

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.10.2017

CORAM:

THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.A.Nos.1276 to 1289 of 2017

and

C.M.P.Nos.17917 to 17943 of 2017

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. ... Appellants in all the W.As

Harreit Anita ... R1 in W.As.1276 to 1279 of 2017
Linda Lathika ... R1 in W.As.1280 to 1283 of 2017
Karuppiyah Dhanalakshmi ... R1 in W.A.1284 of 2017
V.Usha Rani ... R1 in W.A.1285 of 2017
Meenakshi Nagarajan ... R1 in W.A.1286 of 2017
S.Padma ... R1 in W.A.1287 of 2017
R.Shanmugam ... R1 in W.A.1288 of 2017
V.Lenin ... R1 in W.A.1289 of 2017

M/s.Sanggavai Homes Private Limited,
rep. by its Director, Mr.S.K.Selvasubhramanian,
F-1, II Floor, S.G.Jeeva Ashwin Apartments,
4/1, 6th Cross Street, Rayala Nagar,
Ramapuram, Chennai-600 089. ... 2nd Respondent in all W.As

Prayer : Writ Appeals filed Clause 15 of Letters Patent, against the judgement order dated 28.04.2017, passed in W.P.Nos.7059 to 7072 of 2017.

W.P.Nos.7059 to 7072 of 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 Nos.D-1, 1st Floor, D-2, 2nd Floor, D-3, 3rd Floor, D-4, 4th Floor, E-1, 1st Floor, E-2, 2nd Floor, E-3, 3rd Floor, E-4, 4th Floor, C-4, 4th Floor, B-2, 2nd Floor, C-1, 1st Floor, A-2, 2nd Floor, A-4, 4th Floor, C-2, 2nd Floor respectively, Door No.4/5, Kalasathamman Koil Street, Ramapuram, Chennai 600 089.

For Appellants in : Ms.Kavitha
all the appeals for M/s.S.K.Rameshuwar

For 1st Respondent : Mr.Bharathkumar
in all the appeals

COMMON JUDGMENT

[Judgment of the Court was made by RAJIV SHAKDHER, J.]

1. These are writ appeals filed against the common judgement and order dated 28.04.2017, passed by the learned Single Judge.

1.1. The respondents before us are the original writ petitioners. The writ petitions have been filed seeking issuance of a writ of mandamus against the aforementioned appellants.

1.2. The writ of mandamus/direction, which was sought by the respondents, as reflected in the writ petition read as follows :

"..... to issue a writ of Mandamus directing the respondents 1 to 4 to effect service connection to the property situated at Flat No.D1, First Floor, D2, Second Floor, D3, Third Floor, D4, Fourth Floor, E1, First Floor, E2, Second Floor, E3, Third Floor, E4, Fourth Floor, C1, First Floor, A2, Second Floor, A4, Fourth Floor, C2, Second Floor respectively, Door No.4/5, Kalasathamman Koil Street, Ramapuram, Chennai-600 089. (in short, "the subject property")".

2. As would be evident upon perusal of the prayer made in the writ petitions that, the only relief the respondents sought before the learned Single Judge was, for grant of electricity connection to the subject property.

2.1. The appellants, however, have refused to oblige only on the ground that arrears of electricity dues pertaining to 2009 had not been paid. What is not disputed before us by the appellants, is that, the arrears had been run-up by the erstwhile lessee of the subject property. The arrears relate to illegal abstraction of electricity by the erstwhile lessee. It is also not disputed before us that the erstwhile lessee has expired.

2.2. Furthermore, what is not disputed before us is that the appellant had, in fact, raised the issue of payment of the very same dues, which was challenged by way of a writ petition filed under Article 226 of the Constitution. The said writ petition, admittedly, was dismissed by another learned Single Judge of this Court vide order dated 06.01.2014. Concededly, the writ appeal, which was preferred against the aforesaid order, was allowed vide order dated 11.12.2014. The Division Bench, inter alia, took the view that the appellant before us had taken the risk of giving electricity connection to the lessee, based on a lease agreement, to which, the predecessor-in-interest of the respondents was not party. Therefore, the Division Bench came to the conclusion that the arrears pertaining to electricity dues, which had been run up by the lessee could not be recovered from the predecessor-in-interest of the respondents herein.

2.3. It may be important to note that in the earlier round of litigation, to which, we have made a reference above, the argument veered around clause 6.10 of the terms and conditions of Tamil Nadu Electricity Supply Code, 2004 (in short, "the Code").

3. It appears that the respondents, given the aforesaid background, once again, sought to have the subject property energized, and for that purpose, moved the appellants. Since, the appellants refused to oblige, the instant writ petitions, i.e., W.P.No.7059 to 7072 of 2017, were filed by the respondents herein.

3.1. The learned Single Judge while passing the impugned judgement has relied upon the order of the Division Bench dated 11.02.2014, passed in W.A.No.345 of 2014. Thus, based on the fact that the demand had been quashed by the Division Bench in the earlier round, the learned Single Judge came to the conclusion that the instant writ petition had to be allowed. In the impugned judgement, the learned Single Judge has not only referred to clause 6.10 of the Code, but also adverted to clause 17(9)(a) of the amended Code, which should in fact read as clause 17(8) (a).

4. Given the fact that the Code had been amended, the appellants had argued before the learned Single Judge that

position materially changed with the insertion of clause 17(9)(a) / [17(8)(a)].

4.1. The learned Single Judge, however, after noticing the fact that the amendment by way of clause 17(9)(a) / [17(8)(a)] had been brought in only on 18.03.2011, rejected the contentions raised by the appellants herein.

5. Ms.Kavitha Rameshwar, who appears for the appellants, says that the impugned judgement is flawed for the following reasons :

(i) That the appellants cannot be forced to energize the subject property without liquidation of the outstanding dues.

(ii) The amendment brought about in 2011 focuses on the subject property, as against the consumer. The dues attach to the property irrespective of who is housed in the subject property.

(iii) The learned Single Judge failed to take into account the definition of the expression "consumer", as provided in Section 2 (15) of the Electricity Act, 2003, (in short, "the Act") which is pari materia with definition given qua the same expression in clause 2(g) of the Code.

6. Mr.Bharath Kumar, who appeared for the respondents, on the other hand, relied upon the impugned judgement to resist the assertion advanced on behalf of the appellants.

7. We have heard the learned counsel for the parties and perused the record.

8. According to us, the core issue, which arises for our consideration in the present proceedings is : as to whether the respondents can be called upon to pay arrears of electricity dues which accrued on account of illegal abstraction of electricity by the erstwhile lessee ?

9. The submissions made by the learned counsel for the appellants could, perhaps, have been appreciated, if, it was not a case of illegal abstraction of electricity. Since it is a case involving illegal abstraction of electricity, no vicarious liability, whether, civil or criminal can be imposed on the respondents.

9.1. We must indicate though that the counsel for the appellants has sought to argue that civil liability could be imposed on the respondents. There are two difficulties to this argument advanced by the learned counsel for the appellants.

9.2. First, that at the time when illegal abstraction of electricity took place, clause 17(9)(a) / [17(8)(a)] was not inserted in the code. Therefore, there was no way to the

successor-in-interest knowing that arrears, qua, illegal abstraction of electricity would attach to the subject property and therefore would have to be paid before request for provisioning electricity could be entertained.

9.3. Second, even if we were to accept, for the moment, that civil liability would obtain even in a case of illegal abstraction of electricity, that by itself will not help the case of the appellants, in view of the admitted position that no demand obtains with regard to the electricity dues sought to be recovered by the appellants. With the passing of the Division Bench order dated 11.12.2014, the demand was questioned and therefore, in law, today, there are no dues outstanding even against the subject property.

10. Given these circumstances, according to us, no interference is called for with the impugned judgement.

11. We are also informed by the learned counsel for the appellants that a review petition has been filed in so far as the Division bench judgement dated 11.12.2014, is concerned.

12. We are told that the review petition has not been numbered, and therefore, has not come up for hearing before the concerned Court.

13. Thus, for the foregoing reasons, we find no merit in the appeal. Accordingly, the appeal is dismissed.

14. Needless to say, given the fact that the respondents are without electricity, since, May, 2016 (which is, when, fresh applications were filed with the appellants) and also the fact that, even according to the appellants, there is no impediment in energizing the subject property, the appellants will energize the subject property within one (1) week of the receipt of a certified copy of this order.

15. Resultantly, pending applications shall stand closed. There shall, however, be no order as to costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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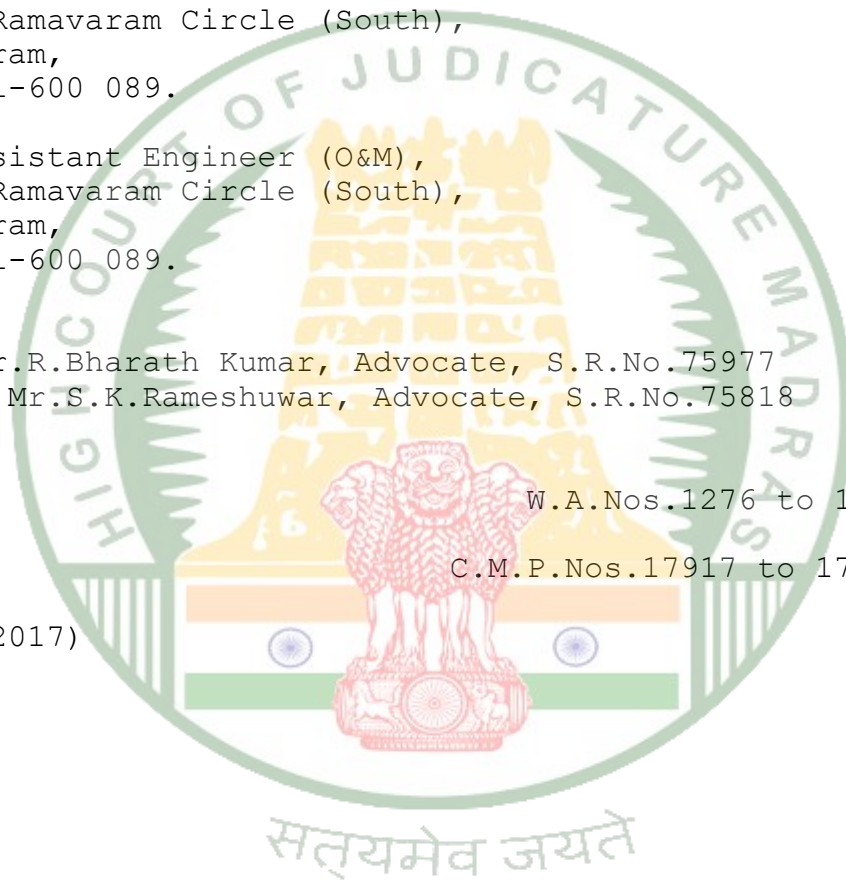
To

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Chennai-600 089.

+1cc to Mr.R.Bharath Kumar, Advocate, S.R.No.75977
+2cc's to Mr.S.K.Rameshuwar, Advocate, S.R.No.75818

W.A.Nos.1276 to 1289 of 2017
and
C.M.P.Nos.17917 to 17943 of 2017

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CA(16/11/2017)



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