

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.01.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.67 of 2016

M/s Velammal Institute of Technology
represented by its Chairman
"Velammal Knowledge Park"
Chennai-Kolkatta Highways, GNT Road
Panchetti, Thiruvallur District

Petitioner

-vs-

1. The Chairman
Tamil Nadu Electricity Board
Anna Salai
Chennai 600 002
2. The Chief Engineer
CEDC/North, TNEB
No.791, Anna Salai
Chennai 600 002
3. The Superintending Engineer
CEDC/North, TNEB
No.791, Anna Salai
Chennai 600 002
4. The Executive Engineer
Operation and Maintenance
Panchetti, TNEB,
Panchetti, Thiruvallur District
5. The Assistant Executive Engineer
Operation and Maintenance
Panchetti, Thiruvallur District

Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, to call for the records in the proceedings letter No.SE/CEDC/N/AEE/DEV/AE/D2/F HT Velammal new/850/14 dated 30.06.2014, on the file of the third respondent, quash the same and consequentially direct the respondents 3 to 5 to effect the conversion of the LTCT connection in No.91/07/641 and 91/07/781 in the name of Velammal institution college and hostel

respectively as HT service connection and provide 600 Kva new service connection as per application dated 20.11.2013 and 28.03.2014.

For Petitioner :: Mr.M.L.Ramesh

For Respondents :: Mr.P.H.Aravindh Pandian
Additional Advocate General
assisted by Mr.P.R.Dhilip Kumar

ORDER

The petitioner institution has obtained electricity service connection from the Superintending Engineer, CEDC/North, Tamil Nadu Electricity Board, Chennai, the third respondent herein in Low Tension Consumer Tariff (LTCT) Account No.91/07/641 and 91/07/781 for the college and hostel respectively. The learned counsel for the petitioner submitted that there was no default in payment of the electricity consumption charges and also the security deposit made to the first respondent. While so, the Assistant Executive Engineer, Operation and Maintenance, Panchetti, Thiruvallur District, the fifth respondent herein issued a notice in Ka.No.Vu.Sa.Po/OM/Panchetti/Ko/A.No.13 dated 1.12.2013 stating that the LTCT connections are used in one premises and therefore the High Tension (HT) electricity connection is to be obtained in the place of two LTCT connections, because the Board is sustaining loss. In the said notice, it was also stated that if the conversion of connection was not obtained, action would be taken upon the connections that were existing. The learned counsel further submitted that only in compliance of the said notice issued in the month of December 2013, the petitioner institution made an application for conversion of the aforementioned two LTCT connections into HT connection on 20.11.2013. Again the third respondent in letter No.SE/LEDL/N/AEE/DEV/AF/D2/FHT Velammal new/D1686/13 dated 27.11.2013 sought for certain compliance with respect to the application to enable the conversion of the two LTCT connections to HT connection. Since all the discrepancies pointed out in the letter dated 27.11.2013 by the third respondent were complied with, the third respondent also informed the petitioner institution in letter dated 28.1.2014 that the petitioner institution shall pay the outstanding dues of the erstwhile owner, namely, M/s Viswas Carbite for their service connection HTSC No.1377, which was disconnected after detection of theft on 14.7.94 and 18.2.95 and the amount was worked out to Rs.4,18,52,900/- and the arrears also came to Rs.4,29,70,382/-. Since the third respondent insisted upon the petitioner institution to comply with the payment of the aforementioned

amounts, on receipt of the said letter, a reply was also given to them making it clear that the application is only for conversion of two LTCT connections into HT connection as per the letter issued by the fifth respondent on 1.12.2013 and in addition thereto, they also explained in the said reply that the land originally belonged to Mr.P.V.Palanimathan, S/o Vadivelu Mudaliar and Jeevakarunyan that was sold to one Mr.C.N.Viswanathan in the year 1980. Thereafter, the said land was also mortgaged with the financial institution and on default in repayment, debt recovery proceedings were initiated before the Debts Recovery Tribunal, Chennai, which ended in the auction sale of the property and one Mr.R.Selvadoss had purchased a portion of the property on 24.10.2001. A sale certificate was also issued on 3.12.2001, which came to be registered as Document No.3892 of 2003 dated 1.9.2003 on the file of the Sub Registrar, Red Hills. He also sold the land in two portions to the vendors of Sri M.V.M.Sasikumar in Document Nos.5960 and 5961 of 2006 dated 26.7.2006, which came to be registered on the file of the Sub Registrar, Red Hills and the said property is used as one of the driveway to the institution. The learned counsel also submitted that since the property purchased by the petitioner institution is only a vacant land without any building for which there was no electricity connection taken from the respondents, they cannot insist upon the petitioner for payment of the arrears of electricity charges for the default committed by someone with whom the petitioner has no connection whatsoever even in respect of purchase of the land in question. Moreover, when the fifth respondent had issued the notice asking the petitioner institution to take steps for conversion of the two LTCT connections into HT connection on 1.12.2013, they cannot ask for payment of the arrears of electricity charges.

2. As mentioned above, the petitioner had no connection whatsoever thereon. Moreover, the issue also has been settled by this Court in an order passed in Writ Petition No.8713 of 2011 dated 23.4.2014 (Sabasthi Ammal v. The Assistant Engineer, O&M, TNEB and another), which was also confirmed by the Hon'ble Division Bench in Writ Appeal No.719 of 2014 dated 27.1.2015 (The Assistant Engineer, O&M, TNEB v. Sabasthi Ammal and another), which is reported in CDJ 2015 MHC 897. The ratio laid down by this Court shows that when a property is sold in public auction free from encumbrance, the subsequent purchaser of the said property cannot be considered as "debtor" within the meaning of Section 2(3) of the Tamil Nadu Electricity Board (Recovery of Dues) Act, 1978, hence, the Electricity Board cannot make any demand from the subsequent purchaser as to the due from the original owner as a condition precedent for grant of the electricity connection and this view was taken, in the light of Clause 6.10 of the Terms and Conditions of the Supply of Electricity. When the said view has been confirmed by the

Division Bench in Writ Appeal No.719 of 2014 dated 27.1.2015, the frivolous and unjustifiable claim made by the third respondent has no merit, hence, the impugned order is liable to be set aside.

3. A detailed counter affidavit has been filed by the respondents. The learned Additional Advocate General for the respondents submitted that admittedly the petitioner institution has not committed any theft of electricity. However, the petitioner had purchased the land in question and since the previous owner has not cleared the arrears of electricity charges and subsequently the said land was also mortgaged and thereafter the mortgagor has committed default, the land in question was brought for public auction in a proceeding before the Debts Recovery Tribunal, Chennai and the petitioner was the bona fide purchaser of the property for a valid consideration. Therefore, the order passed by this Court in Writ Petition No.8713 of 2011 dated 23.4.2014, which was confirmed by the Hon'ble Division Bench in Writ Appeal No.719 of 2014 dated 27.1.2015 can be considered with regard to the prayer made by the petitioner.

4. Firstly, the issue raised in this writ petition is no longer res integra, as the same has been settled by this Court in an order passed in Writ Petition No.8713 of 2011 dated 23.4.2014 (Sabasthi Ammal v. The Assistant Engineer, O&M, TNEB and another), which was also confirmed by the Hon'ble Division Bench in Writ Appeal No.719 of 2014 dated 27.1.2015 (The Assistant Engineer, O&M, TNEB v. Sabasthi Ammal and another), which is reported in CDJ 2015 MHC 897. The ratio laid down by this Court shows that when a property is sold in public auction free from encumbrance, the subsequent purchaser of the said property cannot be considered as "debtor" within the meaning of Section 2(3) of the Tamil Nadu Electricity Board (Recovery of Dues) Act, 1978, hence, the Electricity Board cannot make any demand from the subsequent purchaser as to the due from the original owner as a condition precedent for grant of the electricity connection and this view was taken, in the light of Clause 6.10 of the Terms and Conditions of the Supply of Electricity. When the said view has been confirmed by the Division Bench in Writ Appeal No.719 of 2014 dated 27.1.2015, the frivolous and unjustifiable claim made by the third respondent has no merit, hence, the impugned order is set aside.

5. Secondly, it is not in dispute that the land in question originally belonged to Mr.P.V.Palaninathan, S/o Vadivel Mudaliar and Jeevakarunyam that was sold to one Mr.C.N.Viswanathan in the year 1980. On his purchase, he mortgaged the property with the financial institution and on default in repayment, debt recovery proceedings were initiated

before the Debts Recovery Tribunal, Chennai, which ended in an auction sale of the property and Mr.R.Selvadosh had purchased a portion of the property on 24.10.2001 and a sale certificate was also issued on 3.12.2001, which was also registered as Document No.3892 of 2003 dated 1.9.2003 on the file of the Sub Registrar, Red Hills. Again he sold the land in two portions to the vendors of Sri M.V.M.Sasikumar in Document Nos.5960 and 5961 of 2006 dated 26.7.2006 on the file of the Sub Registrar, Red Hills. Therefore, it is not known how the respondents can claim the payment of arrears to which neither the petitioner nor his vendor was responsible. Hence, the writ petition stands allowed and the respondents are directed to consider the application of the petitioner for conversion of the two LTCT connections into HT connection and do the needful within a period of four weeks from the date of receipt of a copy of this order. Consequently, W.M.P.No.35 of 2016 is closed. No costs.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

ss

To

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Tamil Nadu Electricity Board
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Chennai 600 002
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5. The Assistant Executive Engineer
Operation and Maintenance
Panchetti, Thiruvallur District

+1cc to Mr.ML.Ramesh, Advocate SR.No.5936

+1cc to Mr.P.R.Dhilipkumar, Advocate SR.5914

W.P.No.67 of 2016

GMV (06/02/2019)



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