

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.04.2021

CORAM:

THE HON'BLE MR.JUSTICE G.K.ILANTHIRAIYAN

**CRP(PD).No.2004 of 2018
and
CMP.No.11837 of 2018**

1. M/s.K.M.B.Trading Corporation Private Limited,
Rep.by it's Director K.Shoukath Ali,
 2. K.Shoukath Ali
- ... Petitioners

Vs.

1. The Assistant Engineer (O&M)
TANGEDCO,
Muthunaickenpatty,
Salem-636 604.
2. The Assistant Executive Engineer (Distribution)
TANGEDCO, Karuppur, Salem 636 012.
3. The Superintending Engineer,
Salem Electricity District Circle,
KN Colony Post,
Salem-14.
4. The Chief Engineer,
TANGEDCO, Erode Region,
Hospital Main Road,
Erode.

5. Chenrayaperumal Koil,
Rep by its Fit Person,

6. The Assistant Commissione (HR &CE)
Kottai Mariamman Temple Complex,
Salem 636 001.

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and decretal order dated 15.11.2017 made in I.A.No.738 of 2017 in O.S.No.1107 of 2012 on the file of the 2nd Additional District Munsif Court, Salem.

For Petitioners : Mr.K.Selvaraj

For Respondents

For R1 to R4 : Mr.V.Viswanathan

For R5 : Not ready in Notice
(No Appearance)

For R6 : Notice Served (No Appearance)

ORDER

This Civil Revision Petition is directed against the fair and decretal order passed in I.A.No.738 of 2017 in OS.No.1107 of 2012 dated 15.11.2017 on the file of the learned 2nd Additional District Munsif, Salem, thereby dismissing the petition seeking appointment of an Advocate Commissioner.

2. The petitioners are the plaintiffs and the respondents 1 to 6 are the defendants. The petitioners filed a suit for declaration that the act of the respondents 1 to 4 seeking to remove the poles already laid, as illegal and also sought for permanent injunction restraining the respondents 1 to 4 herein from removing the electric poles, which leads to Service Connection No.285. Pending the suit, the petitioners filed a petition for appointment of Advocate Commissioner to inspect the suit property and also to note down the physical features of the same.

3. On a perusal of the affidavit filed in support of the petition for appointment of Advocate Commissioner, it reveals that the petitioners started a factory and they were granted Electricity Service Connection for 800 KVA. In pursuance of the Electricity Service Connection, they paid requisite fees and Service Connection was also granted in Service No.285. While that being so, the fifth and sixth respondents herein lodged a complaint alleging that the respondents 1 to 4 have encroached their property by erecting electric pole. Therefore, the petitioners filed a petition for appointment of Advocate Commissioner to inspect whether the electric pole erected in the land belonged to the fifth and sixth

respondents or not. Whereas, the Court below dismissed the petition for the reason that, already the petitioners admitted that the fact that the electric pole erected in the land belonged to the fifth respondent herein. It is completely perverse and was only for the purpose of appointment of Advocate Commissioner to inspect whether the electric pole erected in the land belonged to the fifth respondent or not. If the Advocate Commissioner is appointed, no prejudice would be caused to any party and in fact, the respondents did not file their counter.

4. In view of the above discussion, this Civil Revision Petition is allowed and the order passed in I.A.No.738 of 2017 in O.S.No.1107 of 2012 dated 15.11.2017 is set aside. The trial Court is directed to appoint an Advocate Commissioner to inspect the suit property in respect of whether the electric pole in pursuance of the Electricity Service Connection No.285 erected in the land belonged to the fifth and sixth respondents or not. For the said limited purpose, suitable direction may be given to the Advocate Commissioner. Consequently, the connected Miscellaneous Petition is closed. No costs.

23.04.2021

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Index :Yes/No

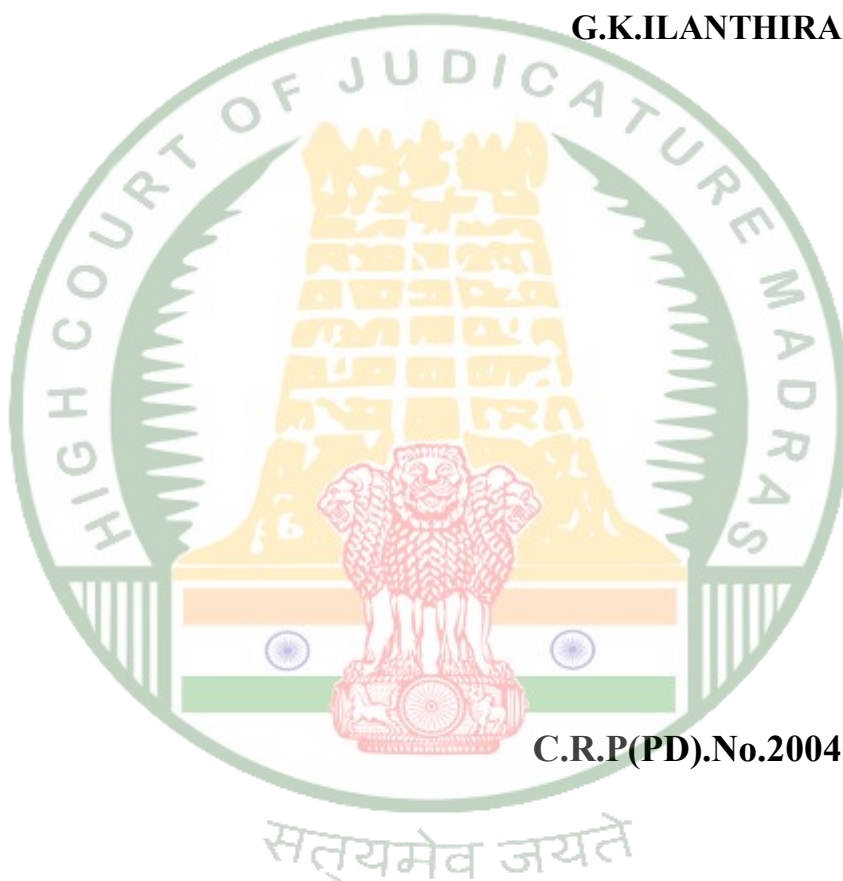
Internet : Yes/No

To

1. The 2nd Additional District Munsif Court,
Salem
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G.K.ILANTHIRAIYANJ.,

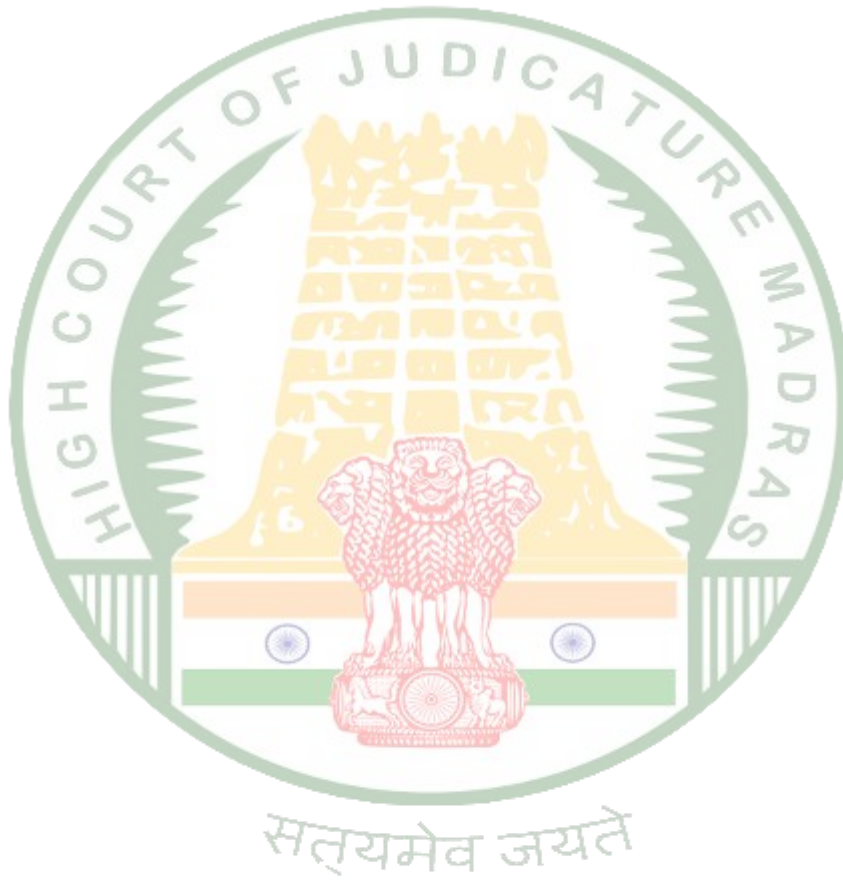
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