



W.P(MD)No.22566 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 06.10.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.22566 of 2022

and

W.M.P(MD)No.16742 of 2022

Sophie Angelia

... Petitioner

Vs.

1.The Junior Engineer (Distribution),
Tamil Nadu Electricity Board,
V.M.Chathiram,
Palayamkotti,
Tirunelveli District.

2.Rajkumar

3.Arunachalam

4.Meena

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records pertaining to the impugned notice dated 23.8.2022 issued by the first respondent and quash the same as illegal, arbitrary and non-application of mind.



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For Petitioner : Mr.V.Angusamy
For Respondents : Mr.S.Dheenadhayalan
Standing Counsel for R.1

Mr.I.Pinaygash for R.3 & R.4

ORDER

Heard the learned counsel appearing for the writ petitioner, the learned Standing Counsel appearing for TANGEDCO and the learned counsel appearing for the third respondent.

2. The second respondent Rajkumar filed O.S.No.182 of 2008 on the file of the I Additional District Munsif Court, Thirunelveli seeking the relief for specific performance against the third respondent herein. The suit was decreed exparte on 29.09.2008. Since the third respondent did not come forward to execute the sale deed, Rajkumar obtained sale deed from the Court on 18.03.2009. The third respondent thereafter filed I.A.No.80 of 2011 for condoning the delay in filing petition for setting aside the exparte decree. The exparty decree was set aside on 26.11.2011. The suit was dismissed on 01.07.2013. In the meanwhile, the petitioner had purchased the property from the second respondent on



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19.01.2011 by Document No.253 of 2011 on the file of the Sub Registrar Office, Palayamkottai.

3. After the dismissal of the suit for specific performance, the third respondent settled the property in favour of his wife. That was unsuccessfully challenged by the petitioner. The third respondent had filed O.S.No.83 of 2016 on the file of the Principal District Munsif Court, Thirunelveli for setting aside the sale deed executed by Rajkumar in favour of the petitioner and the sale deed executed by the Court in favour of Rajkumar. The suit is still pending. It is posted on 18.10.2023 for taking evidence. In the meanwhile, the petitioner had obtained electricity service connection in her name. The petition mentioned property continues to be a vacant site. Acting on the complaint of the third respondent, the first respondent issued the impugned notice of disconnection. Challenging the same, the present writ petition came to be filed.

4. Since the petitioner did not obtain any interim order in her favour, service connection also came to be disconnected. The question



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that calls for consideration is whether the impugned connection should be set aside and whether the service connection should be restored.

5. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to grant relief as prayed for.

6. The learned counsel appearing for the respondents 3 and 4 submits that the possession of the property is with them. The revenue record reflects the name of the fourth respondent. The learned counsel points out that the petitioner had purchased the property from the second respondent and the second respondent sold the property on the strength of the decree obtained by him. The said decree itself has been set aside and subsequently the suit also came to be dismissed for default. According to the learned counsel appearing for the fourth respondent the petitioner's case does not have any foundation whatsoever. He pressed for dismissal of the writ petition.



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7. I carefully considered the rival contentions and went through the materials on record.

8. Though I am in full agreement with the contentions advanced by the learned counsel appearing for the respondents 3 and 4, one aspect alone disturbs my conscience. The petitioner had filed the set aside petition along with condone delay petition in December 2010. However, the condone delay petition was numbered as I.A.No.80 of 2011 and came to be allowed only on 13.08.2011. The set aside petition was numbered as I.A.No.836 of 2011 and it was allowed on 26.11.2012. In the meanwhile, the petitioner herein had purchased the property from the second respondent on 19.01.2011 itself. In other words, the exparte decree was set aside after one year and eleven months after the purchase of the property by the petitioner. The petitioner was not made a party to the set aside proceedings. Since the contesting respondents have filed suit for nullifying the petitioner's sale deed, it would not be fair on my part to render any further finding. I leave the matter at that. Since the



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petitioner was not a party, the learned counsel appearing for the petitioner states that the petitioner cannot be blamed. She had purchased the property on the strength of the sale deed executed by the Court. Whenever exparte decree granted in specific performance suits are set aside, the intervening developments are invariably taken into account. In this case, the third respondent had not bothered to verify if the property had changed hands in the meanwhile. It is only for this reason that I interfere with the impugned communication. The petitioner through her counsel gives an undertaking that she will maintain the status quo on ground and that the rights of the parties will abide by the outcome of O.S.No.83 of 2016 on the file of the Principal District Munsif Court, Thirunelveli.

9. The said undertaking is recorded. The impugned communication is set aside. The first respondent shall restore the electricity service connection to the petition mentioned service connection. The petitioner will have to bear the reconnection charges.



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10. This writ petition is allowed on these terms. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

06.10.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No

MGA

To

The Junior Engineer (Distribution),
Tamil Nadu Electricity Board,
V.M.Chathiram,
Palayamkotti,
Tirunelveli District.

Copy to:

The Principal District Munsif Court,
Thirunelveli.



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G.R.SWAMINATHAN, J.

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