



W.P.Nos.11063 and 11154 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :16.11.2022

CORAM:

THE HON'BLE **MR.JUSTICE N.SATHISH KUMAR**

W.P.Nos.11063 and 11154 of 2017
and W.M.P.Nos. 12006, 12007, 12085 to 12087 of 2017

C.K.Chitra

... Petitioner in both WPs

Vs.

1.The Tamil Nadu Generation &
Distribution Limited Rep. by
Its Chairman and Managing Director
NPKRR Maaligai, No.144
Anna Salai, Chennai 600 002

2.The Assistant Engineer
Operation & Maintenance
Tamil Nadu Power Generation and Distribution
Corporation, Edapadi Town
Salem District

3.C.Iravanan

... Respondents in WP.11063/2017

1.Additional Director
Directorate of Municipal Administration
Chepauk, Chennai- 1

2.The Commissioner
Edapadi Municipality
Salem District



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3.C.Iravanan

... Respondents in WP.11154/2017

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PRAYER in W.P.No.11063 of 2017: Writ Petition filed under Article 226 of Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the records related to impugned order passed by the 2nd respondent in his proceedings in KA.No.Asst.Eng/O and M/town/Edapadi/File/Complaint / A.No.030 dated 04.05.2015 and quash the same and consequently direct the 2nd respondent to grant permanent electricity connection to the petitioner's house situated at S.No.287/6, Avaniperur Kilmugam Village, Edapadi Taluk, Salem District.

PRAYER in W.P.No.11154 of 2017: Writ Petition filed under Article 226 of Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the records related to impugned order passed by the 2nd respondent in his proceedings in N.Ka.No.1604/2015/A1 dated 14.08.2015 and quash the same and consequently direct the 2nd respondent to levy the property tax under Tamilnadu Municipality Act, 1920 to the petitioner house situated in Survey No.287/6.

For Petitioner : Mr.J.Prakasam in both WPs

For Respondents : Mr.M.Abul Dalam for R1 & R2
in WP.11063/2017 Mr.T.Saikrishnan for R3



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For Respondents
in WP.11063/2017

: Mrs.R.L.Karthika
Govt. Advocate for R1 & R2

Mr.T.Saikrishnan for R3

COMMON ORDER

W.P.No.11063 of 2017 is filed under Article 226 of Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the records related to impugned order passed by the 2nd respondent in his proceedings in KA.No.Asst.Eng/O and M/town/Edapadi/File/Complaint / A.No.030 dated 04.05.2015 and quash the same and consequently direct the 2nd respondent to grant permanent electricity connection to the petitioner's house situated at S.No.287/6, Avaniperur Kilmugam Village, Edapadi Taluk, Salem District.

2.It is the case of the Writ Petitioner in W.P.No.11063 of 2017 that in the year 1982, her mother entered into a sale agreement with one E.Chinnairusan and his sons viz. C.Iravanan, the 3rd respondent herein and C.Muthamilan on behalf of the petitioner and her two other sisters. The sale agreement was registered on 07.04.1982 under document



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No.381 of 1982 and the entire sale consideration was also paid. Since the vendors have not come forward to execute documents, the petitioner filed a Suit in O.S.No.154 of 2001 before the District Munsif Court, Sangagiri. The Suit was decreed in her favour. The 3rd respondent, his brother and father have not preferred any appeal against the said decree. Pursuant to the decree, sale deed was also executed by the Execution Court and the petitioner was also put into possession of the house property. However, when she sought for an electricity connection, the same was negatived on the ground that the property tax in her name has to be submitted. Hence the Writ Petition.

3.The 3rd respondent in his counter has stated that the property is originally belonged to his grandmother Periammal, who had one son, one daughter. Other branches had filed a Suit for partition in O.S.No.134 of 2004 on the file of District Munsif Court, Sankari. Though the Suit was filed for specific performance in O.S.No.154 of 2001, it was decreed in petitioner's favour, while pending appeal, the 3rd respondent's father died and his legal heirs were impleaded as parties. The learned District



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Munsif, without even issuing notice to the 4th and 5th respondents in E.P, executed a sale deed in favour of the petitioner and the same was registered in Document No.1615 of 2013. Therefore, the 4th and 5th respondents filed a petition under Section 47 of C.P.C. in E.A.No.57 of 2013 to set aside the sale deed executed in favour of the petitioner and her sisters and the same was allowed. Therefore, it is stated that the petitioner and her sisters have no right over the property and the petitioner cannot claim any right to have the electricity connection. It is further contended that the petitioner is not at all in possession of the property and he has also disputed that there was no house in the said land, accordingly objected the petition.

4.Learned counsel for the petitioner submitted that a specific performance Suit has been filed as against the 3rd respondent which was decreed and the appeal preferred also dismissed. In fact, the appeal has not been filed by the 3rd respondent but the same was filed only by the subsequent purchaser. The appellate Court has rightly arrived a finding that the petitioner is in possession of the property, besides the petitioner



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has also produced photographs of a constructed house in the said land.

However, the Execution Court only on the basis of the impleaded legal heirs without notice, allowed the petition. Now petition has been filed for setting aside the exparte order. At any event, the petitioner is in possession and she is also the co-sharer of the property and she owns a right and entitled for electricity connection.

5.The 3rd respondent contended that the petitioner is not in a possession of the property. The other Suit filed in O.S.No.134 of 2004 by the other branches is also pending. Therefore, when the Suits are pending and the possession is also in dispute, the petitioner cannot seek electricity connection by claiming exclusive possession of the property. His further contention was that the petitioner has not submitted the tax receipt and thereby electricity connection could not be effected.

6.This Court perused the entire materials. It is not disputed that the petitioner has originally filed a Suit in O.S.No.154 of 2001 for enforcement of a contract said to have been executed by the 3rd



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respondent and others on 07.04.1982. The Suit was decreed by the Lower Court and the 3rd respondent has also not preferred any appeal whereas the subsequent purchaser only filed an appeal and the appeal was also dismissed. Pursuant to the decree granted for specific performance, Execution Petition was also filed before the Munsif Court and the Munsif Court in E.P.No.41 of 2007 by the petitioner and in the execution proceedings, sale deed also executed by the Execution Court in favour of the petitioner. Thereafter, it appears that one of the legal heirs one Chinnamal filed an application before the Execution Court stating that the sale deed executed is without any notice and such application appears to be allowed and the same is challenged and pending before the Court.

7. According to the genealogy submitted before this Court, the property comprised of 55 cents owned by one Periyammal. She had one son Chinnairusan and one daughter Chinnaponnu @ Periairusayee ammal. The petitioner herein is the grand daughter of Chinnairusan. The said Chinnairusan has two wives, namely Chinnapillai and Chinnamal.



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The first wife has four children and the 2nd wife has three children. The Periyammal's daughter has five children as per the genealogy admitted by both sides. Even perusing the above genealogy Periyammal's son and daughter each of them are entitled to a share of 27.5 cents. 27.5 cents devolve around the children and the petitioner automatically becomes the co-sharer. That apart, she has also stated to have purchased some property from other co-shares, on the basis of the agreement. Which was decreed and also the subject of the Suit filed for specific performance. The above said agreement was also executed not only by the 3rd respondent herein but also by the others.

8.Considering the above aspects, it is seen that the petitioner is already a co-sharer in the property. The first appellate Court has also recorded the findings to that effect that the possession of the property was handed over to the petitioner on the date of agreement which is a registered document.



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9. Such view of the matter, as the entire findings have to be recorded only by the Civil Court, whether the vendor in the agreement is entitled to convey the said land or not and that could be seen only in partition Suit which is pending between the parties in O.S.No.134 of 2004. At the same time, taking note of the fact that the co-sharer can deal with the property under Section 44 of the Transfer of Properties Act. The petitioner is already a co-owner, she has some more shares in the property and photographs also produced to show that she has constructed a house. That apart, the 1st appellate court had recorded a finding that petitioner is in possession of the property. In the above appeal, the 3rd respondent was a party.

10. Such view of the matter, this Court is of the opinion that the petitioner being the co-sharer of the property and also in a possession of the property, the 1st respondent cannot refuse to give electricity connection to the petitioner. The electricity connection is a basic amenity and the same cannot be deprived.



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11. Therefore, the respondent cannot insist for a production of property tax receipt in the name of the petitioner. Since the petitioner is already a co sharer in the property, the 1st and 2nd respondents are directed to give electricity connection to the petitioner within a period of two (2) weeks from the date of receipt of a copy of this order.

12. Such view of the matter, **the writ petition No.11063 of 2017 stands allowed.** The 1st and 2nd respondents are hereby directed to give electricity connection to the petitioner without insisting for a house tax receipt or property receipts since the property Suit is already pending.

13. W.P.No.11154 of 2017 is filed to call for the records related to impugned order passed by the 2nd respondent in his proceedings in N.Ka.No.1604/2015/A1 dated 14.08.2015 and set aside the same and to direct the 2nd respondent to levy the property tax under Tamilnadu Municipality Act, 1920 to the petitioner house situated in Survey No.287/6.



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14.This Court of the view that the purchaser cannot claim exclusive possession unless the shares are determined in the partition Suit and the same is yet to be determined by the Civil Court. Similar relief is also sought in W.P.No.12046 of 2018 filed by the other co-sharer with regard to the subject matter of the property. This Court taking note of the fact that the Suits are pending, dismissed the writ petition.

15.The petition filed in W.P.No.11154 of 2017 stands dismissed accordingly, leaving it open to the parties to adjudicate their rights before the Civil Court. Let it be the subject to the result of the Civil Suit. Consequently, connected miscellaneous petitions are closed. No costs.

16.11.2022

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Index: yes / no

Internet: yes / no

Speaking / Non speaking



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N.SATHISH KUMAR, J.

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