



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.04.2021

CORAM :

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P. (MD) .Nos.2925 and 2095 of 2013

and

M.P. (MD)Nos.1 and 2 of 2013

W.P. (MD)No.2925 of 2013

Vasuki

... Petitioner

Vs.

1. The Chief Engineer,
Tirunelveli Distribution Circle,
Tamil Nadu Generation and Distribution Corporation Limited,
Tirunelveli-11.
2. The Superintending Engineer,
Parvathypuram,
Nagercoil,
Kanyakumar District.
3. The Executive Engineer (Distribution)
Parvathypuram, Nagercoil,
Kanyakumari District.
4. The Junior Engineer (Distribution),
Tamil Nadu Electricity Board,
Kanyakumari,
Kanyakumari District.
5. The Executive Officer,
Kanyakumari Town Panchayat,
Kanyakumair District.
6. Sahaya Antony
7. Selvam
8. Sivalingam

... Respondents

Prayer: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents 2 and 3 to take appropriate action for disconnecting the electricity service connection in S.C.No.142004/1172, Door No.10/172E, Channel Road, Kanyakumari, Kanyakumari District.



For Petitioner : Mr.V.Sasikumar
For R2 & R4 : M/s.M.Rajeswari
For R6 & R7 : Mr.Mahaboob Athiff
for M/s.Ajmal Associates

W.P. (MD)No.2095 of 2013

V.Selvam

... Petitioner

Vs.

1. The Junior Electrical Engineer
Tamil Nadu Electricity Board,
Distribution and Transmission Division,
Kanyakumari.

2. Vasuki
Respondents

...

Prayer: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings issued by the first respondent in his proceedings in கடித எண்: இமிபொ/விநி/ககுமரி/அஎண் /81/13, dated 21.01.2013 and the consequential impugned proceedings in கடித எண்: இமிபொ/விநி/ககுமரி/அஎண் /86/12, dated 31.01.2013 and quash the same as illegal.

For Petitioner : Mr.M.Mahaboob Athiff
for M/s.Ajmal Associates

For R1 : M/s.M.Rajeswari

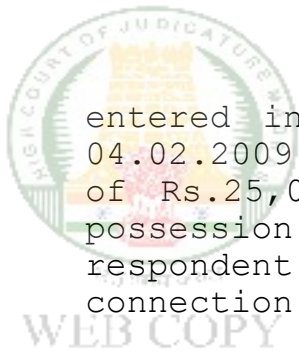
For R2 : Mr.V.Sasikumar

COMMON ORDER

The issues involved in both the writ petitions are common and hence, they are taken up together, heard and disposed of by a common order.

2.For the sake of convenience, the rank of the parties shall be determined as described in W.P. (MD).No.2095 of 2013.

3.The case of the petitioner is that his brother Sahaya Antony
<https://hcservices.ecourts.gov.in/hcservices/>



entered into an agreement of sale with the second respondent on 04.02.2009. The further case of the petitioner is that, a total sum of Rs.25,00,000/- was also paid to the second respondent. The possession of the property was also handed over by the second respondent. A house was also constructed and the electricity connection was also obtained from the first respondent.

4.The further case of the petitioner is that, the second respondent did not come forward to execute the sale deed and hence, a suit for specific performance was filed in O.S.No.3 of 2012 before the District Court, Kanyakumari.

5.In the meantime, the second respondent had given an objection before the first respondent and had accepted for the disconnection of the electricity. The first respondent issued the impugned notice, dated 21.01.2013 and the consequential proceedings, dated 31.01.2013 and the petitioner was informed that the electricity connection will be disconnected. The impugned proceedings of the first respondent has been made a subject matter of challenge in W.P.(MD)No.2095 of 2013.

6.The second respondent has also filed W.P.(MD)No.2925 of 2013 seeking for the issue of writ of Mandamus directing the electricity department to disconnect the electricity service connection given in favour of the petitioner.

7.Heard Mr.V.Sasikumar, learned counsel appearing on behalf of the petitioner in W.P.(MD)No.2925 of 2013 and the second respondent in W.P.(MD)No.2095 of 2013, Mr.Mahaboob Athiff, learned counsel appearing on behalf of the petitioner in W.P.(MD)No.2095 of 2013 and the second respondent in W.P.(MD)No.2925 of 2013 and Mrs.M.Rajeswari, learned Government Advocate appearing on behalf of the first respondent in W.P.(MD)No.2095 of 2013 and the respondents 2 and 4 in W.P.(MD)No.2925 of 2013.

8.In the considered view of this Court, there is no dispute with regard to the fact that the petitioner is in possession and enjoyment of the property and a construction has been put up and the first respondent has given electricity connection. The suit for specific performance is said to have been partly decreed by directing for payment of compensation and aggrieved by the same, an appeal was filed, which is pending before this Court in A.S.No.145 of 2018.

9.The specific case of the second respondent is that the petitioner has forged his signature and has obtained the service connection from the first respondent. It was also submitted by the learned counsel appearing for the petitioner and the second respondent that a criminal case was filed and the same is pending in this regard.



10.The only issue that requires consideration of this Court is as to whether the electricity connection given to the petitioner is liable to be disconnected on the objections given by the second respondent.

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11.The petitioner has got into the possession of the property through the agreement of sale said to have been executed by the second respondent in favour of the brother of the petitioner and by virtue of the payment of a sum of Rs.25,00,000/- towards consideration. Thereafter, the petitioner claims to have put up the construction and obtained the electricity connection. The rights of the parties over the property has to be adjudicated by this Court in the pending appeal. Therefore, this Court does not want to give any finding on the right over the property or with regard to the allegation made by the second respondent to the effect that her signature has been forged by the petitioner.

12.For the sake of argument, even if the possession of the petitioner is considered to be an encroachment, this Court has gone to the extent of holding that electricity supply can be granted even to the encroachers. Useful reference can be made to the Judgment of this Court in the case of **A.Muthusamy and another Vs. The Assistant Engineer, Tamil Nadu Electricity Board, K.T.C. Nagar, V.M.Chatram, Tirunelveli** reported in 2009 (4) CTC 606, **T.M.Prakash and another Vs. The District Collector, Tiruvannamalai District, Tiruvannamalai** reported in 2013 (6) CTC 849 and **G.Murugan Vs. The Chairman, Tamil Nadu Electricity Board, Annamalai, Chennai-2** reported in 2015 (2) CWC 148.

13.In view of the above, the electricity connection given to the premises cannot be disconnected by the first respondent merely based on the objections given by the second respondent. If really the petitioner is in illegal possession of the property, the second respondent should have taken steps to evict the petitioner by filing a suit before the appropriate civil Court. This steps has not been taken by the second respondent till date. Therefore, the second respondent, without even taking steps to get back the property, which is said to have been encroached by the petitioner, cannot merely ask for disconnection of the electricity supply given to the petitioner.

14.In view of the above discussion, this Court is of the considered view that the impugned letter of the first respondent, dated 21.01.2013 and the consequential proceedings, dated 31.01.2013 are unsustainable and the same is liable to be interfered by this Court. That apart, the relief sought for by the second respondent in W.P.(MD)No.2925 of 2013 is also not sustainable for the very same reasons. It is left open to the parties to make all their claims in the pending appeal before this Court and workout their remedy in



accordance with law.

15. In the result, W.P.(MD)No.2095 of 2013 is allowed and W.P.(MD)No.2925 of 2013 is dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS-)

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.

+1 CC to Mr.M.P.SENTHIL, Advocate (SR-18128[F] dated 30/04/2021)

Order made in
W.P. (MD) .Nos.2925 and 2095 of 2013 and
M.P. (MD) Nos.1 and 2 of 2013
Dated:29.04.2021

SJI

TE : 04/06/2021 : 5P/2C