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Court : Chennai Madurai

Decided On : Jul-01-2016

Judge : Nooty Ramamohana Rao & S.S. Sundar

Appeal No. : Writ Appeal (MD) No. 815 of 2016 & C.M.P(MD)Nos. 5046 & 5671 of 2016

Appellant : Savithiri

Respondent : The Assistant Engineer, Operation and Maintenance, Tamil Nadu Generation and Distribution Corporation, and Another

Judgement :

(Prayer: Appeal filed under Clause 15 of Letters Patent praying to set aside the order dated 11.04.2016 passed in W.P.(MD) No.18943 of 2015 by allowing the Writ Appeal.)

S.S. Sundar, J.

1. This Writ Appeal is filed by the petitioner in W.P.(MD)No.18943 of 2015 as against the order passed by the learned Single Judge closing the writ petition by order dated 11.04.2016.

2.The writ petitioner filed the Writ Petition above mentioned, for issuing a writ of mandamus, directing the first respondent herein, the Assistant Engineer, Operation and Maintenance, TANGEDCO, to give electricity service connection to the appellant with regard to Door No.1/8-1, Plot No.4, in Krishnanagar, Cholanmaligai, in Survey No.145/4B, Kumbakonam Taluk, Thanjavur District. The writ petitioner claimed to have purchased the plot measuring to an extent of 1800 square feet in the lay out known as Krishnanagar in Cholanmaligai Village, and got patta changed in her name. According to the petitioner, she has constructed a house, after obtaining proper approval from the panchayat and has been paying house tax to the local body.

3. The writ petitioner has filed an application to the first respondent herein for getting new service connection for her newly constructed house. The case of the petitioner is that the second respondent herein objected to give service connection to the petitioner on the ground of pendency of a suit and that the second respondent does not have any right over the property to sustain her objection. Since the first respondent rejected her application for getting electricity service connection to her house, she approached this Court by filing the above writ petition.

4. The second respondent has filed a counter and submitted that the petitioner had purchased the property from one Pitchai Iyer and another and that they are only the co-owners of the property (wherein a lay out has been formed) along with the temple, Sri Sakthivaneswarasamy Temple. Despite the fact that the temple's right in respect of this undivided share in the properties were upheld in earlier litigations and that the vendors of the writ petitioner had suffered a decree in O.S.No.219/2005 on the file of the First Additional District Munsif, Kumbakonam, restraining the vendors of the petitioner from altering the physical feature by converting the land as lay out and further restraining the defendants 3 and 4 from granting any permission to the petitioner's vendors to sell the property to third parties, they have formed a lay out and sold the property as house plots to various persons. The learned counsel for the second respondent, further, contented that the petitioner who has purchased the property after the decree in O.S.No.219 of 2005, is not in lawful possession of the property and that she has no right to seek

electricity service connection for the illegal construction put up by her.

5. The learned Single Judge after taking into account the decree in the suit in O.S.No.215 of 2005 and the statement of the first respondent to the effect that they are unable to give connection because of the objections raised by the Temple viz., the second respondent, the writ petitioner was closed with following observations:

7. As rightly pointed out, as a *pendente lite* purchaser, she cannot claim any right. If the temple is the co-owner or full owner of the property, she could get no objection certificate from them. The petitioner is only a subsequent purchaser and taking into account objection, the authority concerned shall pass appropriate orders on merits and in accordance with law.

6. The petitioner has filed the present appeal against this order requesting this Court to give a positive direction to the first respondent to provide service connection to the petitioner's house, overruling the objections of the second respondent. Since the petitioner strenuously argued disputing the second respondent's right and title over the property, where the petitioner has put up her house, this Court is inclined to consider the nature of dispute so that we may examine the issue whether the petitioner's possession can be treated as lawful.

7. The petitioner has produced a copy of the judgment and decree dated 29.11.2013 passed in O.S.No.114 of 2012 on the file of the Additional Sub Court, Kumbakonam and the judgment dated 15/12/2015, passed in A.S.No.16 of 2015, on the file of the II Additional District and Sessions Court, Thanjavur and also the judgment dated 14.03.2016 passed in S.A.No.104 of 2016 by this Court.

8. From the perusal of the judgment relating to the suit O.S.No.114 of 2012, it can be seen that one of the vendors of the writ petitioner along with another, filed a suit for partition and separate possession of their 29/30th share in respect of 16 items of properties and has obtained a preliminary decree for partition by judgment dated 29.11.2013. However, an appeal in A.S.No.16 of 2014 on the file of the II Additional District and Sessions Judge, Thanjavur was preferred by the second respondent herein and the appellate Court reversed the findings of the trial Court

and dismissed the suit for partition filed by one of the vendors of the writ petitioner and another. The plaintiffs in the suit thereafter filed a second appeal in S.A.(MD)No.104 of 2016. In the second appeal, this Court has set aside the judgment and decree of the trial Court as well as the judgment and decree of the appellate Court. The matter was remitted back to the trial Court with a direction to the trial Court to dispose of the suit after permitting both parties to let in further evidence and to implead necessary parties. The judgment in S.A.(MD) No.104 of 2016 came to be passed on 14.03.2016. Hence, it is clear that the petitioner's vendors has only a claim for 29/30th share in the suit property and that the suit for partition is pending.

9. The second respondent produced before this Court a judgment in O.S.No.219 of 2005 on the file of the District Munsif Court, Kumbakonam. The said suit was filed by the second respondent herein for a permanent injunction restraining the plaintiffs in O.S.No.114 of 2012 from in any way changing or altering the land by forming a lay out in respect of their undivided 1/30th share and for restraining defendants 3 and 4 therein who are the President of the Panchayat and the Commissioner of Kumbakonam Panchayat Union from granting any permission to defendants 1 and 2 therein (one of the vendors of the writ petitioner and another) to sell the property to third parties. It appears that the said suit has been decreed. It is also not in dispute that the said judgment was confirmed by the Appellate Court in A.S.No.71 of 2000 by judgment, dated 30.01.2011 and further confirmed by this Court by dismissing the Second Appeal. The learned counsel for the petitioner would submit that the second appeal filed by the vendors was only dismissed for default and that an application is filed for restoration of the appeal. Be that as it may, the fact that the writ petitioner's vendors had suffered a decree by which they are restrained from forming any lay out so as to sell the plots to strangers is admitted.

10. The writ petitioner relied upon the judgment of this Court in the case of *P.Arumugam vs. Government of Tamil Nadu, etc. and others* reported in 2003 Writ L.R. 248 wherein the learned Single Judge of this Court has directed the Tamil Nadu Electricity Board to give power supply connection without insisting upon any No Objection Certificate from the Housing Board after referring to clause 6.04 of

terms and conditions of supply of electricity. The following clause in the terms and conditions for supply of electricity was quoted by the learned Single Judge:

Metered power supply to the houses constructed in poramboke lands can be extended, in respect of which house tax have been levied by the local body or whose occupants possess ration cards, as a proof of lawful occupation of the premises subject to execution of an indemnity bond in the form prescribed by the Board and acceptance to pay the initial current consumption deposit at three times the normal rate. However, for such extension of supply to houses constructed in water course porambokes, the safety aspects such as switching off the power during any unforeseen flood conditions should be adhered to.

It was pointed out therein by the learned single Judge that the metered power supply to the houses constructed in poramboke lands can be extended, in respect of which house tax have been levied by the local body or whose occupants possess ration cards, as a proof of lawful occupation of the premises subject to execution of an indemnity bond in the form prescribed by the Board and acceptance to pay the initial current consumption deposit at three times the normal rate.

11. The clause above referred to pertains to houses constructed in poramboke lands and contemplates production of documents to prove lawful possession. The present case does not fall within that category. Hence, the judgment is not strictly applicable to the facts of the present case. The learned counsel for the petitioner relied upon a judgment in the case of *A.Muthusamy vs. The Assistant Engineer, TNEB* reported in 2009 (4) CTC 606 wherein the learned Single Judge of this Court directed the Electricity Board to consider the petitioner's request for service connection in terms of Clause 27(2)(4) of the Tamil Nadu Electricity Distribution Code and grant electricity supply after obtaining the indemnity bond in the statutory form and required fees. It was a case where the land in which the petitioner therein constructed his residential house, had been acquired by the Government for a housing scheme. The petitioners therein were stated to have constructed their houses and they are in lawful possession by virtue of an interim injunction obtained in a batch of writ petitions which were filed by the owners,

when there was a threat of demolition of the buildings by the Tamil Nadu State Housing Board. It was also stated by the petitioner therein that the housing scheme framed by the Housing Board was not implemented and that the owners' request for reconveyance was pending. Since the possession of the petitioners therein is bound to be protected by orders of Court, the learned Judge seems to have been impressed by the fact that the owners therein were in lawful occupation of the premises for which electricity service connection was sought. The said judgment is also not applicable to the facts of this case.

12. Considering the fact that the writ petitioner has purchased the property from one of the defendants in the suit in O.S.No.219 of 2005, after the decree for injunction granted by the Court on 16.06.2010, we are not in a position to recognise the writ petitioner as a person in lawful possession by preventing the second respondent, who is admittedly a co-owner in respect of the property in dispute, from raising the objections to the grant of electricity service connection to the petitioner, particularly in the light of the admitted position that the petitioner's vendors had developed the land into a housing colony in violation of the decree for injunction granted in O.S.No.219 of 2005 on the file of the District Munsif Court, Kumbakonam.

13. It is a well settled legal position that a co-owner is entitled to exercise his right of co-ownership in respect of every piece of land. The development of the land into the housing plots and selling the plots in favour of the third parties are in violation of the decree for permanent injunction. It is also a trait proposition that the Court, in exercise of its inherent power, should always tend to set right things when something is done, in violation of order of Court. Hence, having regard to the factual matrix, we feel that the objection of the second respondent need to be addressed by the first respondent while considering the application submitted by the petitioner for supply of electricity service connection to her house.

14. In view of the foregoing reasons, we do not find any infirmity or illegality in the orders passed by the learned Single Judge and this Writ Appeal deserves dismissal and hence, it is dismissed. However, there is no order as to costs. Consequently, the connected miscellaneous petitions are closed.

