



W.P.(MD).No.9557 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED:31.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

W.P.(MD).No.9557 of 2015
M.P(MD).Nos.1 to 4 of 2015

The Church of South India Trust Association,
Rep.by its Property Officer,
D.David Raja,
S/o.Deva Irakkam

... Petitioner

Vs.

1.The Tamil Nadu Generation of Electricity and
Distribution Circle,
Rep.by its Assistant Electrical Engineer,
Pasumalai,
Madurai-625 007.

2.The Executive Engineer,
TANGEDCO,
Madurai West,
Arasaradi,
Madurai.

3.The Assistant Engineer,
TANGEDCO,
Pasumalai,
Madurai.

4.Kanithevar

...Respondents



W.P.(MD).No.9557 of 2015

WEB COPY

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order bearing Ka.No.Vu.Mi.Po/Pa/Pasu/Ko.Kattu/A.No.178/15 dated 24.03.2015 issued by the first respondent and quash the same and consequently, direct the respondents 1 to 3 not to erect any electricity pole in the petitioner's patta land in Survey Nos.385/1A3 and 385/1A in Madakulam Village, Madurai District.

For Petitioner : Mr.T.Antony Arul Raj

For Respondents : Mr.S.Deenadhayalan
Standing Counsel for R1 to R3
Mr.S.Rajasekar for R4

ORDER

This Writ Petition has been filed challenging the impugned order passed by the first respondent dated 24.03.2015 and for a direction to the respondents 1 to 3 not to erect electricity pole in the petitioner's land in Survey Nos.385/1A3 and 385/1A situated in Madakulam Village, Madurai District.



W.P.(MD).No.9557 of 2015

WEB COPY

2. The case of the petitioner is that the land in Survey Nos.385/1A3 and 385/1A measuring to an extent of 24 acre and 80 cents situated in Madakulam Village, Madurai District, belongs to the petitioner and the petitioner has filed a suit in O.S.No.1153 of 1985 before the District Munsif Court, Madurai, for declaration and recovery of possession and has obtained a decree in his favour. While so, the fourth respondent has unauthorizedly occupied a portion of the said land and filed an application for obtaining electricity service connection with TANGEDCO. The first respondent, vide impugned order, dated 24.03.2015, has informed that they are going to provide electricity service connection to the fourth respondent. Therefore, the petitioner has made objections on 31.03.2015 and 20.04.2015, not to effect electricity service connection in favour of the fourth respondent. However, the official respondents, without considering the objections, has effected electricity service connection in favour of the fourth respondent. Aggrieved over the same, the present Writ Petition has been filed.

3. The learned counsel appearing for the petitioner, by referring to the judgment and decree passed by the District Munsif Court, Madurai in



W.P.(MD).No.9557 of 2015

O.S.No.1153 of 1985, submits that the petitioner is the owner of the subject property and the trial Court has also ordered recovery of possession. He further submits that though the petitioner has produced a copy of the judgment and decree passed in the said suit before the respondents 1 to 3, the respondents 1 to 3, overlooking the same, has effected service connection in favour of the fourth respondent and thereby, the fourth respondent has encroached the petitioner's land unauthorizedly and obtained electricity service connection.

4. The learned Standing Counsel appearing for TANGEDCO submits that the fourth respondent and others have been in occupation of the subject property for long time and depending upon the documents which they have produced for proving their occupation, electricity service connections were effected. Therefore, if the petitioner is having a valid decree from the competent civil Court, he can work out his remedy by filing an Execution Petition before the concerned Court.

5. The learned counsel appearing for the fourth respondent submits that the fourth respondent alone is not residing in the subject property



W.P.(MD).No.9557 of 2015

and 100 other people are residing in the subject property and the suit filed by the petitioner is with regard to only 55 cents of the land in Survey Nos.385/1A3 and 385/1A and the fourth respondent is not a party to the suit filed by the petitioner and he is not residing in the suit scheduled property.

6. This Court considered the rival submissions made by both sides and perused the materials available on record.

7. According to the petitioner, the land in Survey Nos.385/1A3 and 385/1A belongs to him and he has obtained the decree in his favour and the fourth respondent has unauthorisedly occupied a portion of the said land and obtained electricity service connection. But the fourth respondent claims that he is not residing in the suit scheduled property and is not a party to the suit filed by the petitioner in O.S.No.1153 of 1995. However, the Tamil Nadu Electricity Board is expected to provide electricity service connection, after ascertaining the following documents:



W.P.(MD).No.9557 of 2015

(i) self-attested copy of proof of ownership such as sale deed (or) partition deed (or) gift settlement (or) allotment letter (or) computer patta (or) ownership certificate issued by revenue department officials (or) court judgment or recent property tax receipt.

(ii) In case of joint property, self attested copies of proof of ownership along with parent documents specified in note (I) above and consent letters from co-owners. If consent letter is not produced, an indemnity bond with enhanced security deposits.

(iii) If the applicant is not the owner, consent letter from owner in FORM No.5 or valid proof of occupancy and indemnity bond in FORM No.6.

(iv) Plan approval with area earmarked for installing transformer; in case of floor area of 900 square metre and above or the demand exceeds 112 KW in case of LT service connections as per sub regulation 29(11) of the TNE Distribution Code.



W.P.(MD).No.9557 of 2015

WEB COPY

8. Clause 27 of the Tamil Nadu Electricity Distribution Code, 2004 deals with requisitions for supply of energy.

9. As per clause 27(1) of the Tamil Nadu Electricity Distribution Code, 2004, every distribution licensee shall, on an application filed by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring such supply.

10. In Clause 27(4) of the Tamil Nadu Electricity Distribution Code, 2004, it has been stated that an intending consumer, who is not the owner of the premises, shall produce a consent letter in Form 5 of Annexure-III to this Code from the owner of the premises for availing the supply. If the owner is not available or refuses to give consent letter, the intending consumer shall produce proof of his/her being in lawful occupation of the premises and also execute an indemnity bond in Form 6 of Annexure III to this Code indemnifying the licensee against any loss on account of disputes arising out of effecting service connection to the occupant and acceptance to pay security deposit twice



W.P.(MD).No.9557 of 2015

the normal rate.

WEB COPY

11. Clause 27(4) of the Tamil Nadu Electricity Distribution Code, 2004, has been substituted vide Notification No.TNERC/DC/8-21 dated 07.10.2014, which reads as under:-

“An intending consumer who is not the owner of the premises shall produce a consent letter in Form 5 of Annexure III to this code from the owner of the premises for availing the supply. If the owner is not available or refuses to give consent letter, the intending consumer shall produce valid proof of his being in occupation of the premises and also execute an indemnity bond in Form 6 of the Annexure III to this code indemnifying the licensee against any loss on account of disputes arising out of effecting service connection to the occupant and acceptance to pay security deposit twice the normal rate.”

12. The word “occupier” means any person in occupation (whether as owner or otherwise) of the premises, where Electricity is used or intended to be used, and the Electricity has been expanded in the Tamil Nadu Electricity Distribution Code, 2004 to an intending consumer also, who is not the owner of the premises, but in “lawful occupation”, of the same.



W.P.(MD).No.9557 of 2015

WEB COPY

13. In Clause 27(12)(ii) of the Tamil Nadu Electricity Distribution Code, 2004, it has been stated that supply shall be given in poramboke land on production of No Objection Certificate obtained from the Officer (not below the rank of Deputy Tahsildar) or where such No Objection Certificate could not be produced by the applicant for service connection, the undertakings as prescribed in the said clause shall be furnished.

14. For better appreciation, Form-6 of the Tamil Nadu Electricity Distribution Code, 2004, which is to be obtained in a stamp paper is extracted hereunder:

FORM-6

(To be obtained in a stamped paper).

(Refer clause 27(4))

Indemnity Bond from the occupier when there is no consent letter from owner. Indemnity Bond to be furnished by an intending consumer who is not the owner of the premises and applies without the consent of the owner.

DEED OF INDEMNITY

**THIS DEED OF INDEMNITY EXECUTED ON THIS,
THEDAY OFTWO THOUSAND
.....by Thiru./**



W.P.(MD).No.9557 of 2015

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TmtyS/o. D/o
W/oresiding
athaving office / workshop
athereinafter called the indemnifier
(which terms shall mean and include executors, administrators,
heirs, successors and assigns) to and in favour of the (name of
Licensee and address), a body corporate, hereinafter called the
Licensee (which terms shall mean and include its successors in
office and assigns).

WHEREAS the consumer has taken on lease the premises in
Door No.....for the purpose offrom Thiru./
TmtyS/o D/o
W/o..... ..residing
atwho is the owner of the
above said premises.

AND WHEREAS the consumer has approached the said
owner of the premises to give his /her consent in writing to avail
of a service connection in his/her name for the purpose of his /
her business.

AND WHEREAS the said owner is not available/has refused
to give his/her consent in writing for the purpose.

AND WHEREAS the indemnifier has requested the Licensee
to give a service connection in his/her name subject to execution
of an indemnity bond by him/her indemnifying the Licensee
against any damage or loss caused to the Licensee in respect of



W.P.(MD).No.9557 of 2015

WEB COPY

the service connection in his/her name.

AND WHEREAS in consideration of the acceptance of the above for a service connection in his/her name, the indemnifier hereby agrees to indemnify the Licensee against all proceedings, claims, demands, costs, damages, expenses which the Licensee may incur by reason of a fresh service connection given to the indemnifier without the consent of the owner of the premises. The indemnifier further undertakes to make good any sum that may be found to be and become payable to the Licensee with regard to all liabilities and claims personally as well as by means of both movable and immovable properties. The indemnifier agrees that the enhanced Security Deposit paid by him shall be adjusted against the arrears of current consumption charges but also against any claim that may arise in the event of termination of the agreement prior to the expiry of the contracted period. The indemnifier further undertakes that the Licensee shall be at liberty to disconnect the service connection given to him/her , and also for loading the dues remaining unpaid by him/her to other service connection (s) that may stand in his/her name.

NOW THE CONDITION OF THE above written bond is such that if the indemnifier shall duly and faithfully observe and perform the above said conditions, then the above written bond shall be void, otherwise the same shall remain in full force.

IN WITNESS WHEREOF Thiru/



W.P.(MD).No.9557 of 2015

*Tmt.the indemnifier has signed this
deed on the day month and year herein before first mentioned.*

In the presence of Witness

(Name and Address)-

- 1.
- 2.

SIGNED AND DELIVERED BY

15. In view of the above requirements, the respondents 1 to 3 before granting electricity service connection to any person, are expected to follow the procedures as prescribed in the Tamil Nadu Distribution Code, 2004. The petitioner claims that he has obtained a valid decree from the competent civil Court for declaration and recovery of possession and has also produced a copy of the judgment and decree passed in O.S.No.1153 of 1985 by the District Munsif Court, Madurai before the official respondents along with his objections on 31.03.2015 and 20.04.2015. But, the respondents 1 to 3 are not justified in granting electricity service connection to the fourth respondent by rectifying the encroachments. However, the petitioner is directed to submit a fresh representation before the second respondent along with the copy of the judgment and decree passed in O.S.No.1153 of 1985 by the District



W.P.(MD).No.9557 of 2015

WEB COPY

Munsif Court, Madurai, within a period of one week from the date of receipt of a copy of this order and on such representation being made, the second respondent shall consider the same and take a decision in accordance with law within a period of four weeks from the date of receipt of the representation, after providing an opportunity of hearing to the fourth respondent and other rival claimants.

16. Accordingly, this Writ Petition is disposed of. There shall be no order as to costs. Connected miscellaneous petitions are closed.

31.10.2023

Index: Yes/No
Internet: Yes/No
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W.P.(MD).No.9557 of 2015

To

WEB COPY

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Distribution Circle,
Rep.by its Assistant Electrical Engineer,
Pasumalai,
Madurai-625 007.
- 2.The Executive Engineer,
TANGEDCO,
Madurai West,
Arasaradi,
Madurai.
- 3.The Assistant Engineer,
TANGEDCO,
Pasumalai,
Madurai.



WEB COPY



W.P.(MD).No.9557 of 2015

B.PUGALENDHI, J.

ssb

W.P.(MD).No.9557 of 2015

31.10.2023