
(2008) 10 MAD CK 0098

In the Madras High Court

Case No : Writ Appeal No. 1419 of 2007 and M.P. No's. 1 of 2007 and 1 of 2008

V. Ganesan

APPELLANT

Vs

S. Ranganathan, Tamil Nadu Electricity Board by Chairman
and Assistant Engineer, C.E.D.C.

RESPONDENT

Date of Decision : 21-10-2008

Acts Referred:

Tamil Nadu Electricity Distribution Code, 2004 — Rule 27, 27(1), 27(2), 27(3), 27(4)

Citation : (2008) 10 MAD CK 0098

Hon'ble Judges : V. Dhanapalan, J; S.J. Mukhopadhaya, J

Bench : Division Bench

Advocate : A.L. Somayaji for S. Thankasivam, for the Appellant; S.P. Chandrasekaran, for R-1 and A. Selvendiran, for RR-2 and 3, for the Respondent

Final Decision : Allowed

Judgement

S.J. Mukhopadhaya, J.—The first respondent-S. Ranganathan preferred Writ Petition No. 24111 of 2007 praying for issuance of a Writ of Mandamus, to direct the third respondent-Assistant Engineer, Chennai Electricity Distribution Circle (North), TNEB, Rajaji Nagar, Chennai, to give new electricity service connection in his name at Pazhanimalai Nagar, Korattur Village, comprised in Old Survey No. 143, New Survey No. 143/2A1A with Patta No. 31.

2. The learned single Judge, by the impugned order dated 31.10.2007, passed in Writ Petition No. 24111 of 2007, while disposing of the case, directed the first respondent-writ petitioner-S.Ranganathan to furnish the "No Objection Certificate" (for short, "the NOC") from the other three owners of the premises in question, on production of indemnity bond to be executed by himself as well as the three other owners of the property in question and on such furnishing the NOC and the indemnity bond, the Tamil Nadu Electricity Board (for short, "the TNEB") was directed to effect the service connection within two weeks. Learned single Judge, while disposing of the Writ Petition, also made clear that by the granting of this service connection, the writ petitioner cannot claim any title or

right over the property in question.

3. The case of the first respondent-writ petitioner before the Writ Court was that he purchased the vacant site at the above place measuring 21-1/2 cents by a registered Sale Deed dated 1.2.2007, whereinafter, he started the business of supplying the construction materials under the name and style of "Thirumurugan Agency" and also constructed an office room for the purpose of the above said business. The plot(s) in question was purchased not only in the individual name of the writ petitioner, but also in the name of the three others. Consequently, the first respondent-writ petitioner applied for Service Connection on his behalf as well as on behalf of the three other owners. It was also pleaded that the TNEB has received deposit and other charges, but basing on the objection raised by the appellant-third respondent-V. Ganesan (impleaded as per Order of Court dated 30.8.2000 in M.P. No. 2 of 2007 in Writ Petition No. 24111 of 2007), the service connection was not given to the first respondent-writ petitioner.

4. The appellant, who was the third respondent, appeared before the Writ Court and brought to the notice of the learned single Judge that a Civil Suit in O.S. No. 631 of 2004 has been preferred by one Varalakshmi and three others, before the Court of District Munsif, Ambattur, for permanent injunction restraining the appellant-V. Ganesan (defendant), his men, agents or any other person or persons claiming through him from interfering with the plaintiffs" (Varalakshmi and 3 others) peaceful possession and enjoyment of the schedule mentioned property. Therefore, the first respondent-writ petitioner was not entitled for the service connection. It was also pleaded on behalf of the appellant-third respondent, that the writ petitioner was seeking service connection to seek the support of the title to the property in question, by getting the electricity service connection and the first respondent-writ petitioner is not in possession, but only the appellant-third respondent is in possession of the property in question.

5. On the aforesaid facts, the learned single Judge, without discussing the relevant question relating to the possession of the property in question, the law laid down and the provisions of the Tamil Nadu Electricity Distribution Code, 2004, simply issued the direction as prayed for by the first respondent-writ petitioner.

6. Learned Senior Counsel appearing on behalf of the appellant-third respondent submitted that O.S. No. 631 of 2004 was preferred by Varalakshmi and others, for issuance of permanent injunction not to interfere with their peaceful possession over the property in question and the first respondent-writ petitioner impleaded himself as fifth plaintiff to the said O.S. No. 631 of 2004, but did not bring to the notice of the Writ Court with regard to the said fact of impleadment of the writ petitioner as party-plaintiff to the said suit. Though the appellant (impleaded third respondent in Writ Court) brought the aforesaid facts to the notice of the Writ Court, but no discussion in regard to impleadment of the fifth plaintiff-S.Ranganathan (writ petitioner) has been made by the learned single Judge.

7. Learned Senior Counsel appearing for the appellant-third respondent further relied on an order dated 14.3.2007 passed in Civil Revision Petition (PD). No. 610 of 2007, whereby this Court directed the District Munsif-cum-Judicial Magistrate, Ambattur to dispose of O.S. No. 631 of 2004, uninfluenced by any observation made in the order under challenge in that C.R.P. and also directed both the parties to maintain "status quo" till the disposal of the suit.

8. In this regard, learned Counsel appearing for the first respondent-writ petitioner submitted that the writ petitioner was not a party to the said Civil Revision Petition, but we are of the view that the said fact should have been taken into consideration by the learned single Judge.

9. Learned Senior Counsel appearing on behalf of the appellant-third respondent relied on "Patta" (order of mutation) issued in favour of the appellant-Ganesan with regard to the land in question. Schedule to the plaint in O.S. No. 631 of 2004 was also relied upon to show that the suit schedule property is in S. No. 143/2.A.1.A. regarding which, the writ petitioner claim right, title and interest. Learned Counsel appearing on behalf of the appellant also placed reliance on the other evidence to show that the appellant (third respondent in the Writ Court) is in possession of the property.

10. On the other hand, according to the learned Counsel appearing for the first respondent-writ petitioner, the writ petitioner is in possession of the property in question, along with three others.

11. We have heard the learned Counsel appearing for the parties and noticed their rival contentions and also perused the records.

12. The case of the appellant-third respondent in the Writ Court, is that he is the owner of 39 cents of land in S. No. 143/2.A.1.A. (Old S. No. 143/3), Korattur Village, Ambattur Taluk. Originally, the said land formed part of large extent of 2 acres and 9 cents in S. No. 143 at Korattur Village. As per the family partition (koorchit) dated 29.4.1979, the said land(s) were partitioned in three portions of 69 cents in the following manner:

(i) Seeyala Naicker family : 69 cents

(ii) Damodara Naicker family : 69 cents

(iii) Singara Naicker family : 69 cents

(Mrs. Muniammal, the only legal heir)

The appellant has purchased 33 cents from Gangadara Naicker and his children being the legal heirs of Damodara Naicker, vide two sale deeds dated 9.9.1992 and six cents which is contiguous, have been purchased from one Mrs. Santhammal in 1992.

13. The further case of the appellant is that the third sharer Mrs. Muniammal sold all her share in S. No. 143 in the year 1979 under various sale deeds and

she executed the sale deeds for 72 cents, though she has share to the extent of 69 cents only. It is further alleged that with an illegal motive and land grabbing, the said Muniammal created fraudulent settlement deed in favour of her children Varalakshmi and three others on 5.11.2004 relating to the same survey land.

14. On the strength of such settlement deed, in fact, Varalakshmi and three others filed the aforesaid suit in O.S. No. 631 of 2004 for bare injunction in December 2004. They also preferred an injunction application in I.A. No. 2986 of 2004 in the said suit and the said I.A. was dismissed by the District Munsif-cum-Judicial Magistrate, Ambattur on 1.2.2005. The said order dated 1.2.2005 was reversed by the Subordinate Court, Poonamallee, by the order dated 25.1.2007 in Civil Miscellaneous Appeal No. 17 of 2005, against which, the appellant herein preferred C.R.P.(PD). No. 610 of 2007. In the said C.R.P., by order dated 14.3.2007, this Court directed to maintain status quo with regard to the land in question till the disposal of the suit.

15. Learned Counsel appearing for the first respondent-writ petitioner submitted that the writ petitioner is in possession of the property in question and hence, he was entitled to get the electricity service connection in respect of the land in question.

16. In this connection, the parties also relied on Rule 27 of the Tamil Nadu Electricity Distribution Code, 2004. It will be evident that under Rule 27 of the said Code, the requisitions can be made for supply of energy; under Rule 27(1), every Distribution licensee, on an application by the owner or an occupier of any premises, can give supply of electricity to such premises. Rule 27(2) relates to supply to agricultural category. Rule 27(3) relates to application of H.T. supply, which are not applicable to the facts of the present case. Under Rule 27(4), an intending consumer who is not the owner of the premises, but occupies the premises, is liable to produce a consent letter from the owner of the premises for availing of the supply and if the owner refuses to give a consent letter, the intending consumer is to produce proof of his/her share in lawful occupation of the premises and also to execute an indemnity bond.

17. It appears that the learned single Judge, which disposing of Writ Petition No. 24111 of 2007, by the impugned order dated 31.10.2007, relied on Rule 27(4) of the Tamil Nadu Electricity Distribution Code, by directing the first respondent-writ petitioner to obtain the NOC from the three owners and by executing the indemnity bond in favour of the T.N.E.B., but the said provision cannot be made applicable to the facts of the present case, as Rule 27(4) relates to a consumer who is not the owner of the premises. In the present case, the first respondent (writ petitioner) having claimed that he is the owner of the premises in question, cannot take the advantage of Rule 27(4).

18. In the case on hand, the appellant has produced a document to show that it has already obtained electricity connection in the premises in question. The patta (order of mutation) issued in his favour to suggest his possession, has also been

enclosed in the additional typed set of papers, dated 17.3.2008, filed along with the Writ Appeal. The copy of the report (English translated version) submitted by the Tahsildar, Ambattur to the District Revenue Officer, Tiruvallur, dated 15.6.2007 has been produced, which suggests that the appellant-Mr. Ganesan has constructed the compound wall in the land in question and constructed a sheet shed and has also obtained electricity connection to the same. The boundaries of the land, have been shown therein, giving reference to the land in question.

19. Though the Writ Petition in question, was disposed of on 31.10.2007, the learned single Judge has not noticed the aforesaid facts, nor noticed the order of status quo with regard to the land in question, as directed by this Court in C.R.P. (PD). No. 610 of 2007 while disposing of the C.R.P. on 14.3.2007. It has not been discussed that when once electricity connection has been given in one premises, whether the second electricity connection can be given in the name of another person.

20. As the learned single Judge failed to take into consideration the aforesaid facts, we have no other option except to set aside the impugned order dated 31.10.2007 passed by the learned single Judge, in Writ Petition No. 24111 of 2007, which is accordingly set aside. However, we make it clear that the observations made in this judgment cannot be relied upon by any party for determination of the suit O.S. No. 631 of 2004, which has to be decided on its own merits. It will be also open for the competent authorities of the T.N.E.B., namely respondents 2 and 3 herein, to grant electricity connection in the name of the owners (jointly) of the premises in question, if not yet given, in accordance with law, after necessary verification of the possession of a person.

21. The Writ Appeal is allowed with the aforesaid observations/directions. No costs. The Miscellaneous Petitions are closed.