

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.04.2017

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

WRIT PETITION Nos. 7059 to 7072 of 2017

Harreit Anita ...Petitioner in WP.Nos.7059 to 7062/2017
Linda Lathika ...Petitioner in WP.Nos.7063 to 7066/2017
Karuppiyah Dhanalakshmi ...Petitioner in WP.No.4067/2017
V.Usha Rani ...Petitioner in WP.No.7068/2017
Meenakshmi Nagarajan ...Petitioner in WP.No.7069/2017
S.Padma ...Petitioner in WP.No.7070/2017
R.Shanmugam ...Petitioner in WP.No.7071 /2017
V.Lenin ...Petitioner in WP.Nos.7072/2017

Vs.

- 1.The Chairman,
TANGEDCO,
Anna Salai, Chennai.
2. The Executive Engineer (O&M),
Guindy Division,
TNEB, Chennai.
3. The Assistant Executive Engineer (O&M),
TNEB, Ramavaram Circle (South),
Ramavaram, Chennai-600 089.
- 4.The Assistant Engineer (O&M)
TNEB, Ramavaram Circle (South),
Ramavaram, Chennai - 600 089.
- 5.M/s.Sanggavai Homes Private Limited,
Rep by its Director,
Mr.S.K.Selvasubhramanian ...Respondents in all the WPs.

WP.No.7059 to 7072/2017:

Writ petitions filed under Article 226 of the Constitution of India, to issue a writ of Mandamus directing the respondents 1 to 4 to effect service connection to the property situated at Flat No.D-1, first floor,D2,2nd Floor,D3,3rd Floor,D4,4th Floor,E1,1st Floor,E2,2nd Floor,E3,3rd Floor,E4,4th Floor,C4,4th Floor,B2,2nd Floor,C1,1st Floor,A2,2nd Floor,A4,4th Floor,C2,2nd Floor, Respectively, Door No.4/5, Kalasathan Koil Street, Ramapuram, Chennai - 600 089.

For Petitioner
in all W.Ps. : Mr.R.Bharath Kumar
For Respondents
in all W.Ps. : Mr.S.K.Rameshwar (for R1toR4)

.....
COMMON ORDER

Considering the commonality of the issues involved in all these writ petitions, they have been taken up and disposed off by a common order.

2.The petitioners who were the owners of the premises, sought for service connection which is not considered on the ground that they have not paid the arrears for the service connection stood in the name of their tenant.

3.This is the second round of litigation. The petitioners entered into a lease earlier with respect to the very same property. The lessee obtained a service connection in his name. Thus he became the consumer. The lessee of the petitioners became liable to pay the payment. Subsequently, the lessee died. A demand was raised against the petitioners being the landlords. It was put into challenge before this Court in W.P.No.1500 of 2009. The said writ petition was dismissed by the learned Single Judge on 06.01.2014 placing reliance upon Clause 6.10 of the terms and conditions of supply of electricity. Aggrieved over the same, a writ appeal was filed in W.A.No.345 of 2014. The said writ appeal was disposed of on 11.12.2014 in the following manner :

"5.There is no dispute that the appellant entered into a lease agreement date 15.10.1999 in an by which the property was given on lease for conducting a plastic box strapping manufacturing unit. The lessee was permitted to obtain electricity connection and pay the electricity charges to the department. The lessee appears to

have produced the lease agreement before the electricity department for the purpose of taking electricity connection. however, the fact remains that the appellant has not given any undertaking that she would pay the arrears in case the lessee failed to honour his commitment.

6.The respondents collected the electricity charges from the tenant in whose name electricity connection was given. The tenant appears to have involved in an act of theft of electricity resulting in quantification of charges by the respondents.

7.The learned single Judge placed reliance on Clause 6.10 of the terms and conditions of supply of Electricity, which provides that in case of services, which have been disconnected for non payment of arrears and the said premises is taken over by purchase, or transfer, service connection will be effected only on clearance of outstanding against the disconnecting service by the intending consumer. The Said Clause has absolutely no relevance to decide the issue raised by the appellant. The respondents would be justified in case the connection was taken in the name of the appellant. There was no privity of contract between the appellant and the electricity board so as to compel her to pay the amount due from the former lessee. Nothing prevented the respondents from collecting the electricity charges from the tenant. The electricity Board appears to have not taken any action to collect the arrears and they have invented a novel device to recover the amount by insisting that a new connection will be given only in case the arrears is paid. The facts of this case does not warrant invocation of the terms and conditions of supply of Electricity. The respondents should have obtained consent from the appellant for giving electricity connection in favour of the tenant. The respondents have taken the risk of giving electricity connection to the lessee on the basis of a lease agreement without there being a connected agreement agreeing to pay the dues by the landlord. Such being the position, the respondents were not correct in directing the appellant to pay the arrears due from the former lessee. The order passed by the second respondent dated 17.01.2019 is set aside.

In the result, the writ appeal is allowed. Consequently, M.P.No.1 of 2014 is closed. No costs."

4. Accordingly, the demand made against the petitioners was set aside. Thereafter, the petitioners made a fresh application. The application was not considered presumably on the ground of non-payment of earlier arrears, which is the subject matter of W.A.No.345 of 2014.

5. Learned counsel for the petitioner would submit that the denial to consider the application and grant the service connection would be contumacious being contrary to the order passed in W.A.No.345 of 2014 dated 11.12.2014.

6. Learned counsel appearing for the respondents 1 to 4 would submit that as per the clause 17 of the Principal Code which came into effect on 18.03.2011, the petitioners are liable to pay the default caused by their tenant. A specific reference has been made to sub-clause 9(a) which is as under:

"9(a) In case of service connection in a premises, which have been disconnected / dismantled for defaults in payment of dues whagsoever and if such service connections are to be reconnected or new service connections are to be obtained by the other persons in such premises either by purchase or transfer or lease basis, the Distribution Licensee shall reconnect. Such service connections or effect new service connections as the case may be, in such premises only after payment of dues attributed to such premises by the applicants."

7. Considering the above said facts, this Court is of the view that the writ petitions are liable to be allowed. Even on the earlier occasion the impugned demand raised was quashed by not accepting the reliance placed on Clause 6.10 of the terms and conditions of supply of electricity. It seen that Clause 17 (9) (a) of the Principal Code is on the similar lines. Even otherwise, the said clause has come into effect, as seen from the counter affidavit, only with effect from 18.03.2011 and thus cannot be applied to the liability if one could call it, as if accrued in the year 2009. This quantification of the liability culminated on 17.01.2009 has already been set aside. Thus, looking from any perspective the petitioners cannot be made liable for the dues of their tenant. The order passed by the Division Bench would bind the respondents 1 to 4.

8.In such view of the matter, a direction is issued to the respondents 3 and 4 to effect service connection to the property of the petitioner subject to the other compliance within a period of four weeks from the date of receipt of a copy of this order.

9.The writ petitions are allowed accordingly. No costs.

Sd/-
Asst.Registrar (J)

/true copy/

Sub Asst. Registrar

maya/cse

To

- 1.The Chairman,
TANGEDCO, Anna Salai, Chennai.
 2. The Executive Engineer (O&M),
Guindy Division, TNEB, Chennai.
 3. The Assistant Executive Engineer (O&M),
TNEB, Ramavaram Circle (South),
Ramavaram, Chennai-600 089.
 - 4.The Assistant Engineer (O&M)
TNEB, Ramavaram Circle (South),
Ramavaram, Chennai - 600 089.
- +1cc to M/s.R.Bharath Kumar, Advocate sr.36435
+1cc to M/s.S.R.Rameshuwar, Advocate sr.26310

W.P.Nos.7059 to 7072 of 2017

mp(co)
ss(22/5/2017)

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