

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 4TH DAY OF MARCH 2015/13TH PHALGUNA, 1936

WP(C).No. 1115 of 2015 (L)

PETITIONER :

**SMT. MARY PHILIP AGED 69 YEARS
W/O. REV. M.T. PHILIP (LATE), RESIDING AT FLAT NO.1-B
CRYSTAL APARTMENTS, RAJASILPAM, KOTTAYAM DISTRICT.**

BY ADV. SRI.A.J.VARGHESE

RESPONDENT(S) :

- 1. THE KERALA STATE ELECTRICITY BOARD LIMITED
REPRESENTED BY ITS SECRETARY, VYDHUTHI BHAVANAM
PATTOM, THIRUVANANTHAPURAM-695 004.**
- 2. THE ASSISTANT ENGINEER
ELECTRICAL SECTION
KERALA STATE ELECTRICITY BOARD LIMITED
KOTTAYAM CENTRAL, PIN-686 001.**
- 3. M/S.CRYSTAL APARTMENTS
CSI COMMERCIAL COMPLEX, BAKER JUNCTION
KOTTAYAM DISTRICT
REPRESENTED BY ITS MANAGING PARTNER
SRI.BINNY ITTY, PIN – 686 001.**
- 4. P.LALITHAMMA
W/O.LATE RAGHAVAN PILLAI, I-B CRYSTAL APARTMENTS
RAJASOOYAM, GOVINDAPURAM KARA
KOTTAYAM, PIN-686 001.**

**R1 & R2 BY ADVS. SRI.JAICE JACOB, SC
R4 BY SENIOR ADVOCATE SRI.K.RAMAKUMAR
BY ADVS. SRI.S.M.PRASANTH
SRI.M.MANOJKUMAR (CHELAKKADAN)
SMT.ASHA BABU
SMT.JINNU SARA GEORGE
SMT.AMMU CHARLES
SRI.G.RENJITH**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13-02-2015,
ALONG WITH WPC. 1885/2015, THE COURT ON 04-03-2015 DELIVERED
THE FOLLOWING:**

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WP(C).No. 1115 of 2015 (L)

APPENDIX

PETITIONERS' EXHIBITS :

- EXT.P1. A TRUE COPY OF THE SALE DEED NO.3398/1/2009 DATED 19/12/2009.**
- EXT.P2. A TRUE COPY OF THE TAX RECEIPT DATED 24/4/2014 ISSUED BY THE
VILLAGE OFFICER, KOTTAYAM.**
- EXT.P3. A TRUE COPY OF THE ORDER DATED 21/7/2014 ISSUED BY THE
ELECTRICAL INSPECTOR, DEPARTMENT OF ELECTRICAL
INSPECTORATE, KOTTAYAM.**
- EXT.P4. A TRUE COPY OF THE LETTER DATED 1/1/2014 ISSUED BY THE 2ND
RESPONDENT TO THE 3RD RESPONDENT.**
- EXT.P5. A TRUE COPY OF THE SALE DEED DATED 7/12/2007.**
- EXT.P6. A TRUE COPY OF THE JUDGMENT DATED 15/11/2013 IN WPC
NO.9872/2012.**

RESPONDENT(S)' EXHIBITS :

- EXT. R1(A) COPY OF THE APPLICATION DATED 8/8/2014 SUBMITTED BY THE
THIRD RESPONDENT.**
- EXT. R1(B) COPY OF NOTICE DATED 25/10/2014 ISSUED BY THE 2ND
RESPONDENT TO THE FOURTH RESPONDENT.**
- EXT. R1(C) COPY OF THE LETTER DATED 1/11/2014 SENT TO THE THIRD
RESPONDENT BY THE 2ND RESPONDENT.**
- EXT. R1(D) COPY OF THE CERTIFICATE DATED 8/8/2014 ISSUED BY THE REVENUE
OFFICER, KOTTAYAM MUNICIPALITY.**
- EXT. R4(a) COPY OF THE REPRESENTATION DATED 30.10.2014 SUBMITTED
BEFORE THE VIGILANCE DEPARTMENT.**

//TRUE COPY//

P.A. TO JUDGE

Mn

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) Nos. 1115 & 1885 of 2015

Dated this the 4th day of March, 2015

J U D G M E N T

These writ petitions are filed seeking for a direction to the respondent Board to provide electricity connection to a newly constructed apartment, by name, 'Rajasilpam', within the local limits of Kottayam Municipality.

2. WP(C) No.1885/2015 is filed by the builder of the 'Rajasilpam Apartment' along with an allottee of one of the flats in the said apartment; and WP(C) No.1115/2015 is filed by another allottee of a flat in the said apartment. The grievance raised by these petitioners is that the respondent Board is not providing electricity connection to the apartment for the reason that the previous owner of the property (She is the 3rd respondent in WP(C) No.1885/2015 and the 4th respondent in WP(C) No.1115/2015) has raised an objection regarding the use of a way to the said apartment.

3. In WP(C) No.1115/2015, the petitioner alleges as follows;

Petitioner, her son and daughter-in-law together purchased an apartment No.1-B admeasuring 1390 sq.ft super built-up area on the 1st floor and covered car parking area marked as No.1-B in the building, by name, Crystal Apartments Rajasilpam, paying the entire sale consideration, from the 3rd respondent on 19.12.2009 as per Ext.P1. Since the construction was ongoing, the petitioner and her family could not stay in the building. However, they started to reside in the building from November 2014 onwards. The petitioner's children are presently working outside India and the petitioner alone is staying in the above apartment. The 3rd respondent informed the petitioner that though the electrical inspectorate, as per Ext.P3, has approved and granted energization order for 15 flats including that of the petitioner, the 2nd respondent is not effecting electric supply stating that the 4th respondent has raised certain objections.

Chapter III of the Kerala Electricity Supply

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Code, 2014 deals with general conditions of supply of electricity. Regulation 27(2) clearly states that licensee shall, on an application in the proper form from the owner or lawful occupier of any premises located in his area of supply, give supply of electricity to such premises within the time specified in the Code; and as per Regulation 81, the supply had to be given within 7 days from the date of receipt of application form in a case, wherein distribution mains is not required. Regulation 45 deals with proof of ownership or occupancy of the premises, wherein it is clearly stated that the licensee shall accept any of the following documents as proof of ownership or occupancy of premises, which includes certified copy of the title deed or lease agreement.

The petitioner is one of the owners in possession of the property/building, which is numbered as Apartment No.1-B, on the 1st Floor of the Crystal Apartment Rajasilpam and is staying in the said apartment after purchasing the same from the 3rd respondent. All the formalities for getting separate connection for the 15 flats under LT-IA

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tariff have been approved by the electrical inspectorate; and hence, there is no impediment for the 2nd respondent to give electric connection under LT-IA tariff. Hence, the stand taken by the 2nd respondent in Ext.P4 is legally unsustainable; and hence, this writ petition is filed for appropriate reliefs.

4. In WP(C) No.1885/2015, the petitioners alleged as follows;

The 1st petitioner, who is the managing partner of M/s.Crystal Apartments, constructed an apartment by name, Crystal Apartments 'Rajasilpam'; and all the 15 flats were sold; and the 2nd petitioner purchased a flat No.4-A in the said apartment. The 3rd respondent's husband was the original owner of the property, from whom the 3rd respondent and her daughter got right as per Ext.P2 will deed; and the 1st petitioner purchased the said property as per Ext.P3. As per Ext.P1, the 2nd petitioner purchased Flat No.4A in the apartments. There are certain disputes between the 1st petitioner and the 3rd respondent; and the 3rd respondent on

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earlier occasion approached this Court when the 1st petitioner sought for electric connection to the flats; and this Court, vide Ext.P5 judgment, directed the respondent Board to consider the application under relevant regulations after hearing the parties.

Thereafter, the Electrical Inspector, Kottayam, as per Ext.P6, approved energization order for 15 flats including the flat purchased by the 2nd petitioner; and thereafter, the 1st petitioner remitted the necessary application fee as per Ext.P7. However, the 2nd respondent, vide Ext.P8, stated that 3rd respondent objected the application; and hence, connection cannot be given. The stand taken by the 2nd respondent is against Section 43 of the Electricity Act and also against the decision in **Syam Das Bank vs. West Bengal State Electricity Distribution Com. Limited** [AIR 2011 Cal.28], wherein it is held that Section 43 of the Electricity Act, 2003 provides for either the owner or occupier of premises to make an application for electricity. In the decision, it was held that a co-owner can apply for electricity supply and distribution licensee cannot insist on consent of other co-owners before

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supply is provided. In the light of the above settled position, the denial of the connection to 15 flats including the flat owned by the 2nd petitioner is illegal.

The 2nd petitioner started to stay in the flat No.4-B from October, 2014 onwards; and the supply to the premises, which was given under LT-VIIA tariff is disconnected on 16.01.2015 in spite of the fact that there is no due to the KSEB. Hence, this writ petition is filed to give power connection to the 15 flats including Flat No.4A occupied by the 2nd petitioner forthwith and for other reliefs.

5. In WP(C) No.1115/2015, the respondent Board has filed a counter affidavit alleging that no application has been submitted by the petitioners as per law.

6. This Court, by a common judgment in WP(C) No.31437/2010 and connected cases, upheld the issuance of occupancy certificate by the respondent municipality and permission was also granted to the builder/occupants to approach the respondent municipality to get the irregularities, if any, pointed out by the municipality

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regularized after rectifying the defects. As the allottees have started residing in the apartments, it is only just and proper to direct the respondent Board to grant connection to 'Rajasilpam Apartments'.

7. The apex court in **Chandu Khamaru** vs. **Nayan Malik & Others** [(2011) 12 SCC 314] has observed that the distribution company, being under legal obligation to supply electricity, cannot deny supply on the ground of dispute. Therefore, the respondent Board is bound to provide service connection to the apartments owned by the petitioners if their applications are in order.

Therefore, these writ petitions are disposed of directing the respondent Board to consider the applications, if any, submitted by the petitioners and to provide service connection forthwith on production of proof of ownership of the apartments if the applications are otherwise in order and are pending. If anyone of the petitioners has not submitted application so far, it shall be open to such petitioner to submit applications for

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service connections; and in the event of filing such an application for service connection along with proof of ownership of the apartment, service connection shall be provided to the said applicant without any delay.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

bka/-