

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.12.2017

CORAM

THE HONOURABLE MR. JUSTICE K.K.SASIDHARAN

and

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

WA.No.1620 of 2014
and M.P.No.1 of 2014

V.C.Jagadeesan Appellant

..Vs..

1.The Assistant Engineer,
Vellakovil West,
Tiruppur Electricity Distribution Circle,
Muthur via Kangayam Taluk,
Tiruppur District.

2.S.Velusamy

3.S.Ganesh Respondents

Writ Appeal has been filed under clause 15 of Letters Patent against the order of this Court dated 21.08.2014 made in W.P.No.14933 of 2014.

Petition Under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus to calling for the records of the demand notice issued by the respondent by his notice No. KA NO/ AEE/ EPA/VE.KO/ West/ Koppu No. 036/14/15 dated 3.5.2014 and to quash the same and consequently direct the respondent to restore the service connection to the petitioner in S.C.No. 090-001-1391 at Kumara Valsu in Vellakovil Village, Kangayam Taluk

For Appellant : Mr.L.Chandrakumar
for M/s.P.T.Rama Devi.

For Respondents : Mr.S.K.Rameshwar
standing counsel for R1.
Mr.K.A.Vimal kumar for R3.

No Appearance for R2.

JUDGMENT

(Judgment of the Court was delivered by P.VELMURUGAN, J.)

This Writ Appeal has been filed by the Government challenging the order of this Court dated 21.08.2014 made in W.P.No.14933 of 2014.

2. Originally the land and building belongs to the wife of the appellant/petitioner, he leased out the building to the third respondent and the third respondent obtained service connection in Consumption No.0900011797 in his name for commercial activities. Subsequently, the petitioner and his wife sold the property to the second respondent by way of registered deed dated 14.03.2012 and handed over the possession of the property to the second respondent. Thereafter also, the third respondent continued to be the tenant under the second respondent.

3. On verification, it seems that the 3rd respondent committed some default in payment of electricity consumption charges on the assessment dated 25.05.2012 to a tune of Rs.2,13,968/-, for which a notice was issued making the petitioner liable to pay the arrears in the capacity of landlord of the property and comes under the definition of 'consumer' under Tamil Nadu Electricity Supply code, 2004. It is seen from the accounts that till 26.03.2012, the 3rd respondent/tenant has paid the entire consumption charges and committed default only from 27.03.2012. On the date of assessment 25.05.2012, the 3rd respondent had committed default of Rs.2,13,968/-. The petitioner sold the property to the second respondent as early as on 14.03.2012 and handed over the possession to the 2nd respondent. The 3rd respondent continued to be the tenant under 2nd respondent and the petitioner ceased to be the owner of the property on the date of the alleged default committed by third respondent. Hence, the petitioner is not liable to pay any amount to the first respondent. Challenging the impugned order passed by the first respondent in letter No.Ka.No/AEE/EPA/VE.Ko/West/Koppu No.036/14/15 dated 03.05.2014 the petitioner filed writ petition to direct the respondent to restore the service connection to the petitioner in SC.No.090-001-1391 at Kumara Valsu in Vellakovil village, Kangayam Taluk.

4. The learned single judge after hearing the arguments of both sides, disposed of the writ petition directing the appellant/petitioner and third respondent shall pay the amount as directed above to the Electricity Board within the time frame as stipulated and the third respondent/tenant has undertaken before this Court to pay amount of Rs.1,00,000/- subject to the claim to be made in the civil Court.

5. Aggrieved against the order passed by the learned single

judge in WP.No.14933 of 2014 dated 21.08.2014, the appellant/petitioner preferred the present writ appeal.

6. The learned counsel for the appellant would submit that the property was owned by the appellant and his wife, he let out the property to the 3rd respondent and the 3rd respondent obtained service connection in Consumption No.0900011797 in his name for commercial activities. The appellant sold the property to the second respondent vide registered sale deed dated 14.03.2012, thereafter, the 3rd respondent continued to be tenant under 2nd respondent. The 3rd respondent paid the entire consumption charges till 26.03.2012 and committed default in payment of electricity consumption charges on the assessment dated 25.05.2012 to a tune of Rs.2,13,968/-, for which the first respondent disconnected Service Connection No.009-001-1391, since, the tenant has not paid the amount due and payable by him, the same has to be recovered from the appellant. As per law, the appellant is not entitled to pay the amount, he sold the property to the second respondent on 14.03.2012 prior to the date of assessment i.e., on 25.05.2012 and the default committed by the 3rd respondent is only from 27.03.2012. If any default committed by the tenant the same will not bind on the landlord and the appellant has already sold the property to the second respondent, for which the first respondent ought not to have disconnected the service connection No.009-001-1391. Hence, the appellant prays for allowing the appeal.

7. The learned counsel for the first respondent/Electricity Board filed counter and contend that as per the definition under the Tamil Nadu Electricity Supply code, 2004 a "consumer" includes the owner of the building. Furthermore, in this case, the appellant has given consent for sanctioning service connection in the name of the 3rd respondent for commercial purpose. The 3rd respondent admits that there is a dispute between the landlord/appellant and tenant, the Electricity Board cannot be in any way deprived of money and as per Rue 17(8) of the Supply Code Book, the first respondent is at liberty to charge in another service connection, in which the landlord is the owner of the property having a service connection, therefore, they are legally entitled to disconnect the service connection for non-payment of the amount.

8. The learned counsel for the third respondent/tenant would content that the appellant/landlord promised that from the advance amount of Rs.3,00,000/- he will pay the dues to the electricity board, based on the understanding between the parties, the third respondent accepted and vacated the premises without receiving the advance amount. The appellant without settling the dues to the electricity board and taking advantage

to show as if the third respondent is liable to pay the amount to the electricity board.

9. Heard the rival submission made by the learned counsel for the appellant, learned standing counsel for the electricity board and the third respondent. There is no appearance on behalf of the second respondent and perused the materials available on record.

10. The learned single judge disposed of the writ petition based on the undertaking given by the 3rd respondent/tenant in the counter that due to circumstantial changes in the business he is not in a position to pay the due to the first respondent immediately and ready to repay the dues immediately without any default, if the appellant refunds the advance amount of Rs.3,00,000/- to him. While disposing of the writ petition, the learned single judge observed that the appellant/petitioner and third respondent shall pay the amount due to the Electricity Board within the time frame as stipulated and the third respondent/tenant has given an undertaking before this Court to pay the amount of Rs.1,00,000/- subject to the claim to be made in the Civil Court.

11. It is not in dispute that originally, the appellant herein and his wife are the owner of the property and they let out the building to the 3rd respondent. Subsequently, he sold the property to the second respondent and the 3rd respondent continued to be tenant under the second respondent. The said transaction between the appellant and the second respondent was not properly intimated to the first respondent/Board, till the transaction was intimated to the first respondent with proper documents, the appellant continues to be the landowner of the property for the purpose of consumer under the Tamil Nadu Electricity Supply code, 2004. In this case, the sale between the appellant and the second respondent is not communicated to the first respondent/Board.

12. Now there is a dispute between the appellant and the 3rd respondent/tenant with regard to repayment of advance amount of Rs.3,00,000/- to the 3rd respondent. Considering the factual position and also the admission so made by the 3rd respondent and the appellant, the learned single judge rightly directed the 3rd respondent to deposit a sum of Rs.1,00,000/-, in default directed the first respondent to disconnect the service connection owned by him in SC.No.090-001-1797 and further directed the appellant and the third respondent to clear the arrears due to the first respondent.

13. It is seen from the counter filed by the 3rd respondent

before the writ Court that with the consent of the appellant he obtained commercial service connection No.090-001-1797, thereafter shifted the business to Karur and vacated the premises. The tenant/3rd respondent frequently approached the appellant and explained his financial position for refund of the advance amount, at that time, the appellant undertakes to pay the dues to the first respondent and return back the balance amount, believing the words the third respondent waited patiently without initiating any legal action on the appellant in the manner known to law. After receipt of notice in this writ petition only, the 3rd respondent clearly knows the colour of the appellant, in order to defraud the 3rd respondent and to avoid refunding the advance amount and to escape from the clutches of first respondent, the appellant filed this writ petition before this Court. The third respondent states that due to circumstantial changes and loss in business he could not settle the dues immediately, if the appellant refunds the advance amount, he undertakes to settle the arrears immediately without any default.

14. On a perusal of the counter affidavits filed by the respondents 2 and 3 shows, neither the appellant nor the third respondent intimated about the arrears of amount due to the first respondent. Further, after the sale the service connection has not been transferred immediately in the name of the second respondent. Therefore, the second respondent is not treated as necessary party to the proceedings and he is not liable to pay the arrears amount.

15. At the time of entering into lease agreement with the appellant, the third respondent paid a sum of Rs.3,00,000/-, while vacating the premises, there was an undertaking given by the appellant to adjust the arrears of due to the electricity board. But the appellant neither returned the advance amount nor settled the arrears amount to the Board. The learned single judge has rightly observed that the dispute between the appellant/landlord and the third respondent/tenant can be worked out before the Civil Court.

16. As far as the payment of consumption charges, the third respondent as a 'consumer' under the definition of Tamil Nadu Electricity Supply code, 2004, a persons owing the land or building will also be treated as consumer. In this case, the appellant has given his consent for service connection No.090-001-1797 in the name of the tenant/third respondent. Hence, the parties viz., appellant and the third respondent are liable to pay the arrears to the first respondent and learned single judge also made it clear that both the parties are at liberty to agitate their claim before the competent Civil Court with

reference to refund of the advance money.

17. In view of the above facts and circumstances and considering the nature of relationship and dispute between the appellant as landlord and third respondent as tenant, we are of the considered view, that there is no illegality or infirmity in the order passed by the learned single judge and the same does not warrant any interference by this Court.

18. In the result, the writ appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

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To

The Assistant Engineer,
Vellakovil West,
Tiruppur Electricity Distribution Circle,
Muthur via Kangayam Taluk,
Tiruppur District.

+1cc to Mr.K.A.VIMAL KUMAR Advocate, S.R.No.86471

WA.No.1620 of 2014

SS (CO)
TR(19/01/2018)

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