

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.NO.22758 OF 2017

AND

W.M.P.NO.23878 OF 2017

Malayan,
S/o.Malayan

... Petitioner

-vs-

1. The Chairman,
Tamil Nadu Electricity Board,
Anna Salai, Chennai - 600 002.
2. The Executive Engineer,
Tamil Nadu Electricity Board,
Thirupatthur,
Vellore District.
3. The Assistant Divisional Engineer (O & M),
Tamil Nadu Electricity Board,
Thirupatthur,
Vellore District.
4. The Assistant Engineer,
Tamil Nadu Electricity Board,
Kurusilapattu, Vaniyambadi Taluk,
Vellore District.

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the Respondents herein to remove the new electric pole from the Petitioner's Property situated at Chinnavattanoor Village, Pungampattu Nadu, within the Union of Javvadhu Malai, Thirupatthur Taluk, Vellore District comprised in Survey No.49/3.

For Petitioner : Mr.R.Ramesh

For Respondents : Mr.M.Varunkumar

ORDER

The petitioner has filed the present writ petition for a Mandamus, to direct the respondents to remove the electric pole from the petitioners property situated at Chinnavattanoor Village, Pungampattu Nadu, within the Union of Javvadhu Malai, Thiruppatthur Taluk, Vellore District comprised in Survey No.49/3.

2. Earlier, the petitioner had issued a notice dated 10.02.2014 and thereafter filed a suit on 03.03.2014 in O.S.No.49 of 2014 against the respondents herein for a direction to remove the electric pole installed by the respondents.

3. In the said proceedings, the petitioner had also filed an application for appointment of Advocate Commissioner and the Advocate Commissioner has given a report, copy of such report along with plan has been filed in the typed set of papers. Though the said report is undated based on the said report, the suit came to be decreed by the District Munsif Court at Thiruppatthur in O.S.No.49 of 2014.

4. The relief granted to the petitioner in the impugned order reads as under:-

"There shall be an order of permanent injunction against the respondents/defendants and their men from laying new electric line in the suit schedule property in an illegal manner."

5. After the said suit was decreed on 27.04.2016, the petitioner sent representations to the respondents to remove the electric pole. However, the respondents did not comply with the same. Under these circumstances, the petitioner has filed the present writ petition.

6. The respondents in their counter have stated that the Advocate Commissioner has given a wrong report by inspecting S.No.44/2B, CL.5HP and S.No.412-008-765 and that there is no line passing through the petitioner's land in S.No.49/3. It is further submitted that the respondents had also filed an appeal before the Sub-Court, Thiruppatthur against the Judgment and Decree dated 27.04.2016 and that the next date of hearing was 28.09.2017 as on the date when the counter was prepared in the month of September 2017.

7. However, neither the final outcome of the appeal has been appraised nor the appeal number has been given by the respondents. On the other hand, it is the case of the

respondents in their counter that there was no representations received from the petitioner to remove electric pole from his land in S.No.44/2B and there is no necessity to file the writ petition to remove the electric pole.

8. Since there is the suit that has been decreed in favour of the petitioner in O.S.No.49 of 2014 by the Judgment and decree dated 27.04.2016, the respondents are bound by the Judgement and decree unless the said Judgment and decree is set aside in the manner known to law.

9. Under these circumstances, the present writ petition filed by the petitioner stands allowed subject to payment of appropriate cost to be determined by the respondents. This exercise will be carried out by the respondents within a period of three months from the date of receipt of the copy of this order. It is however made clear that if the appeal filed against the Judgment and decree dated 27.04.2016 in O.S.No.49 of 2014 has been allowed or modified, during the pendency of the present writ petition, the respondents will be governed by the final outcome of the appeal.

10. The Writ Petition stands disposed of with the above observations. No costs. Consequently, connected writ miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To:

1. The Chairman,
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Tamil Nadu Electricity Board,
Kurusilapattu, Vaniyambadi Taluk,
Vellore District.

+1cc to Mr.R.Ramesh, Advocate, S.R.No.8446

+1cc to Mr.M.Varunkumar, Advocate, S.R.No.8783

W.P.No.22758 of 2017
and

W.M.P.No.23878 of 2017

SSN(CO)
CS/10/03/2021



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