

T.K.Gunasekar Vs. the Assistant Engineer

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Court : Chennai

Decided On : Apr-16-2012

Judge : Vinod K.Sharma, J.

Acts : [Constitution of India](#) - Articles 226,

Appeal No. : W.P.No.7844 of 2012 and M.P.No.1 of 2012

Appellant : T.K.Gunasekar

Respondent : The Assistant Engineer

Advocate for Def. : Mr.G.Vasudevan, Adv.

Advocate for Pet/Ap. : Mr.K.A.Ravindran, Adv.

Judgement :

Prayer: This writ petition is filed under Article 226 of the [Constitution of India](#) praying to issue a Writ of Certiorari, calling for the entire records of the 1st respondent order made in Ka.No. U PC/O and M/Baratha/Ko. Thani/No.411/12 dated 17.03.2012 and quash the same and thereby direct the 1st respondent to restore petitioner's agricultural electricity service connection No.467-003-287/IV in S.No.396/5A for the borewell situated in S.No.396/4C D.P.Palayam Village, Paradarami, Gudiyattam Taluk, Vellore District.

ORDER

1. The petitioner has approached this Court with a prayer for issuance of writ in the nature of Certiorari, for quashing the order Ka.No. U PC/O and M/Baratha/Ko. Thani/No.411/12 dated 17.03.2012, with consequential relief of writ in the nature of Mandamus, directing the 1st respondent to restore electricity service connection No.467-003-287/IV in S.No.396/5A for the borewell situated in S.No.396/4C D.P.Palayam Village, Paradarami, Gudiyattam Taluk, Vellore District.
2. The petitioner purchased the property measuring 1.00 acre falling in S.No.396/5A to the extent of 0.83 acres and S.No.396/5B1 to the extent of 0.17 acres. The possession of property was given to petitioner.
3. The case of petitioner is that the vendor of petitioner was in peaceful open exclusive, continuous and uninterrupted possession and enjoyment of the land in S.No.396/4C for the past 30 years, without any interference from respondent no.2, therefore, his vendor had perfected title by adverse possession. The petitioner was also given possession of this land.
4. The petitioner, after purchase dug borewell in S.No.396/4C and was given agricultural service connection after taking note of all the records, produced before the 1st respondent. The petitioner is irrigating his land with this borewell, sugarcane crops, which is 3-4 months old grown in the land.
5. The case of petitioner is that in the month of January, 2010, the land was got measured by respondent no.2 and based on the measurement, an attempt was made to disturb the possession of petitioner.
6. The petitioner, feeling aggrieved by the action of respondent no.2, filed O.S.No.10 of 2010, in the Court of the District Munsif, Gudiyattam, for declaration and injunction. An application was also moved for appointment of Advocate Commissioner in a pending suit. The Advocate Commissioner submitted his report in the Court. In view of the report of the Advocate Commissioner, respondent no.2 also filed civil suit for declaration and possession of the land, falling in S.No.396/4C, claiming it to be the land of respondent no.2.

7. It is not in dispute, that both suits are pending in the Civil Court. The respondent no.2 filed a complaint with respondent no.1, alleging that the borewell connection given to the petitioner falls in his land, therefore, it be disconnected.

8. On the complaint of respondent no.2, enquiry was conducted by respondent no.1, taking a view that the land falling in S.No.396/4C is under the ownership of respondent no.2, ordered disconnection of the electricity.

9. The petitioner, being aggrieved by the order passed by respondent no.1, has approached this Court with a prayer referred to above.

10. Learned counsel for the petitioner challenged the impugned order, on the ground of jurisdiction of respondent no.1 to entertain and adjudicate the dispute, which is pending before the Civil Court. The contention of learned counsel for the petitioner is that the claim raised by petitioner was based on adverse possession. It is yet to be determined by the Court, whether the land belongs to petitioner. It was, therefore, not open to the respondent no.1 to disconnect the electricity connection, as there was no violation of terms and conditions of connection.

11. It is also contention of learned counsel for the petitioner that it is not open to the respondent no.1 to disconnect the electricity in view of dispute to title of the property, as disconnection could only be ordered in case of violation of terms and conditions of Electricity Supply, or on the basis of order by the competent Court.

12. It is finally contended by learned counsel for the petitioner, that no disconnection could be ordered on the basis of report of the Advocate Commissioner, as it is yet to be decided by the Court, either to accept or not to accept the report.

13. This writ petition is opposed by respondent no.2, on the ground that he has filed a suit for possession, and furthermore as per the Revenue record and documents, it is prima facie proved that respondent no.2 is the owner of land, therefore, the petitioner had no right to have electricity connection on the land belonging to respondent no.2.

14. Learned counsel for the respondent no.1 contends, that the writ petition is not competent, as respondent no.1 has ordered disconnection of electricity, after holding enquiry and prima facie coming to the conclusion, that the land belongs to the respondent no.2.

15. On consideration, I find that the writ petition deserves to succeed. The very fact, that respondent no.2 has filed a suit for declaration and possession, shows that the petitioner is in possession of property in dispute. Based on the possession, the electric connection was granted by the Electricity Board / respondent no.1 and admittedly there is no violation of the terms of connection, as the petitioner is paying the bills etc regularly.

16. Till the question of title is finally decided by the Civil Court, it was not open to the respondent no.1 to record a finding regarding ownership of property in dispute.

17. In any case, once it is not disputed that the petitioner is in possession of the land, there was no occasion for the respondent no.1 to order disconnection of electricity merely on the complaint of respondent no.2 in view of the pending suit, which has not attained finality. The matter would have been different, in case a final decree is passed in favour of respondent no.2, holding him to be owner and entitled to possession.

18. The order of respondent no.1 in disconnecting electricity, therefore on the face of it, is arbitrary, thus, hit by Article 14 of the [Constitution of India](#), therefore, not sustainable in law.

19. Consequently, this writ petition is allowed. The impugned order is set aside, and a writ in the nature of Mandamus is issued, directing respondent no.1 to restore electricity to the petitioner forthwith, in any case not later than one week of the receipt of certified copy of this order.

20. It is made clear that any observation made herein above be not taken to be opinion or expression with regard to ownership of the property. It will be for the civil Court to take a final decision in the civil suits independent of the observation made herein-above, by appreciating the evidence led or to be led by the

respective parties.

21. No costs. Connected miscellaneous petition is closed.

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