

(2012) 01 MAD CK 0256

In the Madras High Court

Case No : Writ Petition No. 17764 of 2011

Mahalingam and Others

APPELLANT

Vs

The Superintending Engineer Tamil Nadu Electricity Board
Chennai Electricity Distribution Circle (Centre) Valluvar
Kottam High Road Nungambakkam Chennai-34, The Asst.
Executive Engineer O and M Usman Road Cedc Central Tamil
Nadu Electricity Board Chennai-17, V.R. Venkatachalam and
The Chairman Tamil Nadu Slum Clearance Board No. 5,
Kamarajar Salai, Chepauk, Chennai 5

RESPONDENT

Date of Decision : 27-01-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Electricity Act, 2003 — Section 43

Tamil Nadu Electricity Distribution Code, 2004 — Regulation 27, 27(4)

Citation : (2012) 01 MAD CK 0256

Hon'ble Judges : Vinod K. Sharma, J

Bench : Single Bench

Advocate : V. Navaneetha Krishnan, for the Appellant; Vasudevan for R1 and R2 and Mr. P. Balasubramaniyan for R3, for the Respondent

Judgement

Honourable Mr. Justice Vinod K. Sharma

1. The petitioner has approached this Court with a prayer for issuance of writ in the nature of mandamus directing the respondents 1 and 2 to give domestic electricity service connection to the petitioners' premises. The pleaded case of the petitioners is, that the petitioners are residing in the premises for the past 50 years, as lawful occupiers of the premises. The Special Deputy Collector for L.A. Work of Madras City vide order dated 19.9.1978 held that the petitioners ancestors and similarly placed persons as the owners/ tenants of Raj Pillai Thottam, which was declared as "Slum" by the Slum Clearance Board.

2. The petitioners claimed that they applied for electricity service connection to the second respondent on 20.6.2010 along with proof of residence namely

Identity Card/ Ration Card. A notice was also sent to the second respondent along with application form with proof of Ration Card, Voter ID. The petitioners also undertook to file Indemnity Bond. The claim of the petitioners is that no reply has been received from the second respondent.

3. The case of the petitioners is that as per Section 43 of the Electricity Act, 2003 read with Regulation 27 of the Tamil Nadu Electricity Distribution Code, it is the duty of the distribution licensee to provide electricity on an application made either by the owners/ or the occupier.

4. On 29.11.2010, the petitioners filed representation with the first respondent as well as to the Chairman, Tamil Nadu Electricity Board, claiming electricity connection being the occupier of the premises after filing necessary proof of occupation. As per Section 43 of the Electricity Act, 2003, it is mandatory duty of the Electricity Board to supply electricity within a period of one month on receipt of application by the owner or occupier of the premises.

5. Regulation 27(4) of the Tamilnadu Electricity Distribution Code further contemplates that 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 code indemnifying the Licensee against any loss on account of disputes arising out of effecting service connection to the occupants.

6. The stand of the petitioner is that the mandatory requirement has not been complied with. The petitioners submit that the petitioner and other persons are not encroachers of the property.

7. It is also submitted that the writ petitions filed by similarly placed persons like the petitioners stands allowed by this Court, by directing the Electricity Board to give electric supply to 18 residents of the same area and that in pursuance of the order passed by this Court, electricity has been supplied to those persons.

8. Learned counsel appearing on behalf of the third respondent points out, that a suit filed by the petitioners claiming declaration that they are the owner of the property was dismissed by the Vth Assistant City Civil Court, Chennai, and, the petitioners were held to be encroachers of the property.

9. A reading of the affidavit filed in support of the writ petition shows that the petitioners failed to disclose the factum of having filed a suit in the civil court claiming ownership.

10. In view of the decree of Civil Court, the petitioners are neither owners nor lawful occupier of the land.

11. The word "occupier" under the Regulation is to be read as persons occupying the property legally, and not as encroachers.

12. Even otherwise, the petitioners being guilty of concealment of material facts about the civil litigation, are not entitled to discretionary relief under Article 226

of the Constitution of India, as it is well settled that person not coming to Court with clean hands and who is guilty of suppression of material facts is not entitled to equitable discretionary relief under Article 226 of the Constitution of India. No merits. Dismissed. No costs.