

IN THE HIGH COURT OF TELANGANA AT HYDERABAD

W.P.No.6542 OF 2024

Between:

Bhumaraju Edukondala Raju

... **Petitioner**

And

State of Telangana & others

... **Respondents**

JUDGMENT PRONOUNCED ON: 30.07.2024

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

1. **Whether Reporters of Local newspapers may be allowed to see the Judgment?** : **Yes**
2. **Whether the copies of judgment may be marked to Law Reporters/Journals?** : **Yes**
3. **Whether Their Lordships wish to see the fair copy of the Judgment?** : **Yes**

MRS JUSTICE SUREPALLI NANDA

THE HON'BLE MRS JUSTICE SUREPALLI NANDA**W.P.No.6542 OF 2024****% 30.07.2024****Between:**

Bhumaraju Edukondala Raju

... Petitioner**And**

\$ State of Telangana & others

... Respondents**< Gist:****> Head Note:**

! Counsel for the Petitioner : Sri Ravi Chandrasekhar

^ Counsel for Respondents : G.P. for Energy for R1,
Sri Zakir Ali Danish, Ld. Standing
Counsel for R2, R4 and R5,
G.P.for Endowment, for R3 and R6
Sri J.R.Manohar Rao, Ld. Standing
Counsel for R7**? Cases Referred:**

- (1) 2023 LiveLaw (SC) 453
- (2) (2011) 12 Supreme Court Cases 314
- (3) 2022 LiveLaw 570
- (4) 2022 SCC Online TS 2020
- (5) 2022 SCC Online TS 2057

HON'BLE MRS. JUSTICE SUREPALLI NANDA**WRIT PETITION No.6542 OF 2024****ORDER:**

Heard Sri G.Ravi Chandrasekhar, the learned counsel appearing on behalf of the petitioner, the learned Government Pleader for Energy, appearing on behalf of respondent No.1, learned Government Pleader for Endowment appearing on behalf of respondent Nos.3 and 6, Sri Zakir Ali Danish, learned Standing Counsel appearing on behalf of respondent Nos.2, 4 and 5 and learned standing counsel Sri J.R.Manohar Rao, appearing on behalf of Respondent No.7.

2. **The petitioner approached the court seeking prayer as under:**

"To issue writ, order or direction, more particularly one in the nature of Writ of Mandamus, to declare the action of Respondents in rejecting the applications for electricity connections vide application No.NC022302176691 dated 04.10.2023 as illegal, arbitrary, unjust and violative of Articles 14, 19 and 21 of the Constitution of India and consequently direct the respondents to provide electricity connection to the petitioner."

3. The case of the Petitioner as per the averments made by the petitioner in the affidavit filed by the petitioner in support of the present Writ Petition in brief, are as follows:

It is the case of the petitioner that, the petitioner is the owner and possessor of the property bearing Municipal No. 1-9-35/48/48/6/6/B situated in Khammam town and district admeasuring an extent of 350.00 Sq Yds and 200.00 Sq Yds., (compact block) vide regd. Documents No. 3137/2009 and 3138/2009 dated 25.06.2009.

Subsequently, the petitioner obtained required permission and licences to start Lemon business under the name and style 'B.Y.R. Lemon Company.' Thereafter, the petitioner applied for commercial power connection to the respondents through online application dated 26.09.2023 vide receipt no. TF 9901296 and application No. NC022302176691. However, the application was rejected by the respondents without giving a reasoned decision.

It is the case of the petitioner that, the petitioner filed W.P No. 8591 of 2017 as the respondents interfered with the possession of the petitioner's land and the same was disposed directing the respondents therein to follow the due process of

law and subsequently, the endowment department filed a W.A No. 1043 of 2023 and the same was disposed of directing the respondents to file a case before the Tribunal under the Endowments Act.

It is submitted that the petitioner filed W.P No. 33197 of 2023 challenging the rejection order dated 04.10.2023 passed by the respondent – TSNPDCL. However, during the pendency of the writ petition, the petitioner received a notice from the Endowment Tribunal that the respondent No. 6 had filed a case against petitioner vide O.A No. 06/2024 calming the subject property. As a consequence, the 7th respondent addressed a letter dated 06.10.2023 vide no. 9/SGMS/2023 to the 5th respondent stating that the cases are pending with respect to the lands in Sy.Nos. 35, 38 & 39 of the Bokkalagadda area, Khammam district and that the issuance of power supply to the said land is violative of endowment act and requested TSNPDCL authorities not to provide any power supply to the meters in the said premises without obtaining permission from the 7th respondent. Aggrieved by the same, the present Writ Petition is filed.

PERUSED THE RECORD

4. **Order impugned dated 04.10.2023 reads as under:**

Transaction Details

Transaction Id:	TTNC02230217 6691	Application No:	NC0223021766 91
Name:	B YEDUKONDALA RAJU	Service Name:	NEW CONNECTION
Transaction Date:	26/09/2023	Amount:	4536
Status:	Rejected	Remarks:	Rejected Field objection rejectedby field staff
Approved / Rejected Date:	04/10/2023	Print Date:	NA
Printed By:	NA	Franchisee Id/ VLE Id:	USDP-KMSX- OPERATOR-2
District:	KHAMMAM	Mandal:	KMM TOWN

5. **Counter Affidavit filed on behalf of Respondent No.6,
in particular Para nos. 7, 9, 11 and 12.**

"7. It is further fact that, the Petitioner has trespassed into the land belonging to the subject temple situated in the Sy.No.40 of Khammam Urban by removing the fencing and started construction activity. Upon seeing same, the subject temple authority reported the issue to the local Police Authorities in written on 28.09.2023 to protect the land from the Petitioner. Actually, the land in Sy. No.40 is Patta land of the subject temple, but by suppressing the facts and records, Smt.L.Seetharamamma, W/o. the then Archaka of the subject temple sold the land duly dividing into plots without having competency. On subsequent purchase, the Petitioner purchased the land in Sy. No.40

through registered sale deeds which are invalid. Under the Provisions Sec.80 of the Endowments Act 30/1987 any sale transaction in respect of temple land shall be within the prior approval of the Commissioner of Endowments, Hyderabad. Hence the initial sale transaction of the Petitioner is illegal and not valid under the provisions of Endowments Act 30/1987.

9. In reply to the averments of the Petitioner in Para No.7 to 10 : It is submitted that, the contentions of the Petitioner are not correct. The Petitioner is trying to get the temple land by playing the small tricks. The sanction of Power connection in his name in the temple land can strengthen his contentions to grab the property. That's why, the temple authority i.e. the Respondent No.7 submitted to the AE, TSNPDCL, Khammam vide Rc. No.9/SGMS/2023, Dated 06.10.2023 that, the land in which the Petitioner filed application for sanction of Power Connection is belonging to the subject temple and in the year 2016, the Revenue authorities removed the encroachments from the temple land and handed over to the temple, after that, fencing was provided around the temple land in question with a Caution Board saying that the trespasses will be punished under the Endowment Act 30/1987 since it is a land belonging to the subject temple only.

11.This Respondent addressed letter to the Tahsildar, Khammam vide Rc. No.D/2637/2023, Dated 30.09.2023 duly enlightening the Patta rights of the subject temple

over the land to an extent of Ac.0.27 Gts. in Sy.No.40 and requested to the necessary action for removing the Petitioner from the Patta land of the subject temple. After perusal of records, the Tahsildar, Khammam Urban Mandal has issued notice to the Petitioner vide Rc. No.B/3384/2023, Dated 05.10.2023 under the Revenue Act, directing the Petitioner to vacate the temple land. As there was no other remedy to contest the matter, the Petitioner has withdrawn the W.P. Since the land is a temple land and the Petitioner is not having a valid Sale Deed with prior approval of the Commissioner, Endowments Department, Hyderabad, he has no any right to ask for Power Connection. It will effect the rights of the temple over the land.

12. Now, the TSNPDCL Authorities vide Lr.No.ADE/OP/TSD/KMM.FN.No./D-1528/23, Dated 07.02.2024 informed the Petitioner that, the entire issue of his application as well as the objection filed by the Endowments Department are under pursuance of their higher authorities, as and when they receives the instructions, further action will be initiated on the application of the Petitioner. We have filed O.A. No.6/2024 U/s.83 of the Act, against the Petitioner and the same is pending before the Hon'ble Tribunal.

6. Counter Affidavit filed on behalf of Respondent No.7, in particular Para nos. 10, 11, 13 and 14.

10. In reply to the averments as contained in Para 3 to 7: All the averments are denied and it is submitted that the petitioner herein is an encroacher who is squatting over the endowed property of the subject temple. It is submitted that the subject property bearing No.1-9-35/48/48/6/6/B is situated in Sy. No. 40, Bokkalagadda Area, Khammam Urban Mandal of Khammam Town and District. It is submitted that the said land is the endowed land of the subject temple. Further, it is submitted that the petitioner herein is trying to enrich himself unjustly by squatting over the endowed property and conducting business at the cost of the temple.

11. In reply to the averments as contained in Para 9: All the averments other than those which have been expressly admitted herein are denied. It is submitted that the petitioner is facing eviction proceedings before the Telangana Endowments Tribunal vide O.A. No. 6 of 2024 and the same is pending. Meanwhile, the petitioner is trying to get electricity connection in order to conduct business in a premises which he had encroached which itself is detrimental to the interests of the subject institution.

13. In reply to the averments as contained in Para 11: All the averments other than those which have been expressly admitted herein are denied. It is submitted that the subject temple had addressed letter to the Electricity Department officials vide 9/SGMS/2023, Dt: 06.10.2023 requesting the electricity department officials to not to

entertain any application made by the petitioner herein for electricity connection.

14. In reply to all other paras: It is submitted that the petitioner herein had illegally encroached upon the endowed land of the subject temple and now he wants to conduct business operations for enriching himself at the cost of the subject temple. Hence, the present writ petition is misconceived and is liable to be dismissed in limine."

DISCUSSION AND CONCLUSION:

7. The specific case of the respondent Nos. 6 and 7 as per the averments made in the counter affidavit filed on behalf of respondent Nos. 6 and 7, referred to an extracted above is that the endowment authorities had initiated eviction proceedings against the petitioner in terms of section 83 of the Endowment Act 30 of 1987 and the same is pending, and hence the 7th respondent temple had addressed letters to the electricity department officials to not to entertain any application made by the petitioner herein for electricity connection, since petitioner illegally encroached upon the endowed land of the subject temple.

8. A bare perusal of the order impugned dated 04.10.2023 indicates that the application of the petitioner seeking electricity connection vide application no. NC022302176691, as rejected by

the respondent authority stating 'Rejected by field staff.' This court opines that the impugned order dated 04.10.2023, is cryptic order, passed erroneously without assigning any reason, without application of mind in a routine, casual manner.

9. A bare perusal of the record clearly indicates that the respondent Nos. 6 and 7 herein had filed O.A.No.06 of 2024, on the file of Telangana Endowments Tribunal at Hyderabad under section 83 (1) of Tschri and Endowments Act 30 of 1987, read with rule 6 (9) of the Telangana Endowments Tribunal Rules, 2010 with prayer as under:

- A. Declare the Respondent as encroacher and consequently
- B. Direct him to remove the encroachments from the O.A. Schedule properties and handover the vacant physical possession of the O.A. Schedule properties to the applicant temple and,
- C. To award the costs of the instant Original Application and....

The very fact that the respondent Nos. 6 and 7 had filed a said suit for eviction against the petitioner clearly indicates that the petitioner is in possession of the petitioner's subject land admeasuring to an extent of 350 Sq Yds or 292.63 Sq yds bearing Municipal No. 1-9-35/48/48/6/6/B in survey number 40, situated at Bokkalagadda Area, Khammam Urban Mandal of Khammam Town.

10. Section 43 of the Electricity Act, 2003 reads as under:

“Section 43. (Duty to supply on request)

(1)(Save as otherwise provided in this Act, every distribution) licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring such supply:

11. The Apex in the Judgment reported in 2023 LiveLaw (SC) 453 in between K.C.Ninan Vs. Kerala State of Electricity Board and others passed in Civil Appeal Nos.2109 and 2110 of 2004, dated 19.05.2023, observed as under:

“Electricity Act, 2003; Section 43 - The duty to supply electricity under Section 43 is with respect to the owner or occupier of the premises. The 2003 Act contemplates a synergy between the consumer and premises. Under Section 43, when electricity is supplied, the owner or occupier becomes a consumer only with respect to those particular premises for which electricity is sought and provided by the Electric Utilities.”

12. The Apex Court in its Judgment reported in (2011) 12 Supreme Court Cases 314 in between Chandu Khamaru

Vs. Nayan Malik and Others passed in Civil Appeal

No.7575 of 2011 dated 02.09.2011 observed as under:

Sub-section (1) of Section 42 and sub-section (1) of [Section 43](#) of the Electricity Act, 2003 are quoted herein below:

"42. Duties of distribution licensees and open access-(1) It shall be the duty of a distribution licensee to develop and maintain an efficient co-ordinate and economical distribution system in his area of supply and to supply electricity in accordance with the provisions contained in this Act."

"43. Duty to supply on request-(1) Save as otherwise provided in this Act, every distribution licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring such supply."

7. It will be clear from sub-section (1) of Section 42 that every distribution licensee has a duty to develop and maintain an efficient co-ordinated and economical distribution system in his area of supply and to supply electricity in accordance with the provisions contained in this Act. Sub-section (1) of Section 43 provides that every distribution licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the

application requiring such supply. These provisions in the Electricity Act, 2003 make it amply clear that a distribution licensee has a statutory duty to supply electricity to an owner or occupier of any premises located in the area of supply of electricity of the distribution licensee, if such owner or occupier of the premises applies for it, and correspondingly every owner or occupier of any premises has a statutory right to apply for and obtain such electric supply from the distribution licensee.

11. We, therefore, set aside the order of the learned Single Judge as well as the impugned order of the Division Bench and dispose of the Writ Petition of respondent nos.1 to 3 with the direction that the distribution licensee will find out whether there is any other way in which electric line can be drawn for supply of electricity to the house of the appellant, other than the disputed passage in Dag Nos.406, 407 and 409. If there is no other way to supply electricity to the house of the appellant, the distribution licensee will follow the provisions of sub-section (2) of Section 67 of the Electricity Act, 2003 for carrying out the work for supply of electricity to the house of the appellant.

12. The case of the appellant, on the other hand, is that this passage is not a private passage of respondent Nos.1 to 3 but is a common passage and therefore an electric line can be drawn through this common passage. This dispute will have to be resolved in Civil Suit No.83 of 2004 pending in the Court of Civil Judge (Junior Division), Howrah, or in any other suit, but pending resolution of this dispute

between the parties, the appellant cannot be denied supply of electricity to his house.

13. The Apex Court in the Judgment reported in 2022 LiveLaw 570 in between Dilip (dead) through LRs Vs. Satish and others passed in CRLA No.810 of 2022 (arising out of Special Leave petition (CRL)No.8917 of 2019, dated 13.05.2022 observed as under:

“It is not disputed that applicant No.1 has obtained the connection of electricity. The submissions made show that applicant No. 1 is in possession of the shop and he is running a saloon shop. It is clear that he needs electricity for doing this business, but the first informant was not giving no objection certificate. He took every step to see that applicant No. 1 does not get supply of electricity for his business. It is not the case of the Applicant No. 1 that as per the agreement between him and landlord, the landlord is bound to supply the electricity. Further, the Electricity Board seeks no objection of landlord only to verify that the possession of the tenant is authorised. There is no other purpose behind obtaining such no objection from landlord. The landlord cannot prevent the tenant from availing such facility at his own cost.

It is now well settled proposition of law that electricity is a basic amenity of which a person cannot be deprived. Electricity cannot be declined to a tenant on the

ground of failure/refusal of the landlord to issue no objection certificate. All that the electricity supply authority is required to examine is whether the applicant for electricity connection is in occupation of the premises in question. **Be that as it may, the High Court clearly fell in error in quashing the FIR. It cannot be said that fabrication and/or creation of records and/or forging a signature does not constitute an offence under the Indian Penal Code. The High Court completely overlooked the definition of cheating in Section 415 of the IPC. It is however made clear that electricity supply granted, shall not be discontinued, subject to compliance by the Respondents of the terms and conditions of supply of electricity by the electricity department including payment of charges for the same.**"

14. In the judgment dated 05.01.2022 in W.P No. 18822 of 2021 reported in 2022SCCOnline TS 2020 in **Mahant Ravindra das Maharaj vs State of Telangana**, it has been held that the authorities concerned are obligated under law to process the application on their own merits, but cannot reject the same based on the letters written by the heads of other departments.

15. In **Telangana State Northern Power Distribution Company Ltd vs Shaik Karim Bee** in W.P. No. 19212 of 2021 dated 08.08.2022 reported in 2022 SCC Online TS

2057 it is held that electricity and water are basic necessities for human beings and they cannot be denied even in case of illegal encroachers and till it is proved that the applicants are land grabbers and are evicted in the land grabbing proceedings in accordance with law, they are entitled to water and electricity to live as human beings. **A division bench of this court in W.A. No. 676 of 2022 vide its judgment dated 20.10.2022 observed as under: -**

“We are not inclined to interfere with the aforesaid order of the learned Single Judge, firstly, for the reason that the same is an interim order and the writ petition is pending before the learned Single Judge. Secondly, we have held **on more than one occasion that even in a case of illegal encroacher, access to water and electricity is a basic minimum requirement for human existence.** Till it is proved that the respondents are land grabbers and are evicted in the land grabbing proceedings in accordance to law, they are entitled to water and electricity to live as human beings. We therefore decline to entertain the writ appeal.”

16. A bare perusal of section 43 of the Electricity Act, 2003 and the view of the apex court in the judgments referred to and extracted above clearly indicates that the plea of the respondents that until and unless OA No. 06 of 2024 filed for eviction by the respondent Nos. 6 and 7 against the petitioner

herein is decided on merits by the endowment tribunal at Hyderabad, the petitioner cannot ask for any relief, from the court is untenable and hence rejected, both as per Section 43 of the Electricity Act, 2003 and also as per the view of the Apex Court in the Judgments referred to and extracted above.

17. This court opines that the pleas put forth by the respondents and the judgments relied upon by the learned counsels appearing on behalf of the respondents do not apply to the facts of the present case.

18. Taking into consideration: -

1. The specific averments made at para no. 12 of the counter filed on behalf of the respondent No.6,
2. The fact as borne on record, that even as per the averments made in the counter affidavit filed on behalf of respondent Nos. 6 and 7 that the writ petitioner is in possession of petition schedule land,
3. The view of the Apex court and other Courts in the judgments referred to and extracted above,
4. Section 43 of the Electricity Act, 2003,
5. The fact as borne on record that the order impugned dated 04.10.2023, is bereft of reasons

6. The fact that ownership or right of occupancy has no nexus with grant of electricity connection to a consumer.

The writ petition is allowed and the order dated 04.10.2023 is set aside, and the respondents are directed to reconsider the petitioner's application for electricity connection vide application No. NC022302176691, within two (02) weeks from the date of receipt of the cop of the order, in accordance to law, in conformity with principles of natural justice issuing notice to all concerned parties and pass appropriate speaking orders and duly communicate the decision to the petitioner. However there shall be no order as to costs.

Miscellaneous petitions, if any, pending in this Writ Petition, shall stand closed.

MRS. JUSTICE SUREPALLI NANDA

Date: 30.07.2024.

Note: L.R.Copy to be marked
(B/o) Yvkr