

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.04.2015

CORAM

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI  
AND  
THE HON'BLE MR.JUSTICE M.VENUGOPAL

W.A.Nos.643 and 644 of 2015  
and  
M.P.Nos.1,1 of 2015  
and  
M.P.No.2 of 2015 in WP.644 of 2015

A.Parasuraman .... Appellant in both writ appeals

Vs.

1. The State of Tamil Nadu  
rep by its Chairman,  
T.N.E.B.,  
Anna Salai, Chennai-600 002.
2. The Superintending Engineer (Chennai-EDC/South),  
Tamilnadu Electricity Board  
at No.110-KV-SS Complex,  
Anna Main Road,  
K.K.Nagar,  
Chennai-600 078.
3. The Executive Engineer (O&M),  
TNEB at Porur, Chennai-600 116.
4. Er.C.Karupiah,  
Assistant Executive Engineer,  
O&M/Tangedco, Kundrathur,  
Chennai-600 069.
5. The Assistant Engineer (O&M),  
TNEB at Kovur, Chennai-600 122.

6.M.K.Muthurajan

7. The Branch Manager,  
Bank of Baroda, Kovur Branch  
Chennai-600 122.

... Respondents in W.A.No.643 of 2015

1. The State of Tamil Nadu  
rep by its Chairman,  
T.N.E.B.,  
Anna Salai, Chennai-600 002.

2. The Superintending Engineer (Chennai-EDC/South),  
Tamilnadu Electricity Board  
at No.110-KV-SS Complex,  
Anna Main Road,  
K.K.Nagar,  
Chennai-600 078.

3. The Executive Engineer (O&M),  
TNEB at Porur, Chennai-600 116.

4. Assistant Executive Engineer,  
O&M/Tangedco, Kundrathur,  
Chennai-600 069.

5. The Assistant Engineer (O&M),  
TNEB at Kovur, Chennai-600 122.

6. M.K.Muthurajan ... Respondents in W.A.No.644 of 2015

These writ appeals are preferred under Clause 15 of the Letters Patent against the order dated 06.08.2014 passed in W.P.Nos.20320 of 2013 and 7064 of 2014.

Writ Petition No.20320 of 2013 filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari and Mandamus, to call for the records pertaining to the Provisional Assessment Order passed by the 4<sup>th</sup> respondent against the petitioner and made in Letter No.AEE/O&M/KUNDRATHUR/F.APTS/D.CAMP/2013, dated 06.05.2013 and confirmed the same by his Final Order made in Letter No.AEE/O&M/KUNDRATHUR/F.APTS/D.52/2013, dated 26.6.2013 and its consequential amended Final Order made in Letter No.AEE/O&M/Kndr/F.Docket/D.No.56/2013, dated 03.07.2013 and quash the same and consequentially direct the second respondent to refund the deposited amount for a sum of Rs.2,76,800/- to the petitioner towards 50 per cent of the disputed amount of penalty charges/extra levy had

paid by the petitioner on 29.06.2013 along with an amount of interest at the rate of sixteen per cent per annum compounded every six months and direct the fourth respondent to pass assessment orders against the sixth respondent for the suspected or deducted offence of theft of energy which had been committed by the sixth respondent under the Tamil Nadu Electricity Act, 2003 read with Regulation No.23-AA and Explanation (a) to Regulation Nos.23-AA and 23-BB of the Tamil Nadu Electricity Supply Code, 2004.

Writ Petition No.7064 of 2014 filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the 4<sup>th</sup> respondent to restore the electricity supply to the service connection No.304.002.1341 in respect of the premises at Door No.53/5, Sekkadai Street, Kovur Village, Chennai-600 122, by receiving the balance dues from the petitioner, under the Final Order of the 4<sup>th</sup> respondent dated 26.06.2013 in Lr.No.AEE/O&M/Kundarthur/F.APTS/D.52/2013 as amended by the order dated 03.07.2013 Letter No.AEE/O&M/ Kunder/F.Docket/D.No.56/2013.

For Appellant : Mr.B.Dayaalan in both W.As.

#### COMMON JUDGMENT

(Judgment of the Court was made by SATISH K. AGNIHOTRI, J.)

The instant intra-court appeal arises from the common order dated 06.08.2014 passed in W.P.Nos.20320 of 2013 and 7064 of 2014.

2. The facts in brief are that the appellant, who is the writ petitioner in W.P.No.20320 of 2013, is the landlord of the property situated at Door No.53/3, Sekkadi Street, Kovur Village, Chennai. The sixth respondent in both writ appeals was in occupation of the abovesaid property as tenant. On inspection, it was found that an offence of theft of energy was committed. The tenant / 6<sup>th</sup> respondent herein has deposited an amount of Rs.1,25,000/- for compounding of offence under protest. The son of the appellant herein gave a blank cheque under protest. A provisional assessment order was passed by the Assistant Executive Engineer, respondent Board in the name of the landlord on 6.5.2013. The appellant / landlord submitted his objection on 25.5.2013. On 08.05.2013, the electricity supply was disconnected.

3. The final assessment order under Section 135 of the Tamil Nadu Electricity Act for theft of energy was passed on 26.6.2013 in the name of the appellant. The appellant herein has deposited 50% of

the disputed penalty charges by way of demand draft on 29.6.2013, hoping that there is a statutory provision of appeal. However, having come to know that there is no provision for appeal, the instant W.P.No.20320 of 2013 was filed by the appellant herein on the ground that for the theft of energy committed by the tenant, the landlord is not liable. The tenant/6<sup>th</sup> respondent also filed a writ petition, being W.P.No.7064 of 2014, seeking direction to the fourth respondent to restore the electricity supply on receiving the balance dues from him.

4. Both writ petitions were heard together and disposed of by a common order. The learned Single Judge, having examined all aspects of the matter held as under :

"8. In my considered opinion, it is purely a matter of civil dispute between the landlord and tenant, which cannot be agitated in this forum sitting under Article 226 of the Constitution of India, more so, when a Civil Suit in O.S.No.18 of 2014, is pending between the landlord and tenant for eviction on the file of the Sub-Court, Kancheepuram. At this point of time, learned counsel appearing for the tenant would contend that without prejudice to his right, the tenant is now prepared to pay the balance amount as per the Final Assessment Order dated 03.07.2013, as the landlord has paid 50% of the amount as claimed in the Provisional Assessment Order. Since, learned counsel appearing for respondents 1 to 5 submits that on payment of full amount as well as reconnection charges as per the Final Assessment Order, dated 03.07.2013, the fourth respondent is prepared to restore electricity supply, this Court only directs that the tenant/petitioner in W.P.No.7064 of 2014 shall pay back the balance amount due and payable as per the amount already paid by the landlord/petitioner in W.P.No.20320 of 2013 and shall also pay the reconnection charges and thereafter, the fourth respondent shall restore the electricity supply. It is further made clear that the landlord is at liberty to proceed with the Civil Suit for ejectment in O.S.No.18 of 2014 on the file of the Sub-Court, Kancheepuram, in accordance with law and insofar as the question as to, whether the amount for theft of energy has to be paid by the landlord or tenant, is left open and it will be decided by the Civil Court. These Writ Petitions are disposed of accordingly. Consequently, connected Miscellaneous Petitions are closed. No costs."

5. The landlord / appellant has come up with these appeals, questioning the legality and validity of the order on the ground that it is not the liability of the landlord to pay the charges for the theft of electricity energy, which has been used by the erstwhile tenant. It appears that the electricity charge in question is allegedly consumed by way of theft of energy by the earlier tenant. The tenant left the premises without discharging the outstanding dues to the respondent Board. At this stage, the question is as to who is liable to pay, whether the tenant or the appellant-landlord.

6. Heard the learned counsel appearing for the appellant and perused the pleadings and documents appended thereto.

7. Since the dispute with regard to the ejectment and also the payment of rent and other charges is pending consideration before the Civil Court, we are not inclined to go into the issue on merit at this stage.

8. As a result, both writ appeals stand dismissed, reserving liberty to the appellant / landlord to raise the same in pending civil suit for the same relief, if so advised, as observed by the learned Single Judge. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-  
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

vvk

To

1. The Chairman,  
The State of Tamil Nadu  
T.N.E.B.,  
Anna Salai, Chennai-600 002.
2. The Superintending Engineer (Chennai-EDC/South),  
Tamilnadu Electricity Board  
at No.110-KV-SS Complex,  
Anna Main Road, K.K.Nagar,  
Chennai-600 078.

3. The Executive Engineer (O&M),  
TNEB at Porur, Chennai-600 116.

4. Assistant Executive Engineer,  
O&M/Tangedco, Kundrathur,  
Chennai-600 069.

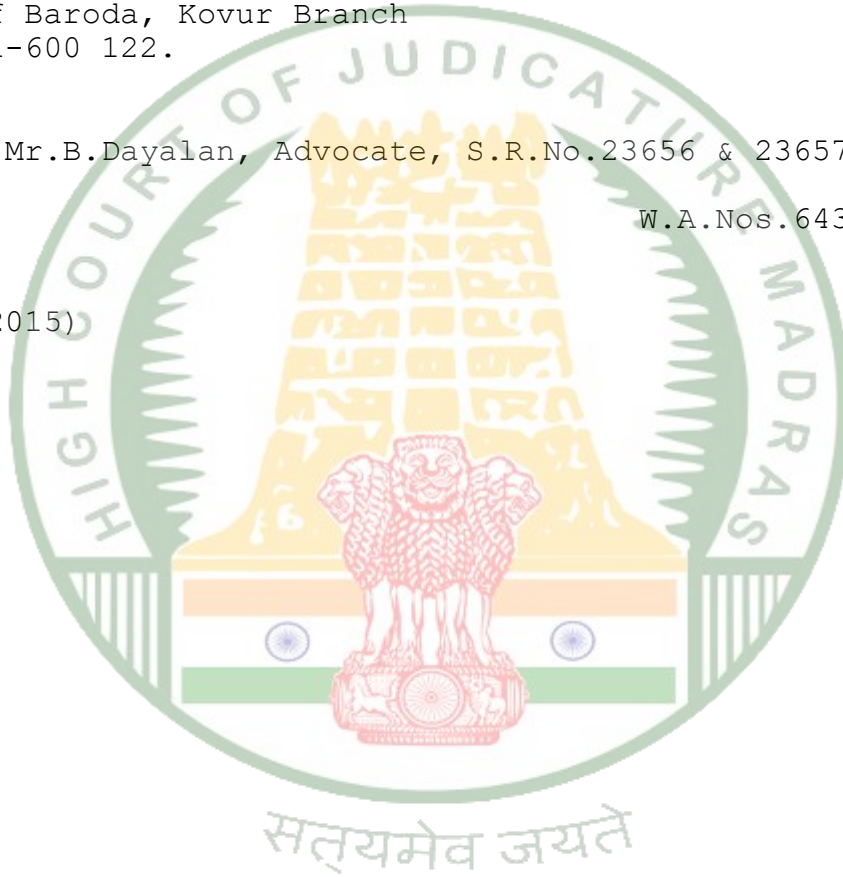
5. The Assistant Engineer (O&M),  
TNEB at Kovur, Chennai-600 122.

6. The Branch Manager,  
Bank of Baroda, Kovur Branch  
Chennai-600 122.

+2cc's to Mr.B.Dayalan, Advocate, S.R.No.23656 & 23657

W.A.Nos.643 and 644 of 2015

VD(CO)  
CA(15/05/2015)



WEB COPY