



W.P(MD)No.2127 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **22.01.2024**

CORAM:

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

W.P.(MD)No.2127 of 2014

and

M.P.(MD)Nos.2 & 3 of 2014

A.Raju

... Petitioner

/Vs./

- 1.The State of Tamil Nadu,
Rep. Through the Secretary to Government,
Department of Revenue,
Government Secretariat,
Fort St. George,
Chennai-600 009.
- 2.The District Collector,
District Collector Office,
Cantonment, Trichy.
- 3.The Tahsildar,
Taluk Office,
Thuraiyur-621 010,
Trichy District.
- 4.The Superintendent Engineer,
Tamil Nadu Generation & Distribution
Corporation Ltd., (TANGEDCO),
Mannarpuram, Trichy District
- 5.The Executive Engineer (Distribution),
Tamil Nadu Generation & Distribution
Corporation Ltd., (TANGEDCO),
Thuraiyur, Trichy District-621 010.



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6.The Assistant Engineer,
Tamil Nadu Generation & Distribution
Corporation Ltd., (TANGEDCO),
Thuraiyur South, Thuraiyur, Trichy District.

7.S.Periyasamy
8.S.Marimuthu
9.P.Muthusamy
10.V.Muthusamy

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent in his proceedings No.A1 34280-07 dated 19.05.2008 and the consequential proceedings of the 5th respondent in Ka.No.Se.Po./E.Ka/Thurai/Va2/Ko.Pugar/A.No.081/13-14 dated 31.10.13 to quash the same and consequently directing the 2nd respondent to initiate proceedings in regulating the land records, issue patta to the Petitioner in Survey No.94/1 in Ammapatti Village, Thuraiyur Taluk, Trichy District and directing the 5th respondent to restore the electricity connection No.42/3HP, Ammapatti Distribution point to the Petitioner's agricultural land.

For Petitioner	: Mr.D.Gurusamy
For R1 to R3	: Mr.G.V.Vairam Santhosh Additional Government Pleader
For R4 to R6	: Mr.S.Deenadhayalan Standing Counsel
For R7 to R10	: No Appearance

ORDER

The petitioner is a farmer. He is having lands in Survey No.94/3 at Ammapatti Village, Thuraiyur Taluk, Trichy District and he is doing agricultural activities in the said land. The land adjacent to his land in survey No.94/1 is



classified as 'vari poromboke'. The said land is located outside rain water course.

Hence, at request of the village community, the family of the petitioner allowed the village people to use part of their land in Survey No.94/3 as pathway. Therefore, the land in Survey No.94/1 was in occupation of the petitioner's family. His grandfather has raised teak tree, coconut tree, neem tree and also he was raising seasonal crops by digging an open well for irrigation. The petitioner inherited the property from his forefathers and he is in possession and enjoyment of the same without any hindrance.

2.While that being so, the seventh respondent has filed a writ petition before this court in W.P.No.35854 of 2003 seeking relief as against the District Collector to take action against the petitioner and to remove him from the vari poromboke in Survey No.94/1. Pending writ petition, the respondents 8 to 10 have filed another writ petition before this Court in W.P.(MD)No.4755 of 2007 for the similar relief. The said writ petition was disposed directing the respondents to conduct enquiry and pass appropriate orders. Based on that order, the second respondent had conducted an enquiry on 04.03.2008. Based on that enquiry, the second respondent through proceedings dated 19.05.2008 directed the petitioner to vacate from the land in Survey No.94/1. The third respondent Tahsildar has also sent a communication to the respondent electricity department to disconnect the service connection granted to this petitioner. Accordingly, the



sixth respondent has passed an order on 06.08.2013 disconnecting electricity service connection granted to the petitioner. Challenging the same, the petitioner has filed the present writ petition.

3.Initially, this writ petition was listed along with the writ petitions filed by the seventh to tenth respondents before the Division Bench of this Court. The Division Bench by an order dated 10.02.2014, passed the following order:

“Notice regarding admission returnable in four weeks.

2.The cause of action for filing the writ petition arose out of a writ petition filed by S.Marimuthu, Muthusamy, S/o.Ponnambalam and Muthusamy, S/o.Veeramani in W.P. (MD) No.4755 of 2007 alleging that the writ petitioner who is the third respondent therein had encroached upon Vari or Odal in S.F.No.94/1, In Ammapatty Village, Thuraiyur Taluk, Trichy District. These persons gave a representation to the authorities on 02.05.2007 to the District Collector. By order dated, 23.05.2007, this Court directed the authorities to consider the said representation, on merits. But a specific direction was given to the authorities to give personal hearing to the respondents 3 and 4.

3.In the typed set of papers, at page No.12, proceedings of the District Collector, in A1-34280-07, dated 19.05.2008 is referred to as the order passed consequent to the final order passed in W.P. (MD)No.4755 of 2007, dated 23.05.2007 and that based on the report of the Tahsildar, Thuraiyur, the District Collector came to hold that S.F.No.94/1 is encroached by the present writ petitioner.



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4. We find that there is no reference to any notice is being issued to the petitioner as mandated by this Court in the order dated 23.05.2007 in W.P(MD) No.4755 of 2007. Furthermore, as a consequence to this order, the Electricity Board appears to have disconnected the electricity supply and the petitioner was called upon to give explanation to the District Collector and Tahsildar, Thuraiyur by order, dated 31.10.2013 and the petitioner has been kept in darkness about the entire proceedings. The proceedings that is challenged, namely 19.05.2008, there is no reference to any notice to the present writ petitioner and there is nothing to show that his claim was considered. On the face of it, the proceedings are arbitrary. We also find that from the year 2007 onwards, the petitioner has been kept in the dark and proceedings have been passed against him that too without communicating the same, thereby his rights have been seriously prejudiced.

5. Further, we find that the learned counsel for the petitioner has in his anxiety to defend his client has included all the prayers in the main writ petition without seeking interlocutory relief.

6. We opine in the facts of the case that it should not stand in the way of the petitioner getting the benefit of protection against an illegal and arbitrary order passed by the authority.

7. While granting liberty to the petitioner to file proper application, we are constrained to exercise inherent power to stay the proceedings of the District Collect as well as the Electricity Board till 24.02.2014 and in the meanwhile, electricity supply shall be restored forthwith.

8. List the matter on 24.02.2014.”



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4. Thereafter, by an order dated 04.01.2024, this writ petition was de-linked from the other writ petitions filed by the seventh to tenth respondents, which are pending in W.P.(MD)No.2786 of 2011 and 343 of 2013 and listed for hearing before this Court.

5. The learned counsel for the petitioner submits that vari poromboke itself is passing through the petitioner's patta land. Since in rainy season there cannot be any access to the said road, the ancestors of the petitioner permitted the village people to use the lands of the petitioner's family and hence, the petitioner family is using the land in Survey No.94/1. Further, before passing the impugned order, no notice or no opportunity of personal hearing was given to the petitioner to submit his objection.

6. The learned counsel for the respondent TANGEDCO submits that pursuant to the order passed by this Court dated 10.02.2014, the electricity service connection was restored.

7. The learned Additional Government Pleader submits that this land in Survey No.94/1 is classified as vari poromboke. Hence, the second and third respondents issued a direction to the fifth respondent to disconnect the electricity



service connection. However, the same was restored pursuant to the orders of this Court dated 10.02.2014. He has also relied upon the 'A Register' and other revenue records to substantiate the stand taken by the official respondents.

8.This Court had considered the rival submissions made on either side and perused the materials available on record.

9.Admittedly, the land in survey No.94/1 is classified as water course and also cart track. The respondents 7 to 10 have filed writ petitions before this Court for taking appropriate action as against the petitioner for his illegal occupation of the land in question in W.P.(MD)No.2786 of 2011 and 343 of 2013 and the same are pending. However in the meantime, an enquiry was conducted by the third respondent and an order has been passed stating that this land is a water course and directing the petitioner to remove the encroachments. Pursuant to the same, a direction was also issued to the electricity board to disconnect the electricity service connection and accordingly, the service connection was disconnected.

10.Reading of the impugned proceedings dated 19.05.2008 issued by the second respondent shows that there is no reference to any notice or grant of opportunity of personal hearing to the petitioner before passing the impugned order. It is also not known as to whether any notice was issued on the petitioner



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while conducting enquiry against the petitioner based on the allegations made by the seventh to tenth respondents.

11.For the reasons stated above, this writ petition is disposed of with a direction to the second respondent to conduct an enquiry on the allegations made against the petitioner and pass appropriate orders after providing an opportunity of hearing to the petitioner in accordance with law. The said exercise shall be conducted and concluded within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

22.01.2024

Index : Yes / No

Internet : Yes / No

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To

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Department of Revenue, Government Secretariat,
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- 3.The Tahsildar,
Taluk Office,
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4.The Superintendent Engineer,
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B.PUGALENDHI,J.

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