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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA No. 3538 of 2016

Date of Decision: 19.09.2016

UTTAR HARYANA BIJLI VITRAN NIGAM LIMITED

....Appellant

Vs

SANTOKH SINGH

....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. P.K. Longia, Advocate,
for the appellant.

RAJ MOHAN SINGH, J.

[1] Defendant has filed this appeal against the judgment and decree dated 16.05.2016 passed by Additional District Judge, Karnal whereby judgment and decree dated 08.09.2014 passed by Additional Civil Judge (Junior Division), Assandh was set aside thereby partly decreeing the suit for declaration. Impugned notices bearing No. 300 and 301 dated 02.05.2013 issued by the defendant against the plaintiff for recovery of amount of ₹1,11,060 + ₹30,000/- = ₹1,41,060/- were held to be illegal null and void and not binding upon the rights of the plaintiff. Defendant was restrained from disconnecting the

electric connection of the plaintiff under the garb of aforesaid notices. However, the plaintiff was not entitled for any relief for permanent injunction restraining the defendant from launching criminal prosecution, if any, in accordance with law.

[2] Plaintiff filed a suit for declaration with consequential relief of permanent injunction on the ground that the alleged notices issued by the defendants were null and void and were not binding upon his rights. Relief of permanent injunction was also sought restraining the defendants from recovering the penalty amount contained in the impugned notices and further to restrain the defendant from lodging prosecution against him and also restraining the defendant from disconnecting the electric connection.

[3] Plaintiff was having electricity connection in his premises and was paying the current charges regularly. Plaintiff received the notices dated 02.05.2013 whereby defendant had imposed a penalty of ₹1,11,060/- on account of assessment for theft of energy and ₹30,000/- towards compounding of the offence. As per notice, the premises of the plaintiff was checked by the official of the Board on 30.04.2013 where a case of theft of energy was inducted. During inspection, it was found that the consumer had used the meter by pass supply to the house and shop and had connected load of 1.766 + 0.820 KW thereby

making the theft of energy for DS + NDS supply. Videography was also done. Plaintiff alleged that in fact no checking was conducted by the official of the defendant and there was no shop of the plaintiff. After receipt of notices, plaintiff immediately approached the defendant for withdrawal of the notices. On being refused, plaintiff had constrained to file the suit .

[4] The suit was contested by the defendant on number of grounds. Defendant submitted that the premises of the plaintiff was checked by the Inspecting Party on 30.04.2013 under the orders of the SDO and the plaintiff was found committing theft of energy by making cut in the cable prior to the meter and from PVC cut, 10 meter black colour cable was connected and the energy was found used in the backside of the house and in the shop of kariyana.

[5] After completion of the pleadings, and after framing of issues, both the parties led evidence. Trial Court dismissed the suit after recording findings under issues No. 1 and 2 jointly. Issues No. 3 to 6 were not pressed by the defendant during the course of arguments. These issues were decided against the defendant being not pressed.

[6] Plaintiff filed appeal before the Additional District Judge, Karnal which was partly accepted vide judgment and decree dated 16.05.2016. The impugned notices were declared

to be illegal null and void. However, injunction to restrain the defendant from launching criminal prosecution, if any, in accordance with law was denied. Restraint was passed against the defendant from disconnecting the electric connection under the garb of the impugned notices. That is how, the second appeal came to be filed in this Court.

[7] I have heard learned counsel for both the parties and have also perused the record.

[8] Learned counsel for the appellant vehemently contended that the evidence of the Board was sufficient to dismiss the suit as done by the trial Court. DW-1 Satbir, AFM of the Board tendered the impugned memos on the record besides tendering the complaint of theft of energy. The checking report was prepared after spot checking on 30.04.2013. It was conducted on the premises of the plaintiff as per order of the SDO. Plaintiff was found committing theft of energy by using cable in the house and shop directly. The load was found to be 2.586 KW and videography was done. The witness admitted in his cross-examination that the raiding party did not join any independent witness from the public at the time of raid. However, he denied the suggestion that the plaintiff was not committing any theft of energy. Satbir, Lineman was also examined as DW-2 who also supported the stand of DW-1. The

case was set up by the defendant on the ground of theft of energy.

[9] Apparently, notice of provisional assessment under Section 126 of Electricity Act was not required to be issued as Section 126 and 135 of the Act have different connotations. Section 126 of the Electricity Act is applicable where there is an unauthorized use of electricity. The provision has no applicability where allegation are of theft of energy. Plaintiff while appearing as his own witness as PW-1 himself contended that he was not present at time time of checking. The statement was duly supplemented by PW-2 Palwinder Singh, who alleged himself to be present on the spot at the time of checking. Witness stated that no videography was done at the spot. The defendant based their evidence on the basis of documentary evidence. CD was prepared by defendant witness and on the basis of spot inspection and the contents of CD, defendant projected the case of theft by the plaintiff. The trial Court believed the defendant's evidence and dismissed the suit.

[10] The lower Appellate Court after considering statement of Palwinder Singh and the contradiction in defendant's evidence viz-a-viz alleged authority letter from SDO in favour of witness DW-1 and DW-2 held that raid was without any authorization. No independent witness was joined from the

locality. The raid was not free from doubt, as the raiding party should have asserted some respectable from the locality. Rather the statement of the neighbour i.e. PW-2 Palwinder Singh appeared realistic in the helm of affairs. The evidence led by the plaintiff and the evidence led by the defendant was found to be contrary to their oral evidence. From Rule 5 and 6 of the Sale Circular No. 54 of 2007, it was obligated on the part of the concerned officer to obtain prior information from the SDO concerned before raiding the premises of any suspect. The inspecting party was required to fill up the checking report indicating necessary particulars viz. account No., site conditions, connected load and members of the raiding party. Concerned SDO was required to issue LL-1 forms to the authorized AFM/JEs. A copy of letters issued by SE(OP) for authorization of AFMs for checking was required to be kept in the case file of the theft case for the purposes of trial Court. The act of the defendant was found to be contrary to the mandatory requirement of sale circular which was mandatory for the members of the raiding party. On the basis of non-compliance of mandatory provision viz. Rule 5 and 6 of Sale Circular No. 54 of 2007, the case of the defendant was found to be discrepant. The legality of report Ex. D-4 and notices issued in pursuance thereof for recovery of amount and imposition of composition fee

were declared to be illegal null and void.

[11] In the present appeal, learned counsel for the appellant has vehemently argued that even though issues No. 4 to 6 were never pressed by the defendant before the trial Court, still the Court had the obligation to see whether the lower court has no jurisdiction to try the present suit under issue No. 5.

[12] Learned counsel contended that under Section 145 of the New Act, lower Court has got no jurisdiction to try the suit in respect of any matter which the Assessing Officer referred to in Section 126 of the Act. On the strength of **Punjab State Eletricity Board Vs. Guru Nanak Agriculture AIR 2007 Punjab and Haryana 57** and **U.H.B.V.N. Panipat and others Vs. Vinod Kumar RSA No. 1919 of 2008** decided on 22.07.2009 and **Vijayendra Singh Vs. DHBVNL and others in RSA No. 138 of 2013** decided on 09.10.2014, learned counsel contended that the Civil Court has got no jurisdiction to try the suit in respect of any matter which an Assessing Officer referred to in Section 126 of the Act and no injunction can be granted by any Court. The matter falling under the ambit of Section 126 of the Act are specifically excluded from the jurisdiction of the civil Court. Secondly, learned counsel for the appellant emphasized that the question of jurisdiction is pure question of law and even if the same was not pressed before the trial Court, the trial Court was

obligated to visualize the situation. There can not be any dispute with regard to legal proposition, but the fact involved in the present case are revolving around allegation of theft. There is mark distinction between Section 135 and 126 of the Electricity Act. Section 135 will apply where there is theft of energy. Section 126 of the Act will apply only where there is an unauthorized use of electricity in view of law laid down in **The Executive Engineer and another Vs. Shri Sita Ram Rice Mill, 2012 (3) RCR (Civil) 633** which was subsequently followed in **RSA No. 4054 of 2013**. Section 126 of the Electricity Act does not apply to the cases where allegations of theft have been alleged. In case of allegation under Section 135 of Electricity Act, Civil Court has got all the jurisdiction to try and decide the case.

[13] Learned counsel for the appellant also cited **M/s Bharat Auto Care vs. Punjab State Electricity Board and another 2012(5) RCR (CIVIL) 64** to contend that Civil Court jurisdiction was barred in view of Section 5 of Section 154 of the Act. Perusal of the aforesaid judgment would reveal that the main thrust was on the assessment to get by the Assessing Officer under Section 126 of the Act. In view thereof, it was held that the civil Court has got no jurisdiction and the plaintiff was required to exhaust the remedies provided under Section 127 of

the Act.

[14] Having failed to establish notices Ex. P1 and P2 for recovery of amount of ₹1,11,060/- and ₹30,000/-, defendant cannot press for legality of such action on the basis of violation of Rule 5 and 6 of Sale Circular No. 54 of 2007 which was discarded by the lower Appellate Court on lawful appreciation of judicial requirement and mandatory requirement which in considered opinion of this Court was sound and lawful assessment and appreciation of evidence.

In view of aforesaid, no illegality can be depicted in the impugned judgment and decree passed by the lower Appellate Court. In view of aforesaid, this appeal is found to be devoid of merit and same is accordingly dismissed.

(RAJ MOHAN SINGH)
JUDGE

19.09.2016

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Whether Reasoned/Speaking
Whether Reportable

Yes/No
Yes/No