



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2021

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THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P.No.28427 of 2018

and

W.M.P.No.33145 of 2018

S.Elumalai

...Petitioner

-Vs-

1. The Superintendent Engineer,
Operation and Maintenance,
TANGEDCO, Chengalpattu,
Kancheepuram District.
2. The Assistant Engineer,
Operation and Maintenance,
TANGEDCO, Kadugupattu,
Maduranthagam,
Kancheepuram District.
3. The Junior Engineer,
Operation and Maintenance (Rural),
TANGEDCO, Kadugupattu,
Maduranthagam,
Kancheepuram District.

4. Mr.C.Ramalingam

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the records of the 3rd respondent relating to Letter No.JE/O & M/Rural/Kadugupattu/Ko-Thani/No.136/17 dated 28.11.2017 and to quash the same and consequently directing the respondents 1 to 3 to provide Agricultural service connection to the petitioner's well situated in Survey No.11/2, Thiruvadavur Village, Seyyur Taluk, Kancheepuram District, without insisting no objection letter from the 4th respondent.

For Petitioner : M/S.P.Sesu Balan Raja

For R1 to R3 : Mr.L.Jai Venkatesh
Standing Counsel



ORDER

This Writ Petition has been filed, challenging the letter of the third respondent, bearing Letter No.JE/O & M/Rural/Kadugupattu/Ko-Thani/No.136/17 dated 28.11.2017 and to quash the same, and consequently directing the respondents 1 to 3 to provide Agricultural service connection to the petitioner's well, situated in Survey No.11/2, Thiruvadavur Village, Seyyur Taluk, Kancheepuram District, without insisting no objection letter from the 4th respondent.

2. M/S.P.Sesu Balan Raja, the learned counsel appearing for the petitioner submits that the property, comprised in S.No.11/2, measuring 3 acres and 48 cents originally belonged to the father of the petitioner, Mr.Subbarayan. After the demise of said Subbarayan, there was an oral partition between the petitioner and his brother Chellamuthu, (viz., father of the fourth respondent), based on which, the petitioner became owner of 1 acre 74 cents out of 3 acres and 48 cents of land.

2.1 The learned counsel further contended that though the property, where, irrigation Well and electric motor are situated, was allotted to the share of the petitioner's brother, Chellamuthu, (father of the fourth respondent), both the petitioner and his brother, Chellamuthu jointly used the irrigation Well and electric motor. But, after the death of the said Chellamuthu, the deceased Chellamuthu's son, the fourth respondent/private party caused troubles to the petitioner in extracting water from the irrigation Well, which necessitated the petitioner to dug another separate well, in his land, which belongs to him. Thereafter, the petitioner made an application to 3rd respondent/Junior Engineer seeking separate electricity service connection to the new Well, which is situated in his property. But the third respondent directed the petitioner to obtain No Objection Letter from the 4th respondent/private party, because, for the purpose of provision of separate electricity service connection to the petitioner's land, the electricity line has to pass through the land, which belong to the fourth respondent. The learned counsel contended that, from the above facts, it is not practically possible to get no objection certificate from the 4th respondent/private party and hence, prayed for appropriate direction, directing the respondent-Electricity Board to provide electricity service connection to the petitioner's property, without insisting upon NOC from the fourth respondent/private party.

2.2 The learned counsel for the petitioner referred to Rule 29(5) and (6) of the Tamil Nadu Electricity Distribution Code 2004, in support of his case, which is extracted hereinbelow:

"(5) The consumer shall provide free of



petitioner and his brother-Chellamuthu, but after the death of the said Chellamuthu, his son, fourth respondent/private party has caused troubles to the petitioner in extracting water from the Well, which made the petitioner to dug a separate Well, in his property, and thereafter, applied for provision of separate electricity connection to the new Well.

5.1 When the petitioner is in possession and enjoyment of the property separately for quite a long time, certainly, he is entitled to seek for new electricity service connection to the property, and there is no need for the respondent-TANGEDCO to insist upon the petitioner to get NOC from fourth respondent. What the respondent-TANGEDCO has to ensure is that, whether the petitioner is, in fact, in possession and enjoyment of the property for a long time, and the same is under his contral, and in this regard, the respondent-TANGEDCO ought to have obtained an affidavit, setting out such details, rather, the respondent-TANGEDCO has directed the petitioner to obtain NOC from the fourth respondent, which is not at all required.

5.2. Further, this Court is of the view that, once the aspect of possession and enjoyment is proved by the petitioner by way of filing an affidavit to that effect, that would be suffice for the respondent-TANGEDCO to provide new electricity service connection. In case, if any objection is brought to the notice of the respondent-TANGEDCO by any other third party, only in those cases, the respondent-TANGEDCO can apply their mind and pass suitable orders. In the present case, both the parties, the petitioner and the fourth respondent's father were enjoying the property that was equally divided between them by way of oral partition and if the fourth respondent/private party is making any objection, and he is not agreeable to the oral partition, then, the fourth respondent has to approach the Court to obtain an decree in his favuor. After the decree is passed, the respondents can take action either disconnecting the service connection in accordance with law. And, in this matter, the said question does not even arise at all. In this case, the only objections of the fourth respondent is that no electric wire should cross his land, while providing electricity service to the petitioner's Well. Based on the same, the official respondents 1 to 3 cannot refuse to grant electricity service connection to the petitioner's Well.

5.3 Further, as per Rule 29(5) and (6) of the Tamil Nadu Electricity Distribution Code 2004, which was referred to, in the preceding para of this order, relied upon by the learned counsel for the petitioner, there is no impediment for the respondent-TANGEDCO, in providing electricity service connection, by laying cables or overhead lines, which connects other consumers.



5.4. In view of the above referred provision, the petitioner is entitled to obtain electricity service connection to his property.

6. Hence, this Writ Petition is disposed of, by directing the petitioner to file an affidavit stating that he is in possession and enjoyment of the property for a long time, within a period of two weeks from the date of receipt of a copy of this order, and the third respondent, upon receipt of such an affidavit, shall act in accordance with law, by providing new electricity service connection to the petitioner's property, within a period of two weeks thereafter.

7. Accordingly, this Writ Petition is disposed No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

jd/sd

To

1. The Superintendent Engineer
Operation and Maintenance
TANGEDCO, Chengalpattu
Kanchipuram District.
2. The Assistant Engineer
Operation and Maintenance
TANGEDCO, Kadugupattu,
Maduranthagam, Kanchipuram District.
3. The Junior Engineer,
Operation and Maintenance,
TANGEDCO, Kadugupattu
Maduranthagam, Kanchipuram District.

+1cc to M/s.P.Sesobalan Raja, Advocate, S.R.No.59558

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and W.M.P.No.33145 of 2018

KSM(CO)
RGA(08/12/2021)