

S.Devaraj Vs. the Superintending Engineer and ors.

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Court : Chennai

Decided On : Dec-23-2011

Judge : V.Dhanapalan, J.

Appeal No. : W.P.No.26999 of 2011 & M.P.No.1 of 2011

Appellant : S.Devaraj

Respondent : The Superintending Engineer and ors.

Advocate for Def. : Mr.S.K.Rameshwar, Adv.

Advocate for Pet/Ap. : Mr.K.Seshadri, Adv.

Judgement :

By consent of learned counsel appearing for both parties, the main Writ Petition itself is taken up for final disposal.

2. Heard Mr.K.Seshadri, learned counsel appearing for the petitioner and Mr.S.K.Rameshwar, learned standing counsel for TNEB appearing for respondents 1 to 4 and Mr.S.N.Kirubanandam, learned counsel appearing for respondent No.5 and 6.

3. This Writ Petition has been moved by the petitioner, praying for the issuance of a Writ of Mandamus, to forbear respondents 1 to 4 from effecting name transfer and shifting of the service connection in L.T.Sc.No.184 (Agriculture) from

S.F.No.313/1K of Dhidumal village and post 637 204, Paramathivelu Taluk, Namakkal District, to another Well situated in different survey number.

4. According to the petitioner, he is the co-owner of the Well situated in S.F.No.313/1K, Dhidumal village. While getting the agricultural service connection, the father of the petitioner and some of the co-owners who have interest in the Well in S.F.No.313/1K, have given consent to get the service connection in the name of one Subramanian under Self Financing Scheme after making payment of Rs.25,000/- which was effected in the year 2001. From the year 2001, the petitioner and others have been enjoying the said service connection till date without any hindrance whatsoever from any one including respondents 5 and 6. While so, the said Subramanian has applied for name transfer and shifting of service connection to his lands located in another survey number. He died on 5.8.2011 and after his demise, his son, the 5th respondent herein approached respondents 1 to 4 for name transfer in his favour and also for shifting of the said service connection to his lands located in another survey numbers.

5. The grievance of the petitioner is that all the co-owners jointly entered into a memorandum of understanding to use the service connection to get the water from the Well situated and if it is shifted to another lands of the 5th respondent, the petitioner will be put into irreparable loss and his agricultural activities will be in stake. Therefore, without consent of the co-owners of the lands, 5th respondent cannot either get the name transfer or shift the said service connection to his other lands. Expressing his grievance, the petitioner made a representation on 10.11.2011 to respondents 1 to 4 not to effect the name transfer and not to shift the service connection on the request made by respondents 5 and 6. Since no action was taken by respondents 1 to 4, the petitioner approached this Court by way of filing the present writ petition.

6. The 5th respondent and 6th respondent have filed counter affidavit along with vacate stay petition, stating that the writ petition is not maintainable as the petitioner has no locus standi to maintain the same. During the year 2000, his father applied for a separate electricity agricultural service connection with the consent of all the co-owners of the Well and obtained 5 HP agricultural service

connection No.184 in his individual capacity after spending a huge amount for installation of pump-set, cable, etc. and none of the co-owners came forward to bear the expenses. The lands comprised in S.No.313/1K are not conducive for cultivation and after the death of his father, the 5th respondent, being the legal heir, on 5.8.2011 made an application to respondents 1 to 4 to effect the name transfer and also to shift the electricity service connection to his land comprised in S.No.312 of Paramathi village, Vellore Taluk. The officials of the electricity board, after verifying and collecting the required documents, processed the request for effecting the name transfer and shifting the service connection to another land. At this stage, the petitioner has raised objection based on invalid document which has no legal sanctity and therefore, the petitioner has no right to object the request of the 5th respondent. Hence, the 5th respondent and 6th respondent pray for dismissal of the writ petition.

7. The foremost contention of the learned counsel for the petitioner is that there was a Memorandum of Understanding dated 10.5.2002 and the petitioner being a co-owner of the lands and Well in use, their consent is necessary before effecting name transfer and shifting the said electricity service connection which is going to be processed at the instance of the 5th respondent. He further contended that the documents annexed to the typed set of papers regarding the lands would establish that they are all joint owners and therefore, without their consent, respondents 1 to 4 cannot effect name transfer and also shift the service connection to other lands of the 5th respondent.

8. Per contra, Mr.S.K.Rameshwar, learned standing counsel for TNEB, appearing for respondents 1 to 4 contended that as per Regulation 37 of the Tamil Nadu Electricity Distribution Code, 2004, there is no bar to shift the electricity service connection subject to the payment of necessary cost by the intending consumer and in the present case, already the father of the 5th respondent was having electricity service connection bearing LT SC No.184 (Agriculture) in the land comprised in S.No.313/1L of Dhidumal village and on verification of the relevant documents, respondents 1 to 4 will consider the request of the 5th respondent.

9. The learned counsel appearing for 5th and 6th respondents submitted that the document relied upon by the petitioner, namely, the Memorandum of Understanding cannot be considered, since, it is fabricated one to prevent the 5th respondent from getting name transfer and shifting of the electricity service connection. During the course of arguments, the learned counsel for respondents 5 and 6 produced an affidavit duly sworn to by the Document Writer, who specifically stated that the said Memorandum of Understanding was written only on 19.10.2011, i.e. after 60 days from the date of death of the father of the 5th respondent. Therefore, the learned counsel for respondents 5 and 6 submitted that so-called document, i.e. Memorandum of Understanding is not a genuine and it cannot be taken as a valid document to defeat the request of the 5th respondent.

10. Heard the learned counsel on either side and perused the material documents annexed to the typed set of papers filed in support of the writ petition.

11. A circumspection of the facts reveals that the petitioner and the father of respondents 5 and 6 are the co-owners of the lands situated in Dhidumal village, Paramathivelur taluk and there was a electricity service connection in LT SC No.184 (Agriculture) in S.F.No.313/1K in the name of one Mr.Subramanian, who is none other than the father of respondents 5 and 6 and the same continues even today. While so, the 5th respondent made an application to respondents 1 to 4 for name transfer and shifting the said electricity service connection to his another land situated in S.F.No.313/2I, since his father expired on 5.8.2011 and the 5th respondent being his legal heir, is taking steps to effect the electricity service connection in his name and also to shift the same to his another land. While the process was going on, the petitioner herein has raised objection, stating that there was a Memorandum of understanding between the co-owners of the land for using the Well in common and therefore, without his consent, the 5th respondent cannot get name transfer or shifting of the electricity service connection to his lands.

12. The only apprehension of the petitioner is that if the name transfer is effected in favour of the 5th respondent, the petitioner will not be in a position to carry on his agricultural operations and therefore, without his consent, it cannot be given effect to. In support of his case, the petitioner relied upon the so-called

Memorandum of Understanding which is said to have been executed on 10.5.2002 by four persons who are the co-owners of the lands including Mr.Subramanian, who is the father of the 5th respondent. However, this so-called document is disputed by respondents 5 and 6, stating that the said document is fabricated for the purpose of raising objection and it was executed after 60 days from the date of death of the father of respondents 5 and 6. Respondents 5 and 6 also produced an affidavit duly sworn to by the document writer, who is party to the so-called Memorandum of understanding, wherein, he has stated that the said document was written after sixty days from the date of death of Mr.Subramanian. Therefore, when the so-called document of Memorandum of understanding relied upon by the petitioner to stake his claim itself is disputed by respondents 5 and 6, it is for the petitioner to establish the same by adducing necessary evidence before appropriate Court and the Writ Court cannot sit over the verification of the document to find out its genuineness. It is not in dispute that as on date, the said electricity service connection stands in the name of Mr.Subramanian, who is the father of respondents 5 and 6 and after his demise, the 5th respondent made an application to get the electricity service connection transferred in his name and also for shifting the same to his another land. As rightly pointed out by the learned standing counsel for TNEB, there is no bar for processing the application made by the 5th respondent as per Regulation 37 of the Tamil Nadu Electricity Distribution Code, and in fact, while they were in the said process, the petitioner raised objection by making a representation.

13. Admittedly, the electricity service connection stands in the name of the father of respondents 5 and 6 and after his demise, 5th respondent made an application to get it transferred to his name and also for shifting the same, the petitioner cannot prevent the same. If at all the petitioner has got any right through the so-called Memorandum of understanding in respect of the electricity service connection, it is always open to him to establish his right in the manner know to law by approaching appropriate forum and merely based on the said Memorandum of Understanding, which has been persistently disputed by respondents 5 and 6, it is not appropriate to grant the relief as prayed for by the petitioner.

14. In the light of the above discussion, I do not find any merit in the writ petition. Accordingly, the Writ Petition fails and it is dismissed. No costs. Consequently, the interim order granted on 23.11.2011 is hereby vacated and all connected MPs are closed.

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