

(2014) 01 MAD CK 0051

In the Madras High Court

Case No : Writ Petition No. 33336 of 2013 and M.P. No's. 1 and 2 of 2013

S. Radha

APPELLANT

Vs

The District Collector, Erode, The Executive Officer, Anthiyur
Town Panchayat, Erode and The Assistant Engineer,
(Operation and Maintenance), Tamilnadu Electricity Board,
Erode

RESPONDENT

Date of Decision : 06-01-2014

Acts Referred:

Electricity Act, 2003 — Section 43

Tamil Nadu District Municipalities Act, 1920 — Section 180 181 182

Citation : (2014) 1 LW 865

Hon'ble Judges : S. Manikumar, J

Bench : Single Bench

Advocate : S. Senthilnathan, for the Appellant; V. Shanmugha Sundar for R1
Government Advocate, Mr. M. Dhandapani for R2 and Mr. S.K. Rameshuwar for
R3 Standing counsel, for the Respondent

Final Decision : Allowed

Judgement

S. Manikumar, J.—Challenge in this writ petition is to quash the proceedings in R.C. No. 442/2013 dated 22.11.2013 of the Executive Officer, Anthiyur Town Panchayat, Anthiyur, Bhavani Taluk, Erode District, addressed to the Assistant Engineer, O& M, TNEB, Anthiyur, Erode District, objecting to the grant of electricity service connection to the occupants of the land in S. No. 1616/5, measuring 32 cents. In the proceeding dated 22.11.2013, stated supra, the Executive Officer, Anthiyur Town Panchayat, Anthiyur, Bhavani Taluk, Erode District, the 2nd respondent, has stated that in S.A. No. 211/98 dated 24.01.2003, the High Court has declared that the property in S. No. 1616/5 measuring 32 cents belongs to Anthiyur Town Panchayat. He has also referred to the proceedings of the District Collector in Lr. No. 36614/2012/002 dated 30.08.2013, by which, the District Collector, is stated to have issued some directions, to remove the alleged encroachments.

2. A resolution No. 114 dated 22.11.2013, passed by the Andiyur Town Panchayat, has also been referred in the objections sent to the Assistant Engineer, O& M, TNEB, Anthiyur, Erode District. Based on the abovesaid objections, the Assistant Engineer, O& M, TNEB, Anthiyur, Erode District, has not provided domestic service connection to the petitioner and hence, the present writ petition, for a writ of certiorarified mandamus and for the consequential relief stated supra.

3. The Assistant Engineer, O& M, TNEB, Anthiyur, Erode District, the 3rd respondent, has filed his counter affidavit. The District Collector, Erode District, Erode, has not filed any counter affidavit in opposition.

4. The Executive Engineer, Executive Officer, Andiyur Town Panchayat, Anthiyur, Bhavani Taluk, Erode District, the 2nd respondent, has not filed counter affidavit. Nevertheless, Mr. M. Dhandapani, learned counsel for the 2nd respondent made submissions, that based on the judgment made in S.A. No. 211/98 dated 24.01.2003, proceedings in R.C. No. 442/2013 dated 22.11.2013, has been sent to the Assistant Engineer, O& M, TNEB, Anthiyur, Erode District.

5. Though, the learned counsel for the 2nd respondent submitted that pursuant to the order made in W.P. No. 28183 to 28192/10 dated 01.02.2011, steps have been taken to vest the property with the Town Panchayat and therefore, he requires time, for filing a counter affidavit, the fact remains that, as on today, no materials have been placed before this Court, by the District Collector, Erode District, Erode to prove that the subject lands in S. No. 1616/5 measuring 32 cents have been vested with the town panchayat.

6. Even the impugned proceedings dated 22.11.2013 of the Executive Officer, Andiyur Town Panchayat, Anthiyur, Bhavani Taluk, Erode District, the 2nd respondent, does not refer to any document to substantiate that the Government have issued any orders, vesting the property with the Town Panchayat. All that is referred to in the impugned proceedings, is a letter of the District Collector in No. 36614/2012/Oo2 dated 30.08.2013, by which the District Collector, Erode District, is stated to have issued directions to remove the encroachments.

7. Material on record discloses that when one Mr. K. Janardhanan has filed a suit in O.S. No. 123 of 1990, on the file of the learned District Munsif, Bhavani, for a declaration and permanent injunction, against three defendants including the District Collector, Periyar District, Erode and the Executive Officer, Andiyur Town Panchayat, Anthiyur, Bhavani Taluk, Erode District, the suit has been decreed.

8. On an appeal, filed by the 2nd defendant, therein, the decree has been reversed. Being aggrieved by the same, Mr. K. Janarthanan has filed a Second Appeal No. 211 of 1998. Thereafter, a Second Appeal has been filed. Reading of the judgment made in S.A. No. 211 of 1998 dated 24.01.2003, shows that earlier, the District Collector, has not preferred any appeal. Whereas, the Executive Officer, Andiyur Town Panchayat, Anthiyur, Bhavani Taluk, Erode District, has filed an appeal and marked Exs. B9 to B19, to prove that the suit

property belongs to the Government. Upon adjudication of the substantial questions of law, raised in the Second Appeal, this Court, at paragraph No. 14 of the judgment has categorically held that the documents filed by the State Exs. B9 to B19, would clearly show that the suit property is a "natham poramboke" and as such, the plaintiff would not be entitled for the relief of declaration. Observing that the plaintiff had not established the title to the disputed property, this Court by judgment and decree dated 24.01.2003, has dismissed the second appeal.

9. Though, S.A. No. 211 of 1998 has been dismissed on 24.01.2003, holding that the property is a "natham poramboke", presuming that the property in S. No. 1615/5 had already been vested with the Andiyur Town Panchayat, the Executive Officer of the said panchayat, has issued a notice under Sections 180, 181 and 182 of the Tamilnadu District Municipalities Act, 1920 to the petitioner to vacate from the land.

10. Notice issued under the Tamilnadu District Municipalities Act, 1920, has been challenged by the petitioner and others in W.P. Nos. 28183 to 28192 of 2010. Perusal of the order made in the abovesaid writ petitions dated 01.02.2011, enclosed at page No. 6 of the supporting affidavit to this writ petition, discloses that a specific contention has been made by the learned counsel for the petitioners therein, that since the subject lands have been classified as "grama natham", neither the Government nor the local body have the power to invoke the Land Encroachment Act, as well as the Tamilnadu District Municipalities Act, 1920. Therefore, the proposed action for eviction taken by the Executive Officer, Andiyur Town Panchayat, Anthiyur, Bhavani Taluk, Erode District, has been challenged on the grounds of jurisdiction. Reliance has also been placed on the decision of this Court in A.K Thillaivanam and A.K. Dayalan Vs. The District Collector, Chengai Anna District at Kancheepuram, The District Revenue Officer, Kancheepuram, Chengai Anna District, The Revenue Divisional Officer, Kancheepuram, Chengai Anna District and The Tahsildar , wherein, this Court has held that once, the land is classified as grama natham, possession cannot be interfered with by the respondents therein, either under the Tamilnadu Public Premises (Eviction of Unauthorised Occupants) Act or under the Tamilnadu Land Encroachment Act.

11. Perusal of the order made in W.P. Nos. 28183 to 28192 of 2010 dated 01.02.2011 further discloses that opposing to the relief of Certiorari, to quash the notice dated 24.11.2010 made in R.C. No. 234/2010/A3, issued by the Executive Officer, Andiyur Town Panchayat, Anthiyur, Bhavani Taluk, Erode District, the learned Special Government Pleader, has placed reliance on the judgment and decree in S.A. No. 211 of 1998 dated 24.11.2003 and submissions have been advanced to sustain the notice issued u/s 181 of the Tamilnadu District Municipalities Act, 1920. After hearing the learned counsel appearing for the parties therein, and perusal of the entire files maintained by the Executive Officer, Andiyur Town Panchayat, Anthiyur, Bhavani Taluk, Erode District, the 2nd

respondent, therein, this Court, at paragraph Nos. 9 to 13, has passed the following orders.

9. On a perusal of the file, especially, the judgment passed by the Civil Court would indicate that the local body who was arrayed as one of the defendants took a stand that the lands in question belong to the Government and a finding has also been recorded by the Courts below and the same was confirmed by this Court also in S.A. No. 211 of 1998. The file also indicates that no documents are available to show that the lands in question is vested with the local body, viz., the second respondent.

10. Learned counsel for the second respondent would submit that the Government is proposing to transfer the lands in question in favour of the second respondent and as and when such a transfer is made, liberty may be granted to the second respondent to proceed against the petitioners for removal of encroachments, in accordance with law.

11. On the said submissions, the Court heard the submissions of the learned counsel for the petitioner also.

12. Since no documents are available in the file maintained by the second respondent to indicate that the lands in question have been vested with the second respondent, viz., Town Panchayat, this Court is of the view that the impugned notice dated 24.11.2010 issue by the second respondent under Sections 180, 181, 182 of the Tamilnadu District Municipalities Act, is liable to be quashed.

13. In the result, the writ petitions are allowed. The impugned notice dated 24.11.2010 passed by the second respondent is quashed. It is made clear that as and when the lands in question vest with the second respondent, viz., Town Panchayat by the Government, the second respondent is always at liberty to proceed against the petitioners for removal of encroachments in accordance with the relevant provisions of law. No costs. Consequently, connected M.Ps. are closed.

12. Reading of the common order made in W.P. Nos. 28183 to 28192 of 2010 dated 01.02.2011, makes it clear that while allowing the writ petitions, this Court has categorically observed that the stand of the Town Panchayat all along was that the subject lands belong only to the Government. The said finding has been confirmed by this Court in S.A. No. 211 of 1998. After perusal of the files, this Court has also categorically observed that there were no materials to show that the subject lands, vested with the local body viz., the Town Panchayat.

13. Like in the earlier writ petitions, W.P. Nos. 28183 to 28192 of 2010, Mr. M. Dhandapani, the then Special Government Pleader, who had appeared for the Executive Officer, Andiyur Town Panchayat, Anthiyur, Bhavani Taluk, Erode District, in the above writ petitions, made submissions that the Government is proposing to transfer the lands in favour of the Town panchayat, and as and

when such transfer is effected, liberty may be granted to the panchayat to proceed against the petitioner for removal of encroachments. Such liberty cannot be granted, in anticipation of any decision to be taken by the Government. A direction in the nature of mandamus cannot be granted, in a writ petition filed by the person in possession of lands, in anticipation of any right to be conferred in the Panchayat in future. There cannot be any anticipatory mandamus.

14. The Assistant Engineer, O& M, TNEB, Anthiyur, Erode District, the 3rd respondent has stated that one Mr. Kaliappan and six others have applied for domestic service connection for the lands in S. No. 1616/5, Manthai Mariamman Koil Street, Anthiyur. On 26.06.2013, the abovesaid place has been inspected and that there is an information by the local people that the subject land is a poramboke. Therefore, in terms of regulations 27(4) and 27(12) of the Tamilnadu Electricity Distribution Code, necessary documents have been requested, to be produced. At this juncture, one Mr. A.I. Thangaraj, has given a objection letter, not to provide electricity service connection to the occupants in S. No. 1616/5. Thereafter, legal opinion from the learned Government Pleader, Bhavani, has been obtained and that on 06.09.2013, the applications for domestic service connections, have been rejected.

15. The Assistant Engineer, O& M, TNEB, Anthiyur, Erode District, has further submitted that by a letter dated 11.09.2013, the Executive Officer, Andiyur Town Panchayat, Anthiyur, Bhavani Taluk, Erode District, the 2nd respondent, has made an objection for giving domestic service connection by referring to the judgment of this Court in S.A. No. 211/98, dated 24.01.2013. On receipt of the order dated 01.02.2011, in W.P. Nos. 28183 to 28192 dated 01.02.2011, another legal opinion has been obtained from the learned Government Pleader, Bhavani and thereafter, an estimate for new domestic connection has been prepared and sanctioned vide 626/A13/HSC/111/13-14 dated 21.09.2013. The sanctioned amount of Rs. 1950/- including double current consumption charges have been collected from the writ petitioner. Work order has also been issued and materials have been received. Again the Executive Officer, Andiyur Town Panchayat, Anthiyur, Bhavani Taluk, Erode District, the 2nd respondent, by letter dated 22.11.2013 has objected to the grant of service connection. In the abovesaid circumstances, the 3rd respondent has sought for dismissal of the writ petition.

16. As stated supra, throughout the civil proceedings, the Executive Officer, Andiyur Town Panchayat, Anthiyur, Bhavani Taluk, Erode District, the 2nd respondent, has reiterated that the subject lands in S. No. 1616/5, Manthai Mariamman Koil Street, Anthiyur, is a natham poramboke. Documents viz., Exs. B9 to B19, have been produced before the Civil Court. Even without any order of vesting, all along the town panchayat was on the erroneous premise that lands belong to the local body, and that notices dated 24.11.2010, in R.C. No. 234/10/A3 issued under Sections 180, 181 and 182 of the Tamilnadu District Municipalities Act, 1920 for eviction, have been quashed, after considering the contentious issues, with regard to the title claimed by the said panchayat and the

right to initiate action for eviction.

17. As stated supra, this Court, on more than one occasion, has reiterated that the stand of the local body, one of the defendants in the suit was that the lands in question belong, only to the Government and it has also been observed that no material documents were available in the files, maintained by the local body to indicate that the lands in question vest with Andiyur Town Panchayat, at any point of time. It is clear from the judgment of this Court in S.A. No. 211 of 1998 dated 24.01.2003 and the common order in W.P. Nos. 28183 to 28192 of 2010 dated 01.02.2011, that the local body was never vested with the subject property in S. No. 1616/5, Manthai Mariamman Koil Street, Anthiyur.

18. When a categorical finding has been recorded by this Court, perusal of the impugned proceedings in R.C. No. 442/2013 dated 22.11.2013, shows that the Executive Officer, Andiyur Town Panchayat, Anthiyur, Bhavani Taluk, Erode District, the 2nd respondent, again by erroneous construction of the judgments stated supra, has made a misleading statement to the Assistant Engineer, O& M, TNEB, Anthiyur, Erode District, to the effect that in S.A. No. 211/98 dated 24.01.2003, this Court has declared the said lands in S. No. 1616/5 measuring 32 cents, is owned by the local body.

19. From the beginning, it has been the contention of the local body that the land belongs only to the Government. Even at the time when the Executive Officer, Andiyur Town Panchayat, Anthiyur, Bhavani Taluk, Erode District, the 2nd respondent, initiated action for eviction, by issuing R.C. No. 234/2010/A3 dated 24.11.2010, notice under Sections 180, 181 and 182 of the Tamilnadu District Municipalities Act, 1920, his action has not been disapproved by this Court, in the common order made in W.P. Nos. 28183 to 28192 of 2010 dated 01.02.2011 and that this Court has clarified that the alleged right and title, claimed by the Panchayat, to the subject lands, does not exist.

20. Still, after two years, the Executive Officer, Andiyur Town Panchayat, Anthiyur, Bhavani Taluk, Erode District, the 2nd respondent, has asserted his right to the property, stating that the High Court has declared its ownership. Even the impugned proceedings R.C. No. 442/2013 dated 22.11.2013, does not indicate that the Government have passed any orders vesting the subject lands with the local body.

21. Perusal of the impugned proceedings also indicates an observation by the District Collector, Erode District, stating that the said land is owned by the Town Panchayat and on the basis of the above, a resolution No. 114, dated 22.11.2013 has been passed by the Andiyur Town Panchayat, to take up steps for removing the encroachments. Contending inter alia that the steps taken to provide domestic service connection to the occupants, would be contrary to the decision of this Court in S.A. No. 211 of 1998, dated 24.01.2003 and on the basis of the letter of the District Collector in No. 36614/2012/Oo2 dated 30.08.2013, the impugned proceedings have been addressed to the Assistant Engineer, O& M,

TNEB, Anthiyur, Erode District, not to provide electricity. As stated supra, the local body has no right or title to the subject lands in S. No. 1616/5 measuring 32 cents in Manthai Mariamman Koil Street, Anthiyur.

22. When the title or ownership claimed by the local body, on the basis of the judgment rendered in S.A. No. 211 of 1998 dated 24.01.2003 has been categorically rejected by this Court and clarified in W.P. Nos. 28183 to 28192 of 2010 dated 01.02.2011, it is not open to the local body, once again to fall back, on the decision in S.A. No. 211 of 1998 and allegedly claim that this Court had already declared ownership of the subject lands to Andiyur Town Panchayat. Such a statement made in the impugned proceedings is contrary to the judgments of this Court. Decisions of the Court have to be respected and honoured, in letter and spirit.

23. From the above, it is abundantly clear that without any right or title, or ownership to the subject lands in S. No. 1616/5 measuring 32 cents, the Executive Officer, Andiyur Town Panchayat, Anthiyur, Bhavani Taluk, Erode District, the 2nd respondent, has acted arbitrarily, and opposed to the request of the occupants, from getting service connection. From the counter affidavit, filed by Assistant Engineer, O& M, TNEB, Anthiyur, Erode District, it is clear that after obtaining a legal opinion from the learned Government Pleader Bhavani, administrative sanction for providing domestic service connection has been issued in 626/A13/HSC/111/13-14 dated 21.09.2013 and materials have also been received, by the said office, for execution of the work.

24. After considering the mandatory nature of Section 43 of the Electricity Act and the regulations 27(4) and 27(12) of the Tamilnadu Electricity Distribution Code and the requirements to be satisfied by even an encroacher, who seek for supply of electricity, this Court, in T.M. Prakash and Others Vs. The District Collector and The Superintending Engineer, Tamil Nadu Electricity Board, , held that denial of electricity supply amounts to violation of fundamental and human right.

25. From the above, it is clear that the Executive Officer, Andiyur Town Panchayat, Anthiyur, Bhavani Taluk, Erode District, the 2nd respondent, has not only misread the judgment, but he has also misrepresented the same, even after the clarification of this Court in the common order in W.P. Nos. 28183 to 28192 of 2010. The objections of the 2nd respondent, are not only untenable, but liable to be rejected in limine. Having accorded the administrative sanction on 21.9.2013 and collected Rs. 1950/- including double current consumption charges from the petitioner for grant of domestic service connection, the Assistant Engineer, O& M, TNEB, Anthiyur, Erode District, ought not to have rejected the request of the occupants. On the contra, he should have applied his mind to the judgments of this Court and rejected the objections as untenable.

26. In the light of the common order made in W.P. Nos. 28183 to 28192 of 2010 dated 01.02.2011, steps to evict the occupiers of the subject lands, can be taken

by the Panchayat only after vesting of the lands with the local body. The Electricity Board ought not to have given weightage to the objections of the local body, as they are opposed to the decisions of this Court.

27. As on today, Andiyur Town Panchayat, has no right to the subject lands in S. No. 1616/5 measuring 32 cents in Manthai Mariamman Koil Street, Anthiyur. The Assistant Engineer, O& M, TNEB, Anthiyur, Erode District, the 3rd respondent ought to have provided domestic service connection, as per the statutory provisions, having regard to the specific finding and decision of this Court in S.A. No. 211 of 1998 dated 24.01.2003 and the common order in W.P. Nos. 28183 to 28192 of 2010 dated 01.02.2011.

28. In the light of the above, the impugned proceedings is liable to be set aside and accordingly, set aside. The petitioner is permitted to resubmit the application with necessary documents. Consequently, a direction is issued to the Assistant Engineer, O& M, TNEB, Anthiyur, Erode District, the 3rd respondent to provide electricity service connection to the house of the petitioner in S. No. 1616/5, Manthai Mariamman Koil Street, Anthiyur, Bhavani Taluk, Erode District, within two weeks from the date of receipt of the copy of this order. In the result, the writ petition is allowed. No costs. Consequently, the connected Miscellaneous Petitions are closed.