



W.P.No.2971 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.04.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.2971 of 2020

G.Bakthavathchalam

... Petitioner

Vs.

1. The Executive Engineer,
Operation and Maintenance,
Chennai South Electricity Distribution Circle,
110, K.V.S.S, Tambaram,
Chennai - 600 045.
2. The Assistant Engineer,
Operation and Maintenance,
Chennai South Electricity Distribution Circle - 2,
New Colony Section Office,
Tamil Nadu Generation and Distribution Corporation Ltd.,
Chrompet,
Chennai - 600 044.

3. A.Margret Rita

... Respondents



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PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records of the second respondent relating to the order of the second respondent in C.No.AE/O&M/New Colony/Ko.Kattu/No/204/2019 dated 03.12.2019, to quash the same and to issue consequential directions to the respondents 1 and 2 to remove forthwith the live electricity wires emanating from 2nd Street, Paduvai Nagar, Chrompet and passing through the landed property of the petitioner in S.No.413/6, Zamin Pallavaram Village and above the premises constructed over the said land for giving service connection to S.C.No.293-016-572 to the premises of the third respondent herein and to give alternative connection through the First Street, Pudukkottai Nagar from the existing Transformer therein.

For Petitioner : Mr.J.Muthukumaran
For Respondents : Mr.L.Jaivenkatesh for R1 and R2
Mr.R.Narayanan for R3

O R D E R

This Writ Petition has been filed to call for the records of the second respondent in C.No.AE/O&M/New Colony/Ko.Kattu/No/204/2019 dated 03.12.2019, quash the same and issue consequential directions to the respondents 1 and 2 to remove forthwith the live electricity wires emanating



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from 2nd Street, Paduvai Nagar, Chrompet which is passing through the landed property of the petitioner in S.No.413/6, Zamin Pallavaram Village and above the premises constructed over the said land for giving service connection to S.C.No.293-016-572 to the premises of the third respondent herein and to give alternative connection through the 1st Street, Puduvali Nagar from the existing Transformer therein.

2. The case of the petitioner is that the petitioner had purchased 1710 ssq.ft. of landed property in S.No.413/6, Zamin Pallavaram Village in Paduvai Nagar 2nd Street, Chrompet from one Perumal and Muniammal through sale deed dated 16.03.1990. He has constructed a small superstructure over the said property in the name of Jayalakshmi Industries and also obtained electricity connection to the said premises. Thereafter, the petitioner has allowed his son to carry on his business in the name and style of 'CARO CAR' and the live electrical wire which is passing through the landed property above the roof will let fire accident due to leakage of electricity and hence, it is not advisable to allow the wires to pass through



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the property and over the shed. Taking advantage of his absence from the property, one Margret Rita, who is the third respondent herein has encroached about 142 ½ sq.ft. of the said property. Hence, he filed O.S.No.514 of 2009 before the Additional District Munsif, Alandur and the same was decreed in his favour. The petitioner has made a representation to the second respondent on 24.10.2009 regarding not to give electricity service connection to the newly constructed premises of the third respondent. But the second respondent gave service connection to the third respondent's premises on 13.01.2010 and hence, he again made representation to the first respondent on 22.09.2010 to remove the live electric wires emanating from the 2nd Street through his land and over the premises. The petitioner has again gave a detailed representation on 21.09.2016 to the second respondent to remove the live electric wires emanating from the 2nd Street through his land and over the premises thereon and even then, the second respondent has failed to take action. Hence, the petitioner has filed a Writ Petition in W.P.No.4467 of 2018 and this Court directed the respondents 1 and 2 to consider the representation of



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the petitioner dated 21.09.2016. Since the second respondent has failed to comply with the above said direction, the petitioner was constrained to file Contempt Petition No.1742 of 2019. During the pendency of the Contempt Petition, the second respondent has passed an impugned order rejecting his representation dated 21.09.2016. Challenging the same, the present Writ Petition has been filed.

3. The learned counsel appearing for the petitioner would submit that already the third respondent has encroached his property, thereby the petitioner has filed a suit before the learned Additional District Munsif and the said suit was decreed in his favour. Even then, the live electric wire which is passing through on the petitioner's land over and above has not been removed, which is not sustainable one. Hence, he prayed for allowing the Writ Petition.

4. The learned counsel appearing for the third respondent would submit that the third respondent is the absolute and sole owner of the



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property admeasuring 1053 sq.ft together with an existing building, comprised in Survey No.413/6, situated at No.5, West Pudurai Nagar 1st Street, Chrompet, through a judgment and decree dated 05.08.2009 made in O.S.No.430 of 2009 on the file of the Additional District Munsif, Alandur pursuant to a joint memo of compromise. Subsequent to the date of judgment and decree, she had constructed a residential house and obtained electricity service connection. Right from the year 2009 to till date, the service wires for the said electricity connection is existing through the common passage, which is exclusively for her ingress and egress from the time immemorial. In fact the petitioner has encroached the said common passage of 135 sq.ft by constructing a huge commercial shop and hereby illegally enriched himself and he had also filed a suit in O.S. No.514 of 2009 and the same was decreed in his favour. She has also filed an Appeal Suit in A.S.No.15 of 2018 before the learned Sub Judge, Tambaram and the said appeal is pending. It is pertinent to note that the photographs taken by the second respondent at the time of inspection conducted by him, which is more suffice to say that the live electricity wires are no way connected to the



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petitioner's shed. On the above particular ground itself, the petitioner has not entitled to get the relief sought for by him.

5. The learned counsel appearing for the respondents 1 and 2 would submit that there is no bar for passing electricity connection over and above the petitioner's land and it is permissible under Section 29(5) of the Tamil Nadu Electricity Distribution Code, 2004. Rule 29(5) of the Tamil Nadu Electricity Distribution Code, 2004 reads as follows:

“29 (5) The consumer shall provide free of cost to the licensee adequate land/space in his/her premises, as may be considered necessary by the engineer and afford all reasonable facilities for bringing in not only cables or overhead lines from the licensee's system for servicing the consumer but also cables or overhead lines connecting other consumers. The land/space should be at a location near the entrance to the premises and should be easily accessible to licensee's officials for inspection.”



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6. The learned counsel for the respondents 1 and 2 would further submit that if at all the petitioner has grievance against the third respondent and the Electricity Board, he has to approach the Competent Court for appropriate remedy. Without exhausting the same, the petitioner has approached this Court by filing the present Writ Petition is not sustainable one, accordingly he prayed for dismissal of the Writ Petition.

7. Heard the learned counsel appearing for the parties and perused the materials placed before this Court.

8. The grievance of the petitioner is that to remove the live electricity wires emanating from 2nd Street, Paduvai Nagar, Chrompet which is passing through the landed property of him and for giving new service connection to the premises of the third respondent, for which, he made a representation to give alternative connection through the 1st Street, Pudukkottai Nagar from the existing Transformer therein and pursuant to which, the impugned order has been passed. However, the fact remains that it is purely



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disputed question of facts in between the petitioner and the third respondent and it has to be resolved only by the Competent Civil Court. Without exhausting the same, filing the present Writ Petition under Article 226 is not maintainable and hence, the prayer sought for in the Writ Petition cannot be granted.

9. Accordingly, this Writ Petition is dismissed in the above terms with liberty to the petitioner to approach the competent Civil Court as against the Electricity Board including the third respondent herein. No costs.

18.04.2023

NCC: Yes / No
Index : Yes / No
Speaking Order : Yes / No

vji



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