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W.P.No.21572 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2024

CORAM

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.21572 of 2021

and

W.M.P.Nos.22775 & 22776 of 2021

K.Palanimuthu

... Petitioner

-Vs-

1.The Assistant Engineer (O&M),
Tamil Nadu Generation & Distribution Corporation Ltd.,
Sathapadi, Attur Taluk,
Salem District.

2.The Assistant Executive Engineer-O&M,
Tamil Nadu Generation & Distribution Corporation Ltd.,
Attur,
Salem District.

3.The Executive Engineer-O&M,
Tamil Nadu Generation & Distribution Corporation Ltd.,
Attur,
Salem District.

4.The Superintending Engineer-O&M,
Tamil Nadu Generation & Distribution Corporation Ltd.,
Salem,
Salem District.

5.Chinnasamy

... Respondents



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Prayer:- Writ Petition filed under Article 226 of Constitution of India for the issuance of Writ of Certiorarified Mandamus calling for the records pertaining to the order passed by the 1st respondent dated 23.09.2021 in Ka.No.U Ni Po/E&P/Saa,Padi/Ko.Kattu/No.146/21-22 and quash the same and consequently, direct the respondents 1 to 4 to consider the documents submitted by the petitioner on 22.09.2021 in support of his title over the property.

For Petitioner : Mr.B.Balavijayan
for M/s.C.S.Associates
For R1 to R4 : Mr.I.Syed Sibghatulla
Standing Counsel
For R5 : Mr.Zeenath Begum

ORDER

This Writ Petition has been filled challenging the order passed by the first respondent dated 23.09.2021, thereby ordered to disconnect the electricity service connection.

2. Heard the learned counsel appearing on either side and perused the materials available on record.

3. The petitioner's grandfather owned 11 cents of property comprised in Survey No.23/11 and 2.35 acres in Survey No.23/12. He



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died leaving behind three sons. Thereafter, the properties were partitioned equally and the petitioner's father was allotted 1/3 share in the total extent of 2.46 acres comprised in Survey No.23/11 and in Survey No.23/12. Further, the petitioner's father had also purchased 1/3rd share of his brother. Therefore, the petitioner's father owned land admeasuring 1.60 acres out of 2.35 acres. Insofar as another 1/3 share is concerned, it was purchased by the fifth respondent, while his father was alive. He applied for electricity service connection and obtained the service connection in S.C.No.368 in both Survey Nos.23/11 & 23/12 for the Well situated in the subject land.

4. Admittedly, the petitioner's father had 2/3rd share over the Well. However, he is entitled to apply for electricity service connection. Accordingly, he obtained electricity service connection in S.C.No.368. While being so, the fifth respondent objected the electricity service connection, which was obtained by the petitioner's father. Therefore, the first respondent objected from drawing water through the electricity service connection in S.C.No.368. Therefore, the petitioner's father filed a suit in O.S.No.96 of 1985 for declaration. The Trial Court concluded



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that the fifth respondent is entitled to have 1/3rd share in the Well and the service connection is standing in the name of the petitioner's father, since, the electricity service connection had been obtained by the petitioner's father. The fifth respondent filed an appeal in A.S.No.77 of 1989 and the same was also dismissed.

5. Aggrieved by the same, the fifth respondent filed second appeal before this Court in S.A.No.1252 of 2004 and the same was also dismissed on the ground that the suit itself is all about a challenge to a show cause notice, which pose no threat of invasion or injury to petitioner's father's right. What may perhaps affect the right of the plaintiff is an adverse decision of the officials. Eventuality it has not happened yet. Subsequently, the petitioner challenged the show cause notice issued by the first respondent dated 18.08.2020 and the same was allowed by this Court in W.P.No.11957 of 2020. However, the first respondent was directed to issue fresh show cause notice to the petitioner, after giving an opportunity to the petitioner to submit all materials and pass appropriate orders. Therefore, the first respondent issued show cause notice on 21.08.2021, thereby ordered to disconnect the electricity service connection.



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6. The survey number has been wrongly mentioned as S.No.23/12 instead of S.No.23/11, in which the well is situated. Admittedly, the petitioner's father had 2/3rd share in the total extent of the property and the fifth respondent is entitled to have 1/3rd share of the property. Further, the Well, though situated in S.No23/11, is a common well and the petitioner's father had 2/3 right over the well and the fifth respondent had 1/3 right over the well. Therefore, the service connection obtained by the petitioner's father cannot be disturbed in any case, since he had 2/3rd right over the well. If at all the fifth respondent wants to have separate electricity service connection for his 1/3rd share in the common well, he can very well apply to draw water from the common well to the extent of 1/3 share over the well.

7. In view of the above, this Court finds infirmity in the order passed by the first respondent and it cannot be sustained and it is liable to be quashed. Accordingly, it is hereby quashed. It is made clear that if the fifth respondent wants to have separate electricity service connection to draw water from the common well in respect of his 1/3rd share, he can very well apply for separate electricity service connection



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before the first respondent. On receipt of such application, the first respondent is directed to consider the same and provide electricity service connection to the fifth respondent if it is otherwise in order.

8. In the result, this Writ Petition stands allowed.

Consequently, connected miscellaneous petitions are closed. No costs.

25.04.2024

Internet : Yes
Index : Yes/No
Speaking/Non-speaking order
Neutral Citation : Yes/No
Lpp

To

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2.The Assistant Executive Engineer-O&M,
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4.The Superintending Engineer-O&M,
Tamil Nadu Generation & Distribution Corporation Ltd.,
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