

12.

\$~

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 1271/2011

%

Judgment dated 31.10.2012

UPENDER SINGH Petitioner
Through : Mr.Rajeev Kumar, Adv.

versus

BSES RAJDHANI POWER LIMITED Respondent
Through : Mr.Deepak Pathak, Adv.

CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J (ORAL)

1. Present writ petition has been filed by petitioner under Articles 226 and 227 of the Constitution of India seeking a writ, order or direction to respondent no.1 to install a new electricity connection or restore the connection no.2650W5221116 to the premises of the petitioner bearing no.C-11, First Floor, Jeevan Park, Pankha Road, Uttam Nagar, New Delhi.
2. Pleadings in this matter are complete. At the request of counsel for the parties present writ petition is taken down for final hearing and disposal. Respondents no.2 and 3 were served through publication, however, despite publication of service none has chosen to appear on their behalf.
3. The petitioner claims himself to be the owner/in occupation in respect of the property in question.
4. As per the petition, on 9.3.2010 the petitioner had entered into an Agreement to Sell with Smt.Rekha Bhatla and Smt.Uma Bhatla for the purchase of the property in question. The petitioner paid a sum of Rs.2.50

lakhs as earnest money to Smt.Rekha Bhatla and Smt.Uma Bhatla. The keys of the second floor of the premises in question were handed over to the petitioner at the time of executing the Agreement to Sell. It has also been averred in the writ petition that the vendors i.e. respondents no.2 and 3 herein handed over possession of the remaining portion of the property to the petitioner on 31.3.2010. The petitioner thereafter made payment of another sum of Rs.10.00 lakhs to the Central Bank of India on behalf of respondents no.2 and 3. After the amount of Rs.10.00 lakhs was paid by the petitioner to the Central Bank of India respondents no.2 and 3 did not execute the Sale Deed; the petitioner thereafter served a legal notice upon respondents no.2 and 3; and subsequently a suit for specific performance was filed by petitioner against respondents no.2 and 3 in Delhi High Court. As per the petition, the petitioner on 7.7.2010 made an application to respondent no.1, BSES Rajdhani Power Limited, for restoration of electricity connection No.2650W5221116. The electricity connection was not restored on account of the outstanding sum of Rs.28,287.41 against the said connection. Since the electricity connection was not restored the petitioner filed the present writ petition.

5. Counter affidavit has been filed by respondent no.1 as per which the writ petition raises disputed questions of fact. Reliance is placed by counsel for respondent no.1 in the case of *Mohinder Kumar Mehra v. BSES & Ors.*, W.P.(C) 5932/2010 in support of his submission that in similar circumstances another Single Judge of this Court was pleased to dispose of the writ petition with a direction to the petitioner to seek redressal before the suit Court. Reliance is also placed by counsel for respondent no.1 on a Full Bench decision of this Court in the case of *BSES Rajdhani Power Ltd. v. Saurashtra Color Tones Pvt. Ltd.*, reported at 2010 AIR (Del) 14, in support of his contention that existing dues of the premises

are liable to be cleared before installation of a new connection and the licensee cannot be compelled to grant a connection if the previous dues with respect to the premises are not cleared.

6. Learned counsel for respondent no.1 submits that the petitioner has not disclosed that there were two connections installed at the premises in question against which Rs.28,287.41 and Rs.96,570.76 are due and payable by the petitioner. Counsel also submits that the sum of Rs.1,62,556/- and Rs.4,65,150/- have been raised on account of theft of electricity and which amounts are also due and payable by the petitioner.
7. Learned counsel for the petitioner has strongly urged before this Court that the petitioner has already cleared the bill with respect to the first floor of the property in question and the petitioner has reason to believe that the erstwhile owners have cleared the entire electricity bills which were raised by respondent no.1, pursuant to a settlement arrived at between respondents no.1, 2 and 3. Learned counsel for respondent no.1, however, disputes this position and submits that although a settlement was arrived at but the respondent no.2 and 3 did not make the entire payments and thus the settlement stands withdrawn. Mr.Pathak, however, submits that in case the petitioner clears all the electricity bills, which are due and payable, without prejudice to his rights and contentions respondent no.1 will grant a new connection to the petitioner. Counsel for respondent no.1 further submits that even otherwise the petitioner is trying to create evidence in his favour by making a request for grant of an electricity connection whereas a civil dispute is already pending between the petitioner and respondents no.2 and 3 in another Court.
8. I have heard learned counsel for the petitioner and respondent no.1 and also considered their rival contentions. It is no longer *res integra* that the licensee, being respondent no.1 in the present case, is entitled to refuse the

installation of a fresh connection or restore electricity to any premises till such time the entire electricity dues have been cleared. It would be useful to reproduce the observations made by the Full Bench in the case of ***BSES Rajdhani Power Ltd.*** (supra). Relevant portion reads as under:

33. In our view, the learned single Judge committed an error in holding that the outstanding dues of earlier owner/occupier cannot be realised from the new owner/occupier unless there were mala fides of the old consumer. The question of mala fides does not arise when there is a statutory provision. We may add that there is no requirement in law for the distribution company to first initiate recovery proceedings by filing a civil suit against the old consumer before disconnecting the electricity supply. In *Swastic Industries v. MSEB* (1997) 9 SCC 465 the Supreme Court observed:

"It would, thus, be clear that the right to recover the charges is one part of it and right to discontinue supply of electrical energy to the consumer who neglects to pay charges is another part of it. The right to file a suit is a matter of option given to the licensee, the Electricity Board. Therefore, the mere fact that there is a right given to the Board to file the Suit and the limitation has been prescribed to file the suit, it does not take away the right conferred on the Board under Section 24 to make demand for payment of the charges and on neglecting to pay the same they have the power to discontinue the supply or cut off the supply, as the case may be, when the consumer neglects to pay the charges."

35. For the foregoing reasons, we hold that in terms of clause 2.1(iv) of the General Conditions of Supply forming part of the Tariff Order dated May 23, 2001 if there are electricity dues against the previous owner or occupant of a premises who transfers the premises to a new owner or occupant, the new owner or occupant applying for a fresh electricity connection can be compelled by the Distribution company to pay the arrears of electricity dues of the previous owner or occupant and the distribution company can refuse to supply electricity to the premises on account of such non-payment."

9. Even otherwise the present writ petition raises disputed question of fact. While counsel for the petitioner submits that the petitioner is in

possession of the ground floor and the second floor and reliance has been placed on the order passed by the trial court, there is nothing on record to suggest that the possession of the premises in question was handed over to the petitioner by respondents no.2 and 3. No possession letter has been placed on record.

10. Accordingly, no grounds are made out to entertain the present petition under Articles 226 and 227 of the Constitution of India and the same is dismissed. In case the petitioner so chooses to clear the outstanding amounts respondent no.1 will consider the request of the petitioner for granting a fresh electricity connection. It is made clear that grant of electricity connection in favour of the petitioner will not create any special equalities in favour of the petitioner and the same shall be subject to final orders, which may be passed by any Civil Court where the dispute between the petitioner and respondents no.2 and 3 is pending, , it is also made clear that in case any payment has already been made by petitioner, respondents no.2 and 3 necessary adjustments will be given to the petitioner.

CM 3087/2012

11. Application stands dismissed in view of the order passed in the writ petition.

G.S.SISTANI, J

OCTOBER 31, 2012

msr