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indira Foundations Vs. the Chairman

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Court : Chennai

Decided On : Jul-02-2014

Judge : C.S.Karnan

Appellant : indira Foundations

Respondent : The Chairman

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED:

02. / 07 /2014 CORAM THE HONOURABLE MR.JUSTICE C.S.KARNAN W.P.No.11967 of 2014 M/s.Indira Foundations Pvt. Limited, V.G.Rajendran, M.D., Rep. by his Power Agent Mr.K.Kannan, No.19, Govindan Street, Aminjakarai, Chennai - 600 029. ... Petitioner Vs. 1.The Chairman, Tamil Nadu Electricity Board, No.800, Anna Salai, Chennai - 600 002. 2.The Superintendent Engineer, Tamil Nadu Electricity Board, No.110, K.V.Sub Station, Thirumangalam, Chennai - 600 040. 3.The Assistant Engineer (Operation & Maintenance), Tamil Nadu Electricity Board, Nolambur, Mogappair West, Chennai - 600 037. 4.The Member Secretary, Chennai Metropolitan Development Authority, No.1, Gandhi Irwin Road, Chennai-600 008. ... Respondents PRAYER: Writ Petition filed under Article 226 of the Constitution of India for a Writ of Mandamus, to direct the first to third respondents to receive the petitioner's application, process and effect electricity service connection to the petitioner's residential building at Survey No.303/2A3A of Nolambur Village, Raja Garden, Andal Ammal Street, Chennai, without insisting

completion certificate from the fourth respondent. For Petitioner : Mr.R.Karunakaran For Respondents : Mr.P.R.Dilipkumar (TNEB) for R1 to R3 Mr.A.Kumar (CMDA) for R4 - - -

ORDER

The writ petitioner submits that he has constructed stilt + 4 floors of residential building with 24 dwelling units of residential building at Survey No.303/2A3A of Nolambur Village, Raja Garden, Andal Ammal Street, Chennai, after obtaining sanction from the fourth respondent office vide Proceedings No.PPA No.B/Spl/BLDG/191/2011, dated 15.06.2011 and completed the same in accordance of approved plan. The petitioner further submits that in order to effect electricity service connection, he had approached the third respondent for electricity service connection to his residential building. The third respondent insisted upon production of 'no objection certificate / completion certificate' from the fourth respondent. Further, he was advised that the said demand of completion certificate / no objection certificate is in pursuant to an observation by the Hon'ble Division Bench in regularization batch cases. The petitioner further submits that during the course of construction there were minor deviation which do not in any manner affect the structural stability or is in gross violation of the Department Control Rules and the same has been done for satisfying additional needs of purchasers. It was submitted that the respondents 1 to 3 have failed to note that this Court, by its order dated 04.09.2007 in W.P.No.1102 of 2007, in a similar case has held that the Electricity Department cannot insist upon production of completion certificate and that in case there are deviations, it is the look out of the fourth respondent, who has to take action in accordance with law. It was submitted that the right to electricity is a fundamental right guaranteed to him under Article 19(1) of the Constitution of India and as such, the respondents 1 to 3 cannot curb the same. Hence, the petitioner has filed this petition to direct the first to third respondents to receive the petitioner's application, process and effect electricity service connection to the petitioner's residential building at Survey No.303/2A3A of Nolambur Village, Raja Garden, Andal Ammal Street, Chennai.

2. The highly competent counsel, Mr.R.Karunakaran appearing for the petitioner submits that the fourth respondent, viz., CMDA had granted building plan for constructing the said building on 15.06.2011 under proceedings No.PPA No.B/Spl/BLDG/191/2011. Accordingly, the building has been constructed. Now, the said building is ready for occupation by the occupants. If any violation or minor deviation exists, that can be rectified at any stage. However, the electricity supply is a basic amenity to the occupants. The respondents 1 to 3 are responsible persons to receive the petitioner's application for providing new electricity service connection, without insisting on completion certificate / no objection certificate. Further, if any violation is there, the fourth respondent is the competent authority to take any legal action. The learned counsel in support of his case has cited two judgments in W.P.Nos.11419 of 2013 and 27845 of 2013. The operative portion of writ petition in W.P.No.11419 of 2013 reads as follows:- ".5. In view of the same, I direct the competent Electricity Department respondents to provide electricity service connection to the petitioner's premises on her applying for such connection with relevant documents. The said exercise has to be carried out within a period of four weeks from the date when the petitioner approaches the competent respondents with an application form along with required documents. The writ petition stands ordered accordingly. However, the CMDA, the fourth respondent, is at liberty to take action against the petitioner for putting up construction if any, deviating the planning permission. There is no order as to costs.". The operative portion of writ petition in W.P.No.27845 of 2013 reads as follows:- ".8. Having regard to the submission of the learned standing counsel for TNEB that the clarificatory letter dated 18.03.2013 squarely applies to the case of the writ petitioner, and also of the fact that there is no violation of terms and conditions of the approved planning permission, this Court is of the view that, in the light of Section 43 of the Electricity Act and the provisions of the Tamil Nadu Electricity Distribution Code, 2004, it is incumbent on the part of respondents 1 to 4, to provide electricity connection to the premises of the petitioner, situated at Plot No.A2, comprised in Old Survey No.84/4, New Survey No.24/1, Noombal Puliyampedu Village, Ambathur Taluk, Thiruvallur District, without any delay. They have already received necessary charges as stated above. Therefore, the Assistant Executive Engineer, O & M, TANGEDCO, Thiruverkadu, Chennai, third

respondent herein, and the Assistant Engineer, O & M, TANGEDCO, Puliyampattu, Chennai / fourth respondent herein, being the competent / field officers to provide electricity service connection, are directed to provide electricity service connection to the above said premises of the petitioner, without insisting upon the completion certificate from the fifth respondent / CMDA, within a period of three weeks from the date of receipt of a copy of this order.".

3. The very competent counsel, Mr.P.R.Dilip Kumar, appearing for the respondents 1 to 3 vehemently argued that the Hon'ble First Bench of this Court has passed an order and as per this order, a High Level Committee had been constituted and as per the recommendations of the High Level Committee, the electricity service connection shall be granted without the production of the completion certificate / no objection certificate, from the CMDA in case of a special building, and multi-storeyed building. It was submitted that consequent to the recommendation of the High Level Committee, the Development Control Rules have been amended and as per the amended provisions of the Development Control Rules, the electricity service connection shall not be granted without the production of completion certificate obtained from the CMDA, in case of special buildings and multi-storeyed buildings. Hence, in the case of the above writ petitioner, the electricity service connection shall not be provided without production of completion certificate obtained from the CMDA, as the petitioner's building is a multi-storeyed building consisting of stilt + 4 floors with 24 dwelling units of residential buildings according to the planning permission from CMDA, the fourth respondent herein. Therefore, the respondents 1 to 3 have instructed the petitioner to submit his application along with necessary documents and the completion certificate / no objection certificate obtained from the CMDA, since the said building is categorized as special building and multi-storeyed building.

4. The very competent counsel, Mr.A.Kumar, for the fourth respondent submits that the petitioner himself admits that there is violation over the said building. As such, the petitioner has no right for getting new electricity connection from the respondents 1 to 3, since the petitioner has violated the conditions of building plan which has been granted by the fourth respondent herein. Further, the petitioner's fundamental and personal rights had not been violated by the respondents 1 to 3

since the petitioner's claim had been rejected only because it was not in order.

5. Per contra, the learned counsel, Mr.R.Karunakaran submits that based on this Court's judgment passed in similar cases, the respondent / electricity board had complied with the same and provided electricity service connection. As such, the petitioner is also entitled to get similar relief.

6. On considering the facts and circumstances of the case and arguments advanced by the learned counsels on either side and on scrutiny of the planning permit issued to the petitioner and on taking into account judgments passed by this Court in W.P.No.11419 of 2013 and W.P.No.27845 of 2013, which is squarely applicable in the instant case, this Court directs the respondents 1 to 3 to receive the petitioner's application, process it and effect electricity service connection to his residential building situated at Survey No.303/2A3A of Nolambur Village, Raja Garden, Andal Ammal Street, Chennai, without insisting on completion certificate / no objection certificate from the fourth respondent / CMDA, within a period of four weeks from the date of receipt of his application. However, the CMDA, the fourth respondent herein, is at liberty to take action against the petitioner for putting up construction if any, deviating the planning permission.

7. With the above direction, the writ petition is disposed of. There is no order as to costs. 02 / 07 / 2014 (2/3) Index : Yes. Internet : Yes. r n s To 1.The Chairman, Tamil Nadu Electricity Board, No.800, Anna Salai, Chennai - 600 002. 2.The Superintendent Engineer, Tamil Nadu Electricity Board, No.110, K.V.Sub Station, Thirumangalam, Chennai - 600 040. 3.The Assistant Engineer (Operation & Maintenance), Tamil Nadu Electricity Board, Nolambur, Mogappair West, Chennai - 600 037. 4.The Member Secretary, Chennai Metropolitan Development Authority, No.1, Gandhi Irwin Road, Chennai-600 008. C.S.KARNAN, J.

r n s Pre Delivery Order made in W.P.No.11967 of 2014 02 /07 /2014 (2/3)

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