



C.R.P.No.1235 of 2023 &
C.M.P.No.15301 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.08.2023

CORAM:

THE HON'BLE Mrs.JUSTICE **V.BHAVANI SUBBAROYAN**

**C.R.P.No.1235 of 2023 &
C.M.P.No.15301 of 2023**

The Superintending Engineer
TNEB/CEDC/Central
Valluvar Kottam
Chennai – 600 034

...Petitioner

Vs.

1. S.Anand
2. Ravichandran

...Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order dated 07.02.2023 passed in E.A.No.5166 of 2018 in E.P.No.1108 of 2009 in O.S.No.4788 of 2001 on the file of learned X Assistant Judge, City Civil Court, Chennai and set aside the same and allow the E.A.No.5166 of 2018

For Petitioner : Mr.S.T.Raja
For Respondents : No appearance for R1
Unclaimed - R2

ORDER

The Civil Revision Petition has been filed to set aside the order dated 07.02.2023 passed in E.A.No.5166 of 2018 in E.P.No.1108 of 2009 in O.S.No.4788 of 2001 on the file of learned X Assistant Judge, City Civil Court, Chennai and set aside the same and allow the E.A.No.5166 of 2018



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2. The brief facts of the case is that the 1st respondent, who is the plaintiff, has preferred O.S.No.4788 of 2001 as against the petitioner / 1st defendant and 2nd respondent / 2nd defendant directing to shift the transformer to some other place from Blocks A & B in No.4, New no.13, Babu Rajendra Prasad, 1st street, West Mambalam, Chennai – 600 034 and direct the petitioner / 1st defendant to remove the service connection to the premises no.15/2 and 15/3, Rajendra Prasad 1st street, Chennai from the transformer installed in the premises bearing Door No.13, Babu Rajendra Prasad Street, Chennai – 33 and to direct the petitioner / 1st defendant to pay a sum of Rs.10,800/- with interest at the rate of 12% per annum, from the date of plaintiff till the date of payment and further, to direct the 1st defendant to pay damages of Rs.9,000/- together with interest at 12% per annum from the date of plaint. After contest, the suit was partly decreed by allowing to transfer the transformer, situated at Block A and B and the charges for transferring the same was ordered be paid by the 2nd respondent to the petitioner. Accordingly, the 1st respondent preferred E.P.No.1108 of 2009 to execute the order passed in O.S.No.4788 of 2001, the petitioner preferred E.A.No.5166 of 2018 against the execution petition, the said appeal was dismissed. As against the same, the petitioner has come up with the present Petition.



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3. The learned counsel for the petitioner submits that the court below failed to note that the direction to the 2nd respondent / J.D.1 to bear the charges towards shifting of transformer, unless deposit of shifting charges is paid, revision petitioner is barred by the Tamilnadu Supply Code to proceed further. The court below ought to have appointed advocate commissioner to inspect the premises to note availability or directed the 1st respondent to provide alternative site to erect the transformer, without removing the transformer would be burden for occupiers of the apartment without supply, to do their day to day activities.

4. Lastly, the learned counsel for the petitioner would submit that the court below failed to note that the execution court cannot travel behind the decree. As per decree cost to be paid by the 2nd respondent to shift the transformer, unless cost is deposited and place for shifting is identified, decree cannot be executed.

5. Though notice was served on the 1st respondent as early as on 27.04.2023, there is no representation for the 1st respondent, either in person or through learned counsel. Further, notice sent to the 2nd respondent was unclaimed,



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6. On going through the averments made in the petition as well as in the suit, it is seen that originally suit was filed for mandatory injunction by the 1st respondent against the petitioner / 2nd defendant and 2nd respondent / 1st defendant praying to direct the petitioner / 2nd defendant to shift the transformer to some other place from Block A & B, No.4, New No.13, Babu Rajendra Prasad 1st Street, West Mambalam, Chennai.

7. It is pertinent to point out that the 1st respondent and his father, viz., V.Suvesham, had entered into an agreement to develop the property and appointed 2nd respondent / 1st defendant as their Power of Attorney agent and registered as document no.594 dated 03.06.1999 before the Sub Registrar, T.Nagar and the undertaking was given by the 2nd respondent for allotment of space for erection of a new distribution transformer at the consumers premises dated 06.12.2000, based on which transformer was erected and supply was given. The 1st respondent cleverly filed a above said suit and obtained a Judgment and Decree dated 09.1.2007 directing the petitioner / 2nd defendant to shift the transformer from the existing area to any other place and the shifting charges shall be paid to the petitioner by the 2nd respondent. Subsequently, the 1st respondent filed E.P.No.1108 of 2009



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seeking to direct the petitioner to shift the transformer at the cost of 2nd respondent. As against the same, E.A. Was filed and in the said E.A., the 2nd respondent remained exparte and the Execution Court directed the petitioner to shift the transformer and recover the charges from the 2nd respondent.

8. It is necessary to extract the relevant provisions of Tamilnadu Electricity Distribution Code No.37, which is as follows:

“37. Shifting of Service Connection : The cost of shifting a new service connection for which line is laid but service connection is yet to be effected shall be borne by the intending consumer. The intending consumer shall pay the above charges in advance in full. The shifting work will be taken up only after the payment is made. The estimate will cover the following: -

- (a) Charges for dismantling at the old site.*
- (b) Charges for transport from the old site to the new site.*
- (c) Charges for re-erection at the new site. 1*
- [(d) Depreciated value of retrievable materials, if any, not used at the site should be credited to the consumer.*
- (e) Cost of new materials including transport, if required*
- (f) Cost of irretrievable materials at depreciated value.]*
- (g) Overhead charges. 2 [With regard to shifting of existing service connection, the consumer shall pay all the arrears due to the Licensee, apart from the above shifting charges.]*



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The above provisions would enunciate that the Electricity Board cannot shift the transformer and give a separate supply on the grievance put forth by the customer.

9. Further, it is brought to the notice of this Court that as per Tamilnadu Electricity Distribution Code No.12 “for any building / premises required LT service connections having either (a total floor area of 900Sq.m an above (excluding the suit floor / basement floor) or (b) the total demand of all the LT services in the buiding exceeds 150KW”, clause (a) (b) clearly says that the landlord would give 10m*4 or 5m * 5M open space shall be provided within the consumer premises preferably at the main entrance for installing structure mounted distribution transformer and associated switchgear” The 2nd respondent gave land in the entrance for erecting transformer. After obtaining undertaking bond, installation and service charges, the petitioner erected transformer in the common passage in front of A&B block and supply was given on 20.02.2001, after completing erection, the petitioner's job was over, this was known to all the owners in the building. As per the bond between the Power agent and the builder, it is clear that the petitioner will not tamper or remove erecting in future and to vacate the space, etc., provided and now, 1st respondent contends that in



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the EP as if they erected the transformer without knowledge. On completion of building, the flats are handed over to owners and electricity connection are changed to owner's name, all these facts are suppressed. When the 1st respondent filed a suit for transfer of said transformer to some other place, the court below has clearly stated that the shifting charges will be paid by the 2nd respondent / JD1 to petitioner / JD2 and after payment, the same will be transferred to some other place.

10. Besides the above, the petitioner cannot on its own shift the transformer, unless, they receive the payment from the parties concerned. The direction of the court below that the charges at actuals should be collected from 2nd respondent / JD1 is not feasible and the said 2nd respondent has not even received the notice, which was sent by the court and also it is seen that the power of attorney holder / builder after sale of the property and construction of the building, would have completed his job and would have washed his hands off while passing the order. It is also clearly seen that the 1st respondent / decree holder being owner of the property, who have entered into agreement with the 2nd respondent / JD1 for construction of flats and selling the same, would have been very well aware about the pros and cons of the entering into a bond with TANGEDCO.



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11. At this juncture, the court below has not considered all these aspects, but directed the Electricity Board to remove the said structure, that too without the payment. There is no possibility of erecting and collecting the charges from the person, who has got nothing to do at present, with the said TANGEDCO. The owners, who are in occupation, if they are having any disturbance, it is their duty to pay appropriate fees to the said authorities. Notice was issued but the respondents have not appeared and name was also printed in the cause list. Hence this Court, is inclined to set aside the order dated 07.02.2023 passed by the trial court in E.A.No.5166 of 2018 in E.P.No.1108 of 2009. If the 1st respondent / decree holder is agreed to pay the cost, the said TANGEDCO can proceed further and thereafter, the 1st respondent can recover it from 2nd respondent / JD1. That apart, alternative place to be marked by the decree holder.

In the result, the present Civil Revision Petition is allowed.
Consequently, connected miscellaneous petition is closed. No costs.

03.08.2023

Index : Yes/no
Speaking order : Yes/No
ssd



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To
The X Assistant Judge, City Civil Court,
Chennai

V.BHAVANI SUBBAROYAN J.

ssd

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