



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.03.2017

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THE HONOURABLE MR.JUSTICE S.S.SUNDAR

**W.P (MD) No.2155 of 2017
and
W.M.P. (MD) .No.1785 of 2017**

R.S.Thiyagarajan

... Petitioner

Vs.

1.Assistant Electrical Engineer,
Tamil Nadu Generation and Distribution Corporation Limited
(TANGEDCO)
Madurai Metro Electricity Distribution Circle,
Arasamaram, Madurai...

2.T.Murugesan

... Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India for issue a writ of Certiorari calling for the records in கடித எண்.உமிபொ/ப/அர/வ.ஆ/கோ.மி.திரு./அ.எண் 461/14 நாள் 20.01.2017 and quash the same.

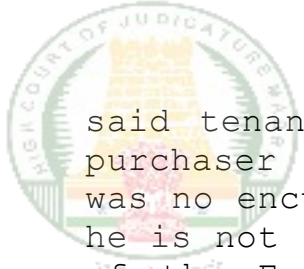
For Petitioner : Mr.N.Sudalai Muthu

For Respondent : Mr.S.M.S.Johnny Basha

O R D E R

The petitioner has filed the above writ petition challenging the impugned order passed by the first respondent demanding a sum of Rs.23,66,337/- from the petitioner. The impugned order further reveals that yet another service connection of the petitioner would be dis-connected, in case the petitioner fails to pay the amount demanded from the petitioner.

2. The admitted fact in this case shows that the petitioner has purchased the property in the year 2005. Further the tenant of the Ex-owner has committed theft of energy and a demand for payment of a sum of Rs.6,21,902/- along with BPSC charges to the tune of Rs.17,44,435/- was made as recoverable from the tenant of the Ex-owner towards theft of energy allegedly committed by the



said tenant. Since the petitioner claimed that he is a bonafide purchaser of the property, from the second respondent and there was no encumbrance in the year 2005, the petitioner's case is that he is not liable to the amount which was found due from the tenant of the Ex-owner towards theft of energy committed by the said tenant. Though the petitioner has made a representation on 07.01.2017 to the first respondent long prior to the impugned notice, the first respondent has not considered the representation of the petitioner. In such circumstances, this Court is satisfied that the case of the petitioner on the facts need not be doubted.

3. Heard the learned counsel for the petitioner and the learned counsel appearing for the first respondent.

4. The learned counsel for the petitioner relied upon the judgment of the Division Bench of this Court in the case of **Assistant Engineer, TNEB, Chennai vs. Sabasthi Ammal and another** in **W.A.No.719 of 2014** dated 27.01.2015 in paragraph 18 & 19 of the said judgement is extracted hereunder:

"18. Therefore, in the present case, the fact of the matter is that the First Respondent/Writ Petitioner by means of an order dated 31.12.2005 was allotted a shed bearing No.915, 28th Street, B.V.Colony, Vyasarpadi, Chennai-39 and she is engaged in a small trade of packing salt in small polythene bags and sell the same in retail. Moreover, electricity supply is necessary for her small business and as such, the impugned order dated 17.03.2011 passed by the Appellant/First Respondent recovering the First Respondent/writ Petitioner to pay the sum of Rs.15,53,975/- together with interest to the Tamil Nadu Electricity Board and only when she is willing to pay the aforesaid amount, the new service connection in her name would be considered is not legally a tenable one in the eye of law because of the simple reason for theft of energy or for the benefit enjoyed by a person in regard to the theft of electricity only that particular person can be considered to be an accused person and against whom the Appellant/First Respondent/TNEB can proceed in the manner known to law and in accordance with law. But the First Respondent/writ Petitioner by no stretch of imagination be called upon to pay a sum of Rs.15,53,975/- with interest to the Tamil Nadu Electricity Board and putting a precondition in regard to the above said payment by the Appellant/Tamil Nadu Electricity Board is not correct and legally valid one in the eye of law based on the reason that the First respondent/writ petitioner had not committed theft of electricity or energy or even benefited by the theft of electricity which was detected on 19.04.2001 and in

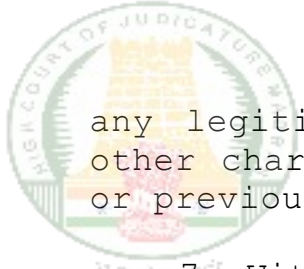


fact, the previous tenant Sengalammal was alone responsible for the same in regard to her electricity connections A/c.67-17-584. Also that, the First Respondent/writ petitioner who is not at all connected with the previous tenant of the Second respondent/Tamil Nadu Slum Clearance Board in the considered opinion of this Court cannot be imposed with a liability or erstwhile tenant in the absence of any agreement between her and the Electricity supplier, more so when the theft of energy was purportedly detected on 19.04.2001 in A/c.67-17-584, wherein, the theft of energy detected was used by the erstwhile tenant.

19. In view of the foregoing reasons, this Court hold that the demand/claim made by the Appellant/First Respondent through its letter No.AE/O&M/V/Va.No.53, dated 17.03.2011, claiming a sum of Rs.15,53,975/- towards theft of energy charges as penalty from the First Respondent/writ petitioner is clearly unsustainable in the eye of law and to that effect, we concur with the view taken by the learned Single Judge in the Writ Petition. However, this Court bearing in mind, Clause 17(9)(a) of the Tamil Nadu Electricity Supply Code, 2004, directs the Appellant/First Respondent to issue a fresh demand notice/communication requiring the First/writ Petitioner to pay the lawful due electricity consumption charges of the previous occupier/tenant, re-connection charges or other ancillary/incidental charges by specifying the time limit as per relevant rule of the Tamil Nadu Electricity Supply Code, 2004, within a period of two weeks from the date of receipt of a copy of this order. Further, upon payment of the said claim amount by the First Respondent/Writ petitioner, the Appellant/TNEB is directed to reconnect/restore/provide new service connection as the case may be forthwith."

5. From the reading of the above judgement of the Hon'ble Division Bench, it is clear that the Electricity Department is not entitled to collect charges which are due by the Ex-owner or the tenants of the Ex-owner, which are payable by them on account of theft of energy committed by them. However the Hon'ble Division Bench relying upon Clause 17(9)(a) of the Tamilnadu Electricity Supply Code, 2004, has held that the Electricity Department is justified in collecting the lawful electricity consumption charges from the previous occupier/tenant or other charges which are ancillary/incidental towards the service connection.

6. Hence, this Court is inclined to allow the writ petition <https://hcservicescourts.in/services> impugned order of the first respondent dated 20.01.2017. However, it is open to the first respondent to make a fresh assessment and initiate separate proceedings for recovery of



any legitimate due on account of consumption of Electricity or other charges which are found due by the previous occupier/tenant or previous owner.

7. With the above observation, this writ petition is allowed. There is no orders as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(AS)

/True copy/

Sub Assistant Registrar

To

Assistant Electrical Engineer,
Tamil Nadu Generation and
Distribution Corporation Limited (TANGEDCO)
Madurai Metro Electricity Distribution Circle,
Arasamaram, Madurai.

+1 cc to Mr.N.Sudalaimuthu , Advocate in SR.No. 13654
+1 cc to Mr.S.M.S.Johnny Basha , Advocate in SR.No. 13217

PJL
AE/SV MMS/SAR2/10.04.2017/4P/4C

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