IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Orders reserved on 06.07.2016)

DATED: 26.07.2016

CORAM

THE HON'BLE MR.JUSTICE R.SUBBIAH

Writ Petition No.20433 of 2015

V.B.R.Menon .. Petitioner

Vs.

1.The Assistant Executive Engineer,
O & M/PORUR/CEDC/SOUTH,
Tamil Nadu Electricity Board,
Porur 110KV SS Complex,
Kundrathur Road, Porur,
Chennai-600 116.

2.The Assistant Executive Engineer,
Enforcement / Chennai / South,
Tamil Nadu Electricity Board,
NPKRR Maaligai,
No.144, Anna Salai, Chennai-600 002.

3.The Assistant Engineer - Rural,
O & M/PORUR/CEDC/SOUTH,
Tamil Nadu Electricity Board,
Porur 110KV SS Complex,
Kundrathur Road, Porur,
Chennai-600 116.

4.The Superintending Engineer,
Chennai EDC / South,
Tamil Nadu Electricity Board,
110-KV, SS Complex,
Anna Nagar Main Road, K.K.Nagar,
Chennai-600 078. .. Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, calling for the records of the 1st respondent in the impugned Final Assessment Order No.AEE/O&M/Porur/F.APTS/D.No.105/15-16, dated 02.06.2015 and to quash the same and consequently, to direct the respondents to refund the Compounding Fee of Rs.4,000/- and the Penalty of Rs.52,239/- with interest @ 18% from the date of receipt of the same to the petitioner within a time frame to be fixed by this Court.

For Petitioner : Mr.V.B.R.Menon
Party-in-person

For Respondent : Mr.S.K.Rameshuwar (R1 to 4)

O R D E R

This writ petition has been filed by the petitioner praying to call for the records pertaining to the impugned Final Assessment Order No.AEE/O&M/Porur/F.APTS/D.No.105/15-16, dated 02.06.2015 passed by the 1st respondent, under Section 135 of the Indian Electricity Act, 2003, (hereinafter referred to as 'the Act') and to quash the same and consequently, to direct the respondents to refund the Compounding Fee of Rs.4,000/- and the Penalty of Rs.52,239/- with interest @ 18% from the date of receipt of the same to the petitioner.

2.The brief facts of the case reads as follows_

2-1.The petitioner herein had purchased the land measuring 3597 sq.ft in Survey No.19/1 in Porur Village, Ambattur Taluk vide registered Sale Deed, Document No.4320 of 1995, and he constructed a factory building, comprising approximately 3600 s.ft in Ground + First Floor, for establishment of an Automobile Manufacturing Unit under SSI Category. On completion of the construction and erection of machineries, the petitioner had applied for 40 HP (32 KW) of Electricity connection under Industrial Category and the same was sanctioned after verification of the documents of premises, connected loads and load testing (O.T.R) by the respondents 1 & 3 in the year 1997.

2-2.Subsequently, in the year 2012, the petitioner had transferred the above said premises, along with the MES Power Connection, in favour of his two sons on 30.03.2012 through a registered Settlement Deed, Document No.4952 of 2012, dated 30.03.2012; since then, the petitioner had ceased to have any control or right over the premises. Thereafter, one of the petitioner's sons had leased out a portion of the groundfloor of the building measuring to an extent of 1800 sq.ft to one M/s.Zhafir Plastic Machinery India (P) Ltd, vide a Lease Deed dated 01.12.2014. The said M/s.Zhafir Plastic Machinery India (P) Ltd. is an industrial unit engaged in manufacturing, erection, commissioning, service and repair of plastic machineries. Being a tenant, they are entitled to use the existing industrial power, subject to the conditions of supply as applicable to the registered consumer.

2-3.While so, on 26.05.2015 at around 5.00 pm, the respondents 1 to 3 had come to the presmises and inspected the service connection and had found the meter and other electrical equipments in proper condition. Thereafter, they inspected and recorded the load details of the inspection of the office room of the Lessee; but, they omitted to inspect and record the load details of the rest of the building under lease as well as the portion of the building under the direct possession of the consumer.

2-4.According to the petitioner, the respondents had maliciously concluded that the total power consumption in the whole building was only for the purpose of office use by the lessee and demanded payment of compounding fee and penalty from the petitioner, under the threat of immediate disconnection of supply, by alleging unauthorized use of electricity, under Section 135 of the Act. Afterwards, the respondents 1 to 3 prepared the Mahazar Report showing the connected loads to the small portion during inspection in respect of the office room of the Lessee alone and got it signed by a person Mr.Kanna as witness, who was a casual worker present at the site for the cleaning of the premises and having no educational qualification to understand the contents of the Mahazar or had any authority to represent the consumer or the Lessee. At the time of inspection, the petitioner was in abroad. Hence, the petitioner's son was threatened by the respondents with the immediate disconnection of the power supply, unless the compounding fee of Rs.4,000 and provisional assessment fee of Rs.52,239/-were paid forthwith. Hence, left with no other alternative, the petitioner's son Vimal Menon paid the said Compounding Fee of Rs.4,000/- on 26.05.2015 and provisional assessment fee of Rs.52,239/- on 27.05.2015. On receipt of the impugned notice of the Provisional Assessment and Compounding Fee, the petitioner's son sent the same through e-mail to the petitioner, who was abroad at that time. As soon as the notices were received, the petitioner had sent an e-mail on 27.05.2015 itself to the 1st respondent objecting to their illegal demands under Section 135 of the Act, 2003, and seeking an opportunity to submit the objections to the above said provisional assessment and compounding fee notice, as well as for a personal hearing on his return from USA on 04.06.2015. When the petitioner's son Vimal Menon went to handover e-mail/confirmation copy, the 1st respondent refused to receive it from him in person and instead asked the petitioner's son to send it by Post and accordingly, the confirmation copy of the e-mail dated 27.05.2015 was sent by Speed Post on 30.05.2015 to the 1st respondent.

2-5.Even though the 1st respondent had received the above said e-mail dated 27.05.2015 as well as the confirmation copy of the e-mail, within the period of 7 working days, as prescribed under Rules 11 & 12, Regulation 23 AA of the Tamil Nadu Electricity Supply Code, 2004 (in short 'Supply Code') and Section 135 of the Act, in gross violation to the mandatory statutory provisions regarding the rights of the petitioner for the submissions of written objections and personal hearing against the provisional assessment notice in Form No.9, the 1st respondent has passed an undated final order and sent the same to the petitioner on 02.06.2015 ie., on the 5th working day itself, from the date of service of the provisional assessment notice. Hence, challenging the same, the present writ petition has been filed by the petitioner before this Court.

3.When the matter was taken up for consideration, the petitioner, who appeared as party-in-person, would contend that on the date of inspection by the respondents viz. on 26.05.2015, the petitioner is not the owner of the property; in fact, he had transferred the property in favour of his two sons on 30.03.2012 itself through Settlement Deed registered as Doc.No.4952 of 2012, by which the ownership along with the MES Power connection was conveyed to them. The petitioner's son viz., A.Vimal Menon subsequently executed a Lease Deed in favour of one M/s.Zhafir Plastic Machinery India (P) Ltd; therefore, as on date, the said M/s.Zhafir Plastic Machinery India (P) Ltd, which is an industrial unit, is in the occupation of the premises. The contracted load for the building was 32 KW. It is alleged by the respondents that during the inspection, it was found that there was a usage of electricity power inside a small portion of the building, for office use by the said industrial unit, connected with lighting, fans, AC etc. Hence, the impugned notice was issued by the respondents stating that there was unauthorized usage of electricity and the total connected load at the time of inspection was 1950 W.

4.It is the contention of the petitioner that he was neither the owner nor the occupier or enjoyer of the premises on the date of inspection. However, the respondents prepared mahazar and threatened the petitioner's son to pay the Compounding Feed of Rs.4,000/- and Penalty of Rs.52,239/-. The petitioner's son left without any other alternative paid the amount demanded by the respondents, since the petitioner was abroad at that time.

5.The petitioner would further submit that when he was neither the owner nor the occupier or enjoyer of the premises, he cannot be held responsible for the alleged unauthorised use of electricity power by the Lessee of the building. In this regard, the petitioner has also made a detailed argument by inviting the attention of this Court to Rule 22(a) of Regulation 23AA of Chapter IV of the Supply Code, which defines "accused person". Further, it is the submission of the petitioner that the provisions under Section 135 of the Act and Chapter IV of Supply Code could be invoked only as against the accused person as defined under Rule 22(a) of Regulation 23AA of the Supply Code. As per the definition given to "accused person" under Rule 22(a) of Regulation 23AA of the Supply Code, the lawful owner or occupier of the building or his authorized agent or representative or any other person who is in occupation or possession or in charge of the premises at the relevant time of detection of theft of electricity or any other person who has been benefited by the theft of electricity, alone could be proceeded with for the alleged offence subject to the proof of alleged unauthorised use of electricity against them. But, in the instant, the petitioner is not the owner nor the occupier or enjoyer of the premises. Hence, the impugned order passed by the respondents as against the petitioner is not legally sustainable. In support of his contentions, the petitioner has also invited the attention of this Court to the decision rendered by a learned Single Judge of this Court in W.P.No.39070 of 2002, dated 10.01.2013, in the case of T.M.Marasimhan Vs. The Superintending Engineer, Tamil Nadu Electricity Board, and another and to the decision rendered by the Hon'ble Supreme Court reported in 2012(2) SCC 108 (Southern Electricity Supply Co of Orissa Ltd., Vs. Sri Seetaram Rice Mill).

6.Per contra, the learned Standing Counsel for the Electricity Board, by filing a detailed counter, submitted that though the petitioner had settled the property in favour of his sons, who in turn leased out the said property to an industrial unit, on the date of inspection, the electricity service connection was standing in the name of the petitioner only. As per the definition for "Consumer" under Section 2(15) of the Electricity Act, 2003, any person who is supplied with electricity for his own use by a licensee or the Government, or any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee, the Government or such other person, as the case may be, would fall within the meaning of Consumer. In the instant case, according to the learned Standing Counsel, since the electricity service connection supplied to the subject building was standing in the name of the petitioner, he will fall within the definition of Consumer.

7.The learned Standing Counsel for the Electricity Board would further contend that as per Regulation 17(4) of the Supply Code, if the consumer fails to give advance intimation with regard to his intention to sell or lease out the property, the Licensee shall have every right to recover the charges for consumption and other charges due to the Licensee under the agreement even beyond the date of sale or lease out or otherwise disposal of the properties or business, from the consumer. In the instant case, admittedly, the petitioner has not given any advance intimation to the Electricity Board, in respect of the property leased out to the industrial unit. Therefore, the petitioner alone is liable to pay the charges. Therefore, there is no infirmity in the impugned order passed by the respondents. Thus, the learned counsel sought for dismissal of the writ petition.

8.By way of reply, the petitioner submitted that the Regulation 17(4) of the Supply Code, cannot be a ground to justify the proceedings against the petitioner under Section 135 of the Act. Under Regulation 17(4) of the Supply Code, if advance intimation is not given to the Electricity Board with regard to the leasing out of property, the Electrical Board can claim only lawful charges. But, Compounding Fee and Penalty under Section 135 of the Act, will not come under the ambit of Regulation 17(4) of the Supply Code. In this regard, the petitioner has also relied upon a judgment of the Division Bench of this Court, in W.A.No.719 of 2014, dated 27.01.2015, in the case of The Assistant Engineer/O & M Vs. Sabasthi Ammal and Ors. The petitioner, by inviting the attention of this Court to the definition for "Accused Person" given under Rule 22(a) of Regulation 23AA, Chapter IV of the Supply Code, made a detailed submission. Thus, the learned counsel for the petitioner submitted that in the factual aspects of the present case, the occupier of the premises alone would fall under the definition of Accused Person; therefore, the impugned order passed by the respondents as against the petitioner is liable to be quashed.

9. I have carefully heard the submissions made on either side and perused the materials available on record.

10.In view of the submissions made on either side, the following questions fall for consideration in this writ petition_

(1)Whether the petitioner, who was neither the owner nor the occupier nor enjoyer of the premises, on the date of inspection by the respondents, is liable to pay the Compounding Fee and Penalty as demanded by the respondents, under Section 135 of the Act, for the alleged unauthorised usage of electricity power by the third party?

(2)Whether the petitioner is liable to pay the Compounding Fee and Penalty as demanded by the respondents, under Section 135 of the Act, since he has failed to give advance intimation to the Electricity Board with regard to transfer/leasing out of the property to the third party, as required under Regulation 17(4) of the Supply Code?

11.The case of the petitioner is that he had already transferred the property in favour of his sons, who in turn leased out the property to M/s.Zhafir Plastic Machinery India (P) Ltd, an industrial unit. Therefore, on the date of inspection by the respondents i.e, on 26.05.2015, the petitioner was neither the owner nor the occupier or enjoyer of the premises. Hence, he is not liable to pay the amount as demanded by the respondents.

12.According to the Electricity Board, the petitioner would fall within the meaning of Consumer, since he had not transferred the electricity service connection from his name to the others and the service connection was standing in the name of the petitioner only; therefore, he would fall within the definition of Consumer under Section 2(15) the Electricity Act, 2003; as such, he is liable to pay the compounding fee and penalty amount under Section 135 of the Act. The liability under Section 135 of the Act is a criminal liability.

13.Before entering into the discussion, it would be appropriate to extract Section 135 of the Act_

"135. Theft of electricity.- [(1) Whoever, dishonestly,-

(a) taps, makes or causes to be made any connection with overhead, underground or under water lines or cables, or service wires or service facilities of a licensee or supplier, as the case may be; or

(b) tampers a meter, installs or uses a tampered meter, current reversing transformer, loop connection or any other device or method which interferes with accurate or proper registration, calibration or metering of electric current or otherwise results in a manner whereby electricity is stolen or wasted; or

(c)damages or destroys an electric meter, apparatus, equipment, or wire or causes or allows any of them to be so damaged or destroyed as to interfere with the proper or accurate metering of electricity; or

(d) uses electricity through a tampered meter; or

(e) uses electricity for the purpose other than for which the usage of electricity was authorized,"

So as to abstract or consume or use electricity shall be punishable with imprisonment for a term which may extend to three years or with fine or with both:

Provided that in a case where the load abstracted, consumed, or used or attempted abstraction or attempted consumption or attempted use-

(i) does not exceed 10 kilowatt, the fine imposed on first conviction shall not be less than three times the financial gain on account of such theft of electricity and in the event of second or subsequent conviction the fine imposed shall not be less than six times the financial gain on account of such theft of electricity;

(ii) exceed 10 kilowatt, the fine imposed on first conviction shall not be less than three times the financial gain on account of such theft of electricity and in the event of second or subsequent conviction, the sentence shall be imprisonment for a term not less than six months, but which may extend to five years and with fine not less than six times the financial gain on account of such theft of electricity:

Provided further that in the event of second and subsequent conviction of a person where the load abstracted, consumed, or used or attempted abstraction or attempted consumption or attempted use exceeds 10 kilowatt, such person shall also be debarred from getting any supply of electricity for a period which shall not be less than three months but may extend to two years and shall also be debarred from getting supply of electricity for that period from any other source or generating station:

Provided also that if it is proved that any artificial means or means not authorized by the Board or licensee or supplier, as the case may be, exist for the abstraction, consumption or use of electricity by the consumer, it shall be presumed, until the contrary is proved, that any abstraction, consumption or use of electricity has been dishonestly caused by such consumer.

(1-A) Without prejudice to the provisions of this Act, the licensee or supplier, as the case may be, may, upon detection of such theft of electricity, immediately disconnect the supply of electricity:

Provided that only such officer of the licensee or supplier, as authorized for the purpose by the Appropriate Commission or any other officer of the licensee or supplier, as the case may be, of the rank higher than the rank so authorized shall disconnect the supply line of electricity:

Provided further that such officer of the licensee or supplier, as the case may be, shall lodge a complaint in writing relating to the commission of such offence in police station having jurisdiction within twenty-four hours from the time of such disconnection:

Provided also that the licensee or supplier, as the case maybe, on deposit or payment of the assessed amount or electricity charges in accordance with the provisions of this Act, shall, without prejudice to the obligation to lodge the complaint as referred to in the second proviso to this clause, restore the supply line of electricity within forty-eight hours of such deposit or payment."

(2) Any Officer of the licensee or supplier as the case may be, authorised in this behalf by the State Government may:

(a) enter, inspect, break open and search any place or premises in which he has reason to believe that electricity has been or is being, used unauthorisedly;

(b) search, seize and remove all such devices, instruments, wires and any other facilitator or article which has been or is being, used for unauthorised use of electricity;

(c) Examine or seize any books of account or documents which in his opinion shall be useful for or relevant to, any proceedings in respect of the offence under Sub-Section (1) and allow the person from whose custody such books of account or documents are seized to make copies thereof or take extracts therefrom in his presence.

(3) The occupant of the place of search or any person on his behalf shall remain present during the search and a list of all things seized in the course of such search shall be prepared and delivered to such occupant or person who shall sign the list:

Provided that no inspection, search and seizure of any domestic places or domestic premises shall be carried out between sunset and sunrise except in the presence of an adult male member occupying such premises.

(4) The provisions of the Code of Criminal Procedure, 1973 92 of 1974), relating to search and seizure shall apply, as far as may be, to searchers and seizure under this Act."

A reading of Section 135 of the Act would show that there must be a prima facie evidence of 'dishonest intention' on the part of the accused person, before invoking the proceedings under Section 135(1)(e of the Act.

Rule 22(a) of Regulation 23AA Chapter IV of the Supply Code defines the "Accused Person" as follows_

"Accused person" shall mean and include the owner or occupier of the premises or his authorized agent or representative or any other person who is in occupation or possession or in charge of the premises at the relevant time of detection of theft of electricity or any other person show has been benefited by the theft of electricity."

A reading of the Rule 22(a) of Regulation 23AA Chapter IV of the Supply Code, along with Section 135 of the Act, would unambiguously go to show that the person who was under the occupation of the premises and committed the offence alone would be held responsible. So far the present case is concerned, the petitioner was neither the owner nor the occupier or enjoyer of the property on the date of inspection; therefore, the petitioner does not come under the ambit of definition of "Accused Person", for initiating the proceedings under Section 135 of the Act.

14.In this regard, a reference could be placed in the judgment relied upon by the learned counsel for the petitioner, delivered by the High Court of Gujarat, reported in CDJ 2009 GHC 003 in the case of Barot Vitthalbhai Damodardas Vs. Natwarbhai Umedbhai Patel, wherein it has been observed as follows_

> "3.It appears that it is an admitted position that at the time when the inspection took place the shop in question - premises was in the occupation of the tenant Patel Pankajkumar Bhikhabhai. The said aspect is also recorded in the complaint by the complainant and the petitioner was not at all in actual occupation or using the shop or the electricity supply. When there is any allegation for fastening of criminal liability, it would be qua the person, who has committed offence and it cannot be extended to the owner of the property, unless there is any specific accusation that the owner is aware about it and he has played role in alleged offence for use of the electricity by the tenant by doing alleged theft. The principles of fastening criminal liability is different than that of civil liability in case of an ownership of the property or the use of the electricity. The language of Section 135 of the Act even if considered as it is, it refers to 'whoever' and the same would mean 'a person, who is involved in the commission of offence'. In a case where the property is owned by 'a' and is given on rental basis on any other agreement or contract known to law to 'b' and when 'b' is in occupation and using the electricity supply, any offence, if detected, such principles of criminal liability may be qua 'b' and it cannot be extended against 'a' in mere capacity as the owner of the property. If the criminal liability is extended to the owner of the property when admittedly the property is in occupation of the person other than the owner in whatsoever capacity it may be, it would be not only result into re-writing the principles of criminal liability in absence of any mens rea and other necessary ingredients for fastening criminal liability, but it would also result into miscarriage of justice on the face of it. The law never intends to punish

the person, who is not guilty or the person, who cannot be said as guilty on the face of the accusation. If such is permitted, it would, on the face of it, also abuse the process of law."

The dictum laid down in the above judgment would clearly show that if the property is in occupation of the tenant and the tenant is the beneficiary of the alleged offence, he should alone be held responsible under Section 135 of the Act.

15.In fact, in an identical case, in W.P.No.39070 of 2002, in the case of T.M.Marasimhan Vs. The Superintending Engineer, Tamil Nadu Electricity Board, and another, when a tenant approached this Court stating that only the owner of the premises would be held responsible, the contention of the tenant was rejected by the learned Single Judge of this Court by order dated 10.01.2013.

16.In this regard, a reference could be placed in one more judgment delivered by the Division Bench in W.A.No.719 of 2014, dated 27.01.2015, in the case of The Assistant Engineer/O & M Vs. Sabasthi Ammal and Ors, wherein it has been observed as follows:-

"7...... In short, Section 135 of the Tamil Nadu Electricity Act, 2003 and the explanation of Section 23 of the Tamil Nadu Electricity Supply Code categorically state that for the purpose of the above Section, tampering of meters and theft of energy if the premises in question is occupied by an authorised tenant, the responsibility shall vest with the authorised tenant only. ....

10......In fact, Section 126 of the Tamil Nadu Electricity Act, 2003 empowers the Assessing Officer to make assessment in the case of 'unauthorised use of electricity'. It specifies that if on an inspection of any place or premises or after inspection of the equipments, gadgets, machines, devices found connected or used or after inspection of records maintained by any person, the Assessing Officer comes to a conclusion that such person in indulging in 'unauthorised use of electricity', then he shall assess the electricity charges payable by such person or by any other person benefited by such use...."

In view of the dictum laid down in the above decision and considering the factual aspects of the case on hand, I am of the considered opinion that the initiation of the proceedings under Section 135 of the Act and the entire procedure adopted by the respondents during the proceedings of the criminal nature against the petitioner, are not legally sustainable, when admittedly he was neither the owner nor the occupier or enjoyer of the premises on the date of inspection.

17.With regard to the second question, as to whether the petitioner is liable to pay the amount since he failed to give advance intimation to the Electricity Board with regard to the transfer/leasing out of the property, as required under Regulation 17(4) of the Supply Code, I am of the opinion that when the petitioner does not fall under the definition of "Accused Person", merely for non-communication with regard to transferring/leasing out of the property, he cannot be held responsible. At this juncture, it would be appropriate to extract the Regulation 17(4) of the Supply Code_

> "If the consumer fails to give advance intimation as aforementioned of his intention to sell or lease out or otherwise dispose of the properties or business to which supply is given or contracted for, the licensee shall have the right to recover the charges for consumption and other charges due to the licensee under the agreement even beyond the date of sale or lease out or otherwise disposal of the properties or business."

It is clear from the above Regulation, that lawful dues arising out of the agreement between the Consumer and the Licensee are civil liabilities, being contractual in nature, against which a criminal prosecution under Section 135 of the Act cannot be invoked. Moreover, Regulation 17(1) as well as Regulation 4 of the Supply Code, list the various types of lawful charges recoverable from the Consumer, in which compounding fee and penalty under Section 135 of the Act do not find a place. Hence, the right to claim lawful dues under Regulation 17(4) cannot be taken as a ground to justify the proceedings against the petitioner under Section 135 of the Act. In this regard, a reference could be placed in the decision of a Division Bench of this Court, in W.A.No.719 of 2014 (cited supra), wherein it has been held as follows_

> "18.Therefore, in the present case, the fact of the matter is that the First Respondent/writ Petitioner by means of an order dated 31.12.2005 was allotted a shed bearing No.915, 28th street, B.V.Colony, Vyasarpadi, Chennai-39 and she is engaged in a small trade of packing salt in small

polythene bags and sell the same in retail. Moreover, electricity supply is necessary for her small business and as such, the impugned order dated 17.03.2011 passed by the Appellant/First Respondent recovering the First Respondent/writ Petitioner to pay the sum of Rs.15,53,975/- together with interest to the Tamil Nadu Electricity Board and only when she is willing to pay the aforesaid amount, the new service connection in her name would be considered is not legally a tenable one in the eye of law because of the simple reason for theft of energy or for the benefit enjoyed by a person in regard to the theft of electricity only that particular person can be considered to be an accused person and against whom the Appellant/First Respondent/TNEB can proceed in the manner known to law and in accordance with law. But the First Respondent/writ Petitioner by no stretch of imagination be called upon to pay a sum of Rs.15,53,975/- with interest to the Tamil Nadu Electricity Board and putting a precondition in regard to the above said payment by the Appellant/Tamil Nadu Electricity Board is not correct and legally valid one in the eye of law based on the reason that the First Respondent/writ Petitioner had not committed theft of electricity or energy or even benefited by the theft of electricity which was detected on 19.04.2001 and in fact, the previous tenant Sengalammal was alone responsible for the same in regard to her electricity connections A/c.67-17-584. Also that, the First Respondent/writ Petitioner who is not at all connected with the previous tenant of the Second respondent/Tamil Nadu Slum Clearance Board in the considered opinion of this Court cannot be imposed with a liability of erstwhile tenant in the absence of any agreement between her and the Electricity supplier, more so when the theft of energy was purportedly detected on 19.04.2001 in A/c.67-17-584, wherein, the theft of energy detected was used by the erstwhile tenant namely, Sengalammal.

19.In view of the foregoing reasons, this Court holds that the demand/claim made by the Appellant/First Respondent through its letter No.AE/O&M/V.Va.No.53, dated 17.03.2011, claiming a sum of Rs.15,53,975/- towards theft of energy charges as penalty from the First Respondent/writ Petitioner is clearly unsustainable in the eye of law and to that effect, we concur with the view taken by the Learned Single Judge in the Writ Petition. However, this Court bearing in mind, Clause 17(9)(a) of the Tamil Nadu Electricity Supply Code, 2004, directs the Appellant/First Respondent to issue a fresh demand notice/communication requiring the First Respondent/writ Petitioner to pay the lawful due electricity consumption charges of the previous occupier/tenant, reconnection charges or other ancillary/incidental charges by specifying the time limit as per relevant rule of the Tamil Nadu Electricity Supply Code, 2004, within a period of two weeks from the date of receipt of a copy of this order. Further, upon payment of the said claim amount by the First Respondent/Writ Petitioner, the Appellant/TNEB is directed to reconnect/restore/provide new service connection as the case may be forthwith."

From a reading of the above decision, it could be seen that in the case of theft of electricity, the person who has committed the theft of electricity and the person who enjoyed the benefit alone could be held responsible. Moreover, Regulations 17(5) to 17(9) contain the provisions for the recovery of such lawful dues from the consumers. The criminal proceedings under Section 135 of the Act do not find a place anywhere among the above recovery measures mentioned in Regulations 17(5) to 17(9). Hence, to invoke the Regulation 17(4) against the petitioner, some pre-existing lawful charges must have been in existence. But, that is not the state of affairs in the case on hand. A reading of Regulation 17(4) of the Supply Code would show that if the consumer fails to give advance intimation about the transfer/leasing of property to the Electricity Board, he is liable to pay the charges payable by the consumer, containing in Regulation 17(5) to 17(9) of the Supply Code, and not beyond that. But, the Compounding fee and Penalty under Section 135 of the Act, do not come under the ambit of Regulation 17(4). Therefore, I am not inclined to accept the submission made by the learned Standing Counsel for the Electricity Board that since the petitioner failed to give advance intimation about the transfer/leasing out of the property, he alone is liable to pay the charges; and the said submission of the learned Standing Counsel has no legal force.

18.For the foregoing reasons, the impugned order passed by the respondents as against the petitioner is not legally sustainable and the same is liable to be quashed.

In fine, the writ petition is allowed and the impugned order is set aside. The respondents-Board is directed to repay the amount collected under the impugned order, within a period of four weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

ssv

To

1.The Assistant Executive Engineer,
O & M/PORUR/CEDC/SOUTH,
Tamil Nadu Electricity Board,
Porur 110KV SS Complex,
Kundrathur Road, Porur, Chennai-600 116.

2.The Assistant Executive Engineer,
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110-KV, SS Complex,
Anna Nagar Main Road, K.K.Nagar,
Chennai-600 078.

1 cc to Mr.S.K.Rameshkumar, Advocate, sr.42059
1 cc to Mr.V.B.R.Menon, Advocate, sr.42204

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