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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	PRONOUNCED ON
06.01.2022	19.01.2022

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NOS.22117 OF 2021

AND

W.M.P. NOS. 23339 & 23341 OF 2021

Annamalai

..Petitioner

- Vs -

1. Tamil Nadu Generation &
Distribution Corporation Ltd.
Rep. By its Chairman
Anna Salai, Mount Road
Chennai 600 002.

2. The Assistant Electricity Engineer
Tamil Nadu Generation &
Distribution Corporation Ltd.
Perumbakkam, Tiruvallur 631 402.

3. Commissioner of Revenue Administration
Chapauk, Chennai 600 005.

..Respondents

(R-3 impleaded suo motu vide order
of this Court of even dated 19.02.2022
in W.P.No.22117 of 2021)

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus to call for the records on the file of the 2nd respondent in proceeding No.THA.NO.U.PO/EB/North Perumbakkam/KoThani/C.N 005 dated 29.04.2021 and quash the same as illegal, incompetent and without jurisdiction and further direct the 1st respondent to restore electricity connection to the premises of the petitioner in survey No.271/1, Perumbakkam Village, Thiruvallur.

For Petitioner : Mr. V.Raghavachari

For Respondents: Mr. L.Jai Venkatesh



ORDER

Challenging the order of the 2nd respondent and the consequential disconnection of the electricity service connection given to Survey No.271/1, Perumbakkam Village, Thiruvallur, in respect of the portion which is in occupation of the petitioner, the present petition has been filed to quash the said order and to direct the 1st respondent to direct restoration of the electricity connection.

2.It is the case of the petitioner that one Sabira Begum was the owner of the property from whom the petitioner had purchased the property in two parts, one on 16.10.2006 and the other part on 26.2.2018. Pursuant to the said purchase the petitioner had been carrying on textile business in the aforesaid survey number.

3.It is the further case of the petitioner that initially the petitioner was constrained to move a writ petition in W.P. No.22786 of 2019 against the notice issued to him u/s 7 of the Tamil Nadu Land Encroachment Act. In the said writ petition, the respondents therein had taken a stand that it is only a notice to the petitioner calling upon the petitioner to establish his rights to the property and in furtherance to the petitioner establishing his rights, the respondents therein will proceed in accordance with law u/s 6 of the Land Encroachment Act. It is the further case of the petitioner that recording the said undertaking, the Division Bench of this Court had disposed of the said petition. However, it is the further case of the petitioner that no action was taken with regard to the said encroachment proceedings.

4.It is the further stand of the petitioner that though he had purchased the property from one Sabira Begum under two different sale deeds, however, the electricity connection standing in the name of the said Sabira Begum was not transposed to the name of the petitioner.

5.Whiles, the electricity service connection pertaining to the petitioner's premises, which was standing in the name of Sabira Begum was disconnected pursuant to the direction of this Court, dated 28.4.2021, by putting the petitioner on notice. The said action had been taken by the respondents without advert to the direction issued by the Division Bench of this Court in the earlier round of writ petition filed by the petitioner in W.P. No.22786/19. Aggrieved by the disconnection of electricity connection, the present writ petition has been filed by the petitioner.



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6. Learned counsel appearing for the petitioner submitted that though this Court had granted an interim direction, on the basis of the prima facie case established by the petitioner, to the respondents to restore the electricity service connection, however, the respondents, inspite of legal notice have not restored the electricity connection.

7. It is the further submission of the learned counsel for the petitioner that the undertaking given by the respondents for the notice issued u/s 7 of the Land Encroachment Act, has been violated and the present action disconnecting the service connection to the petitioner's premises has been done only to harass the petitioner. It is the further submission of the learned counsel for the petitioner that though the petitioner had purchased the property in two lots from one Sabira Begum through sale deeds of the year 2006 and 2018, however, the electricity connection was not transferred to the name of the petitioner. However, the petitioner having put the respondents on notice about the fact that the property has been purchased by the petitioner, the respondents are bound to put the petitioner on notice before taking any action for disconnection of electricity connection. However, without putting the petitioner on notice, issuing notice on the erstwhile owner of the property, viz., Sabira Begum and, thereafter, disconnecting the service connection is wholly unsustainable, arbitrary and impermissible. There is blatant violation of principles of natural justice, as the petitioner, being the owner of the property, has not been afforded an opportunity before the electricity connection was disconnected and, therefore, the said violation necessitates interference with the order impugned herein.

8. Learned standing counsel appearing for the respondents submitted that the alleged sale deeds said to have been entered into between the petitioner and the said Sabira Begum are unregistered sale deeds. Further, it is the submission of the learned standing counsel for the petitioner that the said property, which is the subject matter of the proceeding herein, is a poramboke land, belonging to the Government, which has been classified as a water body, which has been illegally encroached by the said Sabira Begum and other persons. Upon encroachment of the water body, the said Sabira Begum and other persons, filed writ petitions in W.P. Nos. 24236/2017, etc., before this Court in which direction was issued by the Division Bench to disconnect the electricity connection on the strength of the document filed by the respondents showing that the property, alleged to have been purchased by the petitioner from the said Sabira Begum is classified as a water body.



9. Learned standing counsel appearing for the respondents further contended that the Division Bench had further directed to forthwith disconnect the electricity service connection given to all the premises, which have been illegally encroached, except to restore the electricity connection to the residential premises under occupation of the said Sabira Begum, in whose name the electricity service connection stands even as on date. It is the further submission of the learned standing counsel for the respondents that after issuing notice on the owner of the property, in whose name the electricity connection stood, as on date, the service connection was disconnected. The claim of the petitioner that he is the owner of the property, having purchased from the said Sabira Begum is not based on any material document, but only on the basis of an unregistered sale deed. It is the further submission of the learned standing counsel for the respondents that the said unregistered sale deed has been entered into between Sabira Begum and the petitioner after the order of the Division Bench in W.P. Nos.24236/17, etc., in and by which there was a categorical direction to the owner of the property then, viz., Sabira Begum not to alienate the property to any third party. But inspite of the said direction, merely because the said Sabira Begum had allegedly alienated the property in favour of the petitioner, to which she does not have any title, as the said property is a poramboke land, belonging to the Government, the respondents were right in issuing notice to the said Sabira Begum before proceeding with disconnection of the electricity service connection. The petitioner, having not established his right to the said property and the said service connection having not registered in the name of the petitioner and that the respondents having passed the said order only in furtherance of the directions of the Division Bench of this Court, the case of the petitioner that he has not been afforded with an opportunity before passing the impugned order is wholly unsustainable.

10. It is the further submission of the learned standing counsel for the respondents that the petitioner has come before this Court with unclean hands, as he has not divulged the earlier round of litigation filed by his vendor before this Court in which affirmative direction has been issued by this Court to disconnect the electricity service connection and further direction was issued to the vendor of the petitioner not to alienate the property in favour of third parties.

11. Further, it is only pursuant to certain petitions at the instance of some third parties, the matter was seized of by another Division Bench of this Court in W.P. No.24236/17 and directions were issued by this Court and shielding the said orders from the eyes of this Court, the present petition has been filed premising that without notice the petitioner's



electricity service connection has been disconnected despite interim directions issued by this Court, when in actuality, the petitioner, not being the owner of the premises according to the records in possession of the respondent Department, no notice is required to be issued to the petitioner before disconnection of electricity. Therefore, it is prayed that this petition is devoid of merits and, accordingly, the same be dismissed.

12.This Court gave its anxious consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

13.It is not in dispute that the electricity service connection, which has since been disconnected, does not stand in the name of the petitioner. Even according to the petitioner, after the alleged purchase of the premises from the erstwhile owner, viz., Sabira Banu, electricity connection, which stood in the name of the said Sabira Banu was never transferred to the name of the petitioner. According to the petitioner, two sale deeds were executed while entering into sale transaction between the petitioner and the said Sabira Banu. But a perusal of the said sale deeds reveal that they are not registered sale instruments, rather unregistered instruments, which cannot be said to be proper sale transaction transferring title to the petitioner.

14.Further, on the basis of the communication which emanated from the respondent Department, the Tahsildar, Tiruvallur had given his reply stating positively that the survey number, which is alleged to be sold by the said Sabira Banu to the petitioner is, in fact, a water body and is a poramboke land.

15.Further, it is borne out by record that in the earlier round of litigation in W.P. No.22436/17, etc., the same has been instituted at the instance of the said Sabira Banu, from whom the petitioner is alleged to have purchased the property through the unregistered sale deed. Though the aforestated petition has been filed in the year 2017 in which this Court, vide order dated 8.9.2017 had passed direction to the respondent to disconnect the electricity and had further directed the said Sabira Banu not to create alienation in favour of third parties, however, the petitioner had entered into the sale transaction with the said Sabira Banu on 26.2.2018, which is clearly against the orders passed by the Division Bench.

16.Further, one other aspect which stares on the face of the record is the fact that the vendor of the petitioner, according to the respondents, was issued with the notice regarding the encroachment on the water body, but subsequent to



the issuance of the said notice, the vendor had entered into the alleged sale transaction with the petitioner. If the alleged sale transaction between the petitioner and his alleged vendor is bona fide, what prevented the petitioner from registering the sale deed. There is no whisper from the petitioner for not registering the sale deed. In this regard, the stand of the respondents that the premise under the occupation of the petitioner is a water body, which has been encroached by his vendor, which prevented the petitioner from registering the sale transaction. The said stand taken by the respondents, in the absence of any categorical material document controverting the same, deserves to be accepted by this Court.

17. Be that as it may. It is the admitted case of the petitioner that the alleged sale which culminated in the unregistered sale deed, though went through, however, the electricity service connection stood in the name of Sabira Banu and it was never changed in his name. No plausible reason has been stated by the petitioner to substantiate his case for not getting the electricity service connection changed in his name. Had the purchase by the petitioner from the vendor been a bona fide transaction, even if not registered, the petitioner would definitely have taken steps to submit the requisite documents along with application for having the electricity service connection registered in his name. But no iota of material has been placed before this Court to show that any such steps was taken by the petitioner, which did not yield fruitful results.

18. Further, even a bare perusal of the petition filed by the petitioner reveals that none of the earlier litigations, which were instituted by his vendor have been spoken about in the affidavit. The affidavit traverses only on the facts, which the petitioner intended this Court to have a look at. Rather, the petitioner kept silent from telling in the affidavit about the facts relating to the filing of certain writ petitions by his vendor, which resulted in certain orders being passed. The petitioner has not even averred that such facts have not within his knowledge when he filed the writ petition. When the petitioner has placed certain materials about the encroachment proceedings, that were taken up in which, on writ petition being filed by the petitioner, certain orders came to be passed on the undertaking given by the respondents therein, the petitioner cannot plead ignorance to the other writ petitions, which were filed immediately preceding the writ petition filed by the petitioner in the year 2019. The order passed by the Division Bench on the earlier writ petition filed by the petitioner's vendor, viz., Sabira Banu, was in the year 2017, which invited an unfavourable order in the year 2018, the year in which the petitioner is alleged to have bought the property, i.e., on 26.2.2018. The said sale transaction had taken place within a

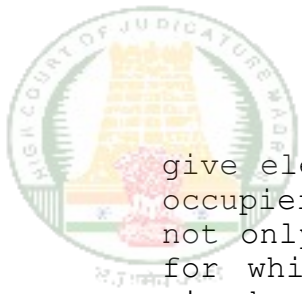


period of five months from the date on which initial interim order was passed for disconnection of electricity and a further direction to the vendor of the petitioner not to alienate the property in favour of third parties. The above sequence of events, in the light of the unregistered sale deed, definitely tilts the balance in favour of the respondents, more so, when the petitioner, even after purchasing the property in the year 2018, had not taken any steps till the year 2021 to have the electricity service connection changed in his name.

19. For the reasons aforesaid, this Court is not inclined to interfere with the impugned order passed by the 2nd respondent disconnecting the electricity service connection given to the premises in Survey No.271/1 of Perumbakkam Villagge, Thiruvallur, which service connection, allegedly stands in the name of Sabira Banu, as the petitioner has locus standi to question the said order, much less, challenge the same.

20. There are no merits in the present writ petition and, accordingly, the same is dismissed. Interim order granted by this Court vide order dated 8.10.2021 is hereby recalled and W.M.P. Nos.23339 and 23341 of 2021 are also dismissed. However, in the circumstances of the case there shall be no order as to costs.

21. Before parting with the case, it is but necessary for this Court, in public interest as well as in the interest of the future generation, to highlight certain important aspects, which have, hithertofore, been stressed by the Courts in a catena of decisions. The Courts have, time and again, stressed the need for preserving the water bodies, for the common good and also for the purpose of protecting and stabilising the water table which would satisfy the needs of the public during times of acute water scarcity. But unmindful of the above, it has been the calculated attempt of the unscrupulous elements, with the connivance of the Revenue officials by encroaching upon such water body and the Revenue Officials, turning a Nelson's eye to such acts perpetrated by those persons, do not take proper action in accordance with law to remove the encroachments on the water bodies. By efflux of time, not only the water bodies get obliterated, but in course of time, the water bodies get forgotten, inspite of the fact that the revenue records reveal the said lands as water bodies. Further, not only are the water bodies encroached, but to give a legal colour to the same, the revenue records are attempted to be mutated or that the encroacher tries to obtain legal documents, in the form of electricity connection, to establish their residence and foothold on the said lands and the officials of the electricity department also, without verifying the genuineness of the documents and the title to the land, for reasons best known,



give electricity connection, which clothes a legal colour to the occupier to continue occupying the lands. By the above acts, not only an unlawful act gets legal colour, but the common cause for which the water bodies were created and put to use, gets wiped off and seldom any person thinks about the said land and its original status. However, due to the vigilant attitude of the public spirited citizens, acts, such as the one in the present case, come to light before the Court in which event, the Courts in exercise of its inherent power passes direction to the officials to set at naught the acts perpetrated by such unscrupulous elements.

22.The case on hand is a classic example of the above sequence, which had been enacted by the vendor of the petitioner and the petitioner before the eyes of this Court, with the connivance of certain officials of the revenue and the electricity department. The Revenue and the Electricity Department officials, throwing caution and vigilance to the winds, unmindful of the environmental impact created by the act of encroachment on water bodies, provide the persons, like the petitioner and his vendor with electricity connection and what not, thereby, the future generations are deprived of storage space for water, even at times of incessant rains, but face acute water shortage during peak summer, which destabilises the life and livelihood of the persons living in the locality.

23.This Court cannot be a mute spectator to such acts perpetrated by persons like the petitioner and his vendor and the judicial sword has to definitely cut through the web so that water, which is the source of livelihood of the living beings is passed on generation after generation and with equal force, the officials, who had refrained from taking any action on the encroachment should also be dealt with in accordance with law.

24.Therefore, this Court, for the reasons aforesaid, is inclined to suo motu implead the Commissioner of Revenue Administration, Chennai, as party respondent No.3, who shall identify the persons responsible for turning a blind eye to the encroachment caused by the petitioner and his vendor and other similarly placed persons and take appropriate departmental action against the said individuals in addition to taking prompt legal action for removing the encroachments, not only caused by the petitioner, but also by persons, equally placed like the petitioner, who are occupying the water body adjacent to the premises of the petitioner. Equally, the 1st respondent shall also take action against such of those officials, who had granted electricity connection to the vendor of the petitioner without proper verification of the records. The said exercise shall be taken up by the 1st respondent and the newly impleaded



third respondent and completed within a period of eight weeks from the date of receipt of a copy of this order.

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Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

GLN

To

1. The Chairman
Tamil Nadu Generation &
Distribution Corporation Ltd.
Anna Salai, Mount Road
Chennai 600 002.
2. The Assistant Electricity Engineer
Tamil Nadu Generation &
Distribution Corporation Ltd.
Perumbakkam, Tiruvallur 631 402.
3. Commissioner of Revenue Administration
Chapauk, Chennai 600 005.

+1cc to Mr.V.Raghavachari, Advocate, S.R.No.3543

+1cc to Mr.L.Jaivenkatesh, Advocate, S.R.No.3292

W.P.NO.22117 OF 2021

SMI (CO)
RGA(28/02/2022)