

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.CHITAMBARESH

MONDAY, THE 13TH DAY OF JULY 2015/22ND ASHADHA, 1937

WP(C).No. 4017 of 2014 (B)  
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PETITIONER(S)/PETITIONER:  
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ABDUL VAHAB, AGED 41 YEARS  
S/O.IBRAHIM MUSLIAR, KUZHIMANNIL, NEAR MUNNUMMEL PALLI  
THATTANCHERRYMALA, VALIYORA AMSOM, KOORIYAD.P.O  
VENGARA, THIRURANGADI TALUK, MALAPPURAM DISTRICT.

BY ADV. SRI.N.M.JAMES

RESPONDENT(S)/RESPONDENTS:  
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1. KERALA STATE ELECTRICITY BOARD  
REPRESENTED BY ITS SECRETARY, VYDYUTHI BHAVAN, PATTOM  
THIRUVANANTHAPURAM - 695 004
2. THE SPECIAL OFFICER(REVENUE),  
VYDYUTHI BHAVAN, PATTOM, THIRUVANANTHAPURAM - 695 004
3. THE ASSISTANT ENGINEER,  
ELECTRICAL SECTION, CHELARI, CALICUT UNIVERSITY.P.O  
MALAPPURAM DISTRICT-673635.
4. SAROJINI, AGED 62 YEARS  
D/O.KARIKUTTY, KOTTODY PARAMBIL, THENJIPALAM.P.O  
THIROORANGADI, MALAPPURAM DISTRICT - 673 635

R1-R3 BY ADV. SRI.RAJU JOSEPH (SR.)  
R1-R3 BY ADV. SRI.K.T.PAULOSE, SC, KSEB  
R BY SRI.JAICE JACOB,SC,KERALA STATE ELECTRICITY BOARD

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON  
13-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1 COPY OF THE SALE DEED NO.5411/2010 OF SUB REGISTRAR OFFICE, THENJIPPALAM.
- EXT.P2 COPY OF THE NOTICE NO.DB/CHELARI/ARREAR NOTICE -SOR-TVM/2013-14/451 DATED 17/1/2014 ISSUED BY THE 3RD RESPONDENT.

RESPONDENT(S)' EXHIBITS

- EXT.R1(a) TRUE COPY OF THE REVENUE RECOVERY REQUISITION DATED 19.12.2002
- EXT.R2(b) TRUE COPY OF THE LETTER SENT BY THE SECOND RESPONDENT TO THE DISTRICT COLLECTOR, MALAPPURAM DATED 19.12.2002
- EXT.R1(c) TRUE COPY OF THE LETTER SENT BY THE SPECIAL OFFICER REVENUE TO THE DISTRICT COLLECTOR, THIRUVANANTHAPURAM DATED 6.8.2003.

*//True copy//*

*P.S.to Judge.*

'C.R.'

V.CHITAMBARESH, J.

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W.P (C) No.4017 of 2014  
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Dated this the 13<sup>th</sup> day of July, 2015

J U D G M E N T

The petitioner is an assignee of 19.15 Ares of land in Resurvey No.88/11 of Thenhipalam Village in Malappuram District from the fourth respondent by Ext.P1 sale deed dated 24.11.2010. The petitioner is aggrieved by Ext.P2 notice dated 13.1.2014 intimating that the property is liable for a sum of ₹.71,40,597/- kept as electricity dues by the fourth respondent. The notice reflects that the fourth respondent was conducting a steel re-rolling mill in the property which is now in the possession of the petitioner. It is not in dispute that the fourth respondent was a high tension consumer and that the steel re-rolling mill had been dismantled before the assignment. The petitioner contends that the sum of ₹.71,40,597/- depicts the electricity charges for the period 1996-2002 and that the remedy to realise the same has become barred. The petitioner asserts that the property purchased by him cannot be proceeded against for the dues of the fourth respondent since there is no charge. The petitioner

adds that the fourth respondent had vouchsafed in the sale deed by explicit recitals that there is no subsisting liability. The Kerala State Electricity Board ['KSEB' for short] on the other hand points out that a statutory charge is clamped on the property which could be proceeded against.

2. I heard Mr.N.M.James, Advocate on behalf of the petitioner and Mr.Raju Joseph, Senior Advocate on behalf of the KSEB.

3. It may at once be noticed that the fourth respondent who has kept the electricity charges in arrears has neither entered appearance in the writ petition nor disputed the liability. The electricity connection had been availed by the fourth respondent at a time when the Electricity Supply Act, 1948 ['the Act' for short] was in force. Regulations Relating to the Conditions of Supply of Electrical Energy, 1990 ['the Regulations' for short] were framed under Section 79 (j) of the Act. Clause 15(d) of the Regulations is to the following effect:

“All dues to the Board from a consumer shall be the first charge on the assets of the consumer. All dues including

penalty shall be realised as public revenue due on land.”

It is the usual practice for every consumer to enter into a separate agreement for supply of electrical energy and a proforma of such agreement can be found amongst the Regulations itself. The following clauses are relevant:

“11. All sums found due to the Board from the consumer under or by virtue of these presence or by reason of the breach thereof or otherwise are recoverable under the provisions of the Revenue Recovery Act for the time being in force as if they are arrears of public revenue due on land or in such other manner as the Board may deem fit . The above provisions shall not prejudice any other remedy to which the Board may be entitled for the recovery of such moneys.

19. The conditions of Supply of Electrical energy published by the Board as amended from time to time shall be deemed to be part of this agreement and the provisions therein which are not contradictory to the provisions made herein as also the statutory obligations under the Act and/or Rules shall also be binding on the consumer.”

4. There is no case for the fourth respondent that such an agreement was not entered into by her with the KSEB creating a first charge on the property or that the Revenue Recovery Act does not apply. Clause 15(d) of the Regulations creating a first charge on the property enabling the dues to be realised as public revenue would spring up even in the absence of a contractual obligation. The Supreme Court has in this regard observed in M/s.Hyderabad Vanaspathi Ltd. v. Andhra Pradesh State Electricity Board [AIR 1998 SC 1715] as follows:-

“Under Section 79(j) the Board could have made Regulation therefor but admittedly no Regulation has so far been made by the Board. The terms and conditions of Supply were notified in B.P.M.Ms.No.690 dated 17.9.1975 in exercise of the powers conferred by Section 49 of the Supply Act. They came into effect from 20.10.1975. They were made applicable to all consumers availing supply of electricity from the Board. The Section in the Act does not require the Board to enter into a contract with individual consumer. Even in the absence of an individual contract, the terms and conditions of

Supply notified by the Board will be applicable to the consumer and he will be bound by them. Probably in order to avoid any possible plea by the consumer that he had no knowledge of the terms and conditions of Supply, agreements in writing are entered with each consumer. That will not make the terms purely contractual. The Board in performance of a statutory duty supplied energy on certain specific terms and conditions framed in exercise of a statutory power. Undoubtedly the terms and conditions are statutory in character and they cannot be said to be purely contractual." (emphasis supplied)

The irresistible conclusion therefore is that a statutory charge is created on the property of the consumer the moment the electricity charges fall due under the Act in the light of the Regulations. The charge being statutory gets clamped on the property of the consumer whether or not an independent agreement is entered into by her with the KSEB.

5. The further question to be considered is as to whether the remedy of the KSEB to recover the arrears of electricity charges by proceeding against the property has become barred by limitation. The sum

of ₹.71,40,597/- with interest denotes the electricity charges due from the fourth respondent for the period from 1996 to 2001. That a period of 12 years is available to enforce payment of money otherwise charged upon the immovable property is evident from Article 62 of the Limitation Act, 1963. The KSEB through its Special Officer (Revenue) had forwarded Ext.R1(a) requisition for recovery of the amount on 19.12.2002 well within the period of 12 years. The requisition was accompanied by Ext.R1(b) covering letter requesting the District Collector, Malappuram to initiate the revenue recovery proceedings. The District Collector, Malappuram however returned the requisition on the premise that it is the District Collector, Thiruvananthapuram who has to take steps. The Special Officer (Revenue) thereupon addressed the District Collector, Thiruvananthapuram by Ext.R1(c) letter requesting to do the needful. The confusion arose because of the wording of section 69 (2) of the Kerala Revenue Recovery Act, 1968 as it stood prior to the amendment on 12.12.2005. Now the District Collector, Malappuram within whose jurisdiction the defaulter held

the property has obviously the jurisdiction to initiate the revenue recovery proceedings.

6. It is the date of requisition for initiating revenue recovery proceedings that matters to discern whether the remedy has become barred by limitation or not. The fact that there was difference of opinion between the District Collectors to set in motion the machinery for realisation of the amount as a public revenue due on land is immaterial. The KSEB which is the requisitioning authority is not responsible for the tussle between the District Collectors in initiating steps. The Supreme Court in *State of Kerala v. V.R.Kalliyankutty* [1999 (2) KLT 146 (SC)] has observed as follows:-

“The process of recovery is different. An Act must expressly provide for such enlargement of claims which are legally recoverable, before it can be interpreted as extending to the recovery of those amounts which have ceased to be legally recoverable on the date when recovery proceedings are undertaken. Under the Kerala Revenue Recovery Act such process of recovery would start with a written requisition

issued in the prescribed form by the creditor to the Collector of the District as prescribed under S.69(2) of the said Act. Therefore, all claims which are legally recoverable and are not time barred on that date can be recovered under the Kerala Revenue Recovery Act.” (emphasis supplied)

The delay on the part of the revenue authorities in pursuing the revenue recovery action when the requisition by the KSEB is in time does not make the claim barred by the law of Limitation.

7. The position may ofcourse be different under the Electricity Act, 2003 and Section 56(2) thereof specifies a time limit of two years from the date when such sum becomes first due. But the same is also subject to the condition that the sum has not been shown continuously as recoverable as arrear of charges and the electricity supply is not cut off. As to where the sum has to be shown continuously as recoverable as arrears of electricity charges is however a debatable issue which need not detain me. Because the above conditions are irrelevant here since the dues for which the revenue recovery proceedings have been initiated

arose when the Act was in force only. The petitioner laments that the property was neither attached nor any encumbrance shown in the revenue records when the same was purchased under Ext.P1 sale deed. The request of the petitioner as a bona fide purchaser for value to exclude the property cannot be acceded to as the assignment is subject to the statutory charge. The remedy perhaps of the petitioner is to sue the fourth respondent for damages after paying the electricity charges if the property has to be salvaged. The reliefs in the writ petition to quash Ext.P2 notice and to direct the KSEB to proceed against the fourth respondent and her assets are misconceived.

The writ Petition fails. Dismissed. No costs.

Sd/-  
V.CHITAMBARESH,  
Judge.

nj.