

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.968 of 2014
IN
Civil Writ Jurisdiction Case No. 17550 of 2013**

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1. Bihar State Power (Holding) Company Ltd. Patna through its Chairman cum Managing Director, Vidyut Bhawan, Bailey Road, Patna
2. The South Bihar Power Distribution Company Ltd. Vidyut Bhawan Bailey Road, Patna through its Managing Director null null
3. The Electrical Executive Engineer, South Bihar Power Distribution Company Ltd. Electric Supply Division, Danapur Patna (wrongly stated as Electric Supply Sub-Division Danapur, Patna)
4. The Asst. Electrical Engineer South Bihar Power Distribution Company Ltd. Electric Supply Sub-Division, Danapur, Patna

.... Appellants

Versus

1. Shashikala Jha, Wife of Dayanand Jha, resident of 401, P.V. Complex Boring Canal Road, P.S.- Sri Krishnapuri, Town & District- Patna
2. Mrs. Abha wife of Rajeev Mishra Resident of Mahamaya Apartment in front of Bajala Mahila College, Deoghar, District- Deoghar (Jharkhand)
3. M/S Atha Constructions, A Partner Ship Firm, At Sheoshakti Apartment, Mohalla- Vishweshwaraiya Nagar, Bailey Road, P.S.- Rupaspur, District- Patna through its Partner Neeraj Kumar Son of Sri Ram Baban Rai, resident of Road No. 6D, Gardanibagh, P.S.- Gardanibagh, District- Patna

.... Respondents

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Appearance :

For the Appellants : Mr. Vinay Kirti Singh, Senior Advocate
Mr. Vijay Kumar Verma, Advocate
Mr. Akhileshwar Singh, Advocate

For the Respondent No.1 & 2: Mr. Suraj Samdarshi, Advocate

For the Respondent No.3: Mr. Mrigank Mauli, Advocate

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**CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 25-04-2017

Heard learned senior counsel for the appellants, learned
counsel for respondent Nos. 1 and 2 and learned counsel for
respondent no.3.

The Power Holding Company has assailed the order



dated 13.03.2014 passed in C.W.J.C. No. 17550 of 2013 since the writ application was allowed and a direction was given upon the appellant Company to provide fresh electric connection to the flats, which fell in the share of the private respondent Nos. 1 and 2.

It seems that an inspection or raid was carried out in the apartment, which was constructed on the land provided by the respondent Nos. 1 and 2, and inspection threw up materials to show that the electric meter was being bypassed and theft of electricity was being committed by the occupiers of the flats, who were said to be tenant of the private respondents. First Information Report was lodged. The builder, respondent no.3, in whose name the electric connection of the meter was recorded, accepted his liability to certain extent, got the dispute compounded, paid the money and the matter rested at that. However, the Power Holding Company insisted on making recoveries with regard to the theft committed by the occupants of the different flats and refused to give connection to the share of the flats which accrued to private respondent Nos. 1 and 2.

The learned single Judge besides this fact has also dealt with the liability which can be fastened under the Electricity Act. The relevant provisions dealing with such situation are Sections 135, 152, 154 as well as Section 43 of the Electricity Act, 2003.

The finding of the learned single Judge is that the



petitioners were not made accused. Criminal liability cannot be fastened on a person who was not found engaged in commission of theft of energy and the meter in question was registered not in the name of the petitioners, but the builder. Since the Power Holding Company failed to pin down the private respondents with the obligation and the liability of theft of energy, therefore, the learned single Judge gave a direction for providing electrical connection to the flats. This order has been challenged in the present Letters Patent Appeal by the Power Holding Company on the ground that by giving such a direction, the persons, who are liable or who have committed theft of energy between the year 2008 and 2011, have been allowed to go scot-free.

The Court is not very impressed by the submission of the learned senior counsel for the appellant. The First Information Report identifies the names of the persons, who were in occupation of the flats and were allegedly found consuming electricity illegally and instead of trying to pin down those person who had committed an offence under the Electricity Act, the Power Holding Company is trying to find an easy way out of now bargaining and if not blackmailing the flat owners, the real owners of the flats by refusing to provide electrical energy when there is no allegation against them even of connivance or some kind of conspiracy amongst the flat



owners as well as the consumers.

Counsel for the private respondent submits that there are enough evidence on record to show that the possession of the flats in question to the extent of their share has been delivered to them on paper much late than the First Information Report, the actual physical possession is even later than that and it was the responsibility of the builder, who has already accepted his responsibility to the extent the law permitted and has paid up the outstanding dues on the basis of compounding.

In the opinion of this Court, therefore, the learned single Judge has not committed any error of law by refusing to go by the stand of the Power Holding Company that the liability is that of the flat owners which is not even vicarious in nature.

The appeal, therefore, has no merit. It is dismissed.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

Pawan/-

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