IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

101 WRIT PETITION NO.2944 OF 2018

RAMCHANDRA MADHAVRAO NAIK
VERSUS
MAHARASHTRA STATE ELECTRICITY DISTRIBUTION CO LTD ANDANOTHER

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Advocate for Petitioners : Mr. Yadkikar Amit A
Advocate for Respondent No. 1 : Mr. A.S. Shelke.
Advocate for Respondent No. 2 : Mr. Dharurkar Chaitanya V.

CORAM : S. V. GANGAPURWALA AND MANGESH S. PATIL, JJ.
DATE : 13/08/2019

PER COURT :

1. Mr. Yadkikar, learned counsel for the petitioner submits that the procedure as laid down under section 126 of the Electricity Act has not been adhered to. According to the learned counsel, the petitioner is the owner of the premises. It was given to the respondent No. 2 to run coaching classes. The petitioner is charged tariff for industrial purpose. Out of bill an assessment order is issued to the petitioner, wherein an amount of Rs. 23,35,321/- is claimed from the petitioner. According to the learned counsel, if the petitioner is relegated to the remedy of appeal, the petitioner has to deposit an amount of Rs. 11,50,000/-, alternate remedy would not be an efficacious

remedy. The petitioner is aged 79 years. The respondent No. 2 is required to pay the electricity tariff. The petitioner at no material point of time was ever issued with any notice prior to the final assessment.

2. Mr. Shelke learned counsel for respondent No. 1 submits that, since the year 2010, the respondent No. 2 is running air conditioner coaching classes. The respondent No. 2 is in occupation of the premises in question. The premises is used for commercial purpose. The petitioner is availing the electric supply for LT-V, industrial category, as he was running a printing press. However, in 2010 he had rented the premises in favour of respondent No. 2 for commercial purpose. The spot inspection was conducted in presence of the consumer representative namely Shri. Sachin Gayke. He has signed on the spot inspection report dated 27.12.2017. On the basis of the spot inspection report, the Assessing Officer issued the order of provisional assessment, as contemplated under section 126(2) of the Electricity Act to the respondent No. 2, as he was the person in occupation of the premises. The respondent No.2 submitted application on 28.02.2018 requesting to grant time for submission of the objection.

3. The respondent No. 2 appeared before the Assessing Officer and submitted objection on 05.03.2018 contending that the petitioner

has authorized him to use the premises for commercial activity. The documents on record and objection was considered and thereafter the liability was ascertained. Final assessment order is issued on 06.03.2018 and the same is received by Mr. Abhishek Gayke, on behalf of petitioner. The learned counsel submits that the petitioner has an alternate remedy under section 127 of Electricity Act.

4. As far as the number of units are concerned, the same would be the disputed question of fact. It is undisputed that premises is used for commercial purpose since the year 2010. Earlier thereto, the premises was used for industrial purposes. The electricity bill was paid and tariff calculated for industrial purpose.

5. As there is a disputed question of fact it would not be appropriate to invoke the writ jurisdiction. The respondent No. 2 is occupant of the premises. He was served with the provisional assessment. He had raised an objection. The objection was considered and thereafter the final assessment bill is issued. Now, the petitioner cannot turn around and raise a plea that he was not issued with the provisional assessment. As per section 126(2) of the Electricity Act the order of provisional assessment shall be served upon the person in occupation or possession or in charge of the place or premises. The respondent No. 2 being in occupation or in charge of the premises

was served with the provisional assessment. Objections were invited. The objection was considered.

6. In view of the disputed questions of fact involved and the statutory remedy of appeal being provided by statute we are not inclined to entertain the writ petition.

7. The writ petition is disposed of with liberty to the petitioner to avail the alternate remedy. All contentions are kept open.

8. The amount of Rs. 1,00,000/- deposited by the petitioner is allowed to be withdrawn by the respondent.

9. In case, the appeal is filed, the said amount of Rs. 1,00,000/- deposited by the petitioner shall be adjusted.

10. The period lost in prosecuting the present writ petition shall be considered by the authority as a period spent in prosecuting bonafidely the litigation.

(MANGESH S. PATIL, J.) **(S. V. GANGAPURWALA, J.)**

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