

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.20636 of 2015

ORDER:

The present Writ Petition came to be filed seeking issuance of a writ of mandamus declaring the action of the 2nd respondent in not restoring the electricity service connection bearing No.L5000541 to the petitioner's shop (Mulgi) situated at Kishannagar, Asifnagar, Jhirra, Hyderabad, as illegal and arbitrary.

2) The facts in issue are as under :

The 3rd respondent herein is the owner of the premises bearing No.12-1-486/B/2/8 situated at Kishannagar, Asifnagar, Jhirra, Hyderabad. It has been let out to the petitioner on a monthly rent of Rs.2,500/- p.m., for running a shop. The rear side room was also let out to the petitioner at Rs.2,000/- p.m. The tenancy between the parties was an oral one. The petitioner claims to be running a sweet shop and a mobile counter in the said Mulgi and was eking out his livelihood by doing the said business. There is an electrical supply connection to the shop bearing Service No.L5000541. It is said that the petitioner, who is the tenant, has been paying the bills regularly without any default. As the business was flourishing, the 3rd respondent is alleged to have developed an eyesore and wanted to create hurdles. When all his attempts proved futile, the 3rd respondent is alleged to have resorted to highhanded and illegal

action. It is stated that, at the instance of 3rd respondent the 2nd respondent inspected his shop on 21.05.2014 and is alleged to have found that the meter tampered. Then, the 2nd respondent got registered a case under meter tampering, vide FIR.No.1367 of 2014 and assessed the penalty to a tune of Rs.1,18,611/- and also disconnected the supply. The averments in the affidavit show that in order to restore the electricity supply, the petitioner paid a total amount of Rs.1,18,611/- to the 3rd respondent and both together obtained a demand draft No.057227 dated 01.10.2014 for an amount of Rs.1,18,611/- in favour of 2nd respondent. It is said that the 3rd respondent, with a malafide intention, directed the 2nd respondent not to restore the connection until he directs. Meanwhile, the 3rd respondent got issued a legal notice dated 24.04.2015 intimating termination of the tenancy by the end of 31.05.2015. Thereafter the 3rd respondent also filed a suit for eviction vide O.S.No.447 of 2015 on the file of VII Senior Civil Judge, City Civil Court, Hyderabad. It is said that though the entire amount has been paid by the petitioner, the 2nd respondent failed to restore the electricity supply at the instance of the 3rd respondent. Hence, the present Writ Petition came to be filed.

3) By an order dated 07.07.2015 this Court issued rule nisi and granted interim directions as prayed for.

4) A counter and vacate stay came to be filed by 3rd respondent denying the averments made in the affidavit of the writ petition. It is stated that petitioner No.1 is the tenant in occupation of the said Mulgi and that the electrical connection to the said Mulgi stands in the name of 3rd respondent. It is stated that the 2nd respondent, in a routine check, found tampering of the meter and accordingly a case was registered against the petitioner No.1 on 06.09.2014 and an amount of Rs.1,18,611/- was also charged towards penalty against the petitioner. As the petitioner failed to pay the amount, the Authorities insisted the 3rd respondent to pay the amount as he is the landlord and the meter stands in his name. It is said that in order to avoid further complications, the 3rd respondent paid the amount on 01.10.2014. It is said that the present Writ Petition is filed only to harass the 3rd respondent. It is further stated that the petitioner has not paid any penalty amount to him and that the 3rd respondent alone paid the amount. Since the petitioner is in the habit of not paying the amounts regularly and is also trying to harass the respondent by not paying the rents and also electricity charges, the 3rd respondent seeks vacation of the stay.

5) Respondents 1 and 2 filed their common counter disputing the averments made in the affidavit of the petitioner. It has been specifically stated that the electricity meter was removed from the premises in the presence of the petitioner and he never objected for dismantling of the connection and removal of the meter. It has also

been stated that the 3rd respondent herein paid the entire amount through D.D., and after paying the amount, the 3rd respondent addressed a letter to the ERO-2/Sultan Bazar vide.Lr.No.AAE/Op/DAtt-47/D-III/SRB/C-IX/D.No.292/14 dated 21.11.2014 for dismantling of the connection. It is further stated that pursuant to the said letter and after payment of the amount, the service was dismantled and a clearance certificate was issued vide bill dated 01.12.2014. It has been specifically stated in para 5 of the counter that the electricity meter was removed from the premises in the presence of the petitioner and he never objected for dismantling of the connection and removal of the meter. The connection was dismantled in the month of December, 2014. It is stated that once the service connection was deleted from the Master Ledger, the entire history of the connection is deleted from the computers. Hence, the said electricity connection cannot be restored with the same number. It is further stated that the petitioner never approached for restoration of power supply after disconnection of the service. It has been stated that as per general terms and conditions of Supply Clause 5.2, the owner of the premises has to apply for new connection along with proof of title to the said premises. It is stated that the 3rd respondent being the owner, paid the entire amount for the theft of power committed by the petitioner, who is the tenant. Hence, the writ petition is liable to be dismissed.

6) The undisputed facts are that the petitioner is the tenant of the 3rd respondent and is running a sweet shop in the said premises. The electricity connection to the said Mulgi stands in the name of the petitioner. There was tampering of the meter, which lead to initiation of proceedings on criminal side and also for recovery of amount due along with penalty. It is also not in dispute that an amount of Rs.1,18,611/- was paid and pursuant to the orders passed by this Court the electrical connection was restored.

7) Learned counsel for the petitioner mainly urged that only with a view to harass the petitioner and to evict him, the 3rd respondent colluded with the 2nd respondent and got the case foisted. It is urged that he paid the entire amount with penalty and as such the authorities cannot disconnect the power supply.

8) On the other hand, the 3rd respondent submits that the since the connection stands in the name of 3rd respondent, the liability is on him to pay the penalty and since the petitioner is in the habit of resorting to the acts of tampering, he prays that the 2nd respondent may be directed not to restore the power supply.

9) From the counter filed by the 2nd respondent, it is clear that the 3rd respondent paid the amount in the month of October, 2014 by way of demand draft, which fact ofcourse is seriously disputed by the learned counsel for the petitioners. Be that as it may, pursuant to an order passed by this Court, the power supply has been restored. The

prayer in the writ petition is for a direction to the 2nd respondent to restore the electricity service connection to the petitioners' shop. The interim prayer as well as the main request appear to be one and the same. Since the electricity service connection has been already restored pursuant to payment of fine, it is not proper to order disconnection as the 2nd respondent cannot disconnect power supply unless there is default in payment of bill amount.

10) The grievance of the 3rd respondent appears to be that the petitioner is in the habit of tampering with the meter and also not paying the electricity charges as per the bill. If that is so, remedies are available elsewhere and it is not necessary for this court to suggest as to what is to be done.

11) Giving liberty to avail the remedies available under law, the Writ Petition is disposed of. No costs. Miscellaneous petitions, pending if any, in this Writ Petition, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

Dt: 14.03.2017
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