THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION No.7115 OF 2014

ORDER:

Heard learned counsel for the petitioners and learned Standing Counsel for the respondents.

2. The facts of the case are that one M.Madhusudhan Reddy, who is the Proprietor of M/s.Arkay Industries, purchased two plots admeasuring 920 square yards under a registered sale deed dated 14.08.1998 from M/s.Sri Rama Potters Industrial Cooperative Society Limited, IDA Uppal, Hyderabad. The said M.Madhusudhan Reddy was also the Managing Director of another company M/s.Maks Castings Private Limited. The said M/s.Maks Castings Private Limited obtained a loan from Andhra Bank and mortgaged the above two plots of land for the said loan. The loan could not be repaid and hence the owner of the plots, in order to discharge the debt, offered to sell them to the petitioners with the consent of the bank and accordingly, the petitioners purchased those plots. The said M.Madhusudhan Reddy addressed a letter to the Superintending Engineer (Operation), Ranga Reddy Circle East, Habsiguda, Hyderabad giving three months notice as per para 5.9.4.2 of the General Terms and Conditions of Supply for termination of HT agreement with him. Accordingly, the Superintending Engineer accepted the same by his letter dated 18.07.2013 and informed that the termination takes place with effect from 08.10.2013 or from the date of disconnection whichever is later. It was also stated therein that the account of M.Madhusudhan Reddy would be settled after the termination of HT agreement. Thereafter the service connection was disconnected on 29.07.2013 and final readings were recorded.

3. While so, the purchasers of plots, who are the petitioners herein,

applied for a new service connection under commercial category on 28.01.2014. A metre was also fixed in the premises but the said application was rejected stating that on field inspection, it was noticed that there was HT service connection existing in the premises. Challenging the same, the present Writ Petition was filed.

4. A counter-affidavit was filed by the third respondent stating that the earlier HT service connection was given to M.Madhusudhan Reddy with a contracted maximum demand of 500 KVA for M/s.Maks Castings Private Limited. It was disconnected on 29.07.2013 pursuant to an application made by him on 08.07.2013. It was stated that a letter was addressed to the petitioners on 21.12.2013 stating that after adjustment of the consumption deposit available with the Department, the outstanding dues are to a tune of Rs.33,68,212/- and requested them to pay the same to avoid action under Revenue Recovery Act for realisation of the dues. On receipt of the said letter, the petitioners submitted a representation on 02.01.2014 stating that the period of 5 years was completed and the Department has no authority to demand three months notice for disconnection of power supply. It was further stated that as per condition no.8.4 of the General Terms and Conditions of Supply, the action of the respondents in rejecting the application of the petitioners was valid. It is further stated that the recitals in the sale deeds are not binding on the respondents.

5. The learned counsel for the petitioners submits that condition no.8.4 was already considered by this Court in **Dhanalakshmi Iron Industries Ltd., v. C.P.D.C.A.P. Ltd.**[1] and the ratio decided in the said case is applicable to the facts of the present case. The learned Standing Counsel on the other hand submits that they are entitled to reject the application of the petitioners for new service connection when there were

arrears in respect of the existing service connection.

6. The correspondence between the parties show that pursuant to an application made by the Managing Director of M/s.Maks Castings Private Limited dated 08.07.2013, it was intimated by a letter dated 18.07.2013 of the Superintending Engineer that the HT agreement would be terminated with effect from 08.10.2013 or from the date of disconnection whichever is later. The service connection was disconnected on 29.07.2013 and the final readings were intimated by the Assistant Engineer to the Superintending Engineer on 31.07.2013. Thereafter, by a letter dated 08.01.2014, the Superintending Engineer informed M/s.Maks Castings Private Limited demanding an amount of Rs.33,68,212/- by quoting clause 5.9.4.2 of the General Terms and Conditions of Supply. On 28.01.2014, the petitioners, who are the subsequent purchasers of plots applied for new service connection and the meter was fixed in the premises. The Assistant Engineer (Operation), APCPDCL, Uppal, addressed a letter on 10.02.2014 to the Assistant Engineer, ICSC, APCPDCL, Ramanthapur informing that the petitioners applied for new service connection, the meter was returned to the office at Ramanthapur as the HT service connection already exists in the said premises and there are arrears to a tune of Rs.36,02,790/-.

7. In the light of the above facts, it has to be seen whether Condition No.8.4 of the General Terms of Supply applies to the instant case or not. This court had an occasion to consider the application of condition No.8.4 in **Dhanalakshmi Iron Industries Ltd.**'s case (supra) and it was held that the said condition casts an obligation on the seller of the property to clear the dues and when the seller/consumer becomes sick and if the dues could not be cleared, the obligation cast on seller was incapable of compliance. However, this will not prevent the respondents from taking legal action. The relevant portion of the order reads as

follows:

> “ 18. In the instant case, Condition No.8.4 obligates the seller of the property to clear all the dues to the company before selling such property. If the seller fails to clear the dues, the company may refuse electricity supply to the premises through the already existing connection or refuse to give a new connection to the premises till all dues to the company are cleared. It is clear from the wording of the said condition that the responsibility is cast on the seller and in the case of sale of a sick unit, the seller would be incapable of complying with the above term. However, the said condition does not disable the company from recovering the dues when the arrears became due and before the unit was sold. The Company cannot keep quiet and try to recover the dues from the purchaser. The issue of limitation also crops up for consideration.”

8. In the instant case, though the transfer of property did not take place through the medium of auction sale, the property was sold to the petitioners due to non-clearing of dues to the Andhra Bank from whom M/s.Maks Castings Private Limited took loan by mortgaging the plots of land. The respondents duly disconnected the power supply on the application of the said company. After disconnection on 29.07.2013, a letter was addressed on 08.01.2014 for payment of the outstanding dues of Rs.33,68,212/-. The sale of the property in favour of the petitioners took place on 26.08.2013, after disconnection of power supply. Nothing prevented the respondents from recovering the dues from M.Madhusudhan Reddy, who is the owner of M/s.Arkay Industries and M/s.Maks Castings Private Limited. No legal steps appear to have been taken for recovery of the outstanding amount. By the denial of service connection to the petitioners, the respondents are not going to gain anything except loosing time.

9. In the circumstances, justice requires that the respondents shall provide service connection to the petitioners leaving it open to the

respondents to recover the outstanding amount through due process of law by making the said M.Madhusudhan Reddy as well as the petitioners as parties to the proceedings. In this view of the matter, the applicability of Condition No.8.4 to the petitioners is left open. As and when respondents take a legal course, the appropriate court/forum, shall take a decision on the application of the above condition No.8.4 to the Petitioners. In the meanwhile the Petitioners shall be given service connection as required by them subject to the payment of current monthly consumption charges.

10. Accordingly, the Writ Petition is allowed to the extent indicated above. There shall be no order as to costs. Miscellaneous Petitions pending, if any in this Writ Petition, shall stand closed.

A.RAMALINGESWARA RAO, J

Date: 21.07.2015
TJMR

[1] 2014(6) ALD 129