.964 of 1990 filed by the trespassers before this court to consider the application filed by the encroachers praying for grant of patta.

2.3.The Special Commissioner and Secretary to Government, Revenue Department, having misread the orders passed by this court in W.P.No.6131 of 1991 and W.P.No.11752 of 1990, directed the District Collector to initiate appropriate action for resuming the land. Karuppasamy filed W.P.No.2813 of 1992 challenging the aforesaid orders passed by the Special Commissioner and Secretary to Government, Revenue Department. The proceedings of the Special Commissioner and Secretary to Government, Revenue Department was quashed and the Government authorities were directed to pass appropriate orders after giving opportunity of hearing to the parties concerned in accordance with law in Writ Appeal No. 1214 of 1997 preferred by Karuppasamy.

2.4.The petitioner entered into an agreement for sale with M.Karuppasamy for purchase of an extent of 5.04 acres out of 6.14 acres owned by Karuppasamy. He filed O.S.No.615 of 1999 on the file of the II Additional Sub Court, Coimbatore against Karuppasamy for specific performance. A decree was passed in favour of the petitioner and the appeal preferred by Karuppasamy in A.S.No.155 of 2000 was also dismissed as withdrawn.

2.5.The District Collector, Coimbatore, communicated an order passed by the Special



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Commissioner and Secretary to Government, Revenue Department rejecting the representation of the petitioner dated 17.12.1999. The Special Commissioner and Secretary to Government, Revenue Department, by the said order, directed the District Collector of Coimbatore to resume the property and take action to grant assignment to the encroachers if they were found to be eligible persons.

2.6.The petitioner challenged the proceedings of the District Collector dated 10.06.2004 in W.P.No.32273 of 2004 and the writ petition was allowed by an order dated 22.04.2010.

2.7.Pursuant to the specific performance decree passed in favour of the petitioner, a sale deed came to be executed in favour of the petitioner on 14.02.2012 and it was registered as Document No.1516 of 2012. This was pursuant to the filing of E.P.No.115 of 1999 before the II Additional Sub Judge, Coimbatore.

2.8.The petitioner made a representation to the Tamil Nadu Electricity Board on 09.02.2013 to disconnect the service connection given to the encroachers who are in possession of the subject property. This representation came to be rejected by the 2nd respondent through the impugned proceedings dated 04.03.2013 and the same has been made a subject matter of challenge in the present writ petition.

3.This writ petition was initially allowed by an order dated 17.10.2019 and the 2nd respondent was directed to disconnect the electricity service connection, if required with the help of the police. This order was taken on Appeal by some of the respondents in W.A.Nos.4255 of 2019 and 651 and 238 of 2020. The Division Bench disposed of the Appeals by an order dated 08.10.2020 by setting aside the order passed on 17.10.2019 and restoring the writ petition by giving liberty to the aggrieved persons to get impleaded in the writ petition and to contest the writ petition on its own merits.

4.Pursuant to the above orders passed by the Division Bench, respondents R14 to R137 were impleaded by an order dated 15.02.2021 made in WMP.No.2766 of 2021.

5.Heard Mr.N.A.Nissar Ahmed, learned counsel appearing on behalf of the petitioner and Mr.M.Abul Kalam, learned Standing Counsel appearing on behalf of the respondents 1 and 2, Mr.N.Sridhar for R14 to R137. The learned counsel for the respondents R3 to R6, R8 to R10, R12 and R13 submitted that they have already given a change of vakalat to the respondents.



6.The learned counsel for the petitioner submitted that the respondents are encroachers in the property and they are not entitled for service connection. The learned counsel submitted that already execution petition is pending and one objection after another is being made and as a result of the same, the delivery of possession is yet to be effected. It was further submitted that effecting delivery of possession has nothing to do with the 2nd respondent disconnecting the service connection that has been given to the encroachers.

7.To substantiate the above submission, the learned counsel for the petitioner relied upon the judgement of this Court in V.Geetha vs. The Superintending Engineer and Others reported in 2018 (1) CTC 593. The learned counsel also relied upon the judgement of this Court in Thiruvalluvar Nagar Kudisai Vazh Nala Sangam vs. The Chairman, Tamil Nadu Electricity Board and others reported in 2000 AIR (Madras) 57. The learned counsel also placed reliance upon the Allahabad High Court judgement in the case of Janak Singh Yadav and others vs. State of Uttar Pradesh reported in 2005 AIR (Allahabad) 342.

8.The learned counsel appearing on behalf of the 1st and 2nd respondents by placing reliance upon the counter affidavit filed by the 2nd respondent submitted that the persons are in possession of the property in their capacity as encroachers by paying the B Memo charges. It was further submitted that some of the service connections were effected pursuant to the directions issued by this Court. A further stand has been taken to the effect that the Tamil Nadu Electricity Distribution Code provides for extending service connection even for those persons, who are not the owners of the property by virtue of Clause 27(4) of the Code. The learned counsel concluded his submissions, by stating that if any directions are issued by this Court, the Electricity Board will comply with the same.

9.The learned counsel appearing on behalf of the private respondents submitted that several disputed facts are involved in the present writ petition and the writ petitioner by making an innocuous request is virtually attempting to throw away nearly 210 families who are residing in the property for a long period of time. It was further submitted that the very title of the petitioner is in question since, the agreement of sale itself is in violation of the assignment conditions imposed on the original assignee and the petitioner has obtained a decree in a suit in which the respondents were not made a party. The learned counsel submitted that the Execution Court has not ordered for effecting the delivery of possession of the property till date and the petitioner has indirectly attempted to disturb the possession of the respondents by seeking for disconnection of the power supply.



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

11. The petitioner who was the agreement holder has become the owner of the subject property by virtue of the sale deed executed in his favour after he filed the execution petition. The fact remains that the petitioner after getting the sale deed executed in his favour is yet to get any orders from the Execution Court effecting delivery of possession of the property in his favour.

12. The judgements that were cited by the learned counsel for the petitioner may not apply to the facts of the present case. Since, in those judgements, the petitioners therein had approached this Court seeking for service connection and they were found not to be in lawful possession of the property. Therefore, this Court held that extending service connection in those cases will amount to granting a premium to the encroachers. In the present case, the private respondents who are residing in the property have been given service connection. There is no dispute with regard to the fact that the private respondents were considered to be encroachers and only thereafter they were given service connection.

13. The difficulty in the present case is that almost all the private respondents are said to belong to the Scheduled Caste community and it is a colony which is in occupation of persons belonging to this community. Even insofar as the subject property is concerned, the original assignment was made only to persons belonging to the Scheduled Caste community. The respondents have been residing in the property for a long time and based on their possession, service connection has been effected in their favour.

14. Under such circumstances, it may not be possible for the Electricity Board to disconnect the service connection since, it will cause serious law and order problem. It will also be impracticable to undertake such an exercise since, the respondents will continue to be in possession of the property till the delivery is effected through the Execution Court. Therefore, till the respondents are actually evicted from the property, no useful purpose will be served by merely disconnecting the power supply.

15. The above reasoning given by this Court should not be misconstrued as if this Court is recognizing the possession of the respondents to be a lawful possession. This Court is only of the view that unless the respondents are evicted and the possession is taken over by the petitioner in accordance with law, it will serve no purpose by merely directing the disconnection of the power supply. This Court is not inclined to exercise its jurisdiction under Article 226 of the Constitution of India and issue such a positive direction.



16. In view of the above discussion, the petitioner shall take steps to effect delivery of possession by getting appropriate orders from the Execution Court and thereafter, the service connection given by the 2nd respondent can be cancelled. In the interregnum, this Court is not inclined to issue any directions as sought for by the petitioner and there is no ground to interfere with the impugned proceedings of the 2nd respondent dated 04.03.2013.

17. This writ petition is disposed of accordingly. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

ssr

To

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

+1CC to Mr.N.A.Nissar Ahmed, Advocate, Sr.No.44545

+1CC to Mr.R.Bharathkumar, Advocate, Sr.No.44842

Pre Delivery Order in
W.P.No.10869 of 2013
and W.M.P.No.2 of 2013

SPD (CO)
K.RK. (07.09.2021)