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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.04.2022

CORAM

THE HONOURABLE THIRU JUSTICE B.PUGALENDHI

W.P.NO.18280 OF 2020

G.A.Alex Stephen

... Petitioner

Vs.

1. The Assistant Engineer (O&M),
Gandhi Nagar Phase,
Tamil Nadu Generation and Distribution Corporation Ltd.,
Sembium, Chennai - 600 110.

2. D.Maheswari

3. A.Raajendhar

4. G.Parthasarathy

5. The Bar Council of Tamil Nadu and Puducherry,
High Court Campus, Chennai - 600 104.

... Respondents

[R.5 suo-motu impleaded vide order dated 15.02.2021
made in W.P.No.18280 of 2020]

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus directing the first respondent to cancel the service connection bearing No.01028028186 and consequently, directing the first respondent to grant service connection in the name of the petitioner in respect of the property bearing No.140, Balakrishnan Street, 1st Floor, Erukanchery, Chennai - 600 118.

For Petitioner : Mr.M.Abdul Razack

For Respondents : Mr.P.R.Dhilipkumar
Standing Counsel for R1
No representation for R2 & R3
Appeared in person - R4
Mr.C.K.Chandrasekhar
Standing Counsel for R5



ORDER

The petitioner has filed this writ petition seeking a mandamus to the first respondent to cancel the electricity service connection bearing No.01028028186 in respect of the property in Survey No.113/3D, Plot No.140, Balakrishnan Street, Nehru Nagar, Erukanchery, Chennai - 600 118 and for a consequential direction to grant service connection in his name, in respect of the said property.

2. According to the petitioner, he is the absolute owner of the subject property and he purchased the same through a registered document in Doc.No.936 of 2009, registered before the Sub-Registrar, Sembium, dated 17.02.2009. The tax assessment made by the Chennai Corporation is in his name and he is paying the property tax and water sewerage tax in respect of the said property. According to him, he entered into a construction agreement with the third respondent for construction of flats in his property. There was a dispute between him and the third respondent in respect of the construction agreement and therefore, he has filed a suit as against the third respondent before the XVIII Assistant City Civil Court, Chennai, in O.S.No.5688 of 2009. The fourth respondent is the Counsel on record for the third respondent in the said suit.

3. The case of the petitioner is that pending the suit, the Builder / third respondent and his Advocate / fourth respondent trespassed into his property with the help of rowdy elements and forcibly took possession of the property. In this regard, the petitioner has lodged a complaint before the Commissioner of Police and the same was forwarded to Kodungaiyur Police Station for necessary action. However, the Kodungaiyur Police refused to take action and advised the petitioner to approach the civil Court. Thereafter, the petitioner has impleaded the fourth respondent and his wife / the second respondent herein as parties to the suit filed by him in O.S.No.5688 of 2009.

4. The grievance of the petitioner is that in the meantime, the second respondent / wife of the fourth respondent applied for permanent service connection in her name, as if she is the tenant of the said property through a lease deed executed by the third respondent in her favour on 10.06.2009. The second respondent has also filed a writ petition before this Court in W.P.No.2257 of 2018 for a mandamus to the Electricity Board to effect the service connection in her name. This Court, by order dated 06.08.2018, directed the Electricity Board to consider the application of the second respondent for electricity service connection, if she is in legal occupation. However, the Electricity Board, without ascertaining as to whether the second



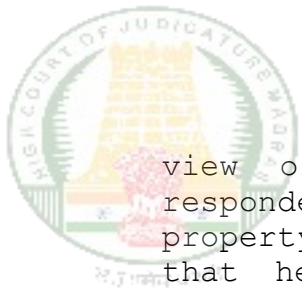
respondent is in legal occupation, has disconnected the temporary connection granted in favour of the petitioner and has effected permanent service connection in the name of the second respondent. Aggrieved over the same, the petitioner has moved the instant writ petition.

5.Learned Counsel appearing for the petitioner submitted that pending this issue, the petitioner has also lodged a complaint before the Bar Council of Tamil Nadu and Puducherry as against the fourth respondent for attempting to grab his property by manipulating the documents. The said complaint was registered in DCC.No.303/2018 and placed before the Disciplinary Committee. The Disciplinary Committee XI, consisting of a Senior Advocate and two other Advocates, has considered and held that the lease deeds are fabricated and suspended the fourth respondent from practice for a period of two years, under Section 35(3) of the Advocates Act, 1961. Learned Counsel further expressed that for having taken the cause of the petitioner, he is now being targeted by the fourth respondent.

6.Learned Standing Counsel appearing for the first respondent / Tamil Nadu Electricity Board submitted that based on the orders of this Court in WP.No.2257 of 2018, they have sought for a legal opinion from the then Standing Counsel for the Tamil Nadu Electricity Board and the then Standing Counsel, on 22.01.2019, gave an opinion that the second respondent is in possession of the disputed property and as such, she has got right for service connection from TANGEDCO. Based on this opinion and on the orders of this Court, they have transferred the service connection in the name of the second respondent. However, he admitted that before effecting such transfer, the petitioner was not heard.

7.There is no representation for respondents 2 & 3. However, a counter affidavit was filed on behalf of the second respondent that she is in possession of the property in her capacity as lessee under the fourth respondent, vide a registered lease deed dated 10.06.2009. She has also referred to the orders passed by this Court in WP.No.2257 of 2018 and the legal opinion given by the then Standing Counsel for the Tamil Nadu Electricity Board in Lr.No.EE/O&M/PBR/AE/R46/F/Legal Opinion/D404/2018, dated 19.12.2018. She further claimed that she remitted the necessary deposit and other charges and is paying the electricity charges regularly.

8.Though in paragraph no.4 of the counter affidavit it is mentioned that the second respondent is a lessee under the fourth respondent, in paragraph no.10, it is clarified that she is a lessee under the third respondent. According to her, in



view of the non-payment of construction costs, the third respondent has taken over the possession and leased out the property to her. She has also stated in the counter affidavit that her husband / the fourth respondent lodged an online complaint as against the petitioner before the Commissioner of Police on 26.12.2020 for criminal trespass into the house, where she is residing on lease.

9.The fourth respondent, who was placed under suspension by the Bar Council of Tamil Nadu & Puducherry appeared as party-in-person and submitted that as against the order of the Bar Council of Tamil Nadu and Puducherry in DCC.No.303 of 2018, he preferred an appeal before the Bar Council of India, New Delhi, in Appeal No.36 of 2019, wherein, the order passed by the Bar Council of Tamil Nadu and Puducherry has been stayed.

10.This Court paid it's anxious consideration to the rival submissions made and also perused the materials available on record.

11.It is very unfortunate and in fact, it is the sorry state of affairs that it is very difficult for an Advocate to get married or even to get a house for rent. Our Country is governed by law and the Advocates are enjoying certain respect in the society that they are aware of law. The profession is maintained with certain standards and therefore, there is respect prevailing for the legal profession. However, some Advocates have converted it as a fear, by their conduct.

12.This is a glaring example as to how a common man is affected at the hands of an Advocate. It is not in dispute that the petitioner / owner of the property has entered into an agreement with the third respondent for constructing flats. A dispute arose between the parties and the petitioner has filed a suit as against the third respondent before the XVIII City Civil Court in O.S.No.5688 of 2009. In the said suit, the fourth respondent, being a Legal Practitioner, defended the third respondent as Counsel on record. Pending the suit, the fourth respondent and his wife / the second respondent occupied the petitioner's property under the guise of a lease deed executed by the third respondent. Admittedly, the third respondent is not the owner of the property, however, the second respondent / wife of the fourth respondent claims that since the petitioner failed to perform the contract, the third respondent, for violation of the terms of contract, has taken possession of the property and has also leased out the same to her. The petitioner also appears to have impleaded the respondents 2 & 4 as parties to the suit and amended the relief sought for. Though the suit was filed as early as in the year 2009, it is still pending for one reason or the other.



13. In the meantime, the petitioner has lodged a complaint against the fourth respondent before the Bar Council of Tamil Nadu and the same was placed before the Disciplinary Committee of the Bar Council. The Disciplinary Committee conducted a detailed enquiry under Section 42 of the Advocates Act, recorded the evidence of both the parties and finally passed an order as follows:-

"8. The conduct of the respondent is definitely unacceptable and against the Act and the Rules. Hence we conclude that he should be suitably punished.

9. It is decided that the respondent / Advocate shall be suspended from practice for a period of two years under Section 35(3)(c) of the Advocates Act, 1961 from the date of this order."

14. The third respondent, who is a Builder, has no legal authority, whatsoever, to execute a lease agreement in favour of the second respondent in respect of a property, which was legally owned by the petitioner. However, the second respondent, in the strength of the lease deed executed by the third respondent, occupied the premises illegally and has also obtained an order from this Court as if she is in legal occupation. The first respondent / Electricity Board, by obtaining an opinion from the then Standing Counsel, effected the service connection. The legal opinion given by one Mr. V. Viswanath, B.Sc., B.L., Advocate and Notary, Standing Counsel, Tamil Nadu Electricity Board, dated 22.01.2019, is also placed before this Court and it appears that the said opinion was given based on the lease agreement dated 10.06.2009. As held supra, the third respondent is not competent to execute such lease deed in respect of the property, which was legally owned by the petitioner. That apart, this lease deed was declared as a fabricated one by the Bar Council of Tamil Nadu and Puducherry, though the charge framed was to find out as to whether there is any professional misconduct, as contemplated under Section 35 of the Advocates Act. From the above, it is clear that the second respondent, based on a forged document, which was created with the help of the respondents 3 & 4, got the service connection, which stood in the name of the petitioner / the real owner, transferred in her name, behind the back of the petitioner.

15. The complaint of the petitioner is that the fourth respondent / Advocate for the third respondent, who is fully aware of the facts of the case pending between the petitioner and the third respondent, protracted the proceedings with mala fide intention to grab the property. The Disciplinary Committee of the Bar Council of Tamil Nadu and Puducherry, having heard



the respective parties, held as follows:-

"1. Admittedly there is no lawyer-client relationship between the parties, but the respondent had filed vakalat for the defendant Raajhendher in the suit filed by the complainant herein. In other words, the respondent represented the rival camp. He was fully aware of the facts of the case and the scope of the dispute between the parties. He appeared for the defendant from 2009 to 2013. He had to recuse from the case only when he was impleaded as party-defendant. The respondent has admitted to this in his cross-examination.

2. The first question to be decided is as to whether he could enter the suit property when the lis was pending. The lease deed itself seems to be suspect. The stamp paper is dated 28/4/2009, it is alleged to have been executed (signed) on 10/6/2009 and the date of registration is 7/10/2009, about four months thereafter. It has been suggested to the respondent in cross examination that after filing vakalat for Raajhendher, the defendant in the suit the respondent herein had created the document by pre-dating it. The alleged lease was registered only very much later on 7/10/2009. The respondent in his cross examination vehemently objected to this suggestion but if the sequence of events is looked at, it is very much probable that the lease was created only just prior to the registration, by printing it in an old stamp paper.

3. The respondent would attempt to get over this by stating that he is not the lessee but only his wife Maheshwari is the tenant and that she alone got the lease deed registered. This defense will not hold water. It is not in dispute that the respondent and his family are in possession of the property claimed by the claimant. This speaks volumes about the conduct of the respondent who is an advocate.

4. There is nothing to show that Raajhendher is the owner of the apartment in dispute. The complainant has filed several documents in the suit as well as in this complaint to show that he is the owner of the undivided share of land and had entered into a construction agreement with the builder Raajhendher. There seems to be some dispute with respect to the payments to be made by the complainant with which we are not concerned here. Whatever it is, the respondent does not claim that the builder is the owner of the flat. He himself had appeared in the case and was fully acquainted with the legal issues involved.



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5. While so, creating a document to encumber the property and complicate the suit proceedings is a deliberate attempt to sidetrack the judicial process. The Advocates Act as well as the Bar Council of India Rules stipulate that a person enrolled as a lawyer should act with utmost probity. That is why Section 35 of the Advocates Act takes note of not only professional misconduct but also "other misconduct". The advocate has deliberately embroiled himself in a case in which he was appearing for one of the parties. This conduct is totally unbecoming of a lawyer. The aim of the respondent was to obstruct the judicial process by colluding with his client. The respondent has definitely committed professional misconduct.

6. The Rules Governing Advocates in Part VI of the Bar Council of India Rules set up stringent "Standards of Professional Conduct and Etiquette." An advocate is supposed to restrain and prevent his client from resorting to sharp or unfair practices. This implies that he should also not resort to these practices. He is also not supposed to personally get involved in any manner in a matter in which he is himself interested. There is also the danger of his being called as a witness in the suit. He shall also not be a party to fomenting of litigation.

7. The argument that when the suit is pending, the complainant cannot maintain the complaint before the Bar Council is also unacceptable. The Advocates Act is a special Act for regulating the legal profession. The Rules framed by the Bar Council govern the conduct of the professional. These can be invoked if there is a complaint against an advocate in his professional capacity.

8. The conduct of the respondent is definitely unacceptable and against the Act and the Rules. Hence we conclude that he should be suitably punished.

9. It is decided that the respondent/advocate shall be suspended from practice for a period of two years under Section 35 (3) (c) of the Advocates Act, 1961 from the date of this order."

16. Though it is reported before this Court that this order of the Disciplinary Committee of Bar Council of Tamil Nadu and Puducherry was stayed by the Bar Council of India, New Delhi, by order dated 02.11.2019, there is no reference as to the subsequent proceedings.

17. It is painful to hear the submission made by the learned Counsel for the petitioner that he is being targeted, for having



taken the cause of the petitioner. This Court strongly condemns such activities. The laws are enacted for the purpose of maintaining a civilized society, however, the law is also used by some miscreants to intimidate and to harass. An Advocate, who is expected to know the law, if started to misuse the law, then havoc will play on the society. To control and to maintain the same, the Advocates Act, 1961 and the Bar Council of India Rules, 1975 were framed. Some of the basic standards of an Advocate is as follows:-

- An Advocate is having a duty to Courts, duty to the client and to his Colleagues.

- An Advocate shall, at all times, comport himself in a manner befitting his status as an officer of the Court, a privileged member of the Community, and a gentleman, tearing in mind that what may be lawful and moral for a person who is not a member of the Bar, or for a member of the Bar in his non-professional capacity may still be improper for an advocate.

- An Advocate shall use his best efforts to restrain and prevent his client from resorting to sharp or unfair practices or from doing anything in relation to the Court, opposing counsel or parties which the advocate himself ought not to do.

- An Advocate should not accept a brief or appear in a case in which he has reason to believe that he will be a witness.

- An advocate shall not at anytime be a party to fomenting of litigation.

18. In Re: Sanjiv Datta and Ors., [(1995) 3 SCC 619], the Hon'ble Supreme Court has held as follows:-

"12. ... The legal profession is a solemn and serious occupation. It is a noble calling and all those who belong to it are its honourable members. Although the entry to the profession can be had by acquiring merely the qualification of technical competence, the honour as a professional has to be maintained by the its members by their exemplary conduct both in and outside the court. The legal profession is different from other professions in that what the lawyers do, affects not only an individual but the administration of justice which is the foundation of the civilised society. Both as a leading member of the intelligential of the society and as a responsible citizen, the lawyer has to conduct himself as a model for others both in his professional and in his private and public life. The society has a right to expect of him such ideal behavior. It must not be forgotten that the legal profession has always been held in high esteem and its members have played an enviable role in public life. The regard for the legal



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and judicial systems in this country is in no small measure due to the tiredness role played by the stalwarts in the profession to strengthen them. They took their profession seriously and practised it with dignity, deference and devotion. If the profession is to survive, the judicial system has to be vitalised. No service will be too small in making the system efficient, effective and credible. The casualness and indifference with which some members practise the profession are certainly not calculated to achieve that purpose or to enhance the prestige either of the profession or of the institution they are serving."

19. In the case of R. Muthukrishnan v. The Registrar General of the High Court of Judicature at Madras [AIR 2019 SC 849], the Hon'ble Supreme Court has observed as follows:-

"23. The role of Lawyer is indispensable in the system of delivery of justice. He is bound by the professional ethics and to maintain the high standard. His duty is to the court to his own client, to the opposite side, and to maintain the respect of opposite party counsel also. What may be proper to others in the society, may be improper for him to do as he belongs to a respected intellectual class of the society and a member of the noble profession, the expectation from him is higher. Advocates are treated with respect in society. People repose immense faith in the judiciary and judicial system and the first person who deals with them is a lawyer. Litigants repose faith in a lawyer and share with them privileged information. They put their signatures wherever asked by a Lawyer. An advocate is supposed to protect their rights and to ensure that untainted justice delivered to his cause.

24. The high values of the noble profession have to be protected by all concerned at all costs and in all the circumstances cannot be forgotten even by the youngsters in the fight of survival in formative years. The nobility of legal profession requires an Advocate to remember that he is not over attached to any case as Advocate does not win or lose a case, real recipient of justice is behind the curtain, who is at the receiving end. As a matter of fact, we do not give to a litigant anything except recognizing his rights. A litigant has a right to be impartially advised by a lawyer. Advocates are not supposed to be money guzzlers or ambulance chasers. A Lawyer should not



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expect any favour from the Judge and should not involve by any means in influencing the fair decision-making process. It is his duty to master the facts and the law and submit the same precisely in the Court, his duty is not to waste the Courts' time.

25. It is said by Alexander Cockburn that "the weapon of the advocate is the sword of a soldier, not the dagger of the assassin". It is the ethical duty of lawyers not to expect any favour from a Judge. He must rely on the precedents, read them carefully and avoid corruption and collusion of any kind, not to make false pleadings and avoid twisting of facts. In a profession, everything cannot be said to be fair even in the struggle for survival. The ethical standard is uncompromisable. Honesty, dedication and hard work is the only source towards perfection. An Advocate conduct is supposed to be exemplary. In case an Advocate causes disrepute of the Judges or his colleagues or involves himself in misconduct, that is the most sinister and damaging act which can be done to the entire legal system. Such a person is definitely deadwood and deserves to be chopped off."

20. This Court hopes and trusts that the members of noble profession would strive hard to maintain the standards of professional conduct and etiquette.

21. Coming to the merits of the case, as per Regulation 27(4) of the Tamil Nadu Electricity Distribution Code, 2004, an intending consumer who is not the owner of the premises shall produce a consent letter in Form 5 of Annexure III of the Code from the owner of the premises for availing supply of electricity. If the owner is not available or refuse to give consent letter, the intending consumer shall produce proof of his / her being in lawful occupation of the premises and also execute an indemnity bond in Form 6 of Annexure III of the Code indemnifying the licensee against any loss on account of disputes arising out of effecting the service connection to the occupant and accepting to pay security deposit twice the normal rate.

22. Regulation 27(3) Explanation 2 of the Tamil Nadu Electricity Distribution Code, 2004, as amended in the year 2019, states that for the requisition of supply under LT category, the application shall be registered in the first instance on payment of necessary charges. If the application is incomplete, then the defects shall be indicated and necessary notice be sent to the applicant for rectification and re-



submission of the same within seven days of the receipt of the notice, failing which, the application is liable for cancellation.

23. Therefore, the first respondent ought to have sought for necessary documents for lawful occupation from the second respondent before transferring the service connection from the name of the petitioner, who is the lawful owner of the premises. Admittedly, the second respondent has not proved her legal occupation by way of any supporting documents to get service connection in her name for the premises owned by the petitioner. When the owner of the premises applied for service connection by producing necessary documents of ownership and when the service connection stands in the name of the original owner, the subsequent transfer of service connection, without any materials showing legal occupation, is against the procedure and rules established by law. Therefore, the very action of the first respondent, violating the norms established by law, that too without affording any opportunity of hearing to the original owner / the petitioner, is liable to be interfered with.

24. In view of the foregoing discussions and reasonings, this writ petition is allowed, as prayed for and the first respondent / Electricity Board shall immediately cancel the service connection bearing No.01028028186 and thereafter, shall reallocate the service connection in respect of the subject property in the name of the petitioner. There shall be no order as to costs.

Sd/-

Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

mrm/gk

To

1. The Assistant Engineer (O&M),
Gandhi Nagar Phase,
Tamil Nadu Generation and Distribution Corporation Ltd.,
Sembium, Chennai - 600 110.
2. The Bar Council of Tamil Nadu and Puducherry,
High Court Campus, Chennai - 600 104.

+1cc to Mr.L.Jaivenkatesh, Advocate, S.R.No.28814

+1cc to M/s.M.Abdul Razack, Advocate, S.R.No.29237

W.P.No.18280 of 2020

SR(CO)

RLP(27/05/2022)