

Udayarajan and Others Vs. The Executive Engineer, TANGEDCO, Madurai and Others

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Court : Chennai Madurai

Decided On : Sep-19-2016

Judge : M. Sathyanarayanan & The Honourable Ms. Justice V.M. Velumani

Appeal No. : W.A.(MD)No. 39 of 2016 & C.M.P.(MD)Nos. 311 & 2087 of 2016

Appellant : Udayarajan and Others

Respondent : The Executive Engineer, TANGEDCO, Madurai and Others

Judgement :

(Prayer: Appeal filed under Clause 15 of the Letters Patent, against the order dated 16.12.2015, made in W.P.(MD)No.5411 of 2015.)

M. Sathyanarayanan, J.

1. By consent, the writ appeal is taken up for disposal.
2. The appellants are the writ petitioners and they filed W.P. (MD)No.5411 of 2015, praying for issuance of a Writ of Mandamus, forbearing the respondents 1 and 2 from erecting any electric poles through common pathway situated in Survey No.254, in Chettiar Street, Kottanathampatti Village, Ambalakaranpatti, Melur Taluk, Madurai District.

3. The writ petition, after contest, came to be dismissed on 16.12.2015, holding that it is for the respondents 1 and 2 to consider the feasibility and take a decision according to such convenience of feasibility.

4. The learned counsel for the appellants would submit that it is a serious dispute as to whether the pathway is exclusively belongs to the appellants/petitioners or it is a common pathway. Further, installation of electric poles is not going to cause any hindrance to the public and even otherwise, the respondents 1 and 2, in the light of the sketch annexed in Page No.6 of the Typed set of papers, can give connection to the third respondent premises and for that, no new electric pole needs to be put up in the land of the appellants and prays for allowing the writ appeal.

5. The learned counsel for the respondents 1 and 2 would submit that the decision lies with the concerned authority as to the feasibility and formation of electric lines for effective electric service connection to the premises of the third respondent and since it is a common pathway, they have decided for effecting the service connection to the third respondent premises.

6. Mr.K.P.Narayanakumar, learned counsel for the third respondent would submit that whether it is exclusively common pathway belonging to the appellants or not, cannot be adjudicated by this Court in exercise of Clause 15 of the Letters of Patent and remedy open to the appellants, if any, is to avail common law remedy and prays for dismissal of the writ appeal.

7. This Court has considered the rival submissions and also perused the Typed set of documents.

8. The appellants/writ petitioners claim that they have exclusive right over the pathway in question and whereas, it is the stand of the respondents that it is a common pathway for public use and it is the contention of the appellants that the third respondent can be provided with service connection by renovation of existing poles without installing any new electric poles.

9. In the considered opinion of this Court, the question as to whether the appellants are the owners of the common pathway or not, cannot be adjudicated by the Court in the exercise of jurisdiction under Article 226 of the Constitution of India and the learned Judge in the light of the stand taken by the respondents also observed that it is the prerogative of the respondents 1 and 2 to take decision according to convenience and feasibility.

10. In the considered opinion of this Court, the reasons cannot be found fault with and the points urged by the learned counsel for the appellants also involve adjudication of disputed facts, for which, availing writ remedy under Article 226 of the Constitution of India is not a proper remedy.

11. In the result, the writ appeal is dismissed confirming the order of the learned Single Judge, dated 16.12.2015, made in W.P.(MD)No.5411 of 2015 and if the appellants are so advised, they are at liberty to avail the common law remedy in accordance with law. No costs. Consequently, C.M.P.(MD)Nos.311 and 2087 of 2016 are closed.

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