

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

WEDNESDAY, THE 3RD DAY OF JUNE 2015/13TH JYAISHTA, 1937

WA.No. 1974 of 2009 () IN OP.36874/2002

AGAINST THE ORDER/JUDGMENT IN OP 36874/2002 of HIGH COURT OF KERALA
DATED 02-06-2009

APPELLANT(S)/RESPONDENT:

THE CORPORATION OF THRISSUR REP. BY ITS SECRETARY,
THRISSUR-1.

BY ADVS.SRI.K.B.MOHANDAS,SC,THRISSUR CORPORATION
SRI.LELLULAL T.G.THUNDATHIL

RESPONDENT(S)/PETITIONER:

T.N.MOTHILAL, S/O NARAYANAN,
THOTTATHIL HOUSE, CHELAKKOTTUKARA VILLAGE
THRISSUR TALUK.

R BY ADV. SRI.K.N.PADMAKUMAR
ADV. SRI.TITUS MANI
ADV. SRI.BINNY THOMAS

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 03-06-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**P.R. RAMACHANDRA MENON
&
BABU MATHEW P JOSEPH, JJ.**

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W.A. No. 1974 of 2009

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Dated, this the 3rd day of June, 2015

JUDGMENT

P.R. Ramachandra Menon, J.

Interference made by the learned single Judge confining the recovery proceedings pursued by the appellant Corporation (licensee under the Electricity Act) to the amount payable within a period of three years preceding from 16.09.2002, with reference to Section 539 of the Municipality Act and also in view of Clause 32(f) of the Conditions of Supply of Electrical Energy, made the respondent licensee to challenge the verdict by filing appeal.

2. The main contention raised is that, Section 539 of the Kerala Municipality Act is not applicable, for the reason that it is only in respect of any amount due under the Municipality Act, whereas the amount due, as involved herein, being the electricity arrears, does not come within the purview of the said Act, but the Electricity Act. It is further contended that Clause 32 (f) of the Conditions of Supply

of Electrical Energy came into existence only by virtue of Electricity Act 2003 and as such, the same does not have any application in respect of the dues as involved in the present case for the period prior to the Act. Reliance is sought to be placed on the decision rendered by a Division Bench of this Court in **Abdul Nazer Vs. KSEB [2006 (1) KLT 811]**, to the effect that Section 56 (2) of the Electricity Act with regard to recovery by resorting to Revenue Recovery proceedings is only prospective and as such, there is no bar in resorting to such course in respect of the dues which arise prior to the relevant period.

3. The respondent is occupying the premises on lease. The learned counsel submits that Section 56 (2), which is declared as only prospective by the Division Bench, as aforesaid creates two classes of persons/consumers without any basis and hence seeks to sustain the verdict passed by the learned single Judge. This Court finds that the respondent has not challenged the virus of Section 56 (2) of the Act by filing any writ petition or otherwise and as such the said contention cannot be accepted. With regard to the correctness and sustainability of the judgment passed by the learned single Judge, this Court does not find it necessary

W.A No. 1974 of 2009

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to consider now, since there is no representation for the appellant.

In the said circumstances, the writ petition is dismissed for non-prosecution.

sd/-

**P. R. RAMACHANDRA MENON,
(JUDGE)**

sd/-

**BABU MATHEW P. JOSEPH,
(JUDGE)**

kmd