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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.02.2019

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.23019 of 2018

1. S.Ramkumar
 2. P.Dharmalingam
 3. Sreekumar Somasundaram
 4. P.Kanagaraj
- ... Petitioners

-vs-

1. The Chairman
Tamil Nadu Electricity Board
800, Anna Salai
Chennai 600 002
 2. The Executive Engineer
TANGEDCO
Coimbatore Electricity Distribution Circle
Ondipudur, Coimbatore
 3. The Assistant Engineer
Coimbatore Electricity
Distribution Circle (Urban)
Singanallur West, Coimbatore
- ... Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order made in Lr.No.AE/SN-W/CBE-Coconut Grove/A.No.511/2018 dated 25.07.2018 issued by the third respondent, quash the same and consequently direct the respondents to grant new electricity service connection to the petitioners' respective flats constructed in Block C and D in Tower I, Coconut Grove Apartments, Vellalur Road, Singanallur, Coimbatore by considering the receipts for payment of registration fees, dated 18.06.2018.

For Petitioners::Mr.N.Manokaran

For Respondents::Mr.S.K.Raameshuwar
Standing Counsel



ORDER

All the four petitioners, who are the owners of the respective flats constructed in Block C and D in Tower-I, Coconut Grove Apartments, Vellalur Road, Singanallur, Coimbatore, have come to this Court jointly challenging the impugned proceedings passed by the Assistant Engineer, Coimbatore Electricity Distribution Circle (Urban), Singanallur West, Coimbatore, the third respondent herein, to quash the same with a consequential direction to the respondents to grant new electricity service connection to the petitioners' respective flats constructed in Block C and D in Tower I, Coconut Grove Apartments, Vellalur Road, Singanallur, Coimbatore by considering the receipts for payment of registration fees, dated 18.06.2018.

2. Learned counsel for the petitioners submitted that Mr.S.S.Ramakrishnan, S/o S.N.Sanjeevi Perumal Naicker is the owner of the subject matter properties comprised in S.F.No.622/2 (2.42 acres) and S.F.No.621 (85 cents) of Singanallur Village, Coimbatore District by way of a registered deed of assignment of surplus land in Ref.No.144/MR-IV dated 26.3.1976 and two sale deeds dated 22.01.1986 bearing Document No.98 of 1986 and 02.02.1998 bearing Document No.1502 of 1998 having an extent of 3.27 acres in toto. The said S.S.Ramakrishnan has appointed one Mr.P.King John as his power agent under the General Power of Attorney dated 29.04.2011 bearing Document No.923/Bkiv/2011. The said power of attorney, after getting approval from the Director of Town and Country Planning, proposed the construction and the land owner/promoter also developed the properties into four Towers, namely, Tower-I, II, III and IV as separate Blocks. After the completion of the construction work and the submission of the applications for electricity service connection, the third respondent finally granted service connections to the individual flats on 4.7.2015 and as such, 126 flat owners took possession of their respective flats including 22 and 26 flat owners in Tower-IV and Tower-II. Now the third respondent has issued the demand notices dated 27.2.2018 and 3.7.2018 respectively, alleging that the domestic connections have been misused for the purpose of carrying out the interior works by the promoter till the flats are occupied by the flat owners. Under this background, the crux of the issue is that when the arrears of electricity charges accrued in Tower-II and Tower-IV have not been paid by the flat owners, the petitioners, who are owning the flats in Tower-I, cannot be jointly held responsible. The reason is that if the arrears of electricity charges remain unpaid in respect of the flats in Tower-II and Tower-IV, the persons occupying the flats in Tower-I cannot be held responsible. Similarly, for the arrears in respect of the flats



in Tower-I, the persons occupying the flats in Tower-II and Tower-IV cannot be held responsible. Finally, it is stated that when the petitioners in Tower-I, even as per the counter affidavit filed by the respondents, are not having any arrears payable to the third respondent, he cannot issue any notice, as the arrears have to be claimed only from the flats owners staying in Tower-II and Tower-IV. Therefore, the impugned proceedings issued by the third respondent calling upon the petitioners to pay the arrears of electricity charges in respect of Tower-II and Tower-IV cannot be put against the petitioners who are staying in Tower-I, which is a separate Block.

3. A detailed counter affidavit has been filed by the respondents. Mr.S.K.Raameshuwar, learned standing counsel for the respondents, filing additional typedset of papers, drawing the notice of this Court to the rough sketch and photographs showing the four Towers, namely, Tower-I, Tower-II, Tower-III & Tower-IV, submitted that each Tower is having individual flats. Therefore, as per the definition of the term "premises" under Section 2(51) of the Tamil Nadu Electricity Act, 2003 that includes any land, building or structure read with sub-clause (9a) of clause 17 of the Principal Code, the petitioners cannot maintain the present writ petition, because, unless they pay the arrears of electricity charges, they cannot ask for individual electricity service connection to their respective flats. Relying upon sub-clause (9a) of clause 17 of the Principal Code, Mr.Raameshuwar contended that in case of service connections in a premises, which have been disconnected / dismantled for defaults in payment of dues whatsoever and if such service connections are to be reconnected or new service connections are to be obtained by other persons in such premises either by purchase or transfer or lease basis, the Distribution Licensee, namely, the TANGEDCO 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 applicant. He also stated that even the proviso also says that even if the premises have legally been sub-divided, the outstanding dues attributed to such premises shall be divided in proportion to the area covered by that sub-division and a new service connection to any of such sub-divided premises shall be given only after the share of outstanding dues attributed to such sub-divided premises, is duly paid by the applicant. Therefore, when the 'premises' defined under Section 2(51) includes a land, building or structure, in the present case, since all the four Towers are built in one land forming part of the same Survey Field number, the petitioners and others shall jointly take the responsibility and pay the arrears of electricity service charges that had accrued in Tower-II and Tower-IV. Only then, they can move the applications for new service connections.



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4. But this Court is unable to find any justification on the said submissions. In this context, it is relevant to refer to sub-clause (9a) of clause 17 of the Principal Code, which reads as follows:-

"9(a) In case of service connections in a premises, which have been disconnected / dismantled for defaults in payment of dues whatsoever and if such service connections are to be reconnected or new service connections are to be obtained by 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 applicant:

Provided that in case such premises have legally been sub-divided, the outstanding dues attributed to such premises shall be divided in proportion to the area covered by that sub-division. A new service connection to any of such sub-divided premises shall be given only after the share of outstanding dues attributed to such sub-divided premises, is duly paid by the applicant. The Distribution Licensee shall not refuse connection to an applicant of such sub-divided premises only on the ground that, dues attributed to the other portion(s) of such sub-divided premises have not been paid, nor shall the licensee demand record of last paid bills of such other portion(s) from such applicants."

5. A reading of the above shows that in case of service connections which have been disconnected / dismantled for defaults in payment of dues, the persons affected by such disconnection in the same premises can get their service connections restored only in the event of clearing the entire arrears due from that premises. But in the present case, the land owner/promoter Mr.S.S.Ramakrishnan had obtained approval for developing the land comprised in S.F.Nos.621 (85 cents) and 622/2 (2.42 acres) of Singanallur Village, Coimbatore totalling to 3.27 acres and the land owner/promoter, for the convenience of flat owners, also developed the properties into four Towers, namely, Tower-I, Tower-II, Tower-III and Tower-IV. Tower-IV consisted of 32 flats and Tower-II consisted of 96 flats. Tower-I concerning the petitioners is also having 96 flats.



Since the promoter at the time of doing the interior works in Tower-II and Tower-IV had consumed electricity and the charges thereto have not been paid till date, the third respondent can claim the arrears only from the promoter/flat owners/occupiers of the flats in Tower-II and Tower-IV. Therefore, when Tower-I is independent and the flats are separately constructed, which is not connected with Tower-II and Tower-IV, sub-clause (9a) of clause 17 of the Principal Code cannot be made applicable to the petitioners, as they are having their flats only in Tower-I. Hence, the impugned order in respect of the claim made against the four petitioners who are owning the flats in Tower-I is alone quashed. At the same time, the impugned order can be directed against the flat owners/occupiers in Tower-II and Tower-IV, if there is any arrears, in the manner known to law. If there is no arrears payable for Tower-I, more particularly in respect of the flats occupied by the petitioners, the respondents are directed to process the applications of the petitioners for new electricity service connection in the manner known to law and if the applications are found in order, the electricity service connections shall be effected within a period of two weeks from the date of receipt of a copy of this order, subject to the payment of the usual charges/deposit. With this direction, the writ petition stands allowed. Consequently, W.M.P.No.27022 of 2018 is closed. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The Chairman
Tamil Nadu Electricity Board
800, Anna Salai
Chennai 600 002
2. The Executive Engineer
TANGEDCO
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Ondipudur, Coimbatore.



3. The Assistant Engineer
Coimbatore Electricity
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Singanallur West, Coimbatore.

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+1cc to Mr.S.K.Rameshuwar, Advocate Sr.16536
+1cc to Mr.N.Manokaran, Advocate Sr.16339

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srg 7/3/2019