

Darma Naidu Educational Vs. the Assistant Engineer

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Court : Chennai

Decided On : Jun-27-2014

Judge : C.S.Karnan

Appellant : Darma Naidu Educational

Respondent : The Assistant Engineer

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED:

27. / 06 /2014 CORAM THE HONOURABLE MR.JUSTICE C.S.KARNAN
W.P.No.8138 of 2014 & M.P.No.1 of 2014 M/s.Darma Naidu Educational and Charitable Trust, Rep. by its Chairman, Mr.D.Duraisamy S/o.Late Darma Naidu, having office at No.24, Chengalvarayan Street, Shenoy Nagar, Chennai - 600 030. ... Petitioner Vs. 1.The Assistant Engineer, Tamil Nadu Electricity Board, Seneerkuppam, Poonamalle, Chennai - 600 056. 2.The Junior Engineer, Tamil Nadu Electricity Board, Seneerkuppam, Avadi Main Road, Poonamallee, Chennai - 600 056. 3.P.Kanniappan ... Respondents PRAYER: Writ Petition filed under Article 226 of the Constitution of India for a Writ of Mandamus, to forbear the respondents 1 and 2 from installing electrical post in the land in Survey No.130/1A, situated at Veeraraghavapuram Village, Poonamalle Taluk, Thiruvallore District, by crossing the petitioner's land except by due process of law. For Petitioner : Mr.S.Parthasarathy For Respondents : Mr.P.Gunaraj (TNEB) for R1 and R2 Mr.C.P.Sivamohan for R-3 - - -

ORDER

The short facts of the case are as follows:- The petitioner submits that he is running a college in the name and style of ".S.A.Engineering College". in the land measuring an extent of 27 acres, situated at Veeraraghavapuram Village, Poonamalle Taluk, Thiruvallore District. In the rear side of the said college, one Mr.Pachaiappa Naicker had lands measuring about 6 acres and 19 cents comprised in Survey Nos.130/1, 131/1, 131/4 and 132/1 of Veeraraghavapuram Village. The said Mr.Pachaiappa Naicker is none other than the father of the third respondent herein. The said Pachaiappa Naicker had expired on 28.11.2001. Subsequently, the said property of Late Pachaiappa Naicker have been settled among the third respondent herein and his three sisters. The petitioner had purchased an extent of 3 acres out of 5.59 acres comprised in S.F.No.130/1 of Veeraraghavapuram Village under a registered sale deed bearing registration No.4374 of 2003, on the file of Sub Registrar Office, Kunrathur, dated 04.08.2003, from the sisters of the third respondent herein. From the date of purchase, the petitioner is in peaceful possession and enjoyment of the said land and is the absolute owner. The said land is subdivided and separate survey numbers has been assigned as S.F.No.130/1A. The said land in Survey No.130/1A is situated on the rear side of the petitioner's engineering college and the said land is being used as play ground by the students of S.A.Engineering College. The college vehicles are also parked sparingly in the remaining area. Various sports activities are also conducted in the subject matter of the land comprised in S.F.No.130/1A, situated at Veeraraghavapuram Village.

2. The petitioner additionally added that the third respondent herein enraged by the purchase of land by the petitioner from his sisters, started creating troubles by putting up casuarina poles and electrical posts for drawing electricity for a distance of about 200 feet across the petitioner's lands situated on the rear side of the college. It was submitted that agricultural electricity service connection was provided for the lands of Mr.Pachaiappa Naicker. By virtue of purchase of land by the petitioner, the petitioner is having 50% share in the electricity service connection, since it has been purchased from the sisters of the third respondent

and the third respondent is also having the rest of 50% share of electricity service connection. The third respondent had also filed civil suits against his blood sisters and the petitioner before the District Munsif Court, Poonamallee. In fact, the petitioner had also filed a civil suit and obtained interim injunction restraining the third respondent from interfering with the petitioner's peaceful possession and enjoyment of the lands comprised in S.F.No.130/1A, situated at Veeraraghavapuram Village, since he is the absolute owner of the property as per the registered sale deed dated 04.08.2003. The petitioner further submits that the casuarina poles and electrical posts put up by the third respondent herein fell down and endangered the life of innocent students. However, with a view to circumvent the lapses, the third respondent filed W.P.No.17399 of 2004 against the respondents 1 and 2 directing them to restore electricity. By an order dated 15.07.2004, this Court was pleased to direct the respondents 1 and 2 herein to restore the electricity. In the said writ petition, the petitioner was not made as a party though he was a necessary party and the third respondent herein obtained an order behind the back of the petitioner.

3. In fact, pursuant to the order of this Court, the electricity was restored to the satisfaction of the third respondent herein. The petitioner further submits that actually there was no agricultural activities in the subject matter of the land but the respondent has been creating troubles to the petitioner at various levels with an intention to harass the petitioner. The third respondent has also given a complaint to the Inspector of Police, who is attached to the Thiruverkadu Police Station and filed a Crl.O.P.No.32875 of 2004, before this Court seeking a direction to register the complaint and the same was also disposed of. The third respondent has also filed a private complaint in C.C.No.117 of 2003, on the file of the Judicial Magistrate No.II, Poonamallee impleading various Government officials unnecessarily. The accused in the said complaint was discharged and the third respondent filed Crl.R.C. against the order of discharge before this Court and the same was also dismissed. Even now, various litigations are pending before the civil Court between the petitioner and the third respondent and his sisters. Being not satisfied with the various litigations and failing in his attempts, during first week of February 2014, the third respondent herein appears to have lodged a complaint before the Inspector of Police, Thiruverkadu Police Station against the Trustees of

the petitioner, stating that the electrical posts put up in the land was dismantled and electricity supply was disconnected and he could not carry out his agricultural activities and the persons connected with the petitioner's Trust are responsible for the same.

4. The petitioner additionally added that as per the orders of this Court dated 15.07.2004, made in W.P.No.17399 of 2004, the electricity was restored to the third respondent and there are no agricultural activities and only to harass the trustees of the petitioner's college and the innocent students, the third respondent is creating troubles unnecessarily. It is obvious that since there was no agricultural activities by the third respondent for a long time, there could not be any electricity supply. Even if the third respondent is entitled for restoration of electricity, i.e., for agricultural service connection, he can draw electricity through electrical posts installed in his own land and not crossing the petitioner's lands, which is being used as a playground by the students of S.A. Engineering College. In fact, the petitioner is willing to surrender his 50% share in the electricity service connection in favour of the third respondent and he can enjoy the electricity service connection absolutely by installing electricity posts on his land and not by crossing the petitioners lands. If the petitioner's lands is used for installing dismantled electrical posts to satisfy the ulterior motive of the third respondent, it will endanger the life of the innocent students of the petitioner's college, who are using the rear side land as playground.

5. The petitioner further submits that due to the constant pressure, at the instance of the third respondent herein, the respondents 1 and 2 herein are trying to install the electrical posts in the petitioner's lands and draw the line across the petitioner's lands. If the respondents 1 and 2 are allowed to install the dismantled electrical posts in the petitioner's lands and the electrical wires are across the petitioner's lands, it will definitely endanger the life of the innocent students and the trustee of petitioner's college will be held responsible for any unforeseen incidents, if it takes place. The respondents 1 and 2 are not entitled to disturb the petitioner's peaceful possession by installing electricity posts in the petitioner's lands, which is being used as a playground, at the whims and fancies of the third respondent. Further, a civil suit in O.S.No.476 of 2013 is pending before the

District Munsif Court at Poonamalle, to restrain the respondents 1 and 2 from installing the electricity posts in the petitioner's lands, but despite this, the respondents 1 and 2 are trying to install the electrical posts in the petitioner's land, with a view to satisfy the third respondent ulterior motives. The respondents 1 and 2 are not entitled to do so, without obtaining any orders from the competent Court. In spite of the petitioner's personal request, the respondents 1 and 2 are again and again attempting to install the electrical posts on the college playground, which necessitated the petitioner to cause legal notice dated 25.02.2014 calling upon the respondents 1 and 2 not to install any electrical posts in the petitioner's lands, without obtaining an order from the competent Court and the same has been duly served on them. In spite of the legal notice, the respondents 1 and 2 came to the petitioner's lands on 11.03.2014 and made an attempt to install the electrical posts, but it was stopped. In the circumstances, the petitioner has approached this Court and filed the present writ petition seeking an order to prevent the respondents 1 and 2 from installing the electrical posts on the petitioner's lands.

6. The second respondent has filed a counter statement, on behalf of the first respondent also and resisted the writ petition. The second respondent submits that the disputed property which is a portion of the inherited property, by a will of Late Pachiappan Naicker, was sold by the sisters of the third respondent to the writ petitioner. There was a common well in the said ancestral property having electricity connection through an electricity post. The said post had fallen due to wear and tear and rain. The third respondent herein filed W.P.No.17399 of 2004, before this Court seeking a direction to direct the respondents to restore the electricity to the common well situated in the said ancestral property. By an order dated 15.07.2004, this Court directed the respondents 1 and 2 herein to restore the electricity and accordingly, the same was restored.

7. The second respondent further submits that in the meanwhile, the third respondent lodged a complaint with the Thiruverkadu Police Station, against the petitioner. Subsequently, he had filed CrI.O.P.No.32875 of 2004, before this Court against his sisters and the petitioner and the same was disposed of. Further, the third respondent lodged a private complaint in C.C.No.117 of 2003, before the Judicial Magistrate-II, Poonamalle and also filed CrI.R.C. against

Crl.O.P.No.32875 of 2004. Further, the third respondent levelled a complaint during the first week of February 2014 before the Inspector of Police Tiruverkadu, wherein, it was stated that the disputed electrical pole was dismantled and the electricity connection was disconnected by the petitioner and that he could not carry any agricultural activities and the persons connected with the Trustees are responsible for the same. It was submitted that the respondent has to restore the electricity supply to the third respondent by refixing the dismantled and damaged pole which was already restored as per the order of this Court in W.P.No.17399 of 2004, dated 15.07.2004, since there is no stay or interim order issued by any of the Courts to forbear the respondents to effect the electricity supply through the disturbed electricity pole and hence, there is no merit in the above writ petition and hence, this respondent prays to dismiss the above writ petition.

8. The third respondent has filed a counter statement and opposed the above writ petition. The third respondent submits that the petitioner has sought for a negative relief of forbearing the respondents 1 and 2 from providing electricity connection to his property which is unsustainable and has made unnecessary allegations in the affidavit which are not warranted for the relief sought for. The prayer of the petitioner, if granted, will infringe his fundamental right and the petitioner has no locus-standi to seek direction for forbearing the respondents 1 and 2 from providing the electricity connection to his land. The third respondent further stated that originally his father Pachiappa Naicker, since deceased and he, had purchased agricultural lands measuring an extent of 6 acres and 19 cents at Veeraraghvapuram Village, in the name of his father from one SK.Kaja Mohideen under a sale deed dated 17.06.1973, registered as document No.1561 of 1973, on the file of Sub Registrar Office, Poonamallee. An extent of 32 cents of agricultural land was also purchased in the name of his father from one Kanthammal in the year 1975. His father sold 10 cents out of 32 cents and the balance 22 cents remained with him and this was in his father's possession and enjoyment till his death and thereafter, he has been in possession of the same by tilling and cultivating it. Apart from the said two lands, a tiled house was purchased in the name of his father and he has been in possession and enjoyment of it also. After the death of his father, he has been in possession of the said agricultural land by tilling, cultivating and harvesting it.

9. The third respondent further stated that the petitioner's college, viz., S.A.Engineering College is situated to the east of his land. Even during the life time of his father, one D.Sudarsanam, Ex.M.L.A., who was the then Managing Trustee of the petitioner's trust, forced his father to sell the lands, but he refused to oblige and later after the death of his father, the petitioner also coerced him and he too never obliged. At a later point of time, the petitioner somehow hatched conspiracy with his sisters and by inducing them to forge a Will, said to be executed by his father, bequeathing 1 acre to each of his three sisters and by getting the will registered by impersonation, made his sisters to sell the said three acres to the above said D.Sudarsanam, Ex.M.L.A., who was the Managing Director of the petitioner's Trust. In connection with the same, various suits are pending before the civil Court. The said three acres of land are situated on the northern side of the entire extent of 6.19 acres. An electric post, a well and a pump set are situated in the said three acres of land sold to the petitioner's then Managing Trustee the said D.Sudarsanam. He is drawing electricity to his lands only through the said electric post. Similarly, he draws water using the pump set for the said well to his paddy fields and for other crops.

10. The third respondent further submits that after having grabbed the property to an extent of three acres, the petitioner attempted to grab the remaining property to an extent of 3.19 acres, by forcing him to sell the lands to them. As he refused to do so, the petitioner started giving trouble by all means, so that he would sell the lands to him, according to the rate to be fixed by him. Angered by his refusal, to sell the lands to them, the petitioner unleashed atrocity on him by pulling down the electric post and cutting the water connection, so that he would be deprived of the power and water and would ultimately have no other option, than to sell the lands to him. Aggrieved by the illegal action of the petitioner, he made representations to the Tamil Nadu Electricity Board, requesting them to restore the electricity connection to his property by refixing the electricity posts, illegally pulled down by the petitioner. Since there was no response, he was constrained to move this Court by way of a writ petition in W.P.No.17399 of 2004, seeking for a writ of mandamus, directing the Chief Engineer and the Junior Engineer, TNEB, to restore electricity connection in his lands, comprised in S.F.Nos.130/1, 131/1, 131/4 and 132/1 at Veeraraghavapuram Village, Poonamalle Taluk, Thiruvallore

District.

11. The third respondent further submits that this Court, by an order dated 15.07.2004, was pleased to allow his writ petition by issuing direction to the Junior Engineer, TNEB, Seneerkuppam, to restore electricity connection for agricultural purpose to his aforesaid lands. Even after, the above said order being passed by this Court, time and again, the petitioner is in the habit of causing trouble to him by one way or another and one such way is to often pull down the electrical post, through which the electricity is provided to his property. The petitioner's sole intention is to make his lands unusable for him, so that they could make him sell his lands to them. In fact, the petitioner's men used to intimidate him to sell his land to them for which, he never used to accede. As the forcible demand of the petitioner became hefty, he lodged a complaint on 18.10.2013, before the Police. However, the Police Officer, managed to join hands with the petitioner and he never took any action on his complaint and hence, he moved this Court by way of filing Crl.O.P.No.28355 of 2013, seeking a direction to direct the Inspector of Police, Thiruverkadu to register his complaint dated 18.10.2013. This Court was pleased to dispose of the said Crl.O.P. issuing a direction to the Inspector of Police, Thiruverkadu to enquire the complaint and proceed in accordance with law. By virtue of the said order, the police conducted an enquiry as an eye-wash and ultimately closed the said complaint that it is civil in nature. It is in this scenario, that the petitioner, who has done all misdeeds and committed all sorts of illegalities with the sole intention of grabbing his property at a throw away price, has come before this Court by way of the present writ petition for the relief of forbearing the respondents 1 and 2 from providing electricity connection to him.

12. The third respondent further submits that the electrical posts are there ever since the time of his father and the petitioner often indulges in the habit of illegally pulling down the said electricity posts with an intention of making him to suffer without electricity, which he uses for the purpose of agriculture. The respondents 1 and 2, instead of restoring the said electricity posts are dilly dallying the issue because of the thrust of the petitioner, despite him meeting the respondents 1 and 2, on so many occasions and requesting them to install the electricity connection to his lands. As a matter of fact, he orally called for the respondents 1 and 2 to

restore the electricity connection, failing which, he would move this Court seeking to issue a mandamus to them, directing them to install the electricity connection. The petitioner, on coming to know about the same, through the respondents 1 and 2 have rushed before this Court with the present writ petition. Under the circumstances, this respondent prays to dismiss the writ petition.

13. The highly competent counsel, Mr.S.Parthasarathy, for the petitioner submits that the electrical posts was erected on the petitioner's lands. He submitted that the petitioner is running a college, viz., S.A. Engineering College, on the said land measuring an extent of 27 acres. The petitioner had also purchased an extent of 3 acres from the sisters of the third respondent under a registered sale deed document bearing No.4374 of 2003, on the Sub Registrar Office, Kundrathur. As such, the petitioner has become the absolute owner of the property. The said land is sub-divided and separate survey number has been given. Now, the land is being used as playground by the students of the college. Besides this, the vehicles of college, students and teaching staff are also being parked in the remaining area. Besides this, frequently sports activities are being conducted on the said land. The third respondent herein, enraged by the purchase of land from his sisters, has been creating trouble by putting up casuarina poles and electrical posts for drawing electricity for a distance of about 200 ft on the petitioner's land situated on the rear side. After purchasing the said land, an extent of 3 acres from the sisters of the third respondent, the petitioner has also got 50% share in the said electricity connection. The third respondent is viciously and deliberately creating trouble to the petitioner by way of criminal activities and raising civil dispute over the said property. Hence, criminal cases and civil cases are pending. In those cases, the erection of electricity posts is one of the main issue. The very competent counsel further submits that the third respondent has filed W.P.No.17399 of 2004 against the respondents 1 and 2 herein directing them to restore electricity. This Court was pleased to direct the respondents 1 and 2 to restore the electricity. Accordingly, the electricity was restored on the petitioner's lands. The order itself is prejudicial since the petitioner had not been added as necessary party. The third respondent, wantonly and deliberately omitted to add the petitioner and obtained judicial direction before this Court in W.P.No.17399 of 2004 fraudulently. Further, the electrical posts can be erected in alternate sites, which is available nearby. If the

electrical posts are erected on the playground of the college, which belongs to the petitioner's trust, this would endanger the life of the students, staff and teaching staff and also be inconvenient to them. During rainy season, there is imminent possibility of getting electrical earth shock. Further the suit in O.S.No.476 of 2013, is pending before the District Munsif Court at Poonamallee, wherein it has been prayed to restrain the respondents 1 and 2 from installing the electrical posts on the petitioner's lands. Till such time the issue is decided, the respondents should not be allowed to carry out the order passed in W.P.No.17399 of 2004, wherein, the petitioner herein had not been added as a party even though, he is the absolute owner of the property. As such, this Court's earlier order passed in the writ petition is violative of civil rights of the writ petitioner herein. Hence, the learned counsel entreats the Court to allow the above writ petition.

14. The very competent counsel, Mr.P.Gunaraj, appearing for the respondents 1 and 2 submits that the third respondent herein obtained an order from this Court, directing the respondents 1 and 2 to restore the electricity to the common well situated in the ancestral property. Accordingly, the electricity has been restored. Subsequently, the petitioner dismantled the electricity posts. Further, civil and criminal cases are pending between the petitioner and third respondent. The respondents 1 and 2 are also added as defendants in O.S.No.476 of 2013, on the file of District Munsif Court, Poonamalle and it has been sought to restrain them from installing electricity posts.

15. The very competent counsel, Mr.C.P.Sivamohan, for the third respondent submits that this Court had directed the respondents 1 and 2 on 15.07.2004 in W.P.No.17399 of 2004 to restore the electricity posts on the petitioner's lands. Accordingly, the electricity posts were restored. But, the petitioner frequently dismantles the same and therefore, a criminal complaint had been levelled against the writ petitioner. Now a private complaint is also pending against the writ petitioner, since he had committed criminal breach of trust. Further, the said land is an ancestral property and belonged to his father. The sisters of the third respondent had created a false Will and executed a sale deed in favour of the petitioner. As such, the transaction is not valid. Further, the first and second respondents are duty bound to execute the earlier direction passed in

W.P.No.17399 of 2004, dated 15.07.2004, which is in force. Further, this respondent is not seeking a new electricity service connection for his agricultural purpose and seeking only restoration of an existing electricity service connection.

16. On considering the facts and circumstances of the case and arguments advanced by the learned counsels on all sides and on perusing the typed set of papers filed by the parties, this Court is of the view that the earlier direction passed by this Court in W.P.No.17399 of 2004, dated 15.07.2004, wherein, the respondents 1 and 2 were directed to restore the electricity service connection on the petitioner's lands herein is prejudicial to the interest of the petitioner, as he had not been added as a party in spite of the fact that the property belongs to the petitioner's college. In view of the civil suit in O.S.No.476 of 2013, pending on the file of the District Munsif Court, Poonamallee, which has been filed by the petitioner herein, against the respondents 1 and 2 herein and another, wherein it has been prayed to restrain the first and second respondents not to install the electricity posts on the petitioner's land and in order to prevent endangerment to the life of the students and staff of the college as the said lands are used as a playground of the petitioner's college, the electricity service connection should be restored only through an alternate site. Hence, this Court directs the first and second respondents to restore the electricity post in an alternate site and supply electricity to the third respondent at the earliest.

17. Accordingly, the writ petition is allowed. There is no order as to costs. Consequently, connected miscellaneous petition is closed. 27 / 06 / 2014 Index : Yes/No.Internet : Yes/No.r n s To 1.The Assistant Engineer, Tamil Nadu Electricity Board, Seneerkuppam, Poonamalle, Chennai - 600 056. 2.The Junior Engineer, Tamil Nadu Electricity Board, Seneerkuppam, Avadi Main Road, Poonamallee, Chennai - 600 056. C.S.KARNAN, J.

r n s Pre Delivery Order made in W.P.No.8138 of 2014 & M.P.No.1 of 2014 27 / 06 /2014

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