



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.04.2021

CORAM :

The Hon'ble Mr.JUSTICE T.S.SIVAGNANAM

AND

The Hon'ble Mrs.JUSTICE S.ANANTHI

W.A. (MD) No.458 of 2018

P.John Kennedy

... Appellant/Petitioner

Vs

1. The Assistant Executive Engineer,
Distribution,
Tamil Nadu Generation and Distribution Corporation,
Formerly known as TNEB,
Kulasekaran, Kanyakumari District.
2. The Junior Engineer,
Distribution,
Tamil Nadu Generation and Distribution Corporation,
Formerly known as TNEB,
Kulasekaran, Kanyakumari District.
3. The District Forest Officer,
Forest Department,
Nagercoil, Kanyakumari District. ... Respondents/Respondents

PRAYER: Appeal under Clause 15 of the Letters Patent, against the order dated 20.06.2014, passed in W.P.(MD) No.5832 of 2013.

Prayer in WP(MD). 5828/ 2013 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus, directing the respondents 1 & 2 to provide electricity connection to the petitioner s house bearing No.6-52A2, in Valia Yala Village, Kadayal Town Panchayat, without insisting the No Objection Certificate from the third respondent or his subordinates on the basis of his application dated 13.09.2012 forthwith.

For Appellant

: Mr.T.Lajapati Roy



For Respondents

: Mr.K.P.Krishnadoss,
Special Government Pleader,
for R1
Mr.S.M.S.Johnny Basha,
for R2

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JUDGMENT

[Judgment of the Court was delivered by **T.S.SIVAGNANAM, J.**]

This appeal filed by the writ petitioner is directed against the order dated 20.06.2014 in W.P(MD).No.5832 of 2013. The said writ petition was filed praying for a direction upon the respondents to provide electricity to the house of the appellant without insisting no objection from the Town Panchayat or from the District Forest Officer.

2. The learned Single Judge by the impugned order dismissed the writ petition. Operative portion of the order reads as follows:

"In view of the reply given by the learned Additional Government Pleader appearing for the third respondent, the submission made by the learned counsel appearing for the petitioners that since electricity connection was given to few houses in Valia Ela, the petitioners are also entitled to electricity connection cannot be sustained. From the perusal of the records, I find that the petitioners are residing within the Forest area. Therefore, this Court cannot given direction to the respondents to provide electricity connection to the petitioners houses without insisting fro No Objection Certificates from the Forest Department. The judgments relied on by the learned counsel appearing for the petitioners are dealing with the encroachments of the poramboke lands. Therefore, the said judgments are not applicable to the present case. Therefore, these Writ Petitions are liable to be dismissed."

3. Before us, Mr.T.Lajapathi Roy, learned Counsel appearing for the appellant would submit that the appellant would fall within the definition of 'Other Traditional Forest Dweller' as defined under Section 2(o) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (Central Act 2 of 2007) and seeks liberty to withdraw the writ petition and apply for recognizing them as 'Other Traditional Forest Dweller', for which a procedure is provided for under the above said legislation.



4. Mr.K.P.Krishnadoss, learned Special Government Pleader appearing for the respondents would submit that the appellant is an encroacher. If that is so, it is not clear as to what action has been taken against them by the respondents.

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5. Be that as it may, in the light of the prayer sought for by the learned Counsel for the appellant, we permit the appellant to withdraw this appeal with liberty to approach the concerned authority as submitted by the learned Counsel for the appellant. Accordingly, this writ appeal is dismissed as withdrawn. We make it clear that we have not made any observations on the merits of the matter or with regard to the appellant's entitlement under the above said enactment and leave it open to the appellant to take appropriate action in accordance with law. No costs.

Sd/-

Assistant Registrar(Records)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

pkn

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.

To

1. The Assistant Executive Engineer,
Distribution,
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2. The Junior Engineer, Distribution,
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3. The District Forest Officer,
Forest Department,
Nagercoil, Kanyakumari District.

+1 CC to M/s.SPL GP (SR-15460[F] dated 08/04/2021)

W.A. (MD) No.458 of 2018
07.04.2021

SSS (CO)
TR (05.05.2021) 4P 5C